

1 THE HEARING RESUMED ON THE 2ND FEBRUARY 1999, AS FOLLOWS:

2 .

3 CHAIRMAN: Good morning. I apologise for the somewhat
4 late start. It was due to legal discussions between the
5 legal teams. Thank you. Mr. Gallagher, when you are
6 ready.

7 .

8 MR. COONEY: Mr. Chairman, before Mr. Gogarty is called to
9 the box. Could I mention one slight error in the
10 transcript of yesterday proceedings which I would like to
11 correct if I may?

12 .

13 CHAIRMAN: Yes.

14 .

15 MR. COONEY: It is the very last, on the very last page
16 and it is a word which is attributed to me which in fact I
17 didn't use in my response to your judgement. Mr. Chairman,
18 the word attributed to me is "intention", in fact the word
19 I used was "injunction". I would just like to correct that
20 because it doesn't -- it may not have made much sense in
21 its original form but it makes no sense --

22 .

23 CHAIRMAN: We have to make sense above all else, Mr.
24 Cooney. I wouldn't have you recorded as saying something
25 nonsensical. Thank you very much for your assistance.

26 .

27 JAMES GOGARTY CONTINUES TO BE EXAMINED BY MR. GALLAGHER AS
28 FOLLOWS:

29

30 1 Q. MR. GALLAGHER: Good morning, Mr. Gogarty.

31 A. Good morning.

32 2 Q. Yesterday we heard evidence from you in relation to

1 telephone calls you say you received in the early hours of
2 the morning from Mr. Murphy Junior, and a statement which
3 you subsequently prepared. I think following the
4 preparation of that statement and following that incident
5 in June of 1994, the Gardai in the form of Detective
6 Sergeant Sherry, among others, came to your home to
7 interview you in connection with the matter; is that right?

8 A. That's correct, yes.

9 3 Q. And I think that Detective Sergeant Sherry arranged to
10 write, to have your telephone number changed as a result of
11 that call; is that correct?

12 A. That's correct, yeah.

13 4 Q. The letter I am referring to is a letter of the 28th of
14 July, it appears to have been stamped the 28th of July, of
15 1994. It is on page 258 of the reference book. And it is
16 to the Telephone Accounts Department "re phone number -
17 8392694. Ex directory subscriber - Mr. James Gogarty" and
18 it gives your address, or your then address. By the way was
19 this an exdirectory telephone number?

20 A. Oh, it was an exdirectory.

21 5 Q. At the time?

22 A. Yes.

23 6 Q. And at the time Mr. Murphy phoned you it was an exdirectory
24 number, was it?

25 A. It was but he had it of course.

26 7 Q. Was it at all times an exdirectory telephone number up to
27 that time?

28 A. Murphy's were paying it.

29 8 Q. But was it in fact an exdirectory telephone number at all
30 times up to then, to the best of your recollection?

31 A. Not at all times, from 1982 Mr. Conroy got it done. Mr.

32 Conroy got it done.

1 9 Q. You are saying from 1982 up to 1994, June of 1994 your
2 telephone number was exdirectory?

3 A. That's correct.

4 10 Q. I see. Now just to return to the letter. It is to the
5 Telecom Accounts Department. It is a letter signed by
6 Sergeant Sherry:

7 .

8 "With reference to the above please note that the Gardai in
9 Howth Detective Unit are currently investigating a
10 complaint from Mr. Gogarty alleging abusive phonecalls.

11 The family are very upset over these calls and are
12 frightened that the threats made may be carried out. I
13 would request that consideration be given to having this
14 telephone number changed as soon as possible". Were you
15 aware that that letter had been written?

16 A. I was, yeah.

17 11 Q. Did you, in fact, write a letter yourself to Telecom pretty
18 much along the same lines. On page 259, the following
19 page?

20 A. I must have.

21 12 Q. To Telecom Eireann, the 3rd of August.

22 .

23 "With reference to above, I the undersigned subscriber
24 have been subjected to offensive and threatening phonecalls
25 of which the Gardai at Howth have been notified. As a
26 result my family and I are very upset and we are frightened
27 that the threats may be carried out. I therefore request
28 as a matter of urgency that you would kindly arrange to
29 have my telephone number changed as soon as possible. I
30 enclose confirmation from the Gardai in support of my
31 request. Thanking you in anticipation, James Gogarty".

32 .

1 Now, the Gardai carried out certain investigations, and we
2 will hear about those in due course. But they conveyed to
3 you that a decision had been taken by Detective Sergeant
4 Sherry that he wasn't going to prosecute Mr. Murphy; is
5 that right?

6 A. That's correct.

7 13 Q. And I think you consulted your solicitor, Mr. Michael
8 Hegarty, at that time, who was dealing with Circuit Court
9 litigation for you?

10 A. That's correct.

11 14 Q. As a matter of interest how did you come to change
12 solicitors from Mr. Messrs. McCann Fitzgerald to Mr.
13 Hegarty?

14 A. Well, it was very personal, do I have to go into that? I
15 do? I will tell you, all right.

16 15 Q. Well --

17 A. You see.

18 16 Q. Well, does it have anything to do with the matters that we
19 are dealing with here? Do you say it is a personal matter?

20 A. Well, I could try and explain it to you. I will tell you
21 -- they were a very big firm and a good firm, McCann
22 Fitzgerald. And they were quite dear.

23 17 Q. I see.

24 A. And they had done a very good job for me and eventually got
25 me pension and got the minimum to help myself and my wife,
26 and we agreed that in the ongoing situation that it would
27 be very expensive on me because it was very expensive and
28 --

29 18 Q. Was that the reason?

30 A. We changed amicably.

31 19 Q. I see. Now, did you convey to Mr. Hegarty what had
32 happened in the course of the telephone calls from Mr.

1 Murphy and subsequent discussions you had with the Gardai?

2 A. I did, both by telephone and letters.

3 20 Q. Did you arrange for Mr. Hegarty to write to Mr. Murphy?

4 A. I did and to write to Mr. Sherry too, as well.

5 21 Q. Did Mr. Sherry convey to you that the Gardai had decided

6 not to issue proceedings?

7 A. That's right. That's right.

8 22 Q. And did he tell you why he was not going to issue

9 proceedings?

10 A. Well, he didn't give me satisfactory reasons for it, that

11 was why I was so annoyed. He gave me some reason but --

12 having regard to what had happened and the background, I

13 felt very concerned.

14 23 Q. Did you not receive from Mr. - or from Detective Sergeant

15 Sherry his decision not to prosecute because he felt that

16 it was not an appropriate case to prosecute having regard

17 to all the circumstances?

18 A. He wrote that letter.

19 24 Q. Did he not convey that to you, did he not tell you that?

20 A. Oh, he told me that -- my recollection is that he told me

21 he felt that my wife wasn't an independent witness and that

22 he felt in the circumstances that it was a civil matter

23 that, but that they would help me, but they didn't feel

24 that it was, in his judgement a case where they should --

25 he said he had spoken to, I think he said he had spoken to

26 a man in the DPP on a social occasion and he raised it with

27 him and that they both came to the conclusion that there

28 wasn't sufficient evidence, or something to that effect.

29 Anyhow I felt with the background that was there, and what

30 I thought I had filled him in on, to remove any threat and

31 the fear that we were going through that we felt that this

32 man should have been brought within the jurisdiction and

1 may be bound to the peace, you know?

2 25 Q. Did you about that time decide to issue civil proceedings

3 against, civil proceedings against Mr. Murphy?

4 A. Well, you see Mr. Sherry said that he would be of

5 assistance in any civil proceedings that would be taken.

6 And I suggested to my solicitor that it warranted a private

7 prosecution, but he felt that he had no experience of such

8 a private prosecution being held in this country and that

9 it would be very expensive and he said to me that his

10 advice was to, not to take issue or embarrass the guards

11 and to pursue me High Court, me case against them, you

12 know, against Murphy.

13 26 Q. And did you initially accept that advice?

14 A. I did, I accepted that advice and instructed him to that

15 effect.

16 27 Q. Well, at a later stage you were making complaints about the

17 Gardai to Deputy Tommy Brougham among others, how do you

18 reconcile your acceptance of the advice that you got

19 initially with your later --

20 A. I didn't accept the advice, I didn't accept the advice. I

21 didn't accept the advice. I told you what I was told but I

22 didn't accept the advice and I still don't accept it, I

23 disagree that it was -- I feel it was an error of

24 judgement, but I disagree with the findings that he

25 shouldn't have been charged and brought within this courts,

26 because I understand that they didn't interview him

27 personally but that they spoke to him on the telephone.

28 28 Q. Well, did you ask Detective Sergeant Sherry or did you

29 arrange for your solicitor to ask Detective Sergeant Sherry

30 to reconsider the decision?

31 A. I did, I did.

32 29 Q. Can I refer you to a letter of the 18th of October, of

1 1994, 263 in the book of reference. It is a letter to
2 Detective Sergeant Bernard Sherry from Smith O'Brien
3 Hegarty, your solicitors. You say you refer to previous
4 correspondence:
5 .
6 "We refer to previous correspondence and in particular to
7 your letter dated 15th of August last. Our client is
8 extremely disappointed at the decision not to prefer
9 charges against Mr.
10 Murphy, bearing in mind the very serious nature of the
11 threats which were made. We would ask you to reconsider
12 your decision in this regard.
13 .
14 We would also ask you to bear in mind that at the time when
15 the threats were made to our clients an appeal to the High
16 Court was pending in a civil case in which Mr. Gogarty had
17 succeeded in obtaining an order against Mr. Murphy's
18 company, Lajos Holdings Limited.
19 .
20 It is our view that the threatening phonecall was in
21 contempt of court and was an attempt to interfere with the
22 administration of justice and interfere with the witness.
23 .
24 Finally we confirm that we have received instructions from
25 our client to issue civil proceedings against Mr. Murphy
26 Junior seeking damages for assault and the infliction of
27 physical and emotional suffering".
28 .
29 Did you also arrange about that time for your solicitor to
30 write to Joseph Murphy?
31 A. Yes. Yes.
32 30 Q. Can I refer you to a letter 275 in the book of reference.

1 It is a letter of the 21st of November of 1994.
2 .
3 "Re: Our clients James Gogarty and Anna Gogarty". It is
4 addressed to Joseph Murphy at his London address.
5 Dear sir, we are writing on behalf of our clients, James
6 and Anna Gogarty of Renvyle, Sheilmartin Road, Sutton,
7 Dublin 13, concerning the events that occurred at
8 approximately 2.30 am on the morning of the 20th June last
9 when you made two telephone calls to Mr. James Gogarty
10 which caused considerable anxiety and distress to both our
11 clients, which also put both of them in immediate fear and
12 trepidation for their personal safety. You are well aware
13 of the details of the conversation which took place,
14 particularly as the matter is currently the subject of a
15 Garda investigation. Suffice to say that you intimated to
16 our client in a clear and unambiguous manner that you were
17 going out to his house "to break every fucking bone in his
18 body, to kick the shit out of him" so that neither of our
19 clients would have a roof over their head.
20 .
21 Bearing in mind the fact that our clients had been soundly
22 asleep in the middle of the night when these calls were
23 received and bearing in mind also the threatening and
24 violent tone of your dialogue our clients were in such fear
25 of their personal safety that they telephoned 999
26 immediately, and two Gardai arrived at our clients house
27 within a short time to provide them with security for their
28 personal safety.
29 .
30 This terrifying incident together with the consequent garda
31 investigation has put both our clients in a continuing
32 state of apprehension. For their personal safety it has

1 had a very serious and harmful impact on their health.
2 This harmful effect is exacerbated by the fact that both
3 our clients are people of advanced years who are not
4 physically capable of defending themselves against the type
5 of threat that was made and the purpose of this letter is
6 to put you on formal notice of the fact that our clients
7 intend to issue civil proceedings against you forthwith in
8 the High Court for damages for assault and for the
9 infliction of physical and emotional suffering.

10 .

11 We would be obliged if you would nominate solicitors to
12 accept service of High Court proceedings on your behalf.

13 .

14 Finally, we are to remind you of the verbal undertaking
15 which you gave to the Garda authorities that you were not
16 to communicate to our clients other than through their
17 legal representative. We must ask you to ensure that this
18 undertaking is strictly complied with. We are also drawing
19 the attention of the Garda authorities to the fact that
20 your actions not only constituted a criminal assault but
21 they also constituted a most serious contempt of court in
22 that an appeal against the circuit court judgement was
23 pending at the relevant time, and further, that your
24 actions were criminal on the basis that it constituted an
25 attempt to interfere with or obstruct the administration of
26 justice".

27 .

28 Did you in fact receive any response to that letter, can
29 you recall?

30 A. No. He evaded everything for the, evaded everything for
31 the next 12 months.

32 31 Q. Did you actually in fact arrange for the commencement of

1 High Court proceedings against Mr. Murphy on the 14th of
2 November, of 1994, or thereabouts?

3 A. I did yeah, I did yeah.

4 32 Q. Did you arrange for service of the proceedings, and if so
5 what attempts were made to serve them?

6 A. Well, I arranged with my solicitor to engage summon servers
7 to serve the proceedings on Mr. Murphy, and they engaged
8 the services of a summons server in Dublin, I understood he
9 was --

10 33 Q. Well, it doesn't matter who he was. They arranged for the
11 services of a summons server in Dublin and what happened
12 after that?

13 A. Well, that summons server reported back within a very short
14 period of time, that he had made inquiries in Santry and
15 talked to people around there, and as a result of his
16 discussions he felt that he would like to withdraw from his
17 agreement to serve the proceedings.

18 34 Q. Did you arrange for substituted service of the summons and
19 was such an order made in the High Court on the 24th of
20 July, of 1995?

21 A. Well, after this man pulled out on serving the summons in
22 Dublin, my solicitor organised a firm in London and they
23 made five attempts to serve proceedings on Mr. Murphy and
24 they failed, and they made a sworn affidavit and that was
25 used by my solicitors to go to the High Court and get an
26 order to serve proceedings on the normal postal service.

27 35 Q. In fact did anything further happen in relation to these
28 proceedings? Did they ever come to a hearing?

29 A. Well, after that time a firm of solicitors for him would
30 see if he would enter an appearance or a defence or
31 something but they never came to hear it.

32 36 Q. Did you contact Deputy Tommy Brougham in connection with

1 the --

2 .

3 MR. COONEY: Mr. Chairman, just before Mr. Gallagher
4 leaves that subject I think perhaps there are a number of
5 matters he should go into; (A) The allegations made by this
6 witness against Detective Sergeant Sherry which were found
7 to be baseless and the similar allegations which he made
8 against the summons server, and also Mr. Hegarty, his
9 solicitor's personal reaction to these allegations. I don't
10 think these matters should be left out of this narrative. I
11 know these are matters that I can raise in
12 cross-examination but I think they should now be brought
13 out in direct evidence, with respect, Mr. Chairman.

14 .

15 CHAIRMAN: This is an unusual application.

16 .

17 MR. GALLAGHER: We will deal with all matters --

18 .

19 MR. CALLANAN: It is an outrageous intervention by Mr.
20 Cooney. Mr. Cooney can cross-examine this witness as he
21 wishes. There is no basis for him seeking to interpose to
22 invite Mr. Gallagher to put matters raised -- it is no part
23 of Mr. Cooney's function. He is at liberty to
24 cross-examine.

25 .

26 CHAIRMAN: I appreciate there is not quite a strict
27 observance of what I might call "the procedural rules" of
28 court, at the same time we do appear to be straying very
29 far. If it will shorten the matter and he can get an
30 account and you can limit your cross-examination to a
31 particular aspect of that account, it is beneficial.

32 .

1 MR. COONEY: What I am concerned is this, Mr. Chairman;
2 this is an inquiry and I understand it, perhaps
3 incorrectly, Mr. Chairman, is that there is a duty on
4 counsel for the Inquiry to bring out all facts relevant to
5 a particular matter then being discussed by a witness in
6 his evidence.

7 .

8 Now, it seems to me that there are facts relating to this
9 incident which are known to the Counsel for the Tribunal
10 but which he hasn't asked Mr. Gogarty about. Now, it is
11 not outrageous by any means, in my respectful submission,
12 that I should ask that Counsel for the Tribunal should
13 bring out these facts at this stage of the proceedings. I
14 can do it in cross-examining Mr. Chairman, but I cannot
15 understand Mr. Chairman, why in an inquiry which is here to
16 establish all facts, some facts are brought out for Mr.
17 Gogarty in direct evidence but others are not. For
18 instance the fact that Mr. Gogarty falsely accused
19 Detective Sergeant Sherry of being bribed and corrupt,
20 secondly that he left his own solicitor Mr. Hegarty.

21 A. I didn't.

22 .

23 MR. CALLANAN: I really must object to Mr. Cooney.

24 .

25 CHAIRMAN: Just, there must be one voice only at a time.

26 Now, Mr. Cooney, please restrain yourself, it is not a
27 free-for-all.

28 .

29 MR. COONEY: Mr. Chairman, this is not a matter of
30 restraining myself. This is information contained in the
31 documents furnished to me by the Tribunal, by the Tribunal,
32 Mr. Chairman. I have been furnished with the Garda file in

1 which all of these matters have been set out. I have been
2 furnished with documents which were attendances by Mr.
3 Hegarty on this client, of which he records Mr. Hegarty's,
4 his dissatisfaction with him, and Mr. Gogarty's, his
5 dissatisfaction with him. This man accused the summons
6 server of having been bought.

7 .

8 CHAIRMAN: Just a moment.

9 .

10 MR. COONEY: May I just finish please. I cannot understand
11 why some facts are brought out by Counsel for the Tribunal
12 and others are not, it just puzzles me Mr. Chairman,
13 because you have stated innumerable times that this is a
14 inquiry into fact. The Counsel for the Tribunal has said
15 the same things, why aren't these facts being brought out
16 in direct evidence, Mr. Chairman? That is all I ask.

17 .

18 CHAIRMAN: Mr. Cooney, there are two aspects to that to
19 reply to. First and foremost, Counsel for the Tribunal are
20 entitled to run their case broadly as they understand,
21 provided they are doing it fairly. That is number one.

22 .

23 Number two; you are fully informed in the sense that all
24 documentation that we have in our possession in relation
25 certainly to this matter, is in your possession, so you
26 have total notice and total command over how you will
27 react.

28 .

29 Thirdly, you are going -- part and parcel of that you will
30 have, and presumably you will either be the first person to
31 cross-examine Mr. Gogarty. And finally, should there be
32 any doubt as to any matter being left undealt with or

1 unfairly posed to me, either by your good self or by
2 anybody else, Counsel for the Tribunal will in fact have,
3 as it were, a sweeper role at the end of all of a
4 particular witness' evidence to tidy up any outstanding
5 matters.

6 .

7 Now, more than that if I don't get the information with all
8 that really somebody has gone wrong somewhere, and badly
9 wrong. Now, I don't believe that to be true. At the same
10 time I have no wish to confine, I want to get on with the
11 inquiry.

12 .

13 MR. COONEY: I quite understand that, Mr. Chairman. I
14 take every point you have made on board, Mr. Chairman, and
15 certainly these are matters that I will be dealing with in
16 cross-examination, but the fundamental point, Mr. Chairman,
17 with respect Mr. Chairman, undealt with is this: Why
18 should Counsel for the Tribunal bring out some facts and
19 omit others when his duties are to present all the facts to
20 the Tribunal?

21 .

22 CHAIRMAN: The duty for Counsel for the Tribunal overall
23 is to present all the facts and to try and keep everybody,
24 keep a full supply of information available to the
25 Tribunal. He does not have to go through every word. He is
26 entitled to flag certain aspects and say this is there, it
27 may be a matter which Mr. Cooney or Mr. -- anybody wants to
28 go into, and I fully understand that you will have a
29 particular approach and you must be given a very
30 considerable latitude in your cross-examination, but I
31 really can't run a Tribunal for your benefit only.

32 .

1 MR. COONEY: I am not asking, Mr. Chairman --

2 .

3 CHAIRMAN: Having regard to the fact that you have all the

4 facts, and with all due respect, a remarkable command of

5 forensic inquiry under your --

6 .

7 MR. COONEY: You are very kind, Mr. Chairman. What I have

8 to say is why are some of the facts selected and others

9 not.

10 .

11 CHAIRMAN: I don't think that is true, I think they are

12 being flagged. We are not going to continue this

13 discussion infinitum. Mr. Gallagher, can you just broadly

14 flag these aspects of the matter, then they are opened to

15 Mr. Cooney to inquire into in detail.

16 .

17 MISS BUTLER: I wonder at this point might I intervene to

18 support Mr. Cooney. I have been granted representation on

19 behalf of An Garda Siochana and I think it inappropriate

20 that Mr. Gogarty, who has made allegations against the

21 Guards which are now accepted as not being correct, should

22 not have to deal with that at this point.

23 .

24 I don't think it is sufficient to say that I will have a

25 right of cross-examination. I shouldn't have to

26 cross-examine in relation to allegations which are not

27 being pursued against my clients, but unfortunately have

28 been made and which have been reported in the media before

29 this evidence has been given at all.

30 .

31 I would support Mr. Cooney's suggestion that these matters

32 should be dealt with in some more detail by Counsel for the

1 Tribunal at this stage and that would be the appropriate
2 way to have the matters dealt with.

3 .

4 CHAIRMAN: Thank you very much. You were about to say?

5 .

6 MR. CALLANAN: I just want to say in relation to Mr.
7 Cooney's intervention and in relation to the statements
8 which he saw fit to make under cover of that intervention
9 as against Mr. Gogarty, that Mr. Gogarty has not accused
10 and does not accuse the Gardai of corruption, this is not
11 an inquiry into the conduct of the Gardai. Mr. Gogarty was
12 not happy with the fact that Mr. Murphy Junior was not
13 prosecuted. He has explained that dissatisfaction to the
14 Tribunal. That, it seems to me, is as far as it goes. I
15 was a little surprised that Miss Butler should seek an
16 amplification of allegations that have not been made by Mr.
17 Gogarty in his evidence. I can only surmise that the basis
18 for Mr. Cooney's intervention is entirely mischievous and
19 he did seize the opportunity to entirely misrepresent the
20 position in relation to Mr. Gogarty.

21 .

22 CHAIRMAN: Well, my view of the matter is very - no, I
23 have had enough submissions on this matter, I am now going
24 to close the gate.

25 .

26 MR. COONEY: Just Mr. Chairman, Mr. Callanan has accused
27 me of misrepresenting the situation. Can I just quote from
28 Mr. Callanan's client's own sworn statement? At paragraph
29 88 of his affidavit, My Lord. These are the words he
30 used. I hope that when Mr. Callanan has heard these words
31 he will have the grace to withdraw the suggestion he just
32 made. The last sentence of paragraph 88 Mr. Gogarty's

1 affidavit.

2 .

3 "Regrettably as I could see no legal or rational reason
4 for that decision of the Gardai I eventually came to the
5 belief, rightly or wrongly, that improper influence must
6 have come to bear on the Gardai for such a decision to have
7 been made".

8 .

9 That was a statement that Mr. Gogarty made under oath some
10 four to five weeks ago. In view of that statement I would
11 now invite Mr. Callanan to withdraw the allegation he made
12 about me being mischievous, I would also direct Mr.
13 Callanan's attention -- he musn't have read his papers --
14 to the statements of evidence made by Superintendent
15 McElligott, and particularly by Detective Inspector
16 Harrington and also Detective Garda McEneaney, that noted
17 Mr. Gogarty as saying that Detective Sergeant Sherry had
18 been bribed and was corrupt. Now, I think Mr. Callanan
19 should now withdraw what he said.

20 .

21 MR. CALLANAN: There is absolutely no assertion of
22 corruption made at paragraph 88 of Mr. Gogarty's affidavit,
23 and I might just read the salient passage. "I am still and
24 am at a loss to understand why no criminal prosecution was
25 ever initiated by the Gardai against Joseph Murphy Junior
26 or even why no file in the case was ever submitted to the
27 DPP for consideration. Regrettably as I could see no legal
28 or rational reason for that decision of the Gardai I
29 eventually came to the belief, rightly or wrongly, that
30 improper influence must have come to bear on the Gardai for
31 such a decision to have been made".

32 .

1 That is as far as Mr. Gogarty's affidavit goes. It refers
2 to a view which he formed as he says, rightly or wrongly.
3 It is not an allegation that he has come before the
4 Tribunal to canvass and for that reason I find both Mr.
5 Cooney's - and I find Mr. Cooney's intervention mischievous
6 and I find Miss Butler's intervention inexplicable.

7 .

8 CHAIRMAN: The debate is now closed, Miss Butler. The
9 debate is closed.

10 .

11 MISS BUTLER: I take exception with the criticism that Mr.
12 Callanan is making of me. Quite clearly Mr. Gogarty has
13 been making allegations against my client. Mr. Cooney has
14 identified those allegations and Mr. Gogarty has made them
15 in other places. If the matter is now closed I would ask
16 that Mr. Gogarty be asked unequivocally to withdraw the
17 allegations he has made against my clients.

18 .

19 CHAIRMAN: I didn't say the matter is closed. I said the
20 debate is closed, please be kind enough to obey my rules.

21 .

22 MR. GALLAGHER: In relation to your ruling, may I as
23 somebody who has been, whose conduct of the matter has been
24 challenged, may I, in fairness to myself and to my
25 colleagues be allowed to say just one or two things?

26 .

27 The first is this; I don't want or need any lecture from
28 anybody or indications from anybody as to how evidence
29 should or should not be lead. All the evidence could be
30 dealt with, the fact that the questions in a particular
31 area in relation to particular matters are not put at this
32 stage does not mean that they will not be put in due

1 course. Contradictions in evidence will be put to this
2 witness and will be put to other witnesses in due course.
3 But in the first instance, we want to get their, in so far
4 as we can, their narrative account of what happened insofar
5 as it is possible to do so.

6 .

7 In those circumstances I do have to say I find it very
8 difficult to understand the intervention of Mr. Cooney at
9 this stage. It is very difficult to please all my
10 colleagues.

11 .

12 Mr. Allen you will recall last week, sometime about 10 past
13 12 as I recall, sought to intervene in the middle of
14 evidence to read the Terms of Reference and to make
15 comments about the length of time the Tribunal was taking,
16 and the pace, the slow pace at which evidence, essential
17 evidence in the view of the Tribunal's legal team was being
18 lead. We now have a situation where Mr. Cooney is
19 complaining that we are going too fast and we are not
20 dealing with salient points. Any salient point that he has
21 referred me to that I wasn't going to raise I have raised.

22 I will raise them in due course when the evidence is dealt
23 with, and Mr. Cooney will know that the evidence I was
24 dealing with now essentially is dealt with by Mr. Gogarty
25 in very general terms in his affidavit under the heading
26 "my contact with Gardai and politicians". So, the fact
27 that I am not now dealing with specific matters that Mr.
28 Gogarty or Mr. Cooney has averted to does not mean that
29 they will not be dealt with by me before the direct
30 examination finishes. Thank you.

31 .

32 CHAIRMAN: My view of the matter is very simple. It is

1 undoubtedly true that all the evidence must be laid out in
2 kind, but I do not think it is necessary to go in line by
3 line. It is quite sufficient if -- areas of evidence are
4 flagged. They can be investigated by those who are
5 concerned and in due course of time, if per chance -- there
6 is no suggestion that Mr. Cooney would do anything else but
7 be perfectly fair in his cross-examination -- if per chance
8 he leaves out or gives an account, then it is a matter for
9 Counsel for the Tribunal to intervene at the end of the
10 cross-examination and indicate or bring back what I might
11 call the balance, if that arises.

12 .

13 MR. COONEY: Very well, Mr. Chairman.

14 .

15 CHAIRMAN: It is my approach to the matter. I think it is
16 a fair approach. It is an endeavour to get business done.
17 I am doing my best to get that underway. Please let's go
18 on.

19 .

20 MR. COONEY: I accept your ruling, Mr. Chairman. Just that
21 it contrasts oddly with Mr. Gallagher's insistence that the
22 written statement of Mr. Gogarty made to the Guards
23 concerning the phone call yesterday should be introduced at
24 length to the Tribunal.

25 .

26 CHAIRMAN: Now, we will leave the matter there. Let's try
27 and get on with the business. You have, you will have an
28 opportunity of going into it in detail, no doubt with very
29 great care and very great excess and all that. At the
30 moment let's get on with the business of the Tribunal.

31 .

32 37 Q. MR. GALLAGHER: The chronology of things, Mr. Gogarty, we

1 know that the order for substitute service was made in a
2 High Court in July of 1995. Did you first contact Deputy
3 Tommy Brougham in June of 1995 or thereabouts?

4 A. That's correct.

5 38 Q. And did you contact, did you see him on a number of
6 occasions subsequent to that?

7 A. That's correct.

8 39 Q. Sorry, I think I said June 1995, it is May 1995 in fact.

9 Deputy Brougham will deal with that in due course. Now,
10 what was your purpose in contacting Deputy Brougham?

11 A. Well, my purpose in contacting him was this; I felt I
12 hadn't got a reasonable explanation of the grounds for not
13 charging Mr. Murphy with, particularly with the background
14 that could have been investigated. I never at any time to
15 my knowledge unwittingly disparaged the Guards. I was a
16 Guard myself for seven years and I went through it, and
17 never did I disparage the Guards deliberately. In fact I
18 had a great relationship with the Guards for over 20 years
19 after Templemore. I attended every annual reunion with my
20 comrades every year up to a few years ago, with Tony Maher
21 and Tony -- and I felt proud of that, and I was seven years
22 in the Guards, and what you learn and what you feel in the
23 Guards after being with comrades, it doesn't get out of
24 your memory. And even if I tried to put it out of my
25 memory I couldn't because I think it is relevant to tell
26 you about one incident that when I was in the Guards that I
27 will never forget. And that was in the 40's, early 40's --

28 .

29 CHAIRMAN: Well now, Mr. Gogarty, please, please restrain
30 your historical record, thank you very much.

31 A. It is not a record, it is a fact.

32 .

1 CHAIRMAN: I appreciate that, but could we get back to the
2 point.

3 A. I was within six feet of being shot dead and a comrade of
4 mine was shot dead, George Mordauant. We were trying to
5 arrest an escaped IRA convict up in Donnycarney. My
6 comrade, George Mordaunt, was shot dead. Even if I try to
7 erase that from my memory, every time I read the paper and
8 see where there is a Guard injured or killed it brings me
9 back to what I went through, and thank God I wasn't in the
10 same boat. So to say that I disparaged the Guards is
11 completely wrong. I disagreed with the judgement that Mr.
12 Sherry made, and over years that played on my mind because
13 I never got a satisfactory explanation to me, that would
14 prompt me to accept, but I did a few weeks ago, about six
15 weeks ago, for the first time, I read a statement from
16 Detective Sergeant Sherry about six weeks ago I think. I
17 think my counsel have agreed this, and he then gave six
18 weeks ago, five or six reasons why he arrived at that
19 judgement. I accept, I accept that unreservedly, except
20 that I disagree with his findings, because I believe it was
21 an error of judgement having regard to the, regard to the
22 facts at the time, where they were sitting.

23 .

24 I was going through trauma for years and that blackguard
25 out there could have been brought within the jurisdiction.
26 How would you feel if you were in that situation? I didn't
27 have, I never disparaged the Guards as a body, and there is
28 correspondence to that effect, and I met decent men in the
29 Guards, and I didn't want -- to give them any reasonable
30 credit. One was them is Superintendent McElligott who had
31 numerous interviews with and who promised me he would
32 eventually get to the end of it. He didn't get to the end

1 of it. He didn't go the last mile. It wasn't his fault I
2 believe. But he promised me that we get me a decision and
3 I wanted a decision from him, did he stand over what Mr.
4 Sherry had done or not? It was a fair question.

5 .
6 MISS BUTLER: I want to object to the witness' evidence on
7 this point. This is now rambling, irrelevant and
8 prejudicial.

9 .
10 CHAIRMAN: Thank you very much, Miss Butler.

11 A. I am just telling you what I am going through.

12 40 Q. MR. GALLAGHER: Mr. Gogarty?

13 A. Tommy Brougham. Tommy Brougham.

14 41 Q. Did you complain to Deputy Brougham about the Gardai or did
15 you complain to anybody else about the Gardai or the
16 failure in particular to prosecute Mr. Murphy?

17 A. I did, and I think Deputy Brougham would confirm that.

18 Will I tell you the reason I went to him?

19 42 Q. Tell me the reason you went to him?

20 A. I thought I failed to get a response from the Guards of why
21 Murphy wasn't thoroughly investigated as regards fraud,
22 corruption and bribery; and going through the Dail at the
23 time in 1995, May or June of 1995 there was a bill going
24 through the Dail that they were hoping to bring accountants
25 and solicitors more within the accounting process, where
26 they would be accountable for possible evidence down the
27 road about fraud and all that, and Mr. Brougham made a very
28 valuable contribution to it, I thought. I had, I have no
29 politics one way or another after all my years. I thought
30 he made a valuable -- I said that is a man that might help
31 me out, that is why I went to him.

32 43 Q. Did you have a number of meetings with Deputy Brougham

1 commencing in May of 1995 and in the succeeding months and
2 perhaps years?

3 A. I did indeed.

4 44 Q. We will hear his evidence in relation to that.

5 A. He was trying to get, he was trying to get oral questions
6 to the Minister to respond to having it investigated, were
7 these facts, the threats and intimidation and the
8 background to him, and he failed as well. He did his best.
9 He tried hard over about 18 months or so. Tried hard,
10 worked hard, but he was being, as he says himself, the
11 political process thwarted him, thwarted him, because he
12 says to me what happens is this seemly; that when you put
13 down a question for oral response from the Minister, these
14 are his words I believe; he says the Minister has a private
15 secretary and a parliamentary secretary, and these
16 questions are all vetted and they are put in a list, and
17 politically if there is anything contentious it is put away
18 down in the list hopefully that it will never be reached,
19 and once it is not reached it is taken out of the list and
20 put in for an ordinary reply, kicked to touch, that is what
21 that man told me. That is what that man told me and Mr.
22 McDermott told me the same thing later on.

23 45 Q. Did you also, did you also contact Deputy Michael McDowell
24 as he was at that time?

25 A. Yes, I spoke to Mr. McDowell after all his efforts. I asked
26 him would he mind, having regard to what he says, because
27 he thought in the events that I was taking too much on
28 myself and that I should rest myself up and enjoy myself.

29 46 Q. Now --

30 A. I thought of Mr. McDowell and the Progressive Democrats and
31 the high moral ground of which he was a big expose -- and I
32 asked Mr. Brougham would he mind if I went to Mr. McDowell

1 and he had no objection. And I wrote to Mr. McDowell and
2 he very kindly took up my case with the Minister, but he
3 came up against a stone wall, again the same as Mr.
4 Brougham. I think the evidence is there.

5 47 Q. Well, is it fair to say, Mr. Gogarty, that your decision to
6 contact Deputy Brougham was prompted to a large extent by
7 what you perceived as the decision of the Garda Siochana
8 not to prosecute Mr. Murphy, arising from the telephone
9 call?

10 A. That's right. I felt strongly on that. I felt very
11 strongly on that, and I believe it is an error of
12 judgement. If I went over the top in describing improper
13 motives to Mr. Sherry I would apologise for that, but it
14 was through frustration and a long period of trauma with
15 failing to get the same grounds three or four years before
16 that in 1994. Had I got them in 1994 it would have changed
17 my outlook, although it wouldn't have changed my
18 disagreement with his error of judgement in his findings,
19 but I would accept that they were based on his own
20 judgement, not by improper influences, and I apologise if
21 there is another interpretation taken out of that.

22 48 Q. Well, you did say that you were of the view that rightly or
23 wrongly, that improper influence must have come to bear on
24 the Gardai in the decision not to prosecute?

25 A. Well in the circumstances after four years of trying hard
26 myself and my solicitors, TDs, the lot, that I got no
27 satisfactory answer that it was being kicked to touch. I
28 may have gone over the top in feeling that there was
29 improper -- especially too where Murphy told me
30 unequivocally that I would get nowhere with the Guards and
31 maybe he was just taunting me, but it is the facts and they
32 are all there.

1 49 Q. Now, tell me when do you say that that was said?

2 A. When what?

3 50 Q. When was that said?

4 A. When was what said.

5 51 Q. When you said Murphy said you would get nowhere with the

6 Guards?

7 A. That was way back in 1992 when we went in the Berkley Court

8 Hotel.

9 52 Q. Sorry?

10 A. When we went in the Berkley Court Hotel in 1992.

11 53 Q. Now, after the events of 1994 and up to the present or up

12 to recently, how -- perhaps I will rephrase the question.

13 Did the fact that the telephone call was made, the

14 telephone calls were made and their contents, have any

15 effect on you and on your life and on your wife's life?

16 A. Sure I have finished up, I am a recluse for the last four

17 years.

18 54 Q. I beg your pardon?

19 A. I have finished up as a recluse for the last four years. I

20 can't go out.

21 55 Q. What do you mean as a recluse?

22 A. Sure I can't go out because that threat was over me by

23 Murphy and it it hadn't been brought -- I am under it now

24 at the present time, for the last 12 months.

25 56 Q. Just tell us how you felt and why you felt that you

26 couldn't go out?

27 A. Sure I was in fear and dread and my family were in fear and

28 dread with that blackguard still out in the open and

29 taunting me.

30 57 Q. And?

31 A. Do you appreciate what I am saying?

32 58 Q. How did this manifest itself, Mr. Gogarty? What did you do

1 as a result of this fear and dread you say you felt?

2 A. I went to Mr. Brougham. I went to Mr. Neary, I went to Mr.

3 McDermott, what more could I do to try to get reasonable

4 satisfaction and to try and get this out of my system and

5 my fears brought to rest?

6 59 Q. When you said you were a recluse, would you go out to the

7 shops, do shopping or out to the pub or out?

8 A. I don't go to pubs, no.

9 60 Q. Are you a church goer? Do you go to church?

10 A. I was at one time.

11 61 Q. Do you go?

12 A. I don't go now. I made my peace with God. I have made my

13 peace with God. Three or four years ago I was at deaths

14 door with a number of complaints, and thanks be to God, due

15 to a successful operation by my surgeon, Sugrue, I got a

16 new lease of life and I made my peace with God, and every

17 morning and night I thank God for the bones of another day,

18 even if it is a simple day and I am not going to put that

19 at risk by coming in here and telling lies. There is no

20 necessity to do that. Could I take a break sir?

21 .

22 CHAIRMAN: All right, 10 minutes.

23 .

24 THE HEARING WAS THEN ADJOURNED FOR A SHORT RECESS AND

25 RESUMED AS FOLLOWS:

26 .

27 62 Q. MR. GALLAGHER: Mr. Gogarty, before the break I was

28 dealing with the contacts you had with Deputy Brougham and

29 Deputy McDowell following generally, the sequence of the

30 affidavit which you swore and which was quoted in part by

31 Mr. Cooney.

32 .

1 You said that you were in touch with Deputy Brougham and
2 Deputy McDowell, did you also contact Donnelly Neary and
3 Donnelly, solicitors?

4 A. I did.

5 63 Q. Can you say when that happened, approximately?

6 A. Shortly after I spoke to Mr. McDowell, because he told me
7 at that time that I should have a criminal lawyer, and some
8 time around that time there was a notice in the paper from
9 Donnelly Neary and Donnelly in connection with a consortium
10 that wanted investigations into corruption in the planning
11 process, and he suggested -- they were outside the
12 jurisdiction and that seemingly they had, the consortium
13 had failed to get -- well, I don't know whether it was the
14 word "failed", but they were being stymied in trying to
15 bring it out into the open, and it wasn't the planning I
16 was interested in at that time, I didn't give a damn to
17 tell you the truth, I was concerned about the situation
18 with the Murphy's and with the threats, on-going threats
19 and intimidation. It was in me that Murphy should have
20 been charged at that time and the whole thing would have
21 been finished four or five years ago and there would be no
22 necessity for the Tribunal. But anyway, Tommy Brougham
23 suggested they might be a good firm to take my brief, which
24 was the High Court proceedings that I was chasing, which
25 your man was evading service on, and you -- that's where I
26 came up with Kevin Neary.

27 64 Q. I think they had, Donnelly Neary Donnelly had advertised in
28 the national newspapers on the 3rd of May, of 1995,
29 offering £10,000 reward?

30 A. That's right.

31 65 Q. For conviction and indictment of persons associated with
32 corruption in the planning process?

1 A. Yeah.

2 66 Q. Was it following that advertisement that you made contact
3 with them?

4 A. I wasn't interested in the rewards, I want to make that
5 sure and -- anyway.

6 67 Q. Sorry, just a moment, was it after that advertisement
7 appeared in the paper that you contacted Donnelly Neary
8 Donnelly?

9 A. I was talking to Mr. Brougham, he said that the firm
10 should, may be take on my High Court case and bring the
11 whole lot out into the open.

12 68 Q. Was it because you were attracted by the reward that was
13 being offered?

14 A. Never, no, no. I think that will come out, although the
15 media have already convicted me of that as well.

16 69 Q. Did you ever apply to them or ask them for monies or
17 anything of that nature?

18 A. Never, never. Never.

19 70 Q. Now, did you instruct them in relation to the events that
20 you say had occurred in proceeding years?

21 A. Well, my main concern with them was to discuss the
22 processing of the High Court procedures, which required a
23 Statement of Claim from our side. He took it on, on that
24 basis. And in processing that, the fraud and intimidation
25 and bribery was discussed, you know.

26 71 Q. You had discussions with counsel in Dublin, I think Mr.
27 Callanan?

28 A. Mr. Who?

29 72 Q. Mr. Callanan; is that correct, among others?

30 A. I had a chat with Mr. Callanan, yeah.

31 73 Q. Yes. Did those solicitors on your instructions communicate
32 with the Minister for Justice and with others in connection

1 with your grievances that you had at that stage?

2 A. They did, yeah they did.

3 74 Q. And did they get any satisfaction so far as you were
4 concerned?

5 A. No satisfaction.

6 75 Q. What satisfaction were you looking for?

7 A. I was looking for answers to my queries, why the Murphy's
8 weren't -- Murphy wasn't prosecuted for contempt of court
9 or for threats and intimidation.

10 76 Q. But had you not been told about this by Detective Sergeant
11 Sherry back in 1994, that he wasn't going to prosecute
12 because of what he perceived the facts to be?

13 A. Yeah, but you see I disagreed with that, whether rightly or
14 wrongly, I disagreed with that because I felt that there
15 was credible evidence, that's what I felt, strongly, that
16 if it was fully investigated, the background and whole lot,
17 we wouldn't be sitting here today, that's all I feel. And
18 it was never a judgement on his part. I accept that from
19 what I read there about six weeks ago in a statement, that
20 he gave then, after four years, the reasons, the grounds on
21 which he made his judgement, I accept them but I disagree
22 with the judgement, that's all I am saying.

23 77 Q. Did he not tell you in 1994 that among the reasons he
24 wasn't going to prosecute --

25 .

26 MISS BUTLER: Mr. Chairman, I wish to object to the
27 witness' evidence on this point and have it clarified. He
28 keeps referring to the reasons which were given in an
29 affidavit which he read or a statement which he read six
30 weeks ago. Those were the same reasons given to him at the
31 time and given to his solicitor at the time, and I think it
32 should be clarified that that is the case.

1 .

2 CHAIRMAN: Miss Butler, I know that you are listening to
3 the evidence, even if you were cross-examining to varying
4 effect, your clients couldn't have got a more full, your
5 client, the Gardai, couldn't have got a more full
6 acknowledgment that the man accepted they were acting
7 properly but didn't agree with the decision, that's the
8 effect of the evidence to date. Now, I don't see any
9 reason why you should object to his evidence at this
10 moment, it is going no further than that. I may say I
11 agree with you, my patience is being tried also. We have
12 to go down the road and let the whole of the evidence come
13 out, that's what everybody wants and I am prepared to do
14 it.

15 .

16 MISS BUTLER: With respect, Mr. Gogarty keeps referring to
17 the statement made six weeks ago and accepting those
18 reasons. Those reasons --

19 .

20 CHAIRMAN: Miss Butler, I have indicated to you my views
21 on the matter, that's an end to it.

22 .

23 78 Q. MR. GALLAGHER: Mr. Gogarty, were you not told in detail
24 by Detective Sergeant Sherry in 1994 the reasons why he was
25 not going ahead, or did you not understand him or did you
26 not appreciate them or why did you not --

27 A. Well, not as specifically as I read there six weeks ago,
28 that's what I am saying. That if I got those reasons at
29 that time I would accept them, although I disagreed with
30 the judgement, that's what I am say saying.

31 .

32 MISS BUTLER: Again, judge, I have to object.

1 .

2 CHAIRMAN: Miss Butler, thank you very much. I have
3 already dealt with the matter. As you are aware those
4 statements are statements made to the Gardai and the
5 authorities, not delivered to your client at that time.

6 A. Rightly or wrongly I felt that I wasn't being taken
7 seriously.

8 .

9 MISS BUTLER: In the circumstances I think the attendance
10 with Mr. Hegarty should be put to the witness, because
11 those reasons were given to Mr. Gogarty's solicitor during
12 a conversation when Mr. Gogarty was present with his
13 solicitor.

14 .

15 CHAIRMAN: Mr. Gallagher, can we sort this matter out once
16 and for all as to when this witness was made aware of
17 Detective Sherry's views and decision, and what his
18 reaction to it was. As I understand it he got it wrong,
19 he got it right at about five weeks ago and I accept it
20 is. Why we are chasing this particular hare around the
21 racetrack about three or four times? I don't know.

22 .

23 MR. COONEY: There is a document in the Tribunal's Book of
24 Reference --

25 .

26 CHAIRMAN: This is the memo?

27 .

28 MR. COONEY: Yes, it is an attendance of Mr. Hegarty of
29 the conversation which he had with Mr. Gogarty, and it is
30 at page -- it begins at page 264 of that book, and the
31 relevant passage is at page 265. Of course there is also
32 Detective Sergeant Sherry's own statement in the Garda

1 book.

2 .

3 CHAIRMAN: That's a different matter.

4 .

5 79 Q. MR. GALLAGHER: Mr. Gogarty, I was asking you whether or

6 not Detective Sherry had given you an explanation in 1994

7 as to why he was not proceeding with any prosecution, and

8 you gave the explanation that you didn't, as I understood

9 your evidence, that you didn't appreciate the explanation

10 that was given to you. But I just want to put this to

11 you, Mr. Cooney -- I had intended putting it at a later

12 stage but I will now put it, unless it gives rise to

13 further controversy.

14 .

15 This is an attendance written by Mr. Hegarty on the 2nd of

16 November, of 1994, and it refers to a lengthy attendance in

17 his office with you and Mr. Seamus Howley on the blank day

18 of October 1994. Perhaps I could, I will read the --

19 A. There is no date on it.

20 80 Q. There is no date, the date of the 2nd of November, of 1994,

21 is on the top right-hand corner?

22 A. It is not on the same type.

23 81 Q. Well, it may not be but that's the date on top of it, I

24 just want to identify the document?

25 A. Yes, I identified the document all right, yeah.

26 82 Q. Yes. Now, in the course of that memorandum -- I wonder,

27 sir, can I just draw attention to a particular paragraph in

28 that. Mr. Cooney asked that the memorandum be opened,

29 there is on page two, there is a particular paragraph --

30 well, read it all.

31 .

32 This is a memorandum, Mr. Gogarty, perhaps you can comment

1 on it as we go along.

2 .

3 "On the (blank) day of October, 1994, I had a lengthy
4 attendance in our Abbey Street office with Mr. James
5 Gogarty and Mr. Seamus Howley. The following points were
6 ascertained:

7 .

8 1. It was agreed that I would send a copy of the bill of
9 costs and outlay which I submitted to the solicitors for
10 Lajos Holdings Limited to Mr. Gogarty.

11 .

12 2. It was agreed that I would write to the solicitors for
13 Lajos Holdings Limited acknowledging safe receipt of Mr.
14 Gogarty's P60. I am also to request them to seek
15 confirmation from their client that all supporting
16 documentation on which the P60 is based has been amended.

17 .

18 3. In relation to the proposed proceedings against Mr.
19 Joseph Murphy Junior, Mr. Gogarty confirmed that he and his
20 wife wanted to be Plaintiffs in the action. He asked me
21 to proceed with this case as quickly as possible. He told
22 me that he did not know Mr. Joseph Murphy Junior's home
23 address, however he was aware that he is living in
24 Ireland. Mr. Gogarty knows that Mr. Murphy travels
25 frequently over to this country and particularly when there
26 is an international rugby match on. Mr. Gogarty gave me the
27 following addresses for Mr. Joseph Murphy Junior. (A)
28 Wilton Lodge, 1A Wilton Terrace, Dublin 2. (B) Deford Court
29 Mansions, London WC1 (This address is incomplete). (C) Mr.
30 Joseph Murphy's telephone number in London is 0318316157.
31 (Note that the code is probably wrong).

32 .

1 4. We discussed in length the proposed proceedings against
2 Mr. Joseph Murphy Junior. We agreed that it would be
3 necessary to satisfy a jury that Mr. and Mrs. Gogarty felt
4 that their lives were really in danger --

5 .

6 MR. COONEY: The remainder of that paragraph and the next
7 paragraph are not relevant, Mr. Chairman.

8 .

9 CHAIRMAN: I was noting that and I was wondering, I had
10 some objection because after all you invited it to be
11 read.

12 .

13 MR. COONEY: I invited the memorandum to be read in
14 relation to what was told by Detective Sherry.

15 .

16 CHAIRMAN: I accept that you also invited him to start at
17 the beginning, but I do think that the next three
18 paragraphs are very, are more prejudicial than they are
19 probative, sorry the next three lines, not paragraphs.

20 .

21 MR. COONEY: And the next paragraph as well, Mr.
22 Chairman.

23 .

24 CHAIRMAN: Well, Mr. --

25 .

26 MR. GALLAGHER: I asked specifically for a ruling and Mr.
27 Cooney asked me to read the entire of the matter, and
28 whilst I don't wish to take Mr. Cooney short in the matter
29 in fairness, if it is going to be read in its entirety then
30 it should be read in its entirety perhaps.

31 .

32 MR. COONEY: Mr. Chairman, it is evidence that I wanted

1 some of the memorandum dealt with by Sergeant Sherry read
2 out, not dealing with hearsay, with has no relevance to the
3 matter.

4 .

5 CHAIRMAN: Mr. Cooney, I have no wish to take you up
6 short, but you did wish to start at the beginning, to be
7 quite fair.

8 .

9 Now, I also want to be fair in public to a person about a
10 matter which really is very, very peripheral, if at all to
11 this matter. I don't want to impugn peoples' reputations
12 for incidents they may demonstrate something, I have it
13 here in front of me I am going to think about it on the day
14 when I come to consider this very carefully before I -- it
15 is a matter, on that basis that I really think the next
16 three lines are --

17 .

18 MR. COONEY: And the paragraphs down to paragraph five,
19 Mr. Chairman.

20 .

21 CHAIRMAN: Just allow me read them. Yes, well I suppose
22 Mr. Gogarty has been called everything in, I can't think of
23 anything worse he could be called by Mr. Murphy's counsel,
24 and I suppose what is sauce for the goose is sauce for the
25 gander.

26 .

27 MR. COONEY: This isn't what Mr. Gogarty says, this is
28 reporting something which somebody who is dead said to
29 him. Surely you are not going to allow that in, Mr.
30 Chairman?

31 .

32 CHAIRMAN: The next four lines I am talking about, the

1 third line down from the top.

2 .

3 MR. COONEY: Yes, well you have already ruled that out, I

4 think, Mr. Chairman.

5 .

6 CHAIRMAN: I have ruled it out in the sense that I don't

7 want to see this fairly unprobative aspect of evidence, but

8 it comes as little ill from you --

9 .

10 MR. COONEY: I beg your pardon?

11 .

12 CHAIRMAN: -- that this man is a total liar.

13 .

14 It comes from -- you are objecting to this evidence having

15 regard to the fact that your clients instructed you to deal

16 with this witness.

17 .

18 MR. COONEY: Mr. Chairman, we have particular instructions

19 to challenging aspects of Mr. Gogarty evidence, we intend

20 to do so and demonstrate their falsity, that doesn't

21 justify the admission of inadmissible evidence, Mr.

22 Chairman. There is no legal principle in law of evidence

23 of so-called sauce for the goose is sauce for the gander,

24 it just simply, there is no such thing.

25 .

26 CHAIRMAN: All right.

27 .

28 MR. GALLAGHER: Can I say something before you make a

29 ruling on the matter. The fact is this is an inquiry, as

30 I said yesterday, has this matter or could this material

31 have any probative value? If it could then it should be

32 admitted because it is part of the basis, the thinking that

1 Mr. Gogarty, that drove Mr. Gogarty at that time, it is a
2 narrative account of what he told his solicitor at that
3 time. Now if he, for example, had said something in that
4 account that differed from his evidence now, Mr. Cooney
5 would be the first person demanding that that would be read
6 out, so that he could show that there was contradiction.
7 The state of mind of this witness is important, or may well
8 be important and that is a matter for you to judge. Unless
9 this evidence is lead then I see, I can see that if you
10 were to rely on this document in forming any conclusion or
11 assisting you to form any conclusion it would be objected
12 to and it would probably be the subject of a challenge on
13 the basis that you are not permitted to do it in that this
14 evidence was not given at this Tribunal.

15 .

16 CHAIRMAN: Well, my view of the matter is this; there is a
17 question-mark over the third to ninth line of the first
18 paragraph, the second paragraph is wholly inadmissible
19 under any circumstances.

20 .

21 The question-mark over the other one in my view is so
22 peripheral, and it is again a piece of hearsay --

23 .

24 MR. GALLAGHER: Well, it is a matter, sir, that has been
25 dealt with by the Gardai extensively in their statements.

26 It is a matter that will arise in the course of Garda
27 statements, they have given evidence as to the fact that
28 they were called to the house, that they carried out such
29 investigations and the result of their investigations, and
30 they are matters that will have to be put in due course to
31 the Gardai and that will be dealt with.

32 .

1 CHAIRMAN: I am ruling at this moment in time that
2 paragraph two is absolutely out.

3 .

4 MR. GALLAGHER: Out? Yes.

5 .

6 CHAIRMAN: I am going to admit the seven lines to which I
7 have referred, and you can then continue the remainder of
8 the page as far as I can see it, I have read it down
9 quickly. It doesn't seem to me to be in anyway
10 objectionable, but I agree with Mr. Cooney in relation to
11 the second paragraph, that it is wholly -- I accepted --

12 .

13 83 Q. MR. GALLAGHER: If I can restart paragraph four?

14 .

15 "We discussed in length the proposed proceedings against
16 Mr. Murphy Junior. We agree that it would be necessary to
17 satisfy a jury that Mr. and Mrs. Gogarty felt that they
18 were living really in danger when Mr. Murphy Junior made
19 his threats on the telephone. I asked Mr. Gogarty was he
20 aware of any circumstances which would lead him to believe
21 this Mr. Murphy was a violent character. Mr. Gogarty told
22 me that Mr. Joseph Murphy Junior had been convicted of
23 assault in Dublin five to seven years ago".

24 .

25 MR. COONEY: I thought you ruled that out, Mr. Chairman?

26 .

27 CHAIRMAN: No, the next paragraph.

28 .

29 MR. COONEY: Very well. Could I say that that statement
30 is not actually true, Mr. Chairman.

31 .

32 CHAIRMAN: That's a matter for demonstration in evidence

1 and also for criticism in cross-examination, and as I said
2 already, any pejorative aspect of that may well, I haven't
3 decided it, may well exceed its probative value and
4 therefore it should be ignored ultimately.

5 .

6 MR. COONEY: I respectfully agree, Mr. Chairman, but I
7 just think in fairness to my client it should be recorded
8 that that statement of fact is false.

9 .

10 CHAIRMAN: Stated by you and you will no doubt
11 substantiate that?

12 .

13 MR. COONEY: Yes.

14 .

15 CHAIRMAN: Very good. On that basis.

16 .

17 MR. GALLAGHER: Just for the purpose of clarification, I
18 wonder is Mr. Cooney saying that the entire of that
19 sentence down to the end of the paragraph is false or just
20 that sentence?

21 .

22 MR. COONEY: I am saying that the bottom -- what Mr.
23 Gogarty is alleged to have told Mr. Hegarty during the
24 course of that conversation is a false statement.

25 .

26 CHAIRMAN: Right, that's a matter in issue in due
27 course.

28 .

29 84 Q. MR. GALLAGHER: All right. I will finish reading the
30 paragraph.

31 .

32 "Mr. Gogarty told me that Mr. Joseph Murphy had been

1 convicted of assault in Dublin five to seven years ago.
2 Apparently he assaulted a girl in the Berkeley Court Hotel
3 at Rugby Festival Dance. He did not receive a prison
4 sentence but was fined
5 a £100 pounds."

6 .

7 Next is the --

8 .

9 CHAIRMAN: May I just correct that, Mr. Joseph Murphy not
10 Mr. Justice Murphy.

11 .

12 It came across to me as Mr. Justice Murphy.

13 .

14 85 Q. MR. GALLAGHER: If I did I apologise to Mr. Justice
15 Murphy. And "In 1992, in early November of that year a
16 shot struck the front window of Mr. Gogarty's home. The
17 Gardai were called to the scene and they confirmed that the
18 hole in the glass had been caused by a bullet or pellet.
19 They were unable to find the bullet or pellet which had
20 been shot. In and around the same time, Mr. Gogarty
21 received a number of nuisance phone calls. The caller did
22 not speak but engaged in heavy breathing. These phone
23 calls were also reported to Howth Gardai.

24 .

25 In early January 1994 both of the cars belonging to the
26 Gogarty's were damaged in the driveway of their homes.
27 Once again this incident was reported to Howth Gardai".

28 Did you tell all these matters to Mr. Hegarty?

29 A. I did, yes.

30 86 Q. Did you believe them to be true?

31 A. I did, yes.

32 .

1 MR. COONEY: Really, Mr. Chairman, can Mr. Gallagher even
2 pretend to be impartial now or will he keep up the
3 pretense.

4 .

5 MR. GALLAGHER: I think that's unfair.

6 .

7 CHAIRMAN: Let's pass on.

8 .

9 87 Q. MR. GALLAGHER: Paragraph five.

10 "During the course of my attendance with Mr. Gogarty and
11 Mr. Howley I received a telephone call from Sergeant Sherry
12 of Howth Garda Station in relation to my recent letter.

13 He said that he thought it was better that he telephone me
14 to discuss the matter rather than sending me a response in
15 writing. Sergeant Sherry outlined to me how Howth Garda
16 had become involved in the incident involving the
17 threatening phone calls. He said Mr. Gogarty had called
18 Howth Garda Station and reported the calls. Garda
19 McEneaney and Guard O'Sullivan went to the Gogarty home.
20 Mr. Gogarty outlined to them what had taken place, and
21 indicated that Mr. Joseph Murphy Junior had made the calls.
22 Sergeant Sherry said that Joseph Murphy Junior appeared to
23 have made a phone call whist under the influence of drink.

24 .

25 He then stated that words had been used by Mr. Joseph
26 Murphy Junior. In particular he said that Mr. Joseph
27 Murphy Junior had told Mr. Gogarty that he was going to put
28 a stop once and for all to all Mr. Gogarty's legal
29 hassles. Sergeant Sherry felt that this was only "Drink
30 talk" as no direct attack was made subsequently on either
31 Mr. Gogarty or Mrs. Gogarty.

32 .

1 Sergeant Sherry confirmed that Mr. Murphy Junior was a
2 non-resident and that he had no address for him. He told
3 me that Garda McEneaney made contact with Mr. Murphy by
4 calling to the premises of Lajos Holdings Limited. The
5 management there agreed to contact Mr. Murphy and request
6 him to telephone the Garda in Howth. Subsequently the
7 Gardai in Howth received a telephone call from Mr. Joseph
8 Murphy Junior from England. (Presumably)

9 .
10 Sergeant Sherry said that in his opinion it would not be
11 worthwhile trying to bring a prosecution against Mr. Murphy
12 Junior as there would be difficulties in proving the case
13 against him, and also there would be practical difficulties
14 in serving a summons on him.

15 .
16 Sergeant Sherry pointed out that he was aware that Mr.
17 Gogarty was still engaged in litigation with Mr. Murphy
18 Junior and for this reason he also felt that it might be
19 better to let the trouble between Mr. Murphy Junior and Mr.
20 Gogarty be resolved in the civil courts. He pointed out
21 that it was a policy of the Garda Siochana to keep out of
22 civil matters as much as possible.

23 .
24 Sergeant Sherry also said that Mr. Murphy Junior had denied
25 that he had made any threats. He confirmed that Mr.
26 Murphy Junior admitted to making telephone calls. He also
27 confirmed that Mr. Murphy Junior had given an undertaking
28 not to ring Mr. Gogarty again.

29 .
30 I pointed out in the strongest terms my clients concerns
31 with regard to the threats made by Mr. Murphy Junior
32 against him and his family, in particular I reminded

1 Sergeant Sherry of the incident involving a bullet or
2 pellet being shot through Mr. Gogarty's window in early
3 1992. Sergeant Sherry acknowledged that this incident had
4 happened and it had been reported to the Gardai. I pointed
5 out also that in early January, both of the cars in the
6 Gogarty home had been damaged whilst in the driveway.
7 Once again Sergeant Sherry confirmed that both these
8 incidents had been reported to the Gardai in Howth.
9 .

10 Sergeant Sherry indicated that he would retain all the
11 records relating to this incident and if a civil action was
12 brought against Mr. Murphy Junior then Howth Garda would be
13 prepared to attend in court to give evidence on behalf of
14 Mr. Gogarty in relation to the calls which had been made.
15 .

16 I relayed the contents of this telephone conversation to
17 Mr. Gogarty and Mr. Howley. Mr. Gogarty got into quite a
18 state when he heard that the Gardai did not intend to
19 prosecute Mr. Murphy Junior. I tried to explain to Mr.
20 Gogarty the practical reason why the Gardai would decide
21 not to bring a prosecution, but it was very difficult to
22 get him to see any sense whatsoever in their approach.
23 Ultimately, in exasperation, I told him that if he wanted
24 he could make a complaint against the Garda or write to the
25 Superintendent of Howth Gardai demanding that the decision
26 be reviewed. I cautioned him however, that if he took
27 this approach he was likely to lose any goodwill which the
28 Gardai might have for him and his wife. I pointed out to
29 him that it would be better for him to cultivate a
30 relationship with the Gardai as he would require their
31 attendance in court to give evidence in his civil case.
32 .

1 I then asked Mr. Gogarty as to the state of his health at
2 present. He told me that he has been suffering from ulcers
3 for the past number of years. He is under the care of Dr.
4 Frit in the Maher Hospital, and his present problems can be
5 summarised as follows: (A) an overactive thyroid gland. (B)
6 an irregular heart beat. (C) diabetes. (D) kidney stones.
7 (E) acute arthritis. (F) stress. (G) he suffers blackouts
8 quite regularly, particularly when he is under stress.

9 .

10 Our clients' GP is Dr. Chapman, however he tends to bypass
11 his GP and go directly to his consultant for treatment.

12 .

13 We then had a discussion about whether or not Mr. Gogarty
14 was entitled to one further months pay from Lajos Holdings
15 Limited. It was agreed that I would write a letter to the
16 company requesting the final months payment and threatening
17 legal proceedings in default of payment"

18 .

19 Do you remember that general meeting, the discussion you
20 had around that time?

21 A. Well, my recollection doesn't agree with all that.

22 88 Q. What is your recollection? Well, Seamus Howley was present

23 I think you could rely, if he agreed with that I would, but
24 my recollection is this; that when we were talking during
25 the course of our consultation the phone rang and Mr.
26 Hegarty had a long conversation with somebody on the
27 phone.

28 .

29 I didn't hear what was happening, but Mr. Hegarty was
30 mostly listening.

31 .

32 After a lengthy telephone, discussion on the telephone, the

1 telephone finished and Mr. Hegarty, it is my recollection
2 he summed it up in a few sentences, and what he said was
3 that Mr. Sherry had been on the line to him in response to
4 his letter and that his advice was not to take issue with
5 the guards or embarrass them, that they would be helpful
6 down the line in our civil action, that's basically the
7 gist of what I heard and I think Seamus Howley may confirm
8 this, when he is on oath, you know. I was annoyed over
9 that because it clearly seemed to me that I wasn't being
10 taken seriously and that's the unfortunate part of it, I
11 wasn't being taken seriously.

12 .
13 Now, I didn't see this memo, which is undated by the way, I
14 didn't see that until about 12 months ago when I was
15 present for my files, there is a record there on that too,
16 it was only then it surfaced in the files, and I also
17 looked for the, but never got it -- I never got the name of
18 the summons server that pulled out of the services of the
19 summons.

20 89 Q. I think that you were pressing to get an answer in the Dail
21 as to why proceedings were not commenced, and you asked
22 Deputy Brougham to ask questions on your behalf in the
23 Dail?

24 A. Yes.

25 90 Q. And I think he did ask a number of questions, and he got an
26 explanation from the then Minister for Justice, Nora Owen,
27 sorry I think that perhaps is to your solicitors--

28 A. I beg your pardon?

29 91 Q. It was a letter to your solicitors asking you to
30 substantiate your allegations?

31 A. There was a fair amount of correspondence with me
32 solicitors, yeah, but -- sorry.

1 92 Q. Now --

2 A. To substantiate what?

3 93 Q. To substantiate your allegations?

4 A. Sure mother of God they were there, the man admitted

5 ringing me up. It is a question of who is telling the

6 truth, you know.

7 94 Q. All right. Insofar as you were concerned in any event,

8 and you are under oath, Mr. Gogarty, did you not have a

9 complete explanation or satisfactory explanation so far as

10 you were concerned as to why the Gardai were not

11 prosecuting Mr. Murphy?

12 A. Yeah, I felt I hadn't got a proper explanation.

13 95 Q. You felt you had not?

14 A. I had not got a proper explanation, and I think that may be

15 -- of course I am a liar according to all the crowd here

16 -- I am hoping to get it here, and that on reflection if

17 there is any validity in what I am saying at all there will

18 be no necessity for this Tribunal because of the background

19 of the whole lot of it, that's all I am saying. I have

20 nothing against the guards, I never had in my life, but I

21 am entitled to question the conduct of an investigation

22 into what I consider was a very serious crime and it was

23 on, on fairly credible evidence, and I was encouraged in

24 this too as well by Tony McMahon a retired Chief

25 Superintendent from the Crime Squad who told me that in his

26 opinion Murphy should have been charged.

27 .

28 MR. COONEY: This is hearsay evidence, Mr. Chairman.

29 .

30 A. As also, I may be wrongly interpreted, a decision of a

31 Justice in a court case about a year or two ago that was

32 brought by a woman who had been sexually assaulted.

1 .

2 MISS BUTLER: I want to object to this evidence, if you
3 call it evidence.

4 .

5 A. It had an effect, a feeling and effect on me.

6 .

7 CHAIRMAN: We will pass from that.

8 .

9 96 Q. MR. GALLAGHER: At the moment what is your attitude to the
10 Garda Siochana and the manner in which they conducted the
11 investigation and dealt with the matter?

12 A. I still disagree with the judgement which was arrived on,
13 which he arrived at his decision, I am not questioning his
14 motives but I am questioning his judgement. I am
15 accepting that if I was told four years ago or five years
16 ago what I was told in the letter, in the statement there
17 six weeks ago it would have removed an awful lot of my
18 concern, but I would still have disagreed, I say, with the
19 extent and the investigation, because I didn't think I was
20 being taken seriously, having regard to what I knew and
21 what I had told them, filled in on, you know.

22 97 Q. Do you believe that there was any improper influence
23 brought to bear on the Gardai now?

24 A. I feel no, definitely not now, but I did have an anxiety on
25 it on-going, not getting a satisfactory answer as I
26 believed, even I think when Mr. McElligott talks to you
27 about our interviews, that was the primary motive and I
28 talking to him, but he hadn't finished his investigations,
29 and he told me that he would continue to assure me that it
30 would all come out, that I would be reasonably satisfied.

31 98 Q. Now, you have given evidence on oath, and I want you to
32 think carefully on this answer and other answers of course,

1 but are you saying or making any allegation now of
2 wrongdoing on behalf of any member of the Garda Siochana?

3 A. No, I never did. I don't believe I ever did wittingly do
4 it. I never used the word "corruption" to my knowledge.
5 I may have used, possibly "improper motives" which I accept
6 were not, placed on Mr. McElligott but that doesn't stop me
7 from disagreeing with not giving the matter that I thought
8 proper investigation and sending the file to the DPP. And
9 it would have saved all this trouble at the present time,
10 that's what I believe, and I still believe that. I have
11 nothing generally against the body of guards, never had as
12 I say, never had, no reason to. I read the papers every
13 day, but there is bad sheep in every flock, I am not saying
14 -- I am saying none of us are perfect, none of us are
15 perfect.

16 99 Q. Mr. Gogarty, I now want to turn to the -- we are retracing
17 our steps somewhat I'm afraid, but in order to try and put
18 some, make some sense of the numerous events that occurred
19 and to try to deal with all relevant aspects, I now want to
20 bring you back to the accounts, you will recall we spoke
21 about the accounts on a previous occasion, hopefully we can
22 get through most of the evidence today in relation to these
23 accounts.

24 .
25 Mr. Cooney, you will recall, asked me to refer you to a
26 letter from Bates & Company on the previous occasion and I
27 now intend to deal with that and with other documents, if I
28 may?

29 A. Yes.

3 100 Q. Just to -- I am now dealing with 1989?

31 A. Yes.

3 101 Q. Summer of 1989?

1 A. Yes.

102 Q. My understanding of your evidence is that at that time you
3 were concerned about the accounts of JMSE for 1987 and
4 1988?

5 A. That's correct.

103 Q. And at that time you had taken over, perhaps if I rephrase
7 that, events had occurred in June of 1988 which led to the
8 removal of Mr. Conroy, Mr. Sweeney and others as Directors,
9 and their replacement in due course by yourself, I think by
10 Mr. Murphy Senior, Mr. Murphy Junior, Mr. Copsey and Mr.
11 Reynolds and Mr. Grehan?

12 A. That's correct.

1 104 Q. I may not have them all, but essentially that was it?

14 A. And Una, the Lord have mercy on her.

1 105 Q. And Mrs. Una Murphy?

16 A. Yes.

1 106 Q. And I think that on the 29th of June, of 1989, arising from
18 discussions in relation to the accounts, you received a
19 letter from Mr. Copsey, 881 on Book 4.

20 .

21 I will read the letter first and perhaps you can comment, I
22 will ask you questions on it then. It is a letter to you
23 from Mr. Copsey, dated the 29th of June, 1989, on the note
24 paper of JMSE
25 and headed "Re: Accounts of JMSE/AGSE".

26 .

27 "Dear Jim, I have carefully considered the effect of the
28 current examination of past transactions on the
29 finalisation of the accounts.

30 .

31 In respect of payments authorised by Mr. Sweeney upon which
32 we are presently unclear, I have requested that he provide

1 further information.

2 .

3 As regards Mr. Conroy, a claim is to be made against him
4 for the return of sums paid, but he will then be able to
5 seek to claim a quantum merit amount from the company.

6 .

7 The result in either case will be that the company will
8 recover any improper payments provided that they are
9 provable.

10 .

11 At present there is insufficient evidence to prove improper
12 payments, and I am not prepared to allege that there are
13 such payments, to do so could attract a libel action which
14 would benefit no one other than the Plaintiff. It may be
15 that in a personal capacity your opinion is different, but
16 I have to consider it from the companies viewpoint.

17 .

18 The companies accounts presently treat all payments as for
19 the companies benefit, which in my view is correct in the
20 absence of proof to the contrary.

21 .

22 If at some later date there is a recovery, this will
23 increase the companies assets. The increment should not be
24 anticipated, nor in my view should an increased charge be
25 now introduced as there is no known liability.

26 .

27 The 1988 accounts have been prepared on the above basis and
28 should now be signed.

29 .

30 I would suggest the matter should be reflected in the
31 minutes as follows;

32 .

1 "The Chairman, Mr. Gogarty, inquired as to progress in
2 examining transactions conducted by Messrs. Sweeney and
3 Conroy prior to the appointment of the present Board.

4 .
5 Mr. Copey reported on the general progress of the
6 company. He advised that a statement of transactions had
7 been requested from Mr. Sweeney and he would pursue the
8 matter. In relation to Mr. Conroy claims had been made
9 for the return of certain sums and the result of the case
10 now being pursued would determine the position of the
11 transactions.

12 .
13 As to the effect on the companies accounts, Mr. Copey
14 advised that if there were any improper transactions the
15 amounts involved would be recoverable, subject of course to
16 the appropriate proof.

17 Should subsequent information show increased charges due by
18 the company they will be reflected in subsequent
19 accounts.

20 .
21 Having regard to the above, it was agreed that no credit
22 should at this time be taken for any recovery and no
23 provision made for liabilities which are not
24 ascertainable. The accounts are approved as drafted" .

25 .
26 And he continued; "I would also propose a note to the
27 accounts as follows;

28 .
29 The company is in legal dispute with its previous Chief
30 Executive, the outcome of the case is uncertain but the
31 Directors are of the opinion no provision or adjustments to
32 the accounts are necessary on the basis of present

1 information available.

2 .

3 You may wish to exclude yourself as a signatory in view of
4 your service before the present Board was appointed and I
5 see no problem in this respect.

6 .

7 The above endeavours to take a responsible view in the
8 absence of provable facts and full explanations, may be by
9 the next accounts the position will be different.

10 .

11 I suggest the Board meeting is now called at which also the
12 pension agreements can be approved in principle. Yours
13 sincerely R J Copsey."

14 .

15 Now, Mr. Gogarty, I think that letter followed a request of
16 the 28th of April, of 1989, requesting you to sign the
17 accounts?

18 A. It would appear to be, yeah.

1 107 Q. And that's to be found at page, I think 846 of Book 4.

20 Now, what was your reaction to that letter?

21 A. Well, my reaction was that I was taking it that here was a
22 man who had just thrown it back into my court, what he
23 already knew to be true. That the accounts were incorrect
24 and Senior had questioned them more so than I had in fact a
25 way back in early 1988. That's 97 --

2 108 Q. Sorry, have you finished?

27 A. Yes. You see there is so much evidence there of
28 questionable accounts, there is so much evidence there.

2 109 Q. All right. Now, I want to refer you to a document on page
30 886 of Book 4.

31 .

32 First of all can you identify it as a document written by

1 you, I believe it is your handwriting. And can you say

2 when you wrote it approximately, and why?

3 A. It is headed "Re: Problems with JMSE's account '88", which

4 I was being pressured to sign.

110 Q. Yes, is that in your handwriting?

6 A. That's my handwriting. It is fairly bad but it varies from

7 time to time but there you go, sorry.

111 Q. What -- when did you make this note or memorandum,

9 approximately when did you write it?

10 A. It would be contemporaneous notes I would say, you know.

1 112 Q. You start off and deal with the 3rd of the 7th -- the 30th

12 of the 6th, and you deal with the event of the 1st of the

13 7th. Perhaps if you read it?

14 A. I will try and read it here.

15 .

16 "On the 30th of the 6th, '89, Senior phoned me the 30th of

17 the 6th at 5 p.m. to say he wanted a Board meeting of JMSE

18 on the 3rd of July, '89, to discuss accounts etc.. John

19 Bates had been pressing me to sign accounts, also Copsey,

20 but Bates had repeatedly failed to furnish me with

21 documentation in response to the queries I had been raising

22 and Copsey had been trying to pass the buck back to me as

23 to the evidence. I had to suggest -- I had to support my

24 reservations, the accounts, even though I had made him

25 aware of all my concerns, and as -- something turned out --

26 as something turned out he had enough evidence himself. NB

27 - to his admission to me on the 6th of the 7th, '89 --

28 that was that meeting in Athlone it was after -- after we

29 left the Board meeting to sell AGSE when he took me down to

30 his archives. I rang John Bates on the 30th of the 6th,

31 '89, but he was away in Donegal. I spoke to him on the

32 1st of the 7th re: The accounts. We arranged to meet in

1 his office, College Green on Monday the 3rd of the 7th,
2 '89, at 2:30 p.m. prior to the Board meeting and had --
3 and he had only unsigned accounts re: '87. He checked and
4 told me LC and somebody else had signed the '89 accounts on
5 the 18th of the 1st, '88, and that -- I have a meeting in
6 fact -- that meeting aborted in fact because I had
7 questioned the accounts and it was a stormy meeting. He
8 again promised to get the working papers on the '87
9 accounts. Board meeting at 4:30 p.m.. Joe, RJC, JG and
10 myself, CRJ sees minutes, also threatened and intimidated
11 by Senior. I repeated my reservations and pointed out that
12 these had been his reservations as well before he got his
13 companies back. He said that was all history, etc.. RJC
14 said the problems of the accounts and my refusal to sign
15 was causing problems with banks and the cash flow, and
16 there would be no fund to meet my pension, etc.. Gay
17 Grehan intervened. I pointed out that RJC was fully aware
18 of my reservations and the fact that Bates had continually
19 failed to produce satisfactory evidence that accounts were
20 proper. Also neither RJC nor Bates had produced any
21 report from Ernst Whinney to confirm they were satisfied
22 with the accounts -- he was shouting about this document
23 but it never materialised even to the present day". Do you
24 know? He was passing the buck again. Oh Jesus -- all
25 there was a statement by Brendan Devine, and that he knew
26 what was --

2 113 Q. What reliance --

28 A. "What reliance we could place on that. Very
29 distressful. RJC again tried to put the ball back in my
30 court re substantiating the allegations I had made. I
31 said that I could not sign the accounts in the
32 circumstances, but that if Roger would contact my solicitor

1 and discuss the matter to see what could be done to resolve
2 the impasse, okay by me. RJ said he would do that. I
3 said meantime I was waiting for Bates to come back to
4 me".

114 Q. Now, can you say when you wrote that memorandum,
6 approximately you have mentioned the date the 6th of July,
7 of 1989?

8 A. It would be shortly after the Board meeting, around that
9 time. It is a contemporaneous note, it is not dated, but I
10 am referring to the problems that were -- coming up at the
11 Board meeting.

1 115 Q. So it had to be after you referred to the events that
13 happened, you say, on the 6th of the 7th, so it had to be
14 written on the 6th of July, 1989, at the earliest?

15 A. Yes.

1 116 Q. When do you say as a matter of probability it was written?

17 A. Well, I would say it was written between the 6th and the
18 10th of the month because I resigned, do you remember? I
19 resigned rather than sign the accounts.

2 117 Q. Now, when you said that the Board meeting, I am talking
21 about the third paragraph, centre of the page, Board
22 meeting at 4:30 p.m..

23 A. That was the 3rd of July.

2 118 Q. Yes, Mr. Roger J Copsey gave Grehan and yourself --

25 A. Yeah, Frankie Reynolds was on holidays.

2 119 Q. Yes. "See RJC minutes. Also threatened and intimidated by
27 Senior". What threats and intimidation were you referring
28 to?

29 A. That if I didn't sign the accounts that there would be no
30 pension for me and what I was talking about, both mine and
31 his reservations, he passed them off as being history now,
32 history. History.

120 Q. And you referred to Mr. Copsey's minutes, are these the
2 minutes on page 887?

3 A. I would say so.

121 Q. Perhaps we can show them to you and see if you can identify
5 them. These are notes of a meeting of Directors of JMSE
6 at Santry.

7 A. Yes.

122 Q. And it reads -- I won't read it all but I will read part of
9 it. "The following matters are set out in the agenda of
10 the meeting. No formal notice of the meeting had been
11 given."

12 Signing of accounts is the first item. Perhaps we can
13 quote that to see if you agree with what's contained in
14 it.

15 .

16 "Mr. Gogarty states that he was not satisfied with the
17 1987 accounts and had been surprised that these had been
18 signed by other Directors of the company. He felt that a
19 meeting of Directors had not been dually convened to sign
20 these accounts, and indeed he had been deliberately
21 excluded from the signing thereof.

22 .

23 He stated that he was not satisfied and the accounts of the
24 company properly reflected stock and other transactions".

25 .

26 Perhaps the word "that" is missing there.

27 .

28 "Mr. Gogarty indicated that he was not satisfied with the
29 investigation carried out by Ernst Whinney in respect of
30 the figures concerned on the basis that they had a conflict
31 of interest.

32 .

1 Mr. Copsey stated that in view of the uncertainty in
2 respect of contracts and certain other payments, a
3 provision of £200,000 had been made in the accounts for the
4 year ended May 1988. Mr. Gogarty was not satisfied with
5 this provision and it was agreed that he would meet with
6 the companies auditor, John Bates, in order to arrive at a
7 figure at a provision which he could recommend to the
8 Board". Did that in fact happen? Is that an accurate
9 summary of what happened at that meeting?

10 A. It is not a full summary no, because, you see I think it
11 was questioned whether it was a proper Board meeting at
12 all.

1 123 Q. Well, whether it is a Board meeting or not, is it an
14 accurate account of what happened at the meeting?

15 A. Not a true account, no. It doesn't talk about the threats
16 and intimidation by Senior to me or Gay Grehan's
17 intervention.

1 124 Q. Did you -- did you receive from Mr. Copsey on the 10th of
19 July, of 1989, a letter from Mr. Copsey, as you say on
20 Joseph Murphy Structural Engineers note paper, in relation
21 to the accounts, enclosing a letter to John Bates which
22 should be self explanatory -- that's to be found on page
23 912. Subject to correction, this perhaps is a letter that
24 Mr. Cooney asked -- a letter to John Bates in the following
25 terms;

26 .
27 "Dear John, as you will be aware Mr. Gogarty has reported
28 to the Board that he is not satisfied that the statutory
29 accounts for the above two years properly reflect the
30 assets of the company.

31 .
32 His particular concern relates to stock and work in

1 progress. My understanding of his concerns are (A) The
2 amount of stock and work in progress as at 31/5/87 in
3 relation to turnover for the year then ended is
4 exceptionally high. (B) The physical stocktake at 31/5/87
5 was badly organised and lacked proper instructions. (C) No
6 separate figures for stock as opposed to WIP are available.
7 (D) The accounts were proved at a Directors meeting from
8 which he feels he was deliberately excluded, although he
9 was Executive Chairman. (E) The transfer of steel between
10 Santry and Fleetwood was not properly controlled..
11 Your firm have been auditors of the company for the two
12 years in question, and Ernst and Whinney were Group
13 auditors for the same period. Both firms formed the opinion
14 that the above accounts reflected a true and fair view, in
15 particular you are aware during the course of the 1988
16 audit there was some disquiet with regard to the way in
17 which the company had been managed and indeed that there
18 had been a special investigation by Ernst and Whinney into
19 the stock and WIP at 31/5/87 in January/February 1988."

20 .

21 Was that a fair summary of the fact that your main concerns
22 or your main area of concern relating to, related to stock
23 and work in progress; would that be correct?

24 A. No, that wasn't the whole lot of it because he says --

2 125 Q. But was that your main concern at that time? Could it be
26 summarised as being a concern in relation to stock and
27 concern in relation to work in progress?

28 A. And other transactions.

2 126 Q. And other transactions?

30 A. Which were very important.

3 127 Q. But insofar, are these other transactions referred to in
32 this letter? Perhaps I better read the letter.

1 A. They are not referred to.

128 Q. They are not referred to in this letter?

3 A. No.

129 Q. We better read the letter in any event. "His particular

5 concerns relate to stock and work in progress. My
6 understanding of his concerns are (A) The amount of stock
7 and work in progress as at 31/5/87 in relation to turnover
8 for the year then ended is exceptionally high. (B) the
9 physical stocktake at 31/5/87 was badly organised and
10 lacked proper instructions. (C) No separate figures for
11 stock as opposed to WIP are available. (D) The accounts
12 were approved at a Directors meeting from which he feels he
13 was deliberately excluded, although he was Executive
14 Chairman. (E) The transfer of steel between Santry and
15 Fleetwood was not properly controlled.

16 .

17 Your firm have been auditors of the company for the two
18 years in question and Ernst and Whinney are Group auditors
19 for the same period. Both firms formed the opinion that
20 the above accounts reflected a true and fair view. In
21 particular you were aware during the course of the 1988
22 audit there was some disquiet
23 with regard to the way in which the company had been
24 managed and indeed that there had been a special
25 investigation by Ernst and Whinney into the stock and WHIP
26 at 31/5/87 in January/February 1988.

27 .

28 It is vital that the accounts for the year ended 31st of
29 the 5th, '88 are finalised. The Board are, however,
30 confused as to whether the present final draft which has
31 been presented for signature presents a true and fair view.
32 I would therefore ask you to state the facts on the

1 following for both years:

2 .

3 1. How your firm was able to satisfy itself on the method
4 of stocktaking and what your observations on the physical
5 count were in respect of both year ends.

6 .

7 2. A breakdown of the stock and work in progress between
8 unpaid measurements, free stocks, stock specifically
9 purchased for contract, work in progress by contract
10 showing labour and materials.

11 .

12 3. The total of provisions against the figures re: 2
13 above.

14 .

15 4. What special work, if any, you carried out in view of
16 the high stock and WIP levels.

17 .

18 5. How you were able to satisfy yourself on stock and WIP
19 with reference to post-balance checks.

20 .

21 6. How you were able to satisfy yourself that transfers of
22 steel between Group companies was properly accounted for.

23 .

24 The Board does not want copious extracts from your audit
25 files, as that would be inappropriate. What the Board
26 wants is to be put in a position where the Directors can
27 make a decision. Most of the present Board were not members
28 during the relevant period and the only common executive
29 member, Mr. Gogarty, feels he was deliberately excluded
30 from relevant discussions at the time.

31 .

32 It would be helpful to have a reply by the week ended 21st

1 of July, if possible" .

2 .

3 Now, did you receive that letter from Mr. Gogarty or Mr.

4 Copsey to the best of your recollection?

5 A. Yes, yes.

130 Q. Did you write to him also on the 10th of July, 1989, at

7 page 907?

8 A. Yes, that's my writing.

131 Q. Tell me, perhaps more correctly tell the Tribunal, what has

10 been Mr. Copsey's role? Where was he effectively in the

11 hierarchy of the company around this time do you say?

12 A. I took him to be the acting Chief Executive, he had

13 complete control over finances and all, all the companies,

14 you know between him and his firm, you know.

1 132 Q. Well, you wrote to him at R J Copsey, at his firm Copsey

16 Murray & Company, chartered accountants?

17 A. Yes.

1 133 Q. "Dear Roger -- can you read the letter please?

19 A. I will read it.

20 .

21 "Dear Roger, I acknowledge receipt of your note of the

22 meeting of Directors at Santry on the 3rd of July, of

23 1989.

24 .

25 You say no informal notice of this meeting was given. This

26 surprises me as I was instructed by Mr. Murphy that he had

27 organised this meeting through you and had come across

28 specially for same. This was also the understanding of Mr.

29 Grehan and Mr. Reynolds. The latter indicating he would

30 be unable to attend since he would be on holidays from the

31 1st of July, of 1989 --

3 134 Q. Can I stop you there, Mr. Gogarty, for a moment. You read

1 the third line as the word "no informal notice", is that
2 word not "formal notice"?

3 A. No, formal notice.

135 Q. Right. Sorry, would you continue please?

5 A. "Your letter of the 29th of June, 1989, while not naming
6 the date did suggest a Board meeting be called at which
7 inter alia the pension scheme can be approved in
8 principle. I would also wish to make the following
9 comments on your notes.

10 .

11 Re: Signing of accounts: I stated at the meeting for the
12 record that Mr. Joe Murphy, apart from myself, had serious
13 reservations on the '87 accounts. And that he did with my
14 agreement in February of 1988 request Ernst Whinney through
15 Brendan Devine to carry out a full investigation, with
16 particular emphasis on stock and work in progress and
17 regular finance transactions on the part of Mr. Conroy and
18 Mr. Sweeney. I further stated -- I further stated to that
19 I expressed my strong reservations on these and other Group
20 company accounts on the 18th of January, of 1988, which was
21 the last Board meeting I was able to attend through Mr.
22 Copey's conduct, Conroy's conduct, when he, Mr. Conroy,
23 refused to consider my reservations on the accounts and
24 other improper transactions, and that he ended of the
25 meeting abruptly without any further discussion of the
26 accounts, and that later Mr. Downes told me that on Mr.
27 Conroy's instructions no minutes were recorded.

28 .

29 Neither I nor Mr. Murphy, to my knowledge, have seen any
30 report of any investigation of our complaints, and that in
31 fact Mr. Devine told us and expressed resentment at our
32 request and stated he was satisfied with the audit.

1 .
2 I consider the statement by Mr. Devine to be reckless,
3 having regard to the grounds for concern. There is also
4 the conflict of interest on the part of Mr. Devine and
5 Ernst Whinney. I believed that at the time, although I
6 changed my mind afterwards. But anyway you make no
7 mention that on at least a number of occasions during
8 discussions with Mr. Murphy to my amazement, and distressed
9 and tried to intimidate and coerce me into signing the '88
10 JMSE accounts by forcefully saying "are you not going to
11 sign the accounts?", and dismissing my well founded
12 observations by repeating "that's all history now". Nor
13 do we record that Mr. Grehan was obliged to intervene and
14 say that he considered it unfair to try to force me to sign
15 the accounts in such circumstances.

16 .
17 I emphasise that I was anxious to be cooperative but that I
18 would not put myself on risk of being --

1 136 Q. Would it be "open"?

20 A. "Open to a charge of aiding and abetting and being held in
21 any respect in the event of the company being purchased on
22 these previous accounts, previous years accounts. I have
23 also suggested in good faith that our respective solicitors
24 might be able to agree a form which would enable me to sign
25 these accounts without any risk to me personally and/or as
26 Executive Chairman. In the event it was agreed and you
27 were to contact my solicitor, Mr. Gerry Sheedy, on the
28 issue on the 4th of July".

2 137 Q. 4th of July?

30 A. "To pursue this line, and Mr. Grehan indicated that my
31 wishes should be respected, even to the point when he asked
32 could not other Directors sign these accounts".

1 .
2 You must remember too that at that time there it was a very
3 difficult situation because they were all relying on them,
4 I was locked into a situation where I was chasing my
5 pension and was depending on Mr. Murphy's goodwill in the
6 matter. There is also a point I might refer to, I think,
7 there that might be relevant. I gave you or the Tribunal
8 contemporaneous notes of what I was doing in response to
9 Copsey's putting the buck back into my court. There is
10 contemporaneous notes about the problems I was having in
11 getting information which I couldn't get from John Bates or
12 from Mr. O'Keefe.

1 138 Q. Well, we will come to notes at a later stage, we will see
14 about that. Now, just one thing I want to ask you about
15 arising from that letter. You said that on the 18th of
16 January meeting, 1988 meeting "was the last Board meeting I
17 was able to attend due to Mr. Conroy's conduct"?

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

1 139 Q. Did you attend any other Board meetings that you can recall
20 between that and the 3rd of July, 1989?

21 A. I can, but in different circumstances. We had got the --
22 we were about to get back the trust, you know, and there
23 were Board meetings held by both companies, by us and by
24 Conroy's crowd.

2 140 Q. Well, to put it another way; what was the last Board
26 meeting you attended, for the purpose of this question --

27 A. The 18th of January because Sweeney and Conroy and his
28 crowd held other meetings behind my back but I was locked
29 out.

3 141 Q. Mr. Gogarty, if you wait for the question. There was a
31 meeting on the 3rd of July, of 1989?

32 A. That's right.

142 Q. You questioned whether it was, in fact, a Board meeting,
2 but whether it was a Board meeting or not it was attended
3 by Directors of the company?

4 A. It was, yes.

143 Q. When prior to that date was the last Board meeting that you
6 can remember?

7 A. I couldn't remember because there was so many meetings.
8 You see it is hard to distinguish what was a Board meeting
9 and what was a management meeting. There was monthly
10 meetings of management at which there were Directors and
11 they discussed company affairs, so there was -- seemingly
12 in a private situation you should need only about two
13 meetings per year, but there were monthly meetings.

1 144 Q. All right. Now, there is, the next document is a six
15 paged typed document which is a response from Bates &
16 Company, commencing on page 922 and ending on page 928.
17 .

18 This, Mr. Gogarty, is a letter from Bates & Company to Mr.
19 Copsey, Financial director of JMSE, dated the 19th of July,
20 of 1989, and it is a response to Mr. Copsey's letter of the
21 10th of July, setting out your reservations on the
22 statutory accounts and setting out his comments on the
23 various aspects of the accounts and on the work that was
24 done and how the figures were arrived at, and he did
25 explain how the analysis of the stock and the work in
26 progress for 31st, year ended 31st of May was arrived at.
27 He goes on and deals with the steel stocks, which he
28 quantifies in money terms. He then goes on to deal with an
29 analysis of the stocks in 1988 and 1987. He deals at Item
30 No. 4 on page 924 with a transfer of steel between Santry
31 and Fleetwood, and he talks about the volumes of work that
32 were being carried out between the two companies in this

1 jurisdiction and in the UK, various stock counts and
2 invoices that were examined. His analysis of the work in
3 progress, contracts work in progress and other items and he
4 -- he concludes the letter by saying "I hope the above
5 gives all the information required by the Board in order to
6 enable them to review the accounts, and I would be happy to
7 meet the Board to discuss any further matters". Did you
8 see that letter at any stage that you can recall?

9 A. I would say I did, but it is a difficult situation at that
10 time, you see I wasn't a Director then, that's first of
11 all.

1 145 Q. You had resigned as a Director?

13 A. Yes.

1 146 Q. As of what date?

15 A. Well, formally on the 10th of July but the 6th I resigned
16 as Director.

1 147 Q. Well, we know that there is a meeting of the Directors of
18 JMSE on the 27th of July, 1989, attended by Mr. Copsey, Mr.
19 Grehan and Mr. Reynolds?

20 A. That's right but, you see Frankie was keeping me informed
21 of what was going on because they were anxious.

2 148 Q. Pardon?

23 A. Frank Reynolds was keeping me informed of these things, you
24 know.

2 149 Q. I see.

26 A. We were very close and they weren't very happy, you know, I
27 think it is important to consider in the context of that
28 letter the contemporaneous notes that I saw recently that
29 you have, which shows what my problem with getting
30 information from Bates and others, and you see the whole
31 problem was that the internal arrangement was that the
32 interaction between companies, the JMSE particularly and

1 AGSE, it was sorted out in the end of the year by the law
2 of averages, ups and downs and swings and roundabouts and
3 ins and outs. One of the critical things was that, I
4 think it is in those notes there that, when Copsey was
5 putting the pressure on me to talk to Bates, I was talking
6 to Bates and asking for stock sheets. There was no proper
7 stock count as far as I am concerned, I believe there is,
8 it can be sworn evidence to that effect. Gerry Kelly was
9 the purchasing officer and the stock controller and he
10 admitted that, in conversation to me and Gay Grehan, that
11 he never attended a stock -- what they did was looked at
12 the stock sheets and put a value on them.

13 .

14 But more importantly was the interchange of steel and stock
15 between AGSE and JMSE and how it was documented with the
16 notes and receipts and invoices, and when I was pressing
17 for all that information for VAT and shipment documents and
18 I put to it Copsey, and he told me to talk to O'Keefe who
19 was, he was working between JMSE and AGSE, and he said he
20 would check in AGSE when he went across to see if he could
21 get those documents. He came back and told Gay Grehan that
22 he couldn't because they were destroyed by Marcus Sweeney
23 who gave instructions to have them all destroyed because
24 they were only put up for convenience for shipment and
25 VAT. That's on the record.

2 150 Q. Mr. Gogarty, you have referred to notes, I just want to
27 identify, if I may please, the notes that you were
28 referring to. Can I put to you typewritten notes at pages
29 57 to 61 inclusive of the reference documents which have
30 been circulated?

31 A. But there is written notes as well, I gave you written
32 notes as well.

151 Q. We will take those for a moment.

2 A. Yeah, I think the written notes are signed by, some of them
3 are signed by Jim Mitchell who was an officer in Murphy's.
4 He would be dealing with invoices and receipts and notes
5 and dockets and all that type of thing. The chap was doing
6 his best to get them.

152 Q. No doubt we will come to them if they are relevant, Mr.

8 Gogarty, but in the meantime can I refer you to those
9 typewritten notes?

10 A. Yes.

1 153 Q. Now, they deal -- it appears to me in the first instance
12 with the Board meeting, or the meeting at least of the 3rd
13 of the 7th, 1989, which you have referred to, and you refer
14 back to your notes and to Mr. Copsey's letter and the phone
15 call you received from Mr. Murphy Senior. Can you say when
16 those notes were typed up can you recall?

17 A. Basically I would say they were a typed up from the
18 contemporaneous written notes that you have, and they would
19 be due in that period, due in a week or fortnight in that
20 period, covered a short period that were --

2 154 Q. Well, I see they refer, for example, to events of the 10th
22 of July on page, that's the bottom, page 61 is on the
23 bottom right-hand corner of it?

24 A. Page what?

2 155 Q. On page 61?

26 A. There is no numbers on this.

2 156 Q. On the bottom right-hand corner, Mr. Gogarty?

28 A. Sorry. Yes.

2 157 Q. So that would suggest that they were written on or after
30 the 10th of July, of 1989; is that correct?

31 A. Yes, yes.

3 158 Q. And you say that these are, these are your notes made at

1 that time; is that correct?

2 A. Yeah, that's right.

159 Q. Perhaps with your permission I will read the notes. They
4 are typed written and they are easier to read, and they are
5 some hand written comments. It may be easier to get the
6 witness to deal with them.

7 .

8 MR. O'DONOGHUE: Sir, I wonder if I may intervene. I
9 appreciate there was an objection made by a previous party
10 in relation to the evidence of Mr. Gogarty, surely we
11 should have the evidence viva-voce, not long read out
12 narratives of notes which he tells us he made or had typed
13 up contemporaneously. If he has evidence to give he
14 should give it from the witness-box in sworn form and not
15 simply have his evidence supplemented by these written
16 records, and that's the objection I have.

17 .

18 MR. GALLAGHER: Sir, I say that clearly credibility is
19 going to arise in this matter, and you have to look at
20 anything that might have probative value to assist you to
21 determine where the truth lies. It is a matter where we
22 are looking at, if Mr. Gogarty is correct in what he has
23 said he wrote this material at, in or about July of 1989.
24 If that is so, and it may be that this documentation will
25 assist you in evaluating whether, whether it is consistent
26 with what he is now saying and what he has sworn already,
27 or whether it is consistent with what will be sworn by
28 other persons? If, for example, this document is not
29 opened now, it may be that other persons who are called at
30 a later stage may have to be asked questions about some
31 element of this document, and if this document has not been
32 opened and dealt with by Mr. Gogarty then of course we will

1 be open to the objection that there is no evidence about
2 the matter and it hasn't been opened.

3 .

4 CHAIRMAN: Isn't the reality of the situation, this
5 contemporaneous note or memorandum is essentially an
6 instrument used by a witness to refresh his memory; isn't
7 that the reality of the situation?

8 .

9 MR. GALLAGHER: That is certainly one of the reasons I am
10 relying --

11 .

12 CHAIRMAN: Isn't it a simpler matter if you take him over
13 a series of headings and say, "Mr. Gogarty, what do you
14 recall about this? And if you wish to refresh your memory
15 perhaps you might refer to page such-and-such", and let him
16 refresh his memory and give his evidence without actually
17 reading the note as such. That's as I understand the
18 appropriate way to deal with the matter.

19 .

2 160 Q. MR. GALLAGHER: All right. Mr. Gogarty, paragraph one of
21 this document, you say that you called to Mr. Bates as
22 arranged; is that correct?

23 A. Yes.

2 161 Q. And can you recall what happened at that time -- if you can
25 try and remember it from your own recollection as best you
26 can?

27 A. You see I had a number of meetings with Bates, both on the
28 phone, because I was looking for factual evidence from him
29 that the audited accounts had been dealt with properly, and
30 I was looking for relevant information about stocks and
31 stock sheets and stock count, inter company transactions,
32 the slush fund, all that type of thing, payments made and

1 how they were accounted for. I had a lot of things like
2 that to talk to him over a period.

162 Q. Did you meet him on a number of occasions about this period
4 in July of 1989?

5 A. I had, yes.

163 Q. What information was he able to give you or what document
7 was he able to show you?

8 A. Feck all, that's the trouble. He was meant to come in to
9 Santry and look in Santry, and he would come into his
10 office and look in his safe there and couldn't get them,
11 and then he thought they might be in Copsey's and then he
12 thought there could be something in Fleetwood. My heart
13 was broke asking questions and being kicked to touch.

1 164 Q. You record, for example, here that he gave me what he said
15 were working papers on the 1987 accounts?

16 A. What?

1 165 Q. You record that on the 5th of July, 1989, "10:30 AM - met
18 John Bates in the presence of Gay Grehan. He gave me what
19 he said were working papers of the 1987 accounts"?

20 A. What he said were working papers, but they weren't
21 satisfactory. I asked questions on them and couldn't get
22 the back-up.

2 166 Q. He did give you some papers?

24 A. He did, but nothing could convince me that there was a
25 proper audit, as I thought it should have been done, and as
26 I say, he even agreed that there was a difficulty between
27 Fleetwood and Dublin which was very important. This
28 prompted me to talk to Copsey and get him to agree that
29 O'Keefe, when he was next in Fleetwood, he would bring back
30 the relevant documentation, shipping documents, VAT
31 documents and point of sales notes, that type of thing.

3 167 Q. Did you draw to his attention that there was a shortfall in

1 the amounts of steel that had been accounted for?

2 A. Yes, yes

3 .

4 CHAIRMAN: More important still, did you make any

5 contemporaneous notes of this or at some stage on this

6 document that you referred us to? Is that your handwriting

7 on the edge?

8 A. Yes, that's my handwriting.

168 Q. MR. GALLAGHER: When did you make that handwriting?

10 A. About the same time, maybe as a result of him saying

11 something that I hadn't, I had omitted.

12 .

13 CHAIRMAN: Well, what is the word, what followed the word,

14 if you look at the top or right-hand side and look on the

15 lateral point of view, you see the "NB", what's the

16 reference there? What does that say? . "I again raised

17 the matter of --

18 .

1 169 Q. MR. GALLAGHER: On the side of the page.

20 .

21 CHAIRMAN: If you turn the document on its side now, you

22 see the "NB", you seem to make a series of notes?

23 A. "I again raised the matter of slush funds admitted by

24 Downes, Marcus, Sweeney of which Copsey had plenty of

25 evidence and documentation. Bates was very prevaricated

26 but admitted his, he had relied heavily on information from

27 Downes, Marcus, Sweeney and Conroy and he accepted their

28 assurances".

2 170 Q. On the following pages you recall or you record that you

30 spoke with Jim Mitchell in the presence of --

31 A. Gay Grehan, that's the chap, yeah.

3 171 Q. Gay Grehan. And --

1 A. What page is that on?

172 Q. That's page 58?

3 A. Yes, yeah.

173 Q. You were asking for Mr. Grehan for bids/cost reports for
5 the 31st of the 5th, '87?

6 A. Yeah. "I asked Gay Grehan about bids/cost reports for the
7 year ending 31st of the 5th, '87. He checked with Martin
8 Green, the surveyor, who told him they were not in Dublin
9 as MAS took them all to Fleetwood. GG phoned Fleetwood and
10 spoke with E Kelly about stock sheets and said Eddie would
11 be in back in Dublin the following day and he would give me
12 what he had. He also said Geoff Millar would check on the
13 bid/cost reports.

14 .

15 Thursday 6/7/89 Santry. Met Tim Parker and spoke with him
16 about the '87 accounts and that I had sought information in
17 both Dublin and Fleetwood without much satisfaction. He
18 said I should have done it through him. I said I had done
19 it through GG. He then said if the '88 accounts were not
20 signed the Revenue would withdraw AGSE's and JMSE's
21 registrations. I said I appreciated this but that I was
22 checking out the accounts as both JM and I, that's senior,
23 and I had serious reservations on the '87 accounts which
24 had serious reservations on the '88 accounts. He said
25 that was all history now. I disagreed and said it was
26 very relevant to the '88 accounts, and in that context the
27 information I was seeking was very urgent. He said he
28 couldn't pursue the matter then, as he had other matters
29 requiring his attention.

30 .

31 Friday 7th of the 7th, Santry. Spoke with E Kelly in the
32 presence of GG about stock sheets for stock count at

1 31/5/87. He left and returned with a pile of stock
2 sheets. On my perusal of these sheets and in reply to
3 questions from me he agreed (A) They were not originals but
4 copies. (B) They were not stock sheets of stock count at
5 audit date 31/5/87 but standard stock sheets costed
6 routinely. He agreed they were not what I was looking but
7 said they were all he had. He then said he had only started
8 with the company in mid March 1987 and things in purchasing
9 and stock control were in an awful mess. He admitted he
10 did not attend nor supervise the stock count at 31/5/87,
11 nor did he organise this stock count. He did not know if
12 Mr. Bates had supervised the stock count. He said Mr.
13 Bates did not involve him in the stock count and did not
14 give him any plan or briefing for organising or being
15 involved in the stock count. Although as purchasing
16 officer and in overall control of materials, etc., he
17 admitted he should have been involved. He admitted the
18 sheets he had given me were not stock count sheets in the
19 audit sense but were inventories and valuations of
20 available stock sheets, and not actual inventory nor actual
21 costings as at 31/5/87.
22 .
23 I then rang John Bates and advised him that --
24 .
25 MR. O'DONOGHUE: We seem to be drifting from your rulings
26 a few moments ago to reading the entire document.
27 .
28 CHAIRMAN: I think the simplest answer to this problem is
29 it is just on one o'clock and I will invite the witness to
30 take these memoranda, have a look at them overnight and
31 perhaps he will be in a position to give viva-voce evidence
32 with the assistance of refreshing his memory from the

1 memoranda which he has available to him and perhaps some
2 form of orders, ordered system that could be achieved.

3 .

4 For the moment, thank you very much for your attendance
5 here today. We will resume tomorrow morning at 10
6 o'clock.

7 .

8 MR. O'DONOGHUE: Sir, there is one matter which arises
9 from the evidence which has now been given, and that
10 relates to correspondence which my solicitor had with the
11 Tribunal's solicitors, starting with the 15th of January,
12 and a further reminder of the 26th of January seeking
13 specific documentation. I appreciate the Tribunal team has
14 been very busy over the last couple of weeks and I have not
15 had an opportunity to reply, but these are documents that
16 appear to be highly relevant to the question of accounts,
17 and I am now in a position where I don't know whether I can
18 proceed to partake at the present time and to hear this
19 evidence in the absence of that documentation.

20 .

21 CHAIRMAN: Sorry, would you mind repeating the two letters
22 so we will check the situation.

23 .

24 MR. CALLANAN: Mr. Gogarty can be released?

25 .

26 MR. O'DONOGHUE: There is a letter of 15th of January,
27 sir, and a reminder of the 26th. The letter of the 15th
28 specifies a number of documents. Now, it may be that these
29 are not relevant to me, and if Mr. Gallagher can assure me
30 that that is the position then I have no further argument
31 but without that assurance, sir, I think these matter will
32 have to be attended to before we attend further --

1 .

2 CHAIRMAN: Again I don't know if Mr. Gallagher can do it
3 off-the-cuff.

4 .

5 MR. GALLAGHER: Can I speak with Mr. O'Donoghue please,
6 and if there is a difficulty it may be that I will have to
7 go to other colleagues to see if they are agreeable to
8 documents being released. If there is a problem perhaps we
9 can address it tomorrow?

10 .

11 CHAIRMAN: If you have a problem perhaps you will outline
12 the problem on the telephone to Mr. O'Donoghue and the
13 solicitors.

14 .

15 MR. GALLAGHER: I will speak with Mr. O'Donoghue right
16 now.

17 .

18 CHAIRMAN: So we can try and bring this thing and shorten
19 it down.

20 .

21 Thank you very much.

22 .

23 THE HEARING WAS THEN ADJOURNED TO THE 3RD OF FEBRUARY,
24 1999, AT 10 AM.

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