

1 THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY, 9TH FEBRUARY,
2 1999 AT 10AM:

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4 CONTINUATION OF EXAMINATION OF MR. GOGARTY BY
5 MR. GALLAGHER:

6 .

7 1 Q. Good morning, Mr. Gogarty.

8 A. Good morning.

9 2 Q. Now yesterday I drew your attention to an article in the
10 Irish Independent of Wednesday last, written by Mr.

11 Smyth. Have you had an opportunity to read that?

12 A. Yes, I read that article.

13 3 Q. Now I don't know whether Mr. Allen or anybody else is going
14 to put these matters to you as their case, but because it
15 has been alleged in print in public, I must put a number of
16 questions to you arising from that article.

17 The first is this, did you ask Michael Bailey or Thomas
18 Bailey or Bovale for any money or payments to secure the
19 sale of the six lots referred to in the Terms of Reference
20 or any other property?

21 A. No, never.

22 4 Q. Were you ever offered any such payment by Michael Bailey,
23 Thomas Bailey or Bovale in relation to or in order to
24 secure the sale of the six lots or any other property?

25 A. No.

26 5 Q. Apart from the uncashed cheque for £50,000 drawn on the
27 Bank of Ireland in Montrose, did you receive £50,000 or any
28 other sum from or on behalf of Michael Bailey, Thomas
29 Bailey and/or Bovale in relation to the sale of the six
30 lots or any other property?

31 A. No.

32 6 Q. I just want to refer you back to one matter for

1 clarification if I may. On Thursday, the 4th February,
2 you gave evidence of a meeting attended by yourself, by Mr.
3 Murphy Jnr and Mr. George Redmond at which you alleged and
4 I quote, "And that he also had an agreement with Mr. Conroy
5 that we get 10 percent of the sale between the sum that
6 would have been, he reckoned would have been more than
7 double under a new form of planning permission. I should
8 mention that." Later, at question 293, the question was
9 "And what was the response to the suggestion from Mr.
10 Redmond that he would get 10 percent of any sale that
11 might, sales that might accrue as a result from the monies,
12 the £122,480 paid at the time?"

13 Answer. Junior said he would talk to his father about it"
14 was the answer.

15 .

16 Was there any further reference that you can recall about
17 the payment of any such monies to Mr. Redmond?

18 A. Not at that time, because as I said -- oh except that later
19 on Junior said he would sort it out but I wasn't in touch,
20 because once the letter went from Grafton to the Council
21 that I signed in McArdle's office, I heard no more about it
22 for sometime and it was Junior told me and I didn't
23 question the amount but he sorted it out with Redmond and
24 he was blaming Conroy for committing himself and Frank
25 Reynolds told me too as well, but I didn't go into details,
26 but and then McArdle later on, did tell me that they had
27 got the extension of the services for two years at the
28 original files.

29 7 Q. What do you mean by your statement that Junior said he had
30 sorted it out?

31 A. Well I took it that he paid him money.

32 8 Q. To whom?

1 A. To Mr. Redmond.

2 9 Q. What money are you talking about?

3 A. Well, there was figures dangled about, the figure that
4 basically I understood was the 10 percent of whatever
5 savings, I don't know what the savings were and I think
6 there was a mention earlier on with Junior that he was owed
7 a few quid as well on top of that from previous services he
8 provided.

9 10 Q. When you say service he provided, you are talking about Mr.
10 Redmond providing services to or for somebody else?

11 A. To Conroy.

12 11 Q. To Conroy. Sir, I am now turning to -- Mr. Gogarty,
13 perhaps Mr. Cooney doesn't quite follow the last evidence
14 you have given. Would you elaborate a little please on
15 the evidence that you have given, if you are able to do so,
16 in relation to the payment of additional monies by Mr.
17 Murphy Jnr to Mr. Redmond?

18 A. No, just that Junior did say that he sorted it out and he
19 was blaming Conroy for committing himself to whatever
20 arrangement there was between them, do you know? And
21 Frank Reynolds agreed that he understood that Junior had
22 sorted him out.

23 12 Q. When did that happen?

24 A. Sometime later on from that.

25 13 Q. Can you recall where or when you were told by --

26 A. It would be in Santry when I would be in talking to Frank,
27 you know.

28 14 Q. Sir, I now intend to turn to the evidence of Mr. Gogarty as
29 set out in the affidavit in relation to Moneypoint.

30 .

31 MR. COONEY: Mr. Chairman, may I address you on that
32 issue? We know what Mr. Gogarty says about this incident,

1 Mr. Chairman --

2 .

3 CHAIRMAN: Just one moment till I turn it up on the actual
4 affidavit.

5 .

6 MR. COONEY: It's under subheading C in his affidavit at
7 paragraph 18, Mr. Chairman.

8 .

9 CHAIRMAN: Paragraph 18. I shall turn it up.

10 .

11 MR. COONEY: And Mr. Gogarty's allegations about this
12 matter continue from, start with paragraph 18,
13 Mr. Chairman, and continue on at up to paragraph 23 and in
14 those paragraphs, Mr. Chairman. He purports to relate
15 events which occurred in late 1981 or early 1992. That's
16 how he puts it in paragraph 20.

17 .

18 CHAIRMAN: Sorry, '81 and '82. You said '92.

19 .

20 MR. COONEY: No, '82, I beg your pardon. Now, I have
21 read these paragraphs in this affidavit and I am sure you
22 have at one stage, Mr. Chairman, so you are familiar with
23 the events which he alleges in these paragraphs occurred.

24 .

25 In my respectful submission, Mr. Chairman, none of these
26 events have any connection with the Terms of Reference of
27 this Tribunal. And if they are to be referred to in
28 evidence, Mr. Chairman, I think Mr. Gallagher will have to
29 satisfy you that they have some relevance to this inquiry,
30 certainly they have no connection with the Terms of
31 Reference and I fail to see, Mr. Chairman, how these events
32 can have any relevance to any other matters which may have

1 arisen during the course of this part of the Tribunal's
2 hearing.

3 .

4 CHAIRMAN: If they are admitted in evidence, they must be
5 shown to be relevant. I just captioned --

6 .

7 MR. COONEY: I am assuming, Mr. Chairman, then you say
8 that you agree, although I hope I am not being
9 presumptuous, that you agree they are not being caught up
10 by the Terms of Reference, so it's hard to see what
11 relevance they are and I think the onus is on

12 Mr. Gallagher --

13 .

14 CHAIRMAN: Your first point, as you put it, they have no
15 connection with the Terms of Reference and your second is,
16 if admitted in evidence, they must be shown -- sorry, it's
17 the other way around, to be admitted in evidence, they must
18 be shown to be relevant. To have a relevance --

19 .

20 MR. COONEY: Well there is certainly no relevance in the
21 sense of the Terms of Reference. It's very difficult to
22 see how they could otherwise have any relevance so as to
23 make them admissible in evidence and I think the onus is on
24 Mr. Gallagher, the onus is on Mr. Gallagher to show that
25 relevance if he can, Mr. Chairman.

26 .

27 The second point which I'd make is this, Mr. Chairman, if
28 you decide to have this matter canvassed in evidence, not
29 only by Mr. Gogarty but by all the other witnesses, and we
30 know there are a substantial number of other witnesses who
31 will have evidence about this, including a large number of
32 Garda Siochana, this would add hugely to the length of the

1 Tribunal, Mr. Chairman. It would certainly be another
2 week, perhaps a fortnight's hearing to deal with that issue
3 and it's in that situation, Mr. Chairman, which I think it
4 should not be dealt with.

5 .

6 CHAIRMAN: Before you resume your seat, may I make this
7 inquiry because I think it's going to arise and might as
8 well hear what your view on it is now.

9 .

10 MR. COONEY: Yes.

11 .

12 CHAIRMAN: Without in any way indicating a viewpoint, if
13 it were to be submitted that they go to credit, may I put
14 an open question; how do you say that should be
15 approached?

16 .

17 MR. COONEY: Well, I think there has to be a limit,
18 Mr. Chairman, to the matters which can be --

19 .

20 CHAIRMAN: I just want to hear you -- I am not in any way
21 canvassing a view now.

22 .

23 MR. COONEY: I understand that, Mr. Chairman. I think
24 it's a fair query, Mr. Chairman. I think there has to be
25 a limit, Mr. Chairman, to the matters which can be
26 canvassed on the issue of credit, Mr. Chairman. And the
27 real question is whether or not these matters have any
28 probative value insofar as the Terms of Reference are
29 concerned and the matters into which you have to inquire.
30 And there are many matters have arisen and will arise again
31 during the course of this Tribunal which deal with the
32 accuracy and reliability of the evidence of the various

1 witnesses whom you hear, Mr. Chairman, but I would submit
2 that this is so far outside the matters which are
3 immediately relevant, that even on the issue of
4 credibility, it shouldn't be canvassed.

5 .

6 These events, Mr. Chairman, occurred over seven years
7 ago -- 17 years ago and they are wholly unrelated to the
8 matters that you are inquiring into. There were other
9 matters which have already been canvassed which are more
10 immediate and which were germane to the issue of
11 credibility such as the pension and the ESB and the
12 accounts and so on, Mr. Chairman, and obviously they are
13 relevant to the issue of credibility both and particularly
14 in terms of times and immediacy, these matters happened so
15 long ago and on that basis, first of all, memories will
16 have failed, there are some contemporaneous documents still
17 in existence, but you are inquiring into matters,
18 Mr. Chairman, which occurred 18 or 19 years ago and for
19 that reason, Mr. Chairman, it would be a rather weak matter
20 upon which to judge anybody's credibility.

21 .

22 CHAIRMAN: Can I also -- I don't like to in any way bind
23 you in any way, I take it in your submission that in due
24 course of cross-examination, they are not going to be put
25 in as a matter of credit by your good self. That's not
26 what I want to know. I want to know the scenario which I
27 am dealing with. That's all I want to know. I don't want
28 in any way to confine you in any way.

29 .

30 MR. COONEY: Yes, I think it's a relevant query,
31 Mr. Chairman, and you can take it, Mr. Chairman, that I
32 would not be canvassing this matter in cross-examination of

1 Mr. Gogarty or any other witness.

2 .

3 CHAIRMAN: Thank you very much. That's your
4 submission. Now, I think before I call Mr. Gallagher, is
5 there anybody else --

6 .

7 MR. GALLAGHER: I suggest that you would ask each of the
8 counsel representing each of the parties --

9 .

10 CHAIRMAN: That's exactly what I am going to do. Let's
11 go back to Bailey/Bovale.

12 .

13 MR. LEAHY: In relation to the submission Mr. Cooney has
14 made in regard to relevance, I am a stranger and do not
15 wish or require to be heard.

16 .

17 In relation to the latter matter as to credit, I don't want
18 to close the door entirely on that, but perhaps we are
19 consistent, if I say this, if it is a matter that we would
20 wish to raise as regards credit in the course of
21 cross-examination, we will give notice to that.

22 .

23 CHAIRMAN: Well that apart, and that's one way of coping
24 with it, a matter raised is a matter of credit and if one
25 takes the order rules of evidence which in principle
26 applied but not necessarily very strictly, once the matter
27 is put as a matter of credit you are bound by the answer,
28 broadly speaking. I am not going to say that that's an
29 absolute situation. Would you -- would it be your
30 intention, I might as well find this out now, to lead
31 evidence in that event?

32 .

1 MR. LEAHY: Again Sir, I don't want to close the door in
2 relation to it but I think it's a bridge that's not
3 necessary to cross at this stage and may well not be
4 necessary to cross. I am not seeking to be unduly coy.

5 .

6 CHAIRMAN: I fully understand your situation. Thank you
7 very much. Who is next? Mr. Callanan -- Mr. Leonard,
8 have you anything to say?

9 .

10 MR. LEONARD: Nothing at all. We joined this company in
11 1983 My Lord.

12 .

13 CHAIRMAN: The state?

14 .

15 MR. WILSON: As far as the Garda Siochana are concerned,
16 they supplied the statements in response to the
17 affidavit. I fully agree with Mr. Cooney that they are
18 not relevant to the Terms of Reference.

19 .

20 CHAIRMAN: Very good. Thank you very much. Mr.
21 Callanan?

22 .

23 MR. CALLANAN: My position is very simple, it's that either
24 all of these matters are in or they are all out. Now --

25 .

26 CHAIRMAN: What do you mean -- sorry, what do you mean by
27 all of these matters?

28 .

29 MR. CALLANAN: What I mean is this, I am most concerned at
30 the fact that while Mr. Cooney has indicated that he
31 doesn't intend to go into any of the matters referred to,
32 indicated in Mr. Gogarty's affidavit or any of the related

1 matters that have been raised in other statements that it
2 is, it seems apparent that Mr. Leahy, on behalf of the
3 Baileys and Bovale is reserving his right to do just
4 that. Likewise, it is perhaps an issue which the Tribunal
5 itself has to form a view insofar as at least one statement
6 which was recently furnished to Mr. Gogarty's team is
7 concerned, and it seems to me that if any of these matters
8 are being raised that, in that event, the only fair or
9 proper course is for Mr. Gardiner to deal with the matters
10 referred to in Mr. Gogarty's affidavit at the passages
11 referred to and any matters arising there from. What I
12 think would be a manifest injustice to Mr. Gogarty would be
13 for the matter now to be passed from and to be then
14 resurrected in the manner of choice of somebody else and
15 that's why I say that if any of these matters are being
16 referred to, then they must all be referred to and the
17 appropriate time to introduce those matters is now. Thank
18 you.

19 .

20 CHAIRMAN: Mr. McGowan, I overlooked you, I beg your
21 pardon.

22 .

23 MR. MCGOWAN: That's okay, Chairman. I have nothing to
24 say at this stage in any event on this matter.

25 .

26 MR. GALLAGHER: I wonder when Mr. McGowan says he has
27 nothing to do, is he reserving his position in relation to
28 this matter or --

29 .

30 CHAIRMAN: I understand he has no submissions to make.

31 .

32 MR. MCGOWAN: I have no submissions to make at this

1 stage. I think I would go in behind Mr. Leahy. It's not
2 something that arises. Something might arise in
3 cross-examination but as things stand, I trust that nothing
4 will.

5 .

6 MR. CALLANAN: In my submission, Mr. Chairman, if that is
7 the situation, then the only appropriate course is now to
8 proceed to deal with the matters referred to in Mr.
9 Gogarty's affidavit.

10 .

11 CHAIRMAN: Let us hear from Mr. Gallagher.

12 .

13 MR. GALLAGHER: Well I think Mr. -- Counsel for Mr.
14 Sweeney, Mr. O'Donoghue --

15 .

16 CHAIRMAN: Mr. O' Donoghue, have you got any views?

17 .

18 MR. O'DONOGHUE: I am a complete stranger to these
19 matters. The only thing I am a little bit concerned
20 about, Mr. Cooney says they run from paragraphs 18 to 23
21 inclusive. Paragraphs 22 and 23 appear to me to deal with
22 matters other than the strictly Moneypoint issue but as far
23 as Moneypoint issue is concerned, I am a complete stranger
24 to it --

25 .

26 CHAIRMAN: They are peripheral even to the Moneypoint
27 issue.

28 .

29 MR. O'DONOGHUE: Indeed.

30 .

31 CHAIRMAN: That's correct. So be it. Mr. Gallagher, do
32 I have your assistance?

1 .
2 MR. GALLAGHER: Clearly it is undesirable that you should
3 have just part of the story. The fact is that credibility
4 of witnesses will arise and the credibility of this witness
5 has already been raised by Mr. Cooney and this matter is a
6 matter relevant to Mr. Gogarty's credibility, the
7 credibility of Mr. Murphy and to others and therefore it is
8 something that I feel you should deal with and you should
9 hear.

10 .
11 The extent to which it assists is you in arriving at the
12 truth, the weight to be attached to it is, of course, a
13 matter entirely for you. But it is, I think, a matter you
14 should hear evidence and make such decisions or findings in
15 relation to it as you think appropriate and that of course
16 may be a decision that it is not of any probative value to
17 you. I believe it may be of probative value in relation
18 to credibility.

19 .
20 You did indicate in opening that you would hear evidence de
21 benne esse and you would hear all the evidence and it is
22 for you, at the end of the evidence, to determine what
23 weight is to be attached to the evidence.

24 .
25 I should say, there is, in my view, a relevance to this
26 evidence in relation to credibility. I do accept, as Mr.
27 Cooney has indicated, that if this area is to be embarked
28 upon at this stage, that it will certainly involve the
29 calling of additional witnesses, it will involve some
30 considerable time of perhaps a week, two weeks of hearing
31 in order to deal with the matter. But in my respectful
32 submission, it is a matter that will arise in relation to

1 credit and the fact that my colleagues choose to indicate
2 that they don't wish to go down this road in relation to
3 credibility or in relation to any other aspect of the
4 matter, or indeed some of my colleagues wish to keep the
5 door open is not, in my respectful submission, a good
6 enough reason to exclude the evidence at this stage.

7 .

8 If, however, you feel that it is, having regard to all the
9 matters that have been canvassed, something that you should
10 reserve your position on, then so be it. It is, in my
11 view, a matter that should be dealt with at this stage and
12 I would hope to be able to deal with it in a relatively
13 short way with this particular witness.

14 .

15 I obviously accept that the cross-examination would
16 probably take a considerably longer time.

17 .

18 MR. LEAHY: I wonder, Sir, I wasn't sure if Mr. Gallagher
19 was finished...

20 .

21 CHAIRMAN: Wait a moment --

22 .

23 MR. GALLAGHER: Perhaps I can -- if Mr. Leahy wishes to
24 say something.

25 .

26 MR. LEAHY: Sorry, I didn't mean to interrupt in any
27 way. I am simply going to say that my submission seems to
28 have caused ripples that I hadn't necessarily intended.
29 Perhaps if I simply suggest that you were to deal with it
30 on the issue of relevance first and if you reach a decision
31 one way on relevance, that seems to answer the matter. If
32 you reach a decision the other way on relevance, it leaves

1 my door partially open. If that was the deciding factor,
2 if you would give me a short period of time, perhaps I
3 could be of assistance.

4 .

5 CHAIRMAN: Mr. Leahy, you are going to have to put your
6 money on the double-tailed nag. There is no each-way bets.

7 .

8 MR. LEAHY: The simple position is issues of credit
9 normally arise in the course of cross-examination. I
10 hasn't anticipated the position. It's not my intention at
11 present to raise this in the course of cross-examination.
12 I don't necessarily want to close the door, but if that was
13 something that was going to affect a significant ruling the
14 Tribunal will have, I will see if I can be more definite in
15 relation to that.

16 .

17 CHAIRMAN: As you happen to be on you're feet, isn't the
18 reality of life this, that in matters of evidence,
19 including matters of credibility, there is a limit and
20 there has to be a relevance in some way and a probative
21 value in whatever is going to be put as to credit. I
22 mean, if it's purely credit, would I not be correct in
23 thinking that the rule of practice, it's not a rule of law,
24 it's certainly a rule of practice but those two factors
25 must be present?

26 .

27 MR. LEAHY: I fully accept that and I have heard what Mr.
28 Cooney has said. I don't necessarily agree I am hugely
29 different in relation to it. The only thing I am seeking
30 to do, because it's a matter that normally arises in the
31 course of cross-examination, is not to close the door but,
32 as I say, if that position were to cause difficulties as

1 regards whether something should or should not be gone
2 into, if you give me a short period of time I believe I
3 would be able to assist you then.

4 .

5 CHAIRMAN: Sorry --

6 .

7 MR. LEAHY: If I postulate, Sir, that you would decide that
8 the issue was not relevant and not become relevant unless
9 perhaps someone sought to raise it in cross-examination as
10 to credit, and if you were then of the view that if that
11 was a possibility, it should be gone into. Now, if you
12 would give me a little time I think I would be in a
13 position to assist you.

14 .

15 CHAIRMAN: Thank you very much. Mr. Gallagher, sorry, do
16 you want to conclude your remarks?

17 .

18 MR. GALLAGHER: I don't know whether Mr. Leahy is asking
19 you for a few moments to take instructions so he can be in
20 a position to assist you.

21 .

22 CHAIRMAN: As I understood Mr. Leahy, if he was solely
23 confined or if the matter were confined to credit alone, he
24 may have submissions on law.

25 .

26 MR. LEAHY: What I am effectively saying is if you decide
27 it is relevant to the Terms of Reference, then I have no
28 input, good, bad or indifferent. If you were to decide
29 it's irrelevant to the Terms of Reference and might only be
30 led in evidence at this stage by virtue of the fact there
31 was a possibility of someone keeping a door open down the
32 line, if you were to give me five or ten minutes, I might

1 be able to assist new relation to that. If it's

2 relevant --

3 .

4 CHAIRMAN: I follow, yes. I follow --

5 .

6 MR. GALLAGHER: The position is that the credibility of

7 this witness is in issue or it's not. The credibility of

8 Mr. Murphy is in issue or it's not. The credibility of

9 perhaps other persons is perhaps in issue or it's not. In

10 my respectful submission, you should hear the evidence.

11 Hear it de benne esse and deal with it as you consider

12 appropriate as matters evolve. If the evidence, if all

13 the evidence should be in, it should be dealt with for what

14 it is worth. But it is a matter that is relevant. It's

15 relevant to the credibility. It's credible, Mr. Gogarty

16 has raised it and it is a matter that involves not only Mr.

17 Gogarty, but Mr. Murphy and others, so it is a matter, in

18 my respectful submission, that you should allow me to deal

19 with it at this stage.

20 .

21 The alternative, as occurs to me, perhaps a less attractive

22 alternative, is that if anything should arise in the course

23 of cross-examination in due course, that effectively

24 cross-examination be interrupted and the evidence of all

25 witnesses including this witness would be led on the

26 matters relating to Moneypoint. I think that that's an

27 undesirable, much less attractive alternative, and one that

28 is likely to cause difficulties and problems in all types

29 of ways.

30 .

31 Credibility has been raised. Credibility is in issue and

32 I think you should hear the evidence for what it is worth

1 and attach such weight to it as you consider necessary.
2 If you do not hear it, you cannot rely on it in future and
3 if matters arise in cross-examination, you may have a
4 situation where the full story will not be told.
5 Allegations, points will be made that are not set in
6 context and need to be set in context and that is why I
7 think the Tribunal should hear the evidence for what it's
8 worth and for what weight the Tribunal considers should be
9 attached to it.

10 .

11 CHAIRMAN: Well, my attitude to this matter is this; I
12 appreciate that the phrase we hear it "warts and all" has
13 been used and essentially that is addressed to the fact
14 that there is a complete collision course within the
15 evidence of Mr. Gogarty, that he was doing this, was part
16 and parcel of his functions -- sorry, that he was dealing
17 with the lands and events that led up to the letter and the
18 meeting in Swords as part and parcel of his functions. The
19 view expressed and very firmly stated by Mr. Murphy's
20 counsel that he is on "a frolic of his own" or words to
21 that effect and indeed the challenge to his veracity in
22 every way, which was the other day, there can be no doubt
23 that that's the clear-cut issue.

24 .

25 We are also dealing here with a very simple issue
26 who -- sorry, how and in what circumstances was a sum of
27 money transferred from A to B. That's what we are looking
28 at. We have gone a fair distance outside that essential
29 relevance basically on the proposition of credibility and
30 of motivation and that sort of thing, but there is a lot in
31 it.

32 .

1 I am familiar, as you are all aware, so you are all,
2 counsel I am talking about, are fully aware of all the
3 facts in this case. There have been statements from the
4 Gardai and everybody else's statements. It's a
5 17-year-old dispute. It's a quagmire of allegations of
6 one form or another and the first thing I would have to do
7 would be to determine the end product, which obviously was
8 incapable of determination 17 years ago. The situation
9 really hasn't improved over the years and it's certainly
10 not a task that I feel I should enter on to unless it has a
11 significant probative value one way or the other.

12 .

13 My attitude to the situation is that I cannot see how a
14 piece of labour management and I am being very -- 17 years
15 ago, could possibly affect, as I say, which there are two
16 sides or more than two sides, could possibly affect the
17 situation ten years later or seven years later when a
18 certain sequence of events is alleged to have happened.

19 .

20 I do not think that there is any connection with the Terms
21 of Reference -- that's the first conclusion I come to. It
22 therefore is entirely dependent on credit and as I have
23 already expressed the view in discussion with counsel, my
24 view of the matter is that as a rule of practice, there
25 must be both relevance and probative value in any questions
26 as to credit. So I am going to do two things.

27 .

28 One, I am going to find that it is not relevant to the
29 Terms of Reference. And secondly, I am going to find that
30 unless very, very exceptional arguments are advanced to me,
31 I am not going to allow cross-examination as to credit
32 based upon Moneypoint. Now let me be quite clear, I am

1 not in any way interfering with anybody's right to
2 cross-examine as to credit but Moneypoint is not a subject
3 which is open to anybody. And that's a firm ruling. It
4 may well be that somebody may have some exceptional reason,
5 they can try it, there is a very vulgar phrase, I won't use
6 it, see what happens. That's my view on the matter.

7 .

8 So frankly, it's a waste of time and will have no
9 probative -- I don't think -- zero probative value as far
10 as I see it, on taking the broad parameters of the
11 evidence. That's my view. I have read the evidence. I
12 have thought about it and I have how had about it before I
13 come in here.

14 .

15 MR. GALLAGHER: If it becomes an issue in
16 cross-examination --

17 .

18 CHAIRMAN: It will be a very hard fought matter to get it
19 in issue as to cross-examination, because I will stop any
20 questions being based on Moneypoint being asked in
21 cross-examination going to credit.

22 .

23 MR. GALLAGHER: Well I would ask you, Sir, then to make it
24 clear that if it is going to arise in cross-examination as
25 to credit, that it would only be done after all the
26 evidence has been led that I was proposing to lead it this
27 morning, in relation or proposing to lead in due course and
28 after questions had been put to Mr. Gogarty in relation to
29 the matter --

30 .

31 CHAIRMAN: All I am saying at this point in time, it is a
32 brave and extremely talented counsel who will succeed in

1 persuading me that it is admissible in any form. Talented
2 and brave. I am closing down that scene and I am stopping
3 it ten years there or thereabouts. I am not going much
4 further back. 17 is beyond my memory. Thank you very
5 much. Let's go onto the evidence on other matters.

6 .

7 MR. GALLAGHER: Mr. Gogarty, you, in the course of your
8 evidence --

9 .

10 CHAIRMAN: Sorry --

11 .

12 MR. FINNEGAN: I appear for Mr. O' Sullivan and it would
13 seem to me the ruling that you have just made would
14 terminate his involvement in this matter.

15 .

16 CHAIRMAN: I think that's correct. I am fully aware that
17 he has representation. He asked for it and it appeared
18 that he could have it. I think that's correct.

19 .

20 MR. FINNEGAN: In those circumstances, I would propose that
21 his representation withdraw, but in the event that the
22 ruling was modified as envisaged may in some unlikely
23 circumstance occur, that he should be notified so that he
24 could attend.

25 .

26 CHAIRMAN: I will do that. I won't allow the matter to
27 proceed in the absence of his counsel.

28 .

29 MR. FINNEGAN: : I am very much obliged to you.

30 .

31 CHAIRMAN: Thank you very much for your attendance.

32 Sorry, I beg your pardon, you were carrying on

1 Mr. Gallagher.

2 .

315 Q. MR. GALLAGHER: Mr. Gogarty, in the course of your
4 evidence, you indicated that you had received a copy of an
5 affidavit of Liam Conroy from Mr. Murphy Snr.

6 A. That's correct.

716 Q. Now, I don't intend to take you through that affidavit in
8 any way, but I would like you to identify for me the
9 affidavit that you actually received. Could it be passed
10 to Mr. Gogarty for identification purposes?

11 .

12 MR. COONEY: Mr. Chairman, I query, what's the point of
13 this, Mr. Chairman, unless it's intended to use the
14 affidavit and I have already made submissions to you about
15 that, Mr. Chairman. What's the point in asking him to
16 identify --

17 .

18 CHAIRMAN: As I understand the evidence being tendered at
19 the moment, is that your client, your -- Mr. Murphy Snr, I
20 understand what the evidence is, that in the course of
21 sequence of events of which the two men were having not
22 necessarily a common cause, but a common interest at the
23 time, he gave an affidavit by -- he was the plaintiff in
24 the action. Mr. Conroy was the plaintiff in the action to
25 Mr. Gogarty with a request, with more than a request, with
26 a draft replying affidavit which was never sworn. I see
27 no objection to being -- to it being identified as the
28 document he received from your client. I don't see that
29 it should go any further at the moment.

30 .

31 MR. COONEY: Very well, Mr. Chairman. That's all. It's
32 a matter of identity of a document. It's from your

1 client --

2 .

3 MR. GALLAGHER: Let me say, Sir, it is relevant to this
4 extent, it is relevant because Mr. Gogarty has sworn that
5 A, he was given this copy affidavit by Mr. Murphy and B, it
6 was the contents of the affidavit were the reasons why Mr.
7 Murphy wished to sell the lands and C, there is an issue on
8 that that may arise in due course.

9 .

10 CHAIRMAN: That's an issue which may or may not arise.
11 It's a question may arise on cross-examination. It will
12 have to be founded by the cross-examiner on the basis and
13 the document is there to be identified as the document.

14 .

15 MR. COONEY: At this stage, Mr. Chairman, I'd like to make
16 my position perfectly clear and that is that under no
17 circumstances, Mr. Chairman, should the contents of this
18 affidavit be used. It's an affidavit made by a man who is
19 in a position of hostility and antipathy to my clients at
20 that time. It was made for the purposes of proceedings in
21 another jurisdiction and it is made by a man who is now
22 dead and cannot be called as a witness in this case. In
23 other words, I have no way of challenge the veracity of
24 averments made in that affidavit. For those reasons,
25 there can be no circumstances, Mr. Chairman, in which the
26 contents of that affidavit could be admitted into
27 evidence.

28 .

29 CHAIRMAN: At this moment, all I am doing is allowing the
30 document which was said to have been received from your
31 client, presumably voluntarily, to be identified as that
32 document there. That's all I am doing at this moment.

1 .
2 MR. COONEY: I quite understand that, Mr. Chairman, and
3 you have already said that and I accept that, Mr. Chairman,
4 but I am a bit perturbed by what Mr. Gallagher subsequently
5 said, Mr. Chairman. And it seems that if it's his
6 intention somewhere or another to introduce the contents of
7 this affidavit into evidence and the first step towards
8 doing that apparently is by asking Mr. Gogarty to identify
9 it. Otherwise, it's fairly pointless exercise. I don't
10 want to engage in an argument at this stage other than to
11 indicate my firm opposition to any mention being made of
12 the contents of the affidavit.

13 .

14 CHAIRMAN: Everybody is now on notice of your situation.

15 .

16 MR. COONEY: May it please the Tribunal.

17 .

18 MR. CALLANAN: Just if Mr. Cooney is putting the Tribunal
19 on notice of his position, I think I should do likewise in
20 relation to my position. And it's not a matter that has
21 to be addressed now, but it does seem important that the
22 issue is at least raised at this point. Mr. Cooney is
23 correct that the matter was raised earlier and that can be
24 found at the transcript, page 41 of Day 3, page 41 and
25 42. It was not dealt with on that occasion and it may not
26 be necessary to deal with it now, but I should say that my
27 position in relation to the Conroy affidavit is
28 diametrically opposed to that of Mr. Cooney. It is a
29 document which I will be putting to Mr. Gogarty on
30 cross-examination. It is a document on which I will
31 certainly be cross-examining Mr. Murphy Snr and perhaps
32 others and the only -- it seems to me that the Tribunal

1 could not possibly assess the conflict of evidence which is
2 already apparent from Mr. Gogarty's affidavit and the
3 statements in reply as to the responsibility for the sale
4 of lands without considering the Conroy affidavit and that
5 will go further than the mere admission of the document
6 and --

7 .

8 CHAIRMAN: I don't want actually to start a general debate
9 until the issue is netted by a situation arising.

10 .

11 MR. CALLANAN: Very good, My Lord --

12 .

13 CHAIRMAN: I appreciate your courtesy, but it can only be
14 determined in relation to a particular proposition,
15 whatever it be. I can't possibly postulate a series of
16 propositions and nor do I intend to permit any counsel to
17 postulate a series of propositions in which it could
18 arise. If it arises, I will determine it. I only
19 determine facts when they have to be determined. I note
20 your position and I understand what you are saying and we
21 will see how you progress it when it arises.

22 .

23 MR. CALLANAN: Yes. Obviously we do not know what the
24 case to be made on behalf of the Murphys and JMSE is, other
25 than from their statements and, in my submission, it's
26 quite apparent from their statements that there is a major
27 conflict which renders the contents of Mr. Conroy's
28 affidavit highly germane. The only reason why it's
29 perhaps necessary or prudent from my point of view to raise
30 the issue at this stage is that I want to make quite
31 certain there is no objection on Mr. Cooney's part on the
32 grounds that this is a document that should have been put

1 to Mr. Gogarty in the course of his examination-in-chief or
2 that he is in some way prejudiced by that not having
3 happened. And I am simply, at this stage, all I need to do
4 is to foreclose the possibility of that argument being
5 raised.

6 .
7 I do submit, Mr. Chairman, this would be the appropriate
8 time to consider the issue. I am perfectly prepared to
9 make submissions as to the central relevance of the Conroy
10 affidavit and as to the impossibility of properly
11 determining the matters which are in issue before the
12 Tribunal without a consideration of the contents of that
13 affidavit and I would have thought this was the appropriate
14 moment. Once I have made clear my position, and I think
15 the effect of that is to make it not possible for Mr.
16 Cooney to object at a later stage on the simple ground that
17 it should have been put to Mr. Gogarty as part of his
18 examination-in-chief. So at the present time, my basic
19 needs are limited to that.

20 .
21 I do nonetheless suggest that this would be the appropriate
22 stage at which to consider the relevance of the or to
23 consider the issue of the relevance of the Conroy affidavit
24 and what I say in that regard is that however insufficient
25 the statements in reply in particular of Mr. Murphy Snr and
26 Mr. Murphy Jnr are, the one thing that is crystal clear is
27 that there is an absolute conflict as to who had the
28 responsibility for the sale of the lands and in what
29 circumstances the sale of the lands took place.

30 .
31 That it is, in my submission, apparent from consideration
32 of Mr. Gogarty's affidavit and from the statements in

1 reply, is an absolutely central issue in the inquiry. It
2 is not a document which is going to go away. It is not a
3 document of which sight can be lost. It is, in my
4 submission, a document which will be opened to the Tribunal
5 which one means or another at one time or another. I
6 would have thought this was the preferable time to do so.

7 .

8 If you, Sir, prefer to leave the matter over, I have no
9 difficulty with that, subject as I say, to precluding any
10 objection on Mr. Cooney's part to the document being
11 introduced as a matter of procedure other than in the
12 course of Mr. Gogarty's evidence-in-chief.

13 .

14 CHAIRMAN: Well I don't think it's an appropriate moment
15 to deal with it. It's accepted as a document identified
16 as being received from Mr. Murphy to, sorry, by Mr. Gogarty
17 from Mr. Murphy Snr. That's the limit of it at this
18 moment in time.

19 .

20 MR. GALLAGHER: There have been requests to have the
21 document circulated and it is the intention of the Tribunal
22 to do that to those persons who have not yet received it --

23 .

24 CHAIRMAN: Just a moment. To whom is it -- to whom is it
25 relevant that it should be circulated?

26 .

27 MR. GALLAGHER: Persons who have before the Tribunal, who
28 are represented before the Tribunal have asked to have a
29 copy of the document circulated to them.

30 .

31 CHAIRMAN: That doesn't follow that that document can be
32 circulated.

1 .

2 MR. GALLAGHER: It may be that you will have to rule on
3 that.

4 .

5 CHAIRMAN: If somebody wants the document who isn't Mr.
6 Cooney, and who isn't Mr. Gogarty, they will have to make a
7 case to me for getting the document. There is no reason
8 why it should be circulated. You circulate documents only
9 in the circumstances where the document will adversely
10 affect a party, sorry not a party, a participant. That's
11 as I understand the rule is.

12 .

13 MR. GALLAGHER: My understanding and I think we can
14 perhaps leave it for the moment until we get the matter
15 clarified, but my understanding is that persons who are
16 here want to see these documents for the purpose of their
17 representation and for dealing with their case as they see
18 appropriate to eliminate or to otherwise or to make
19 representations to you in relation to it. They cannot do
20 that unless they see it. Perhaps if we just park that
21 issue for the moment and it can be returned to. It is
22 something that may have to be addressed in due course,
23 because you may have to make a determination as to the
24 circumstances and the reasons why the lands were sold and
25 whether this document and other documents had any relevance
26 in relation to it.

27 .

28 MR. LEONARD: Mr. Chairman, in relation to this issue, we
29 carried out an inspection of the Gogarty discovery
30 documents and the time was limited and among the -- we
31 sought a number of documents from the Tribunal. The
32 Tribunal, Sir, gave us the documents that we listed but in

1 addition to the documents that we asked to be furnished
2 with copies of, were the documents in one particular bundle
3 and in that bundle, it included this affidavit. Now, the
4 reason why that is germane to the possible
5 cross-examination of Mr. Gogarty by Mr. Downes is this,
6 that following on that affidavit, there has been evidence
7 that Mr. Oakley came over to Ireland and interviewed Mr.
8 Gogarty and took attendances from Mr. Gogarty and then Mr.
9 Gogarty prepared a draft replying affidavit.

10 .
11 Now we didn't have a lot of time to go into that in detail
12 the day we were inspecting discovery but there appeared to
13 be material in the attendance and there appeared to be
14 material in the replying affidavit by Mr. Gogarty which it
15 might be desirable for my client to cross-examine Mr.
16 Gogarty about, because those attendances and draft replying
17 affidavit and some of the other material in the relevant
18 bundle expressly related to matters and concerned matters
19 which Mr. Downes had knowledge of and in order to do my
20 job, in Mr. Downes' interest, I asked for copies of
21 those.

22 .
23 Now, rest assured Sir, if you are not allowing
24 cross-examination in relation to that document, I haven't
25 any problem with your rulings in that regard, but --

26 .
27 CHAIRMAN: I am not going that far at this moment in time,
28 I am merely saying that as I understand the principle, the
29 circulation of documents are circulated to enable people
30 who may be adversely affected to properly deal with the
31 adverse effect of somebody's evidence. That's the purpose
32 of doing so. That's the purpose of it. Now, I accept

1 the purpose is that you have to know what's in the document
2 to know if you are adversely affected but that can be
3 arranged without circulation.

4 .

5 MR. GALLAGHER: On the 14th January, there was agreement as
6 to the method by which documents would be inspected and
7 made available to other sides and the documents that I am
8 referring to here are included in those documents and were
9 available on foot of that agreement for circulation to the
10 relevant parties.

11 .

12 CHAIRMAN: But not for general circulation. If somebody
13 says that document is relevant to my defence, then they
14 must be entitled to read it and to, if necessary, have a
15 copy of it if they say so, and that's a bona fide statement
16 by a legal adviser.

17 .

18 MR. LEONARD: At this present moment in time, Sir, I am
19 waiting a reply from the Tribunal in relation to my request
20 to be furnished with that particular bundle of documents.

21 .

22 CHAIRMAN: I am not going to discuss that with the public
23 now.

24 .

25 MR. GALLAGHER: Can we leave this matter to a later time
26 and come back to it, without -- but noting my submission
27 that it's a matter that may have to be revisited and may be
28 relevant. In fact I think is relevant.

29 .

30 I want to put to this witness also, Sir, another document
31 for the purpose of identification. It's a document
32 bearing number 2147 and would you, Mr. Gogarty identify

1 that please. (Document handed to witness.) I believe it's
2 the document that, a copy of the affidavit that was
3 furnished to you by the solicitors for JMSE in which you
4 were asked to swear in reply to the affidavit of Liam
5 Conroy.

6 A. I beg your pardon?

717 Q. I am asking you is that a copy of the draft affidavit that
8 was furnished to you by the English solicitors on behalf of
9 JMSE in the or the Emery Trust in relation to the Isle of
10 Man proceedings?

11 A. It appears to be.

1218 Q. And just lest there be any confusion of the matter, would
13 you identify the document I am now handing to you, the
14 affidavit of Liam Conroy, as the copy of the affidavit of
15 Liam Conroy that was handed to you by Joseph Murphy?

16 (Document handed to witness.)

17 A. That's what started it all off.

1819 Q. Would you look at that and would you confirm that that is
19 the copy that was in fact furnished to you by Joseph
20 Murphy?

21 A. Oh yes, there is no doubt about that. Will I read it?

2220 Q. No, not at the moment.

23 A. I beg your pardon?

2421 Q. Not at the moment, thank you.

25 .

26 MR. COONEY: What does Mr. Gallagher mean, 'not at the
27 moment'?

28 .

29 CHAIRMAN: Not at the moment is what he means, and that's
30 it.

31 .

32 MR. GALLAGHER: Mr. Gogarty, what do you mean that that's

1 the document that started it off?

2 .

3 MR. COONEY: Now really, Mr. Chairman --

4 .

5 CHAIRMAN: Mr. Gallagher, that I think is breaching the

6 spirit of my ruling. At the moment you are identifying a

7 document which is said to be a document in a particular

8 piece of litigation.

9 A. Do I answer the question?

10 .

11 MR. GALLAGHER: That's all right. Mr. Gogarty, if you'd

12 hand that back to --

13 A. That's a very valuable document.

1422 Q. Indeed. Mr. Gogarty, it has been alleged by Mr. Cooney

15 that in paying over monies to Ray Burke in June of 1989,

16 that you were on a frolic of your own --

17 .

18 MR. COONEY: Mr. Chairman, forgive me for interrupting, I

19 never used that phrase. With respect what happened, you

20 used it, Mr. Chairman --

21 A. Somebody used it --

22 .

23 CHAIRMAN: My recollection is you or your distinguished

24 senior... do it together with --

25 .

26 MR. COONEY: In fact, Mr. Chairman, I remember this

27 clearly, I raised the question of Mr. Tim O'Keefe's

28 statement and then you said to me, are you saying that Mr.

29 Gogarty was on a frolic of his own? I am afraid I would

30 prefer a more serious phrase --

31 .

32 CHAIRMAN: I will take responsibility for the phraseology

1 but not necessarily for the scope --

2 .

3 MR. COONEY: I don't want to waste any time. It's a very

4 minor point.

5 .

6 CHAIRMAN: Could we use another phrase that doesn't offend

7 you?

8 .

9 MR. COONEY: No, no, a frolic is too light a word to

10 describe --

11 .

12 MR. GALLAGHER: Can I just to be clear, can I refer you

13 Sir, to the transcript for Wednesday the 20th January,

14 1999. In the course of that transcript -- it's Wednesday

15 20th January -- in the course

16 .

17 MR. CALLANAN: It's Day 6, page 92, I believe.

18 .

19 MR. GALLAGHER: Day 6, page 92. In the course of the

20 discussion with you, Sir, you asked the question of Mr.

21 Cooney "Am I to understand, I will make it clear about

22 this, that this was, if I may use the phrase, a frolic by

23 Mr. Gogarty?

24 Mr. Cooney: Absolutely."

25 "Absolutely", that's the answer. Absolutely.

26 .

27 MR. COONEY: What is Mr. Gallagher at, Mr. Chairman? He

28 can see plainly from that passage in the transcript that I

29 was continuing my answer and you interrupted me, Mr.

30 Chairman. I am not objecting to that. Why is

31 Mr. Gallagher bothering about details like this? Can he

32 not get on with the business of Tribunal?

1 .

2 MR. GALLAGHER: I am getting on with the business of the
3 Tribunal. Can I refer Mr. Cooney to the next page.

4 "Chairman: That's your situation, that it was a frolic of
5 his own without authority and without your say-so?

6 Mr. Cooney: That will be our evidence Mr. Chairman."

7 .

8 Now, that is clear and unequivocal. There is no ifs, buts
9 or interruptions in that and in those circumstances, given
10 that that is going to be the case and the evidence that Mr.
11 Cooney will be calling, it is appropriate and fair and
12 reasonable that I should put that question to this
13 witness.

14 .

15 MR. COONEY: Mr. Chairman, I never used the word frolic.

16 You used it. I didn't correct you, Mr. Chairman. It's
17 not my business to correct you, Chairman. Now would
18 Mr. Gallagher stop this childishness and get on with the
19 point.

20 .

21 MR. GALLAGHER: Mr. Gogarty, were you on a frolic of your
22 own when the £30,000 or £40,000 as you have deposed was
23 handed over to Ray Burke by JMSE or on behalf of JMSE?

24 A. There was no frolic by me.

2523 Q. Mr. Gogarty, did Joseph Murphy Snr know about the payment
26 of monies to Ray Burke at any time?

27 A. I am quite certain he did and I think it will appear in
28 evidence, to back it.

2924 Q. Do you know of your own knowledge whether he -- did he ever
30 discuss it with you, the payment of the monies to Ray
31 Burke?

32 A. He did.

125 Q. When did he discuss the payment?

2 A. In Santry. Sure I said that before, didn't I.

326 Q. Did you?

4 A. I did.

527 Q. When -- Joseph Murphy Snr?

6 A. No, no, not Senior. I rang him. But Joseph Murphy Jnr.

728 Q. What do you say about Joseph Murphy Snr?

8 A. That I rang him just to check on what his approach to it

9 was and he says I want you to go along and keep an eye on

10 him, keep an eye on Junior.

1129 Q. Did you have any subsequent discussion with Mr. Murphy Snr

12 in relation to the monies or any possible approach to Ray

13 Burke?

14 A. There was, yeah, there was.

1530 Q. Would you tell us about that please?

16 A. It was around about that fatal meeting, the board meeting,

17 after the board meeting or the supposed board meeting on

18 the 3rd July, 1989. He panicked and he says that he was

19 going for the outright sale of lands because he couldn't go

20 along with the other thing and I wasn't swearing an

21 affidavit.

2231 Q. Sorry, would you move forward?

23 A. And I wasn't swearing an affidavit. He was turning

24 against him.

2532 Q. The question I was asking you, whether there was any

26 discussion about the payment to Ray Burke involving Mr.

27 Murphy Snr at any stage after the payment had been made?

28 A. Oh I think it was a year or two after he mentioned it

29 again.

3033 Q. What did he see?

31 A. Well --

32 .

1 MR. COONEY: Mr. Chairman, sorry, with respect,
2 Mr. Chairman, it's not good enough for a witness to say he
3 is accusing somebody of corruption or agreeing to a corrupt
4 act. It's not good for a witness to say a year or two
5 afterwards. He should be asked by Mr. Gallagher to be a
6 little more specific in his evidence.

7 .

8 MR. GALLAGHER: I will ask in due course. I will ask in
9 due course.

10 A. It was at the funeral of his wife Una, the Lord have mercy
11 on her. I went up and I shook his hand and I sympathized
12 with him and I said we'd be in touch, you know, he said,
13 whether he was serious or not, he says, any chance of
14 getting that £40,000 back and I said, I think he meant that
15 I'd get it back from Bailey.

1634 Q. Yes.

17 A. That was the last time I spoke to him.

1835 Q. Was there anything else said?

19 A. No. Except that we'd be in touch, you know, because it
20 was, it was a funeral you know.

2136 Q. What did you respond or did you respond to that?

22 A. I didn't take it seriously you know.

2337 Q. Now, you say that there was a payment made to Ray Burke of
24 £40,000 in June of 1989 and you say that there is an
25 ongoing dispute which was not resolved until sometime later
26 in relation to your pension; isn't that right?

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

2838 Q. And that pension dispute was resolved when there was a
29 dividing up of the Moneypoint, sorry, of the ESB payment in
30 relation to the Moneypoint contract?

31 A. Well, I had hoped it was but it didn't turn out that way.

3239 Q. Were you at any stage asked by Mr. Murphy or Mr. Reynolds

1 or by Mr. Murphy Jnr or by Mr. Copsey or anybody else to

2 return the £40,000 that had been paid to Mr. Burke?

3 A. No.

440 Q. Were you ever asked to account for it --

5 A. Me personally?

641 Q. You personally.

7 A. Oh mother of God, what would they be looking to me for?

842 Q. Because the evidence will be that you were on a frolic of

9 your own.

10 A. Oh Jesus -- sorry...

11 .

12 MR. COONEY: Really, Mr. Chairman, it's becoming like a

13 pantomime...

14 A. Sorry, there is evidence there. There is evidence there

15 that Copsey knew about it and organised it and it was from

16 his funds or his funds -- he arranged the funding of it.

17 That will come out in evidence, please God. And the

18 sooner the better, do you know?

19 .

20 MR. GALLAGHER: Did you ask Mr. O' Keefe to go to the bank

21 in order to get monies to pay to Ray Burke?

22 A. Not at all, not at all, not at all. They had already got

23 the money. They had it there. And Frankie said, it was

24 Mr. Copsey organised it.

2543 Q. Thank you, Mr. Gogarty.

26 .

27 CHAIRMAN: Well it's half past eleven. Does that

28 conclude your examination, Mr. Gallagher?

29 .

30 MR. GALLAGHER: Yes, Sir.

31 .

32 CHAIRMAN: It's half past eleven now. I think we should

1 break.

2 .

3 MR. CALLANAN: Just in relation to the issue of the
4 cross-examination, apart from the fact that as I think the
5 Tribunal is aware, Mr. Gogarty wanted to have some break
6 and the fact that it is the last opportunity that his
7 advisers will have to deal with any matters which arise,
8 apart from that, there is Mr. Chairman, the issue of the
9 outstanding Anglo Irish Bank documents. Now, I don't know
10 whether any progress has been made in relation to that by
11 Anglo Irish. I certainly yesterday indicated that I was
12 concerned that Mr. Gogarty's cross-examination should not
13 commence until such time as we had had an opportunity to
14 consider both the three documents which it has been
15 conceded that we ought to see and any other relevant
16 documents on the Anglo Irish file.

17 .

18 Now, I don't know logistically how that is to be resolved,
19 as far as the documents were at one time furnished to the
20 Tribunal. One would have not, it wouldn't involve any
21 delay, but it is certainly something which would be proper
22 to be done before Mr. Gogarty's cross-examination as I did
23 indicate yesterday. It may be a matter that I could
24 discuss with the Tribunal counsel to ascertain whether
25 those documents might be available, but it does have a
26 bearing on when Mr. Gogarty's cross-examination might
27 commence.

28 .

29 CHAIRMAN: Do you want to say anything, Mr. Cooney and Mr.
30 Leahy?

31 .

32 MR. COONEY: Just this, Mr. Chairman, there is still a lot

1 of documents outstanding from discovery and we had arranged
2 a meeting with Mr. Hanratty this morning to discuss this
3 and if we can't reach an agreement with Mr. Hanratty, then
4 we will have to make an application to you, Mr. Chairman.
5 May I just finish for a moment -- a lot of this
6 documentation will be necessary and relevant for the
7 purpose of cross-examination.

8 .

9 CHAIRMAN: Well isn't the reality of the situation this,
10 and let's be pragmatic, there is a number -- I am obviously
11 not privy to your situation. There is a number of matters
12 which have to be organised by yourselves and Mr. Leahy.
13 It seems to me that, first of all, Mr. Gogarty I think
14 probably could well do if he was rested on grass, as it
15 were, for a few days, put it that way. And what I have in
16 mind is that I would adjourn the cross-examination of Mr.
17 Gogarty until Monday. That leaves everybody time to get
18 everything ready.

19 .

20 MR. GALLAGHER: Sir, there is outstanding discovery
21 matters to be dealt with. I quite understand that Mr.
22 Herbert and Mr. Hanratty had a meeting in relation to, Mr.
23 Herbert wishes to examine. We have provided documents
24 that have already been identified, but there is still
25 discovery outstanding from the JMSE side and that will have
26 to be done and will have to be dealt with. Likewise,
27 there is the outstanding issue in relation to the Anglo
28 Irish Bank situation and you will recall that yesterday,
29 you indicated that you would hear submissions in relation
30 to the circulation of those documents.

31 .

32 Now, if those submissions are to be dealt with --

1 .

2 CHAIRMAN: Do you want a further period longer --

3 .

4 MR. GALLAGHER: No, I think it should be simply borne in
5 mind that there is an awful lot to be done and it may be
6 that you will have to again look at matters either in the
7 intervening period or on next Monday.

8 .

9 CHAIRMAN: I don't want to bring people back here
10 pointlessly. I think the answer to this and I will
11 compromise that I will make it next Wednesday, tomorrow
12 week, we start tomorrow week and by that time we should be
13 ready. We have to make the effort.

14 .

15 MR. COONEY: Monday would be perfectly acceptable to us,
16 Mr. Chairman, but because I think the outstanding
17 documentation is a matter of either agreeing with our
18 opposite numbers or if we disagree coming back to you for
19 an order. That should only take a couple of days.

20 .

21 The other thing, Mr. Chairman, at this stage, would you
22 care to rule on the order in which the various participants
23 should cross-examine Mr. Gogarty or would you perhaps leave
24 that over until the day upon which the cross-examination is
25 going to take place?

26 .

27 CHAIRMAN: Well first of all, I would certainly hear from
28 the principal participants in what order you wish to do it
29 and I frankly have no great difficulty with the order. If
30 you have a particular order, but I would like that people
31 would confine themselves to matters which have not been
32 dealt with at an earlier point in the cross-examination.

1 I accept a particular aspect gives rise to a particular
2 personal reason, but obviously we can't be trawling back
3 and forward on the same subject. We must try and keep
4 with a certain degree of order --

5 .

6 MR. COONEY: It's clearly --

7 .

8 CHAIRMAN: Finally, I would assume -- sorry, it's a matter
9 for the counsel for the witness to decide as to what point
10 he -- I take it he will be the last person, I would assume
11 that -- second last person. The last person being a
12 member of our team. I would assume that will be the
13 situation. Perhaps I am prejudging what your applications
14 might be, Mr. Callanan, but I would assume that that is the
15 situation so it's in that order. Yourself, Mr. Leahy, Mr.
16 McGonigal or Mr. McGowan, Mr. Leonard, in that order, more
17 or less now. Which particular pecking --

18 .

19 MR. COONEY: Perhaps you'd leave Mr. Allen and myself a
20 little discretion on that, Mr. Chairman.

21 .

22 CHAIRMAN: I will always leave you some discretion.
23 Never too much though.

24 .

25 MR. GALLAGHER: Mr. Chairman -- sorry, can I just --

26 .

27 MR. O'DONOGHUE: I would propose to make an application to
28 you, Sir, to be discharged from these proceedings at some
29 stage before cross-examination would commence. I would
30 hope to have a written submission --

31 .

32 CHAIRMAN: Perhaps you'll do that and we will do it very

1 very outset. I don't know the circumstances which you are
2 making this application. I don't propose to go into it
3 today.

4 .

5 MR. O'DONOGHUE: Indeed. I just want to flag the fact
6 that I intend to do so. I wondered was there any stage, it
7 would you, in the convenience of Tribunal to hear my
8 applications.

9 .

10 CHAIRMAN: Is it an application that would have to be
11 heard in public?

12 .

13 MR. O'DONOGHUE: Certainly, Sir. I don't see any reason
14 why it shouldn't be. It should be done obviously before
15 cross-examination commences.

16 .

17 MR. GALLAGHER: Can I suggest, Sir, if Mr. O' Donoghue
18 sends in his written submission in the first instance, it
19 can be considered and then a decision can be taken as to
20 what should be done. While I am speaking, can I just make
21 it clear, Sir, that because there is discovery outstanding
22 and because this is an inquiry and not a court of law, I am
23 reserving my position in relation to calling further direct
24 evidence or asking Mr. Gogarty further questions before, at
25 any stage, subject of course to any ruling you may make.

26 .

27 CHAIRMAN: Well broadly speaking. Mr. Leonard?

28 .

29 MR. LEONARD: Mr. Chairman.

30 .

31 CHAIRMAN: What can I do for you?

32 .

1 MR. LEONARD: Just in relation to the matter I raised
2 earlier and in relation to one other matter, the order in
3 which cross-examination is to take place. Now, it's
4 absolutely fundamental, abundantly clear that the matters
5 which involve Bovale and Mr. Burke have no relevance or
6 impinge in any way on Mr. Downes' role in this company
7 during the period 1983 to 1988 and in those circumstances,
8 it seems to me that it would be appropriate, in the public
9 interest, quite apart from my client's interest, that Mr.
10 Downes should be given an opportunity, if he wishes, to,
11 through myself, to cross-examine Mr. Gogarty at the
12 conclusion of Mr. Cooney's cross-examination because it
13 seems to me that it should be possible for me to withdraw
14 from the Tribunal at that stage until a much later stage in
15 the proceedings and there should be a considerable saving
16 in public expense at that stage. I certainly have no wish
17 to be present for one moment longer than I need be at the
18 Tribunal. But if I have to be present for anybody's
19 cross-examination, I think it should be Mr. Cooney's and
20 Mr. Cooney's alone.

21 .

22 MR. GALLAGHER: Can I suggest that Mr. Leonard and Mr.
23 Bailey, sorry Mr. Allen and Mr. Cooney discuss this between
24 them and perhaps they can address you at a later stage.

25 .

26 CHAIRMAN: For the moment, we will deal with that -- but I
27 think we will adjourn now until Wednesday week, tomorrow
28 week, at ten o'clock. Thank you very much.

29 .

30 THE TRIBUNAL THEN ADJOURNED UNTIL WEDNESDAY, 17TH FEBRUARY,
31 1999 AT 10AM.

32