

1 THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 17TH
2 FEBRUARY, 1999 AT 10AM:

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4 CHAIRMAN: Good morning everyone. Very good. Mr.
5 Cooney?

6 .

7 MR. CALLANAN: Just before the cross-examination of Mr.
8 Gogarty takes place, I have an application to make to the
9 Tribunal arising out of the fact that while as you, Sir,
10 will be aware there was a reciprocal arrangement come to in
11 relation to discovered documents whereby Mr. Gogarty, on
12 the one hand, and JMSE, the Murphys and Bovale and the
13 Baileys and the other, agreed to waive reciprocally
14 confidentiality to permit each access to the other's
15 documents. That arrangement was come to and an inspection
16 duly took place. By far the most voluminous discovery made
17 was that of Mr. Gogarty. It now transpires and this is
18 something which we were not aware, that there was, in fact,
19 no discovery as such by the Baileys or Bovale Limited.
20 All there was is a furnishing of documents selected by the
21 Baileys/Bovale without any affidavit, without any means of
22 ensuring that they are the only relevant documents and at
23 the stage when the agreement was come to for reciprocal
24 inspection of documents, it was certainly not disclosed by
25 Bovale Limited or the Baileys that they had not, in fact,
26 made discovery.

27 .

28 Now, discovery is a basic requirement in this situation as
29 indeed both Mr. Allen and Mr. Cooney asserted in their
30 application to have access to Mr. Gogarty's properly
31 discovered documents and obviously it has a number of
32 purposes, the making of proper discovery, to give a party a

1 full opportunity of considering the documents in the
2 possession of another party in advance of the case.
3 .

4 Secondly, to ensure that all documents are produced rather
5 than a selective and self serving choice of documents and
6 it seems to me entirely unfair that where Mr. Gogarty has
7 made full and exhaustive discovery, supported by an
8 affidavit listing those documents and deposing to the fact
9 that he has no other documents, that he should be exposed
10 on cross-examination to either counsel for the Baileys,
11 Bovale or indeed counsel for JMSE, the Murphys, to put to
12 Mr. Gogarty any document which he has not seen in advance
13 of his cross-examination.
14 .

15 Now, I suppose one could imagine a situation which Mr.
16 Gogarty reasonably and properly required that full
17 discovery was made in advance of his cross-examination. I
18 do not seek that, Mr. Chairman, because we are anxious that
19 this cross-examination should proceed but the purpose of
20 the present application, the nature of which was indicated
21 to the Tribunal in the letter of my solicitor of the 16th
22 February, 1999 is in the first instance, to elicit from Mr.
23 Cooney and Mr. Allen whether it is proposed to put to Mr.
24 Gogarty in cross-examination any documents which have not
25 been discovered in the case of the Murphys and JMSE or
26 documents which have not been furnished in the case of the
27 Baileys/Bovale Limited. And if it is so indicated, I
28 would invite you, Sir, to make a ruling that no documents
29 will be permitted to be put to Mr. Gogarty in
30 cross-examination which have not been discovered or
31 furnished as the case may be, and secondly, that if an
32 order has not been made in the interval, that you, Sir,

1 order the Baileys/Bovale Limited and any relevant servants
2 or agents to make discovery forthwith. That's not --
3 that order is not a precondition, it's not something that
4 need for the purpose of this application be addressed in
5 advance of the cross-examination of Mr. Gogarty but it is
6 something which will obviously be required before any
7 cross-examination of the witnesses called on behalf of the
8 Baileys or Bovale Limited but it does appear to me that it
9 would be a manifest injustice and part of Mr. Allen's
10 scheme for what he has described as a big ambush if in what
11 would be, in my submission, an unprecedented situation in
12 proceedings of this nature involving the kind of issues
13 which these proceedings involve and issues as to
14 credibility if any party was left at large to put to Mr.
15 Gogarty documents which have not been either discovered or
16 furnished. May it please you, Sir.

17 .

18 MR. ALLEN: Chairman, I wonder if you would hear me for a
19 moment in relation to that. Obviously I have no notice of
20 this application, Sir, but if I can just say very briefly
21 as I understand it, discovery is a matter for the
22 Tribunal. Any documents which have been sought from my
23 clients have been furnished to the Tribunal. You, Sir,
24 will be aware of a private sitting and obviously I am
25 constrained from referring to the subject matter of that
26 private sitting which dealt with this particular... Having
27 said that I am constrained, I find myself running into
28 difficulties but you know that --

29 .

30 CHAIRMAN: I am aware of the sitting to which you refer.

31 .

32 MR. ALLEN: Yes, Sir. The position is that as I

1 understand it, discovery is entirely a matter for the
2 Tribunal, and I understand that there is a ruling that you
3 propose to make to ruling following upon the making of
4 submissions. Obviously my clients would be bound by that
5 ruling but I think it is, it would be unfortunate to
6 suggest that my clients or indeed myself have any form of
7 scheme or that in some way we have kept documentation from
8 the Tribunal.

9 .

10 I think you will be aware, Sir, of what has transpired
11 between us in relation to the furnishing of documentation
12 and you will be aware of the fact that that is an ongoing
13 matter. I should also say that on an earlier occasion,
14 Messrs. McCann Fitzgerald, Mr. Callanan's instructing
15 solicitors, felt free, and I don't suggest there was
16 anything wrong with it, felt free to correspond directly
17 with my instructing solicitors expressing other and
18 different concerns which they had. This is the first we
19 have heard of this particular matter but I simply want
20 those issues clarified, Chairman, and I accept fully that
21 discovery is a matter for the Tribunal and we await your
22 ruling in relation to that issue.

23 .

24 MR. CALLANAN: Well, I take it from that that the answer
25 to that question is it is intended to put to Mr. Gogarty
26 documents which have not been furnished by Mr. Allen's
27 side. We have not heard from Mr. Cooney in relation to
28 that but it may be that the same situation is arising in
29 relation to his client and in those circumstances, I would
30 ask you, Sir, to make a ruling.

31 .

32 MR. COONEY: Mr. Chairman, perhaps I should say very

1 briefly if there's any validity in this point at all, it's
2 a point I think counsel for the Tribunal would have made.
3 He hasn't made such a point, Mr. Chairman, and it seems to
4 me that this is a skirmish engaged in by Mr. Callanan to
5 try and some way circumvent the cross-examination of his
6 client.

7 .

8 CHAIRMAN: My approach to the matter is essentially
9 defined by the decision of Mr. Justice O'Flaherty, in AIB
10 -v- Ernst and Whinney, 1993 Irish Reports, page 396 where
11 he says:

12 "The purpose of discovery is define the issues as sharply
13 as possible in advance so that the actual hearing is
14 allowed to take its course as smoothly as possible."

15 Further he stated, "Discovery is but an instrument to
16 advance the cause of justice. It should be available to
17 give parties a proper appraisal of the case and on occasion
18 remove some issues from debate..."

19 .

20 Essentially as far as I am concerned, I dealt with the
21 matter in a ruling on cross-examination on Monday, the 1st
22 February, 1999 at 2:15, page 10 of that ruling says,
23 "The rationale of the legal requirement that a person
24 should be furnished in advance with a copy of the evidence
25 which may reflect on his good name is that it would be
26 unfair to, as it were, "spring" such evidence on him for
27 the first time in the witness-box. As a matter of basic
28 fairness, he should have the opportunity, if necessary, of
29 taking legal advice on the evidence to be adduced. I am
30 obliged to ensure fairness of procedures as much for Mr.
31 Gogarty as for anybody else. It appears to me that there
32 is a distinction to be made between, on the one hand,

1 cross-examining a witness on the basis of merely
2 challenging the veracity of his evidence, perhaps on the
3 basis of inadequacy, of recollection, self-interest
4 incompleteness of information and so forth and on the other
5 hand, cross-examining a witness by putting to him matters
6 which involve positive accusations of wrongdoing or
7 misconduct on his part of which he had no prior notice."

8 .
9 It seems to me that documentation comes squarely within
10 that principle. I will deal with the matter as it arises
11 on that principle.

12 .
13 That is my ruling as at this moment in time. Mr. Gogarty,
14 please.

15 .
16 MR. O'DONOGHUE: I have an application to make also.

17 .
18 CHAIRMAN: I have taking no applications until 2:15. Mr.
19 O'Donoghue, I am making a ruling that I want the
20 cross-examination of Mr. Gogarty to start now and continue
21 until 1 o'clock. I will sit at 2:15 and deal with any
22 other applications that arise.

23 .
24 MR. O'DONOGHUE: Would you hear me, Sir?

25 .
26 CHAIRMAN: No, I will not.

27 .
28 MR. O'DONOGHUE: Very good, Sir, thank you.

29 .
30 CHAIRMAN: Could Mr. Gogarty be seated in the witness-box
31 please.

32 .

1 MR. GALLAGHER: Sir, the last occasion you invited my
2 colleagues to discuss among themselves whether they could
3 reach agreement subject, of course, to your ruling as to
4 who should commence cross-examination. I wonder if that
5 is --

6 .

7 MR. COONEY: With the Tribunal's permission, Mr. Chairman,
8 I will go first.

9 .

10 CHAIRMAN: Very good, we can take it from there on. If
11 there is a problem, we will resolve it at 2:15. It's
12 important to now proceed to cross-examination for the
13 morning's session.

14 .

15 MR. JAMES GOGARTY IS CROSS-EXAMINED AS FOLLOWS BY MR.

16 COONEY:

17 .

18 1 Q. MR. COONEY: Mr. Gogarty, I think you know who I
19 represent?

20 A. I do.

21 2 Q. I represent the Murphy Group of companies?

22 A. That's correct.

23 3 Q. And Mr. Murphy Jnr., Mr. Murphy Snr., Mr. Frank Reynolds,
24 Mr. Copsey, Mr. Maher and Mr. O'Keefe, you are aware of
25 that?

26 A. I am aware of that.

27 4 Q. Now, Mr. Gogarty, first of all I want you to remind us
28 please for how long you served as a member of the Gardai
29 Siochana?

30 A. Roughly seven years, that's between the Tacha and regular
31 Guards.

32 5 Q. The Tacha Garda was sort of auxiliary force. Was it

1 established at the end of the war?

2 A. At the beginning of the war, that's correct.

3 6 Q. And you transferred from that body to the regular Gardai

4 Siochana, is that correct?

5 A. That's correct.

6 7 Q. And you continued to serve as a member of the Gardai

7 Siochana until about 1947 or '48, is that right?

8 A. '47.

9 8 Q. And when you transferred from the auxiliary force to the

10 regular force, did you receive any training, any additional

11 training?

12 A. I beg your pardon?

13 9 Q. Did you receive any additional training when you

14 transferred from the auxiliary force to the regular force?

15 A. Well, training was an ongoing thing, you know.

16 10 Q. What sort of matters were you trained in?

17 A. Well, I was trained in all matters relating to Garda force,

18 including arms, armed Garda force, revolvers, I was trained

19 in that.

20 11 Q. I take it you received some training in the disciplinary

21 regulations which were enforced to regulate the conduct of

22 Gardai Siochana?

23 A. That's correct, yes.

24 12 Q. And you also presumably were trained in the necessity for

25 accuracy and notetaking and recording statements and so on?

26 A. Oh yes, yes, yes.

27 13 Q. And I take it that you were also told of the necessity that

28 you must be evenhanded when you are dealing with members of

29 the public?

30 A. That's correct.

31 14 Q. And that under no circumstances should you or any member of

32 the Gardai Siochana act as a result of any improper

1 influence by some member of the public sought to bring on
2 you?

3 A. Oh that's correct, yes.

4 15 Q. And you would have appreciated that to do that would have
5 been a very serious breach of discipline?

6 A. I beg your pardon?

7 16 Q. And that to do so, to act improperly at the behest of some
8 member of the public would be a very serious breach of
9 discipline?

10 A. That's true.

11 17 Q. In fact, one of the worst acts which a member of the police
12 force could commit, isn't that correct?

13 A. I have no recollection of ever being disciplined in that
14 respect.

15 18 Q. I am not suggesting that you were, Mr. Gogarty. What I am
16 suggesting to you, you knew from your own training and the
17 knowledge and experience which you required as a member of
18 the Gardai Siochana that a charge of corruption or bribery
19 against a member of the Gardai Siochana is a most serious
20 charge?

21 A. Oh serious, yes.

22 19 Q. And it leads inevitably to investigation by his superior
23 officers, is that right?

24 A. That's correct.

25 20 Q. And, in fact, when such an allegation is made against a
26 member of the Gardai Siochana, the regulations require that
27 his superior officers conduct an investigation to see
28 whether or not there's any substance in that, is that
29 correct?

30 A. That's correct.

31 21 Q. And you were aware of that, I think, when you left the
32 Guards in 1947 or 1984, isn't that right?

1 A. That's correct, yes.

2 22 Q. And I think you have already told the Tribunal that you

3 have a great admiration for the Gardai Siochana?

4 A. Great admiration, never left me.

5 23 Q. You manifested this admiration by continuing to associate

6 with your former comrades at annual reunions right down to

7 recent years?

8 A. That's correct.

9 24 Q. You have a very high regard for the Gardai Siochana as a

10 force and for the individual members?

11 A. That is true, yes.

12 25 Q. Although I think you did say on day 12 of your evidence

13 there were perhaps a few bad apples there, is that correct?

14 A. Well sure that's in every society, yes, that would be a

15 general observation in every society.

16 26 Q. Tell me do you now number Detective Sergeant Sherry among

17 those bad apples?

18 A. Well, sometime ago I gave evidence here and I didn't come

19 into the Tribunal to accuse any Garda of bribery and

20 corruption, I have already stated that.

21 27 Q. I am not asking you now, I am merely asking you this, Mr.

22 Gogarty, do you number Detective Sergeant Sherry among

23 those bad apples that you have referred to?

24 A. No, no, no.

25 28 Q. When did you change your mind about Detective Sergeant

26 Sherry?

27 A. Well, I changed my mind about a couple of months when I

28 read statements by Mr. Sherry and some other Garda, that

29 they gave the reasons why they didn't charge Murphy.

30 29 Q. Yes. And are you telling the Tribunal on your oath that

31 the first time you learned of Detective Sergeant Sherry's

32 reasons for not prosecuting Mr. Murphy Jnr. was four to

1 five weeks ago?

2 A. That's the first time I got, what I believed, to be

3 rational reasons.

4 30 Q. I see.

5 A. I did say that, I still disagreed with his judgment. I

6 felt it was an error of judgment but I never, as far as I

7 am concerned, accused anybody of bribery and corruption.

8 31 Q. I see. Well then is it your evidence then, Mr. Gogarty,

9 and I want to understand this clearly is that the worst you

10 ever thought or said about Detective Sergeant Sherry was

11 that he was guilty of an error of judgement?

12 A. That's correct.

13 32 Q. Sorry -- continue.

14 A. And unfortunately, you see, it lasted over a period of

15 years which was very distressing to me, you know.

16 33 Q. I quite understand your distress, and I will come to that

17 in more detail later on but what you are saying is that the

18 worst you ever thought or said about Detective Sergeant

19 Sherry was that he was guilty of an error of judgment, is

20 that right?

21 A. That's right.

22 34 Q. And did you think that that error of judgment was brought

23 about by an improper influence?

24 A. Well, after four years, you see, of going through the

25 turmoil and the stress and going through, as I thought all

26 the proper channels, even to the politicians and the

27 ministers to try and get what I believed would have been an

28 explanation of why Murphy wasn't charged on what I believe

29 was very credible evidence at the time, that he was caught

30 in the act, he was caught in the act of obstructing the

31 course of justice and threatening me and intimidating me in

32 the middle of the night and what he would do to stop my

1 legal hassles, I was pursuing legal cases against the
2 company which I was justified to have recourse to the law
3 and I was tortured in that and I honestly then came to the
4 conclusion that there was a serious error of judgment in
5 the Guards and I was never completely satisfied despite
6 what people might say, because even the Minister, in her
7 reply to me or my solicitor, said she had no knowledge of
8 any of the things I was talking about, you know, after four
9 or five years, after four or five years.

10 35 Q. Have you finished your answer now?

11 A. I beg your pardon?

12 36 Q. Have you finished your answer?

13 A. Well, as far as I can go I suppose.

14 37 Q. Now, I want to repeat the question.

15 A. Yes.

16 38 Q. Which was this; do you believe that this error of judgment
17 which you say Detective Sergeant Sherry made was due to the
18 exercise of some improper influence? Now do you understand
19 that question?

20 A. I beg your pardon?

21 39 Q. All right, I will repeat the question.

22 A. Yes.

23 40 Q. Do you believe that the error of judgment which you are now
24 ascribing to Detective Sergeant Sherry was as a result of
25 the exercise of some improper influence?

26 A. No, an error of judgment wouldn't necessarily be following
27 improper influence. If you make -- you can make an error
28 of judgment independent of any influences, that's what I
29 believe.

30 41 Q. Can we take it, Mr. Gogarty, you are withdrawing your
31 allegation that Detective Sergeant Sherry acted under some
32 form of improper influence?

1 A. Well, I did that a couple of weeks ago when I came in here.

2 42 Q. I am asking you now.

3 A. Sure I am repeating it now for you, how many more times
4 must I repeat it? For God's sake, I repeated it and I gave
5 the Tribunal my assurances, I went through too much to come
6 in here and accuse the Guards of any improper conduct. I
7 went through too much for that.

8 43 Q. Mr. Gogarty, you have to answer my questions I am afraid.

9 A. In the name of God, tell me what your question is then.

10 44 Q. I am asking you do you now withdraw the charge that you
11 made that he had acted under improper influence?

12 A. I didn't make a charge against him. I just felt that
13 failing to charge Murphy was due to an error of judgment.

14 45 Q. Well, are you saying now that you never charged Detective
15 Sergeant Sherry with acting under improper influences?

16 A. I believe I am saying that now.

17 46 Q. You are saying you never did that?

18 A. I believe I never did that.

19 47 Q. You believe that most members of the Gardai Siochana are
20 honourable and decent men who do their job to the best of
21 their ability?

22 A. Sure no one feels that better than I do.

23 48 Q. You see, three members of the Gardai Siochana, Mr. Gogarty,
24 have noted you as saying about Detective Sergeant Sherry,
25 not that he committed an error of judgment but that he had
26 been bribed and was corrupt. Now, are those three members
27 of the Gardai Siochana all mistaken when they noted you
28 down as having said that?

29 A. I haven't seen them documents, could I have a look at them
30 documents?

31 49 Q. I am going to refer you to each one of them now.

32 A. Could I have a look at them?

1 50 Q. I will read them out.

2 A. I would like to have a look at them. I think it's fair to

3 look at them.

4 51 Q. Well, the first is a statement made by Detective Garda --

5 A. By whom?

6 .

7 MR. CALLANAN: The witness has asked to see the

8 statements. I can't see any basis which he is not given

9 the statements on which he is being cross-examined.

10 .

11 MR. COONEY: Mr. Chairman, at this stage, surely these

12 objections, if they are to be made, are to be made by

13 counsel for the Tribunal if he thinks. After all, this

14 witness is his witness and while Mr. Callanan is

15 representing Mr. Gogarty here, Mr. Chairman, I think that

16 he should not interrupt my cross-examination frequently.

17 Perhaps on occasions he might do it but it's a matter for

18 counsel for the Tribunal. I am now going to put certain

19 matters from statements by three members of the Gardai

20 Siochana. If I am not putting these fully to him, it can

21 be remedied as a later stage. I don't intend in any way

22 not to put the matter fully to him but if I do so

23 inadvertently, it can be put later on.

24 .

25 MR. CALLANAN: I really must make a point in relation to

26 this. The witness has asked to be shown the statements.

27 I cannot see what possible prejudice it imposes on Mr.

28 Cooney's cross-examination if it's easier for the witness

29 to assimilate the matter on which he is being

30 cross-examined by having the document in front of him, he

31 should be given the document.

32 .

1 MR. GALLAGHER: Sir, I will point out in his direct
2 examination the witness was given opportunity to read the
3 documents put to him, there doesn't seem to be any reason
4 why he shouldn't be allowed look at them at the moment.

5 .

6 MR. COONEY: I have no objection.

7 .

8 CHAIRMAN: If you have no objection, we will shorten the
9 matter.

10 .

11 MR. COONEY: I have no objection if he insists upon it but
12 the point is I want --

13 .

14 CHAIRMAN: I don't want to govern the manner which you
15 conduct cross-examination and if you are going to read a
16 document to the witness, there doesn't seem to be anything
17 wrong to give him a copy to hold in his hand. I am not in
18 any way attempting to interfere in the manner which you
19 conduct your affairs.

20 .

21 MR. COONEY: Very well, Mr. Chairman. Well perhaps he
22 could be given the statement of Detective Garda
23 McEneaney. Now, you have that statement which was made by
24 Detective Garda McEneaney and the section I want to ask you
25 about is on the third page, Mr. Gogarty. (Document handed
26 to witness.) And here Detective Garda McEneaney says --

27 A. You haven't given me a chance to read it.

28 52 Q. No, Mr. Gogarty, I am asking you questions on it now.

29 A. Yes.

30 53 Q. You remember Detective Garda McEneaney... please, Mr.
31 Gogarty, listen to my question.

32 A. Sorry, yes.

1 54 Q. Do you remember Detective Garda McEaney was one of the
2 two Guards who went to your house in June of 1994 on the
3 occasion of the telephone call?

4 A. I certainly do.

5 55 Q. And he conducted some of the investigations into that
6 incident under the supervision of Detective Sergeant
7 Sherry, do you recall that?

8 A. I recall that.

9 56 Q. Now, I want to ask you if you remember Detective Garda
10 McEaney returning to your house on the 22nd November,
11 1996? At that stage you were living at the lodge in Mount
12 Prospect Avenue?

13 A. I do, that's right.

14 57 Q. And he has reported a long interview with you on that
15 occasion, isn't that correct?

16 A. No, it's not correct.

17 58 Q. Well, he asked you, first of all, to make a statement in
18 relation to the allegations which you are now making
19 against corruption among politicians, isn't that right?

20 A. That's correct.

21 59 Q. And I think you said that you preferred to make a statement
22 to somebody not below the rank of superintendent, is that
23 right?

24 A. Well, I had said that not only then but I had said that
25 seven or eight months earlier.

26 60 Q. Well, I am asking you now what you said on this occasion.
27 Did you say to Detective Garda McEaney, did he record you
28 accurately as saying you want to make these statements of
29 corruption among politicians to a member of the Garda not
30 below the rank of superintendent?

31 A. That's not my recollection. I am not saying -- what his
32 version is, it's not my recollection.

1 61 Q. But he also said that you went on to say that you would,
2 you requested Garda not below the rank of superintendent to
3 interview me and discuss the case because there is
4 corruption along the line. Do you remember using that
5 phrase?

6 A. No.

7 62 Q. Do you deny using that phrase?

8 A. I spoke differently than that.

9 63 Q. Are you saying then Detective Garda McEneaney has record
10 you inaccurately?

11 A. It simply must be a misunderstanding because I would like
12 to tell you what I believe to be the truth on my side.

13 64 Q. Just answer my question. You have been in the witness-box
14 giving your side for four weeks now. I am entitled to ask
15 you questions and you must answer them.

16 A. Fair enough.

17 65 Q. Did you use the word 'corruption' in the course of that
18 interview with Detective Garda McEneaney?

19 A. Not in that sense that you are implying.

20 66 Q. Did you use the word 'corruption' at all?

21 A. I did, I did.

22 67 Q. Did you use the word 'corruption' when he, when you said to
23 him that you wanted to be interviewed about your general
24 allegations by a Garda not below the rank of
25 superintendent?

26 A. That's not what I said, that's not what I recall saying.

27 68 Q. All right, so this, the manner in which Detective Garda
28 McEneaney recorded this is a mistake, is that right?

29 A. Well, I haven't read -- I would love to read this first,
30 you know.

31 69 Q. I will quote it accurately.

32 A. Is there anything wrong in I reading this document, is

1 there?

2 70 Q. Have you seen that statement before, Mr. Gogarty?

3 A. No, not in detail, no.

4 71 Q. Have you seen it before?

5 A. I may have, yes.

6 72 Q. You either did or you didn't, Mr. Gogarty?

7 A. What?

8 73 Q. Did you see that statement?

9 A. I perused statements.

10 74 Q. Did you read the Garda statements, Mr. Gogarty?

11 A. I may have read it, I am not denying I did.

12 75 Q. There's no may about this Mr. Gogarty, you either did or

13 you didn't?

14 A. Are you suggesting I am trying to deny it or something?

15 76 Q. I am not suggesting that, Mr. Gogarty, I am suggesting, I

16 am asking you did you or did you not read these statements?

17 A. I perused a lot of statements in my solicitor's office.

18 77 Q. Including the statements which have been furnished by the

19 Tribunal which the Tribunal received from the Gardai

20 Siochana?

21 A. Possibly, possibly.

22 78 Q. Well now, you either did or you didn't, Mr. Gogarty? Did

23 you or did you not read these statements beforehand?

24 A. Not in detail, honest to God, I didn't because look it, I

25 have gone through too much, I want to be fair. What are

26 you trying to pin me on? Tell us, for God's sake.

27 79 Q. All I want you to do is answer the question.

28 A. You see, am I entitled to give a fair, my own honest fair

29 account of what I am talking about?

30 80 Q. Mr. Gogarty, all I am trying to do is establish facts.

31 A. All I am trying to do is confirm the truth too. I am

32 here, look it, sorry, I am only trying to tell the truth

1 and the truth is not in legislation. It's in morality,

2 it's based on morality, based on a lot of things.

3 81 Q. I will move on from that section of the statement.

4 A. I beg your pardon, can I read the statement first of all?

5 82 Q. Look at the third page.

6 A. I want to read it all.

7 83 Q. No, Mr. Gogarty, look at the third page, the section I am

8 quoting to you, now look down at the fifth line where

9 Detective Garda McEneaney says there you invite him, that's

10 you, to make a statement in relation to these

11 allegations.

12 .

13 MR. GALLAGHER: Sorry, Mr. Gogarty is looking at the

14 fourth page I think.

15 A. I will ask a question; when was this statement made? Is

16 there a date on it?

17 .

18 MR. COONEY: Mr. Gogarty, just look at the statement

19 please, would you? You asked for the statement.

20 A. I am asking a fair question, when was this statement made?

21 Is there a date on it?

22 .

23 MR. GALLAGHER: There was no date on the statement, it was

24 furnished at the end of 1998 to the Tribunal following this

25 --

26 A. So that's twelve months afterwards.

27 .

28 MR. GALLAGHER: Just within the last four or five

29 months.

30 A. When he interviewed me, he called to the house, it was in

31 November 1997, twelve months before that.

32 .

1 MR. COONEY: 1996 actually.

2 .

3 CHAIRMAN: Mr. Cooney --

4 A. Sorry --

5 .

6 CHAIRMAN: The statement appears to be a statement of an
7 interview which took place on the 22nd November, 1996.

8 And it appears to me, and I stand subject to correction, to
9 presumably be an internal Garda document or report of
10 sequence of events of...

11 .

12 MR. COONEY: I beg your pardon?

13 .

14 CHAIRMAN: Report of a sequence of inquiry, that's what it
15 seems to be. It's not a statement in the accusatorial
16 sense of the word. Now, one may assume it was written
17 sometime in or about the 22nd November, 1996, somewhere
18 around that period of time in the course of a report to a
19 superior officer.

20 .

21 MR. GALLAGHER: Sir, if that is so, I am not quite clear
22 but it may have been made at the end of last year, perhaps
23 Miss Butler will be able to tell us when. It may have been
24 made in response to the circulation of the affidavit, I
25 don't know.

26 .

27 MR. COONEY: Mr. Chairman, can I proceed with my
28 cross-examination?

29 .

30 CHAIRMAN: I just want to find... the witness is being
31 given a statement which is made about a member of the
32 Gardai, it's signed --

1 .

2 MR. COONEY: If he doesn't agree with its contents, Mr.

3 Chairman, he says that and I leave it. That's all.

4 That's all I want to hear. I want to put the contents of

5 this statement to him because I assume that the Tribunal

6 will eventually be calling Detective Garda McEneaney to

7 give evidence and his evidence will be in accordance with

8 the statement. That's all.

9 A. Well now can I read it then?

10 84 Q. Mr. Chairman, I think it's unusual but if it will help

11 him.

12 .

13 CHAIRMAN: All right. Let it be read.

14 A. It would be a great help to me.

15 .

16 CHAIRMAN: All right. Five minutes.

17 A. And also is it fair?

18 .

19 CHAIRMAN: I am not going to rise, five minutes, give him

20 a chance.

21 A. Is it fair that I should read it, is it fair?

22 .

23 CHAIRMAN: Carry on reading it, Mr. Gogarty.

24 .

25 MR. COONEY: May I also tell you, Mr. Chairman, I will be

26 referring to other documents, I don't know if this routine

27 is going to be followed right through cross-examination.

28 If it is, so be it.

29 .

30 CHAIRMAN: Well, Mr. Cooney, I don't want to again to

31 implicate how you should conduct your affairs but there is,

32 if this situation is going to arise, there doesn't seem to

1 be any reason why he shouldn't be advised in advance of a
2 particular statement.

3 .

4 MR. COONEY: I am not going to do that.

5 .

6 CHAIRMAN: I am not getting involved in conducting your
7 cross-examination. Very good.

8 .

9 MR. COONEY: Mr. Chairman, you know our attitude towards
10 Mr. Gogarty, his credibility and veracity is stated very
11 clearly. I will not have any form of cross-examination to
12 be hindered or obstructed. It isn't fair to my clients --

13 .

14 CHAIRMAN: I am not getting involved.

15 .

16 MR. GALLAGHER: Sir, I am informed by Miss Butler this
17 statement was prepared for the purposes of the Tribunal.

18 .

19 CHAIRMAN: I see. Thank you very much.

20 .

21 A. I have read that statement, now.

22 .

23 CHAIRMAN: Thank you. Would you resume.

24 .

25 MR. COONEY: Now, Mr. Gogarty, I want to refer you to the
26 third page of that statement and I have already asked you
27 whether or not Detective Inspector, I beg your pardon,
28 Detective Garda McEneaney recorded you accurately when he
29 said, quoted you as saying that "you wanted to see a Garda
30 not below the rank of superintendent to interview and
31 discuss the case because there had been corruption along
32 the lines." Now, did you use that phrase to him

1 'corruption along the line'?

2 A. That's not my recollection, honest to God.

3 85 Q. Well then, that's a misrecording of what you stated?

4 A. But I think there's some confusion. I tell you what

5 happened. That man was very fair to me all along as far

6 as I am concerned, he was very helpful way back in 1994

7 when he and he gave me great assurances he would

8 investigate this and Mr. Sherry with investigate it and he

9 would see that there was protection for me and all that,

10 very good, and we spent a couple of hours talking in the

11 house and I gave him the background to it all, that kind of

12 thing and there's a lot of events recorded, a lot of

13 documents that have to come in too in connection with this

14 because there's letters at the time, you see, where I gave

15 my solicitors a copy of the statements that I made in 1994

16 and I filled them in by discussions with the Guards at the

17 time. That's recorded too. This --

18 86 Q. Mr. Chairman?

19 A. The second part of this.

20 87 Q. Mr. Chairman, there has to be some limit.

21 .

22 CHAIRMAN: You asked the question.

23 A. This statement --

24 .

25 MR. COONEY: Mr. Chairman, I did ask a question relating

26 to a statement which is recorded as having been made in

27 this statement by Detective Garda McEneaney. He is now

28 gone well beyond that, Mr. Chairman.

29 .

30 CHAIRMAN: Mr. Cooney, that's his answer, now let's get on

31 to the next answer.

32 A. I'll qualify it further.

1 .

2 88 Q. MR. COONEY: What's the answer got to do with the question

3 he was asked?

4 A. Mr. Cooney --

5 89 Q. Mr. Chairman, just for a moment please, Mr. Gogarty, Mr.

6 Chairman, can I respectfully submit to the fact that a

7 witness in response to a question opens his mouth and words

8 issued from it don't necessarily mean that he is answering

9 the question he has been asked. Now, we can go on with

10 this, Mr. Chairman, and waste endless times while he avoids

11 the point of the questions or you, Mr. Chairman, I

12 respectfully submit, can direct him to answer the question

13 and the point of the question but I am quite prepared to

14 spend as much time as possible listening to these long

15 answers which are off the point of the question if you want

16 to permit him to do that, Mr. Chairman.

17 .

18 CHAIRMAN: Mr. Cooney, you have asked him a question, he

19 has given the answer that he didn't mean corruption in that

20 sense. Now that --

21 A. Mr. Cooney --

22 .

23 CHAIRMAN: Now please don't interrupt me as well. I have

24 got the point that you say he is alleging corruption and it

25 flows from it, the balance of the statement implicates

26 that. Are we going to get any further?

27 .

28 MR. COONEY: Yes, we are.

29 .

30 CHAIRMAN: Carry on.

31 .

32 MR. COONEY: It's my right to put these to him and it's

1 also my right to expect that he listen to the question,
2 answer the point of the question and then bring his answer
3 to an end so that I might ask the next question and if he
4 doesn't do that, Mr. Chairman, I can't force him to do it
5 but it's the presiding officer in this Tribunal as in any
6 court of law who enforces these rules of decorum and
7 evidence and I am asking you, Mr. Chairman, to direct Mr.
8 Gogarty to answer any questions shortly and to the point.

9 A. Mr. Cooney, could I --

10 .

11 CHAIRMAN: Just a moment, Mr. Gogarty. Mr. Cooney asks
12 you a question, give him a short answer yes or no as the
13 case may be, if you want to shortly explain your answer,
14 you may do so you but it must be on the point and succinct?

15 A. This is what I am trying to do, Your Honour, because this
16 statement here covers two distinct investigations and it
17 covers these incidents in 1994, June, 1994. It covers
18 them in good detail and --

19 .

20 CHAIRMAN: Mr. Gogarty, will you listen to me? The
21 question you were asked related to what you said to Garda
22 McEneaney, according to Garda McEneaney on the 22nd
23 November, 1996, according to Garda McEneaney you said, "I
24 requested a Garda" -- sorry, he invited you to make a
25 statement, you replied, "I respectfully refuse to discuss
26 the details with you. I request a Garda not below the
27 rank of superintendent." Did you say that?

28 A. That's not my recollection.

29 .

30 CHAIRMAN: Very good.

31 A. Sorry -- I want to be very fair to everybody. What I
32 said was, can I say what I said was?

1 .

2 CHAIRMAN: If you recall what you said.

3 A. You see, I referred him to what happened sometime before
4 that as well because I had spoken to Tommy Broughan and
5 those people and it was they said that I should talk to, at
6 that time I agreed to talk to Garda not below the rank of
7 superintendent, that's going pack to Tommy Broughan's time,
8 you know?

9 .

10 CHAIRMAN: Well, can you now answer the question did you
11 say that you wanted to talk to a Garda not below the rank
12 of superintendent?

13 A. That's right. That's right.

14 .

15 90 Q. MR. COONEY: So having said that, did you then go on to
16 add the phrase "because there is corruption along the
17 line"? Did you or did you not say that?

18 A. I said 'corruption'. It wasn't corruption in the Guards.

19 91 Q. All right.

20 A. It was corruption with politicians.

21 92 Q. Okay. That's your answer. Now, Garda McEneaney also
22 recorded you as saying that and I am going to quote
23 directly from the statement. He stated, that's referring
24 to you, Mr. Gogarty, he stated that "when Detective
25 Sergeant Sherry of Raheny got involved in the case back in
26 1994 somebody got to him, somebody bribed him."

27 A. I don't believe I said that.

28 93 Q. I see. Well again Detective Garda McEneaney has --

29 A. I have to accept what he is saying.

30 94 Q. You then did make accusation to Detective Garda McEneaney
31 against Detective Sergeant Sherry and said "somebody must
32 have got to him, somebody must have bribed him."

1 A. Oh God, I don't believe I said that.

2 95 Q. You either did or you didn't, did you say that to him?

3 A. Not in that sense.

4 96 Q. Mr. Gogarty, the words are very clear, very unambiguous,
5 "somebody must have got to him, somebody bribed him," now
6 did you or did you not say that? Yes or no please, Mr.
7 Gogarty?

8 A. Maybe I did, I don't know, I don't want to be telling lies
9 but I don't --

10 97 Q. Mr. Gogarty, it's not a maybe situation. Did Detective
11 Garda McEneaney record you accurately at that interview in
12 November of 1996?

13 A. What I said to him, honest to God, what I said to the man
14 was that he was a Detective Garda and he was investigating
15 circumstances and problems that had been dealt with earlier
16 on by a Detective Sergeant and he was now investigating
17 matters that I felt should have been done by
18 superintendents.

19 98 Q. That's not an answer to the question I have asked you, Mr.
20 Gogarty, and you know that. Now I will ask you once more
21 and then the Chairman can draw his own conclusions. Did
22 you or did you not say to Detective Garda McEneaney during
23 the course of the interview on the 22nd November, 1996 that
24 Detective Sergeant Sherry of Raheny had been got to,
25 somebody had bribed him?

26 A. I don't believe I said that.

27 99 Q. You deny that?

28 A. I deny that, honest to God.

2 100 Q. You deny that and then it follows from that --

30 A. I think he misunderstood it.

3 101 Q. It follows from that Detective Sergeant McEneaney
32 understood it?

1 A. Misunderstood it.

102 Q. And has written down something in the statement you never

3 said?

4 A. I don't believe I said it in that context at all.

103 Q. I am not asking you about context, I am asking you about

6 the words Detective Garda McEaney used.

7 A. It's relevant all I had gone through.

104 Q. No speeches now, Mr. Gogarty.

9 A. I am not making speeches.

1 105 Q. Answer the questions. Are you now saying, Mr. Gogarty,

11 you never said this and Detective Garda McEaney has

12 recorded this?

13 A. I think he has misrecorded it.

1 106 Q. Do you think he has invented it or simply misinterpreted

15 it?

16 A. I wouldn't suggest the man did anything wrong at all.

1 107 Q. Are you saying he made it up out of his own imagination?

18 A. I am not, I am not.

1 108 Q. I see. It follows from that you must have said something

20 which led him to put that statement in his general

21 statement, isn't that right?

22 A. I would agree with that, whether it was said then or over

23 the previous twelve months, I don't know.

2 109 Q. You know very well, Mr. Gogarty, that I am not referring to

25 any date in the previous twelve months. I am referring to

26 the interview you had on the 22nd November, 1996.

27 A. Yes.

2 110 Q. Now, are you saying, therefore, you never said this and

29 that this statement included in Detective Garda McEaney's

30 Statement of Evidence is invention on his part?

31 A. I am not saying invention. What I am saying I never

32 intended in such a context because I felt it should be

1 investigated by a superintendent at a higher rank.

111 Q. All right. Let's go on. He records you then as saying

3 that he, that is, Detective Sergeant Sherry, "he was

4 involved with somebody" -- he stated that "he failed to

5 investigate the case of bribery and corruption. I want

6 Sherry investigated." Now did you say to Detective Garda

7 McEneaney you wanted Sergeant Sherry investigated?

8 A. I said that, yes, because you see, I felt that the man had

9 made an error of judgment earlier on.

1 112 Q. So that part of Detective Garda McEneaney's recollection

11 and statement of his interview with you is correct, is that

12 right?

13 A. Correct.

1 113 Q. So he is not correct when he says you accused Detective

15 Sergeant Sherry of bribery and corruption but he is correct

16 when he records you as saying you wanted him investigated,

17 is that right?

18 A. Investigated and by a man not below Sherry's rank but a

19 superior officer, you know.

2 114 Q. And you were saying you wanted him investigated for what

21 was not bribery and corruption but error of judgment?

22 A. Yes.

2 115 Q. I see. Are you saying now that you never ever used the

24 words bribery or corruption against Detective Sergeant

25 Sherry when you made this statement to Detective Garda

26 McEneaney?

27 A. That's true.

2 116 Q. Never used those words at all?

29 A. I never accused him of bribery and corruption.

3 117 Q. Yes. Okay.

31 .

32 MR. CALLANAN: Mr. Cooney should put the relevant part of

1 the statement is he failed to investigate the case of
2 bribery and corruption. It's quite clear this is a
3 totally --

4 .

5 MR. COONEY: Mr. Chairman, I will not be interrupted.
6 Mr. Callanan will have a chance to cross-examine his own
7 witness later on.

8 .

9 CHAIRMAN: Carry on.

10 .

11 MR. COONEY: Now the statement by Detective Garda
12 McEneaney goes on, he says, he is referring to you, "he
13 stated his solicitor Mr. Hegarty falls short in trust."

14 A. I beg your pardon?

1 118 Q. "He stated," that's you, "stated to Detective Garda
16 McEneaney that your solicitor, Mr. Hegarty falls short in
17 trust."

18 A. Where is that?

1 119 Q. It's in the statement. Did you say that to Detective Garda
20 McEneaney you felt your solicitor acting for you fell short
21 in trust?

22 A. Fell short in what?

2 120 Q. In trust.

24 A. In trust. T-R-U-S-T?

2 121 Q. Yes, exactly.

26 A. Oh that's possible, yes.

2 122 Q. So you accused your solicitor, Mr. Hegarty, of being
28 untrustworthy, in effect, is that right?

29 A. I didn't accuse him. I said there was questionable
30 conduct.

3 123 Q. Well, what does the term "falls short of trust" mean to
32 you?

1 A. That's Mr. McEneaney's description of it.

124 Q. Well, did he record you accurately in using that phrase?

3 A. To tell you the truth, if the Tribunal had the time to read
4 all the documentation from 1994, June, 1994 up to date to
5 see what I was trying to do and...

125 Q. I respectfully ask you, Mr. Chairman, to ask the witness to
7 answer the question.

8 .

9 CHAIRMAN: Mr. Gogarty, you must answer the question you
10 are asked and not make statements please.

11 .

12 MR. COONEY: I will repeat the question, Mr. Gogarty, in
13 case you have forgotten it.

14 A. Yes.

1 126 Q. Did you say to Detective Garda McEneaney that your
16 solicitor, Mr. Hegarty, fell short of trust?

17 A. Could you show me the paper?

1 127 Q. Did you hear my question, Mr. Gogarty?

19 A. But he says he put it in the statement, didn't he?

2 128 Q. Did you hear my question?

21 A. That I said to him my solicitor...

2 129 Q. Fell short of trust.

23 A. Fell short in trust. What would you mean by that now?

2 130 Q. Well first of all, did you say that to him?

25 A. I have no recollection of that, I questioned his conduct.

2 131 Q. Questioned whose conduct?

27 A. My solicitor's conduct.

2 132 Q. Mr. Hegarty's conduct?

29 A. Yes.

3 133 Q. I see. Did you say to Detective Garda McEneaney he fell
31 short in trust?

32 A. That's not my recollection.

134 Q. Is this another mistake then by Detective Garda McEneaney
2 in his statement?

3 A. I have nothing against Sergeant McEneaney whatsoever or
4 Detective Garda or whatever and if he said these things, I
5 have to accept them but my recollection is this, that it
6 wasn't in that context and I have no intention of going
7 further than saying that I questioned Mr. Hegarty's conduct
8 and that is very clearly set out in correspondence even
9 between me and Mr. Hegarty, between me and Mr. Hegarty at
10 the time.

1 135 Q. Mr. Gogarty, I have asked you a very simple straightforward
12 question and I'd like you to give me a similar answer.

13 Did you tell Detective Garda McEneaney that Mr. Hegarty
14 fell short in trust?

15 A. I have no recollection of that.

1 136 Q. Well then, is it you could have said it but you don't
17 remember saying it?

18 A. I don't remember saying it.

1 137 Q. You could have said it?

20 A. I could have said a lot of things.

2 138 Q. Now, Mr. Gogarty, let's not play the old soldier here in
22 the witness-box.

23 A. I am not playing old soldier, let's not you play old
24 soldier with me either.

2 139 Q. Just answer my questions. You don't remember saying that
26 to Detective Garda --

27 A. You are trying to make me a liar and everything. If I had
28 told you that I had cornflakes for my breakfast, you would
29 tell me and I was telling lies and you would tell me it was
30 porridge.

3 140 Q. Mr. Chairman --

32 .

1 CHAIRMAN: Isn't the situation this, he has already told
2 you that if Detective McEneaney says so, I have to accept
3 it. Isn't that the answer to your question? Can you get
4 it any more definitive from this witness?

5 .

6 MR. COONEY: All right, Mr. Chairman, I will now ask him
7 another question. Did you have a lack of trust in your
8 solicitor Mr. Hegarty at that time?

9 A. I had, I had, yes. Sorry, in what time?

1 141 Q. At the time that you made the statement to Detective Garda
11 McEneaney?

12 A. Are you talking about June, '94 or in 1996?

1 142 Q. When did you first consult him?

14 A. I made two statements you see to, Mr. Sherry.

1 143 Q. When did you first consult Mr. Hegarty?

16 A. I tell you, it was in around about 1995 when I went to
17 Tommy Broughan and that's on the record.

1 144 Q. When did you leave, Mr. Hegarty?

19 A. I left him in the end of 1995 or August, 1995.

2 145 Q. And was that because you had a lack of trust in him?

21 A. Yes.

2 146 Q. I see. I will come back to it.

23 A. And it's all set out in letters to him and his replies or
24 his lack of replies. It's all set out.

2 147 Q. Very well. So, Mr. Hegarty was among the people who
26 treated you badly and behaved in an untrustworthy fashion
27 towards you?

28 A. Sorry, I lacked trust in him.

2 148 Q. Yes.

30 A. You can put your own spin on it then after that.

3 149 Q. Now, I want to continue on with the statement of Detective
32 Garda McEneaney and refer you to another sentence in that

1 sentence and he says and I quote: "He says" and that's
2 you, "Detective Sergeant Sherry must have been bought."
3 Now did you say that to him?

4 A. I don't believe I said that. At that meeting it didn't
5 take -- he wasn't ten minutes in the house, he was less.

150 Q. Well, is that then a misrecording by him of what you said?

7 A. I honestly think it's a misrecording and I have the highest
8 respect for the man and you can put your own construction
9 on either of them, you know.

1 151 Q. So you never said to Detective Garda McEneaney Sergeant
11 Sherry must have been --

12 A. I am not going to say it either now that I ever accused him
13 of bribery and corruption, that's my belief.

1 152 Q. I am just asking you this. You never made this statement
15 to Detective Garda McEneaney?

16 A. Not in those words.

1 153 Q. Not in those words. All right. He also says in your
18 statement about you, "he kept shouting and waving his
19 clenched fist."

20 A. I beg your pardon?

2 154 Q. Detective Garda McEneaney describes you at this interview
22 as follows: "He," that's you, Mr. Gogarty, "kept shouting
23 and waving his clenched fist saying I'll prove all this so
24 long as there's blood in my veins and I will begin with
25 Sherry the, sergeant that made little of me." Now, did you
26 say to Detective Garda McEneaney, "I will prove this so
27 long as there's blood in my veins and I will begin with
28 Sherry, that Sergeant who made little of me"?

29 A. Not in that sense at all. What I said was that there was
30 questionable conduct where he didn't charge Murphy and I
31 didn't get an explanation on that even up until two months
32 ago. That's what I am saying and I have to stand over

1 that, you know, I stand over that.

155 Q. Is Detective Garda McEneaney accurate in what he says about

3 you and what you said on that occasion in that sentence?

4 A. I don't think he is completely accurate, that's honestly

5 what I believe the man, you know.

156 Q. Well then, can we take it then he is mistaken in recording

7 you as saying that "you will begin with Sherry the sergeant

8 that made little of me"?

9 A. What. You are going to take something --

1 157 Q. Now, just so that you understand my question, Mr. Gogarty,

11 are you saying that you never said to him the words "I will

12 prove all this as long as there's blood in my veins and I

13 will begin with Sherry, that sergeant who made little of

14 me"? Do you deny you said those words?

15 A. In that context.

1 158 Q. I am not asking about context. Did you or did you not use

17 those words?

18 .

19 MR. CALLANAN: All this refers to a number of matters in

20 the statement.

21 .

22 CHAIRMAN: I beg your pardon?

23 .

24 MR. CALLANAN: "I will prove all this so long as there is

25 blood in my veins," the quotation refers to a number of

26 other matters which Mr. Cooney hasn't put.

27

28 MR. COONEY: This is -- Mr. Callanan will have his

29 opportunity to cross-examine. Mr. Gallagher --

30 .

31 CHAIRMAN: Carry on, Mr. Cooney.

32 .

1 .

159 Q. MR. COONEY: Did you use those words?

3 A. Not in that context.

160 Q. Okay. Did you shout and waive your clenched fist in the

5 air during the course of this interview with Detective

6 Garda McEneaney when you were speaking about Sergeant

7 Sherry?

8 A. I don't believe I did because I thought I was very nice to

9 the man and I thought he accepted what I was saying.

1 161 Q. And his description of you shouting and waiving your

11 clenched fist is an inaccurate description?

12 A. Maybe I am wrong, I don't know. The context of the thing

13 is all --

1 162 Q. All right. So to a very large extent, what Detective

15 Garda McEneaney records as having been done and said on

16 this interview with you on the 22nd November, 1996 is

17 inaccurate?

18 A. Well, it's not in that context. That's what I am saying

19 because there's an awful lot of documents have to be read

20 which are contemporaneous documents and are very relevant

21 and they will have to be read in it and this is the trouble

22 here as far as I can see. At one time you and your pals

23 are professing that you are going to get at the truth, the

24 whole truth like meself and then you spent half the time

25 over the last five or six --

26 .

27 CHAIRMAN: You invited it.

28 A. Sorry, you have spent the last --

29 .

30 CHAIRMAN: You asked the question which is a not necessary

31 question in the circumstances. You got the text of this

32 statement that he doesn't recall -- I have to accept.

1 What more do you want?

2 .

3 MR. COONEY: I asked him simply a straightforward question

4 if what Detective Garda McEneaney was saying was

5 inaccurate.

6 .

7 CHAIRMAN: He says "I don't recall," I have "I don't

8 recall." If he has said it, I have to accept it. What

9 more do you want?

10 .

11 MR. COONEY: That's not what he said. With respect, he

12 launched into long answer which refers to my client and

13 referred to context. With respect, Mr. Chairman, if there

14 is any dignity or any efficiency to be maintained in this

15 Tribunal, that sort of answer has to be stopped. I can't

16 do it. Only you can do it, Mr. Chairman. Now I will

17 move to another question.

18 A. Could I finish what I am saying please? Please could I say

19 what I am saying because you spent a lot of the time saying

20 you and your crowd were going to get to the truth and you

21 spent more than half the time in the past five or six weeks

22 --

23 .

24 CHAIRMAN: Mr. Gogarty, please.

25 A. Spindoctoring...

26 .

27 CHAIRMAN: Mr. Gogarty, you are not going to be allowed to

28 make statements like that in the Tribunal. You are going

29 to answer the questions yes or no and if you want to add an

30 explanation to your answer which is on the point in

31 relation to the question, you are entitled to do so.

32 Please let's work on that basis, I have been very tolerant

1 to date.

2 A. I am very sorry, I will try and be accurate. I try do my

3 best.

4 .

163 Q. MR. COONEY: You see, Mr. Gogarty, I have to put it to you

6 that not only did you make allegations of bribery against

7 Detective Sergeant Sherry to Detective Garda McEneaney, you

8 did it to other members of the Gardai Siochana as well.

9 Do you recall having suggested to other more senior members

10 of the Gardai Siochana that Detective Sergeant Sherry had

11 been bribed?

12 A. Is that on the record?

1 164 Q. No, no, I am asking you do you recall making these

14 accusations against Detective Sergeant Sherry?

15 A. No.

1 165 Q. To other members of the Gardai Siochana?

17 A. No, what I did was put to other members of the Gardai

18 Siochana what I felt was his questionable conduct which

19 should have been explained and required explanation and I

20 was assured by Superintendent McElligott who I had great

21 respect for that he would satisfy me in that respect and he

22 would investigate it and we finished up that he said to me

23 and I took it as his word that he hadn't finished his

24 investigation and I am talking about 1997 so he never made

25 a decision whether he was going to stand over Mr. Sherry or

26 otherwise and that caused me a certain amount of concern

27 and distress and I believe that Superintendent McElligott

28 would say that and confirm that and with those letters

29 between myself and himself on it, bring him in and we will

30 talk about it, you know.

3 166 Q. Mr. Gogarty, did you or did you not say to other members of

32 the Gardai Siochana that Detective Sergeant Sherry had been

1 bribed?

2 A. No, I didn't.

167 Q. All right.

4 A. And it's on the record.

168 Q. Do you remember being interviewed by Detective Inspector

6 Harrington?

7 A. On his own?

169 Q. It doesn't matter.

9 A. It does, oh it does, it does.

1 170 Q. Do you remember being interviewed by him?

11 A. Sorry, let's put this right now please, Mr. Cooney. Give

12 me a chance. Please, Mr. Cooney. Are you saying that

13 Detective Inspector Harrington interviewed me on his own?

1 171 Q. Did you have an interview with him?

15 A. On his own?

1 172 Q. Did you have an interview with him?

17 A. With Superintendent McElligott. With Superintendent

18 McElligott his superior officer. There, that's the only

19 interviews I had with Mr. Harrington was in the presence of

20 Superintendent McElligott and I had discussed with

21 Superintendent McElligott for about five or six times.

22 It's on the record and the first three times Inspector

23 Harrington was with him and then he dropped out and I never

24 spoke to Mr. Harrington after that. It's all recorded.

25 Don't be selective. I don't want to be selective. I want

26 the whole lot...

2 173 Q. I want to put it to you particularly now, Mr. Gogarty, that

28 on the 15th February, 1997 during the course of an

29 interview, that both Superintendent McElligott and

30 Detective Inspector Harrington, you accused Detective

31 Sergeant Sherry of having been bribed.

32 A. I did not. I said to him, oh God, would you bring in Mr.

1 McElligott please because I have great respect for that man
2 and still have and the first meeting with him in February
3 we started off and we discussed the conduct of Inspector
4 Sergeant Sherry.

174 Q. Mr. Gogarty, can I just intervene for a moment to say, Mr.

6 Chairman, it must by now be abundantly clear that Mr.
7 Gogarty has adopted to technique to avoid the point of the
8 questions by giving long rambling speeches from the dock.
9 Now again I respectfully ask...

10 A. From the dock? Oh Jesus. I didn't know that.

11 .

12 CHAIRMAN: Order please.

13 A. I didn't know that.

14 .

15 MR. COONEY: From the witness-box.

16 A. I am in the dock. You said it and --

17 .

18 MR. COONEY: This is breaching proportions of --

19 A. Putting me in the dock, oh mother of God... Put me in the
20 dock...

21 .

22 CHAIRMAN: I am going to adjourn for ten minutes.

23 .

24 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED

25 AS FOLLOWS:

26 .

27 CHAIRMAN: Before Mr. Gogarty resumes his evidence, I want
28 to say two things. The first is that no one, but no one
29 at all is in the dock in this Tribunal.

30 .

31 The second thing is this, that while I appreciate that
32 moments of levity can arise, the decorum of this Tribunal

1 must be maintained by the audience and by me and I invite
2 your cooperation in the circumstances, if some levity does
3 arise to treat it calmly, because we can not have clapping
4 at any time. Thank you very much.

5 .

6 MR. COONEY: May it please you, Mr. Chairman. I say,
7 Mr. Chairman, I used the word dock inadvertently.

8 .

9 CHAIRMAN: I accept and I am sure Mr. Gogarty knows it's
10 an inadvertent use of word.

11 .

1 175 Q. MR. COONEY: Before the break I asked you about statements
13 you made to Supterintendent McElligott and Inspector
14 Harrington, you recall me asking you about those? Can you
15 hear me, Mr. Gogarty? Can you hear me now?

16 A. Yeah.

1 176 Q. Can you hear me?

18 A. Yes.

1 177 Q. Before the break I had been asking you about, I put it
20 another way, about an interview which you had with
21 Detective Inspector -- you remember that?

22 A. With Superintendent McElligott.

2 178 Q. No, I am asking you first of all about Inspector
24 Harrington, you remember meeting him, don't you?

25 A. With McElligot?

26 A. Yes.

2 179 Q. Superintendent McElligott was there. I understand that.
28 Now, I have to suggest to you that you said to Inspector
29 Harrington that Detective Sergeant Sherry had been bribed
30 because he did not investigate the threatening phone call
31 properly. Now, did you say that to Inspector Harrington?

32 A. No.

180 Q. You never used those words at all?

2 A. No, no.

181 Q. And again he has recorded or in his statement --

4 A. Could I see this statement?

182 Q. No, no. I want to put to you these questions.

6 A. Sorry, I want to see this statement.

183 Q. No, I am putting it to you --

8 A. I am putting to you I want to see the statement.

184 Q. Mr. Gogarty, please listen to the question. I am putting

10 it to you that he recorded you as saying that, has he also

11 misrecorded you?

12 A. Could I see the statement please?

13 .

14 CHAIRMAN: Mr. Gogarty, you have been asked a question

15 very simply put. If that statement -- if that record

16 exists, is it correct or incorrect?

17 A. I believe it's incorrect.

18 .

19 CHAIRMAN: Very good. That's the way to answer the

20 question. We must have some discipline please in the

21 manner in which the questions are answered.

22 .

23 MR. COONEY: May it please you, Mr. Chairman. So the

24 Tribunal can conclude, can it then, Mr. Gogarty, from that

25 answer that Inspector Harrington noted you down wrongly as

26 having made a very serious charge against a serving

27 detective sergeant?

28 A. That is correct.

2 185 Q. I see. And you never said that to Inspector Harrington?

30 A. No.

3 186 Q. Is that correct?

32 A. That's correct.

187 Q. I see. And when he included a statement to that effect in
2 his report, it was an invention on his part, was it?

3 A. What do you mean by invention?

188 Q. That he dreamed up a statement by you in which you accused
5 Detective Sergeant Sherry of having been bribed?

6 A. That's what you are saying.

189 Q. No, are you saying --

8 A. No, I am not saying.

190 Q. Well you say that you never said this to Inspector
10 Harrington?

11 A. I never said, that to the best of my recollection I never
12 said that and it's recorded.

1 191 Q. And when Inspector Harrington included a statement to that
14 effect, in his statement, he was dreaming it up, was he?

15 A. I beg your pardon?

1 192 Q. Was Inspector Harrington inventing this then when he
17 included a statement in his report that you alleged that
18 Detective Sergeant Sherry had been bribed? Is it an
19 invention by Inspector Harrington?

20 A. I am not going to use your words. I don't know what you
21 mean by invention. There is a number of things with
22 invention. I am saying my recollection is that I didn't
23 and in fact that I hadn't a direct interview with Mr.
24 Harrington. In fact he said little -- very little at the
25 interviews. He was there for three meetings with Mr.
26 McElligott and Mr. McElligott and I did all the talking.
27 That's honest to God.

2 193 Q. Didn't you know that Inspector Harrington was deputed by
29 the chief superintendent of that area, detective -- Chief
30 Superintendent Carolan to investigate these allegations of
31 bribery and corruption which you had made and that that was
32 the purpose of his interview?

1 A. No.

194 Q. You didn't know that?

3 A. That's what I understood.

195 Q. That's not your understanding?

5 A. No, that's not my understanding.

196 Q. And I suggest to you that you know well, Mr. Gogarty, from

7 reading the Garda documents, that Inspector Harrington

8 subsequently furnished a report to a his superior officers

9 relating to these allegations.

10 A. I don't know about that at all.

1 197 Q. All right. You have seen the Garda documents in this

12 case?

13 A. I have perused them but I haven't seen them in detail but

14 I'd love to get them and also I'd like to get my letters to

15 Superintendent McElligott on the matter.

1 198 Q. Just for a moment. When you say you, as you say, peruse

17 these documents?

18 A. Peruse these documents.

1 199 Q. When did you do that?

20 A. In my solicitor's office.

2 200 Q. You have already told us where you did it, what I am asking

22 you, Mr. Gogarty, is when you did it?

23 A. Only a couple of months ago, less than a couple of months

24 ago.

2 201 Q. They were supplied to your solicitors by the Tribunal in or

26 about the same time as we got them which was in or about

27 November last, about the 9th November, isn't that correct?

28 A. Yeah, that's right.

2 202 Q. And your solicitor told you that these Garda documents had

30 now come to hand, isn't that right?

31 A. That's right, yeah.

3 203 Q. And he told you that they contained some very important

1 matters insofar as you are concerned, isn't that right?

2 A. That would be right, yeah.

204 Q. And he said you better come into my office, Jim, and read

4 these letters, isn't that right?

5 A. That's right.

205 Q. Or read these documents?

7 A. That's correct, yes.

206 Q. And you made an appointment to go into McCann Fitzgerald's

9 office down in the IFC, isn't that right?

10 A. You know all about this.

1 207 Q. No, no, I am asking you.

12 A. You are telling me I did.

1 208 Q. You can take it I am asking in the form of a question.

14 A. You are asking me now, okay.

1 209 Q. I am, Mr. Gogarty. Did you make an appointment to go into

16 your solicitor's office for the purpose of reading these

17 documents?

18 A. My solicitors asked me to go in.

1 210 Q. And you did go in?

20 A. I did go in, correct.

2 211 Q. And your solicitors handed you the file of Garda documents,

22 isn't that right?

23 A. Oh sure there was -- I could be reading documents

24 until -- if I live for the next couple of years, you know.

2 212 Q. Did your solicitors at this prearranged meeting hand you

26 the file --

27 A. They showed me documents.

2 213 Q. Of the Garda documents?

29 A. She showed me documents. With all due respects, I perused

30 them. I never read them what that I considered in detail,

31 in detail. I like to take things home with me and read

32 them in the bed at night and study them. I didn't get

1 that opportunity and there is an awful lot of documents
2 there that I haven't read yet.

214 Q. Did you read them in your solicitor's office?

4 A. I perused them, yeah, not them all.

215 Q. How long did you spend perusing them?

6 A. Oh very little, very little.

216 Q. How long?

8 A. Oh I'd say, I'd say that -- I'd say no more than a half an
9 hour or so. That sort of thing -- in fact I was hoping
10 that I could take them home with me and my solicitor
11 impressed upon me that they preferred I wouldn't.

1 217 Q. I understand that. And did you discuss the contents of
13 these documents then? I am not asking you to tell us the
14 details of the discussion, I am just asking you, did you
15 discuss them?

16 A. Not at length. I did discuss them but not at length.

1 218 Q. But you did discuss them?

18 A. Not at length.

1 219 Q. And I suggest to you that during that particular meeting,
20 you must have read the documents which had been prepared
21 and written by Inspector Harrington?

22 A. I couldn't swear to that. I couldn't swear to that.

2 220 Q. And that you knew that he was preparing these documents in
24 order to report to his superior officers on his
25 investigations into the allegations of bribery and
26 corruption which you had made against Detective Sergeant
27 Sherry.

28 A. I am not sure of that, I don't know that.

2 221 Q. You don't know that?

30 A. No.

3 222 Q. I see.

32 A. I thought that I was reporting them to the Tribunal, but

1 not to his superior officer.

223 Q. You thought he was reporting to the Tribunal, not his chief

3 superior officer?

4 A. That was the context I took it.

224 Q. You read it in that context, was it?

6 A. Just perused it, yeah.

225 Q. You see, Mr. Gogarty, you have a remarkable recall for some

8 details. I am just wondering how you can't recall the

9 details of documents which you read five or six weeks ago,

10 perhaps three months ago?

11 A. Do you want me to come in on that? I am only human like

12 yourself. You can introduce phrases too, that you say now

13 are not appropriate. You are human too, do you see?

14 Let's be candid about this, do you know?

1 226 Q. Because you see --

16 A. I am in the dock at one minute and I am not in the dock the

17 other minute.

1 227 Q. I have already explained that to the Tribunal. That the

19 use of the word 'dock'...

20 A. It has caused me an awful lot of distress.

2 228 Q. You can take it, Mr. Gogarty, that that was an inadvertent

22 use of the term.

23 A. Coming from a senior counsel of your calibre, I am telling

24 you I take it with a pinch of salt.

2 229 Q. We will leave it now for the moment. I will leave it... I

26 just want to ask you this, you see this seems to me that

27 this would be something which would be very present in your

28 mind, Mr. Gogarty, for this reason, because on the 12th

29 October of that last year, you didn't make a statement, you

30 swore an affidavit relating to all of the evidence that you

31 were going to give to this Tribunal, isn't that right?

32 A. As far as possible, yeah.

230 Q. And this wasn't just a statement that you dictated. This
2 was a statement that you had made in the form of affidavit
3 and you swore an oath that everything in that statement was
4 the truth, isn't that right?

5 A. That's right, yes, Sir.

231 Q. In the course of that statement, you referred --

7 A. Just a liability --

232 Q. Of course. You referred in paragraph 88 to Detective
9 Sergeant Sherry's failure to have a prosecution, isn't that
10 right?

11 A. It was practically an obsession with me.

1 233 Q. Yes indeed. And what you said --

13 A. For four years, five years, six years, six years --

1 234 Q. You didn't use the word, name the detective -- what you
15 said "I was and still am at a loss to understand why no
16 criminal prosecution was never initiated by the Gardai
17 against Joseph Murphy Jnr or even why no file in the case
18 was ever sited to the DPP for consideration." Then you add
19 this; "Regrettably, as far as I can see no, legal or
20 rational reason for that decision -- there was no legal or
21 rational reason for that decision of the Gardai. I
22 eventually came to the belief, rightly or wrongly, that
23 improper influence must have come to bear on the Gardai for
24 such a decision to have been made."

25 .

26 Now do you remember incorporating that statement in the
27 affidavit which you swore on the 12th October last?

28 A. I do, yeah, I do.

2 235 Q. Now I have to suggest to you that if that matter was
30 present in your mind on the 12th October when you swore
31 that statement, it was even more present in your mind when
32 you were handed the file of Garda documents some weeks

1 later to read.

2 A. Not necessarily. That's your suggestion.

236 Q. No. I am putting it to you, you can either agree or

4 disagree with the suggestion.

5 A. I disagree with your suggestion.

237 Q. I see. So we have to conclude then, Mr. Gogarty, that

7 although you had referred to this matter in your sworn

8 affidavit, when you got the Garda documents within three or

9 four weeks of making that affidavit, you were unconscious

10 of the fact that these documents might record you as saying

11 that Detective Sergeant Sherry had been bribed, is that

12 what you are asking us to accept?

13 A. No, I don't I want you to repeat that because you have a

14 funny way of putting things to me.

1 238 Q. All right. I will repeat it to you, Mr. Gogarty. I am

16 suggesting to you that bearing in mind you had included

17 this statement in an affidavit which you made on the 12th

18 October last year, bearing that fact in mind when you were

19 handed the Garda documents some weeks later, you read them

20 to see in what way you had been recorded in making

21 allegations against Detective Sergeant Sherry. Do you

22 understand the question?

23 A. I understand it, but you must remember, with all due

24 respects, Mr. Cooney, that if you were prepared not to be

25 selective, then if you go back and look at all the other

26 documents, you see the context that you are talking about,

27 because -- sorry... Was I interrupting, was I?

2 239 Q. No.

29 A. Sorry, because there are contemporaneous documentation to

30 show where for four years I was living in fear and dread of

31 a fella that had rang me up twice in the night in June 1994

32 and threatened not to leave a roof over my head. I will

1 kick every bloody bone in my body and he wasn't charged on
2 credible evidence, that today is sticking out a mile that
3 if that was done at the time, we wouldn't be here today and
4 I say, and repeat, that it was an error of judgement on Mr.
5 Sherry's part and I accept that there was no improper
6 influences. But I was led to believe that I had no
7 alternative but to think it after five years, five years,
8 going through everything, with TDs, Mr. McDowell, Tommy
9 Broughan, my solicitors, the ministers for justice in the
10 past and present government. And here I am today --

11 .

12 CHAIRMAN: Mr. Cooney, before we pass from the matter
13 which I hope we are about to do so --

14 .

15 MR. COONEY: No, I am not, Mr. Chairman.

16 .

17 CHAIRMAN: In due course, would you be kind enough to look
18 at the last two lines of paragraph 88, in fairness to the
19 witness, and in fairness to the cross-examination you have
20 been putting, do you not consider they are relevant?

21 .

22 MR. COONEY: I have read them out.

23 .

24 CHAIRMAN: No, you haven't. As far as I know you
25 haven't.

26 .

27 MR. COONEY: I beg your pardon?

28 .

29 CHAIRMAN: You ended at the word Gardai.

30 .

31 MR. COONEY: No, "I said I eventually came to the belief
32 rightly or wrongly that improper influences must have come

1 to bear on the Gardai for such a decision to have been
2 made."

3 .

4 CHAIRMAN: Would you think it's not reasonable to inquire
5 what he means by the words rightly or wrongly?

6 .

7 MR. COONEY: No, with respect, Mr. Chairman. It's for
8 me --

9 .

10 CHAIRMAN: If it doesn't commend itself to you, leave it.

11 .

12 MR. COONEY: With respect, Mr. Chairman, first of all, can
13 I establish this, I may be wrong but I think I did read out
14 that section of the affidavit and my colleagues --

15 .

16 CHAIRMAN: I stand corrected, you did. That's first of
17 all. I didn't note it.

18 .

19 MR. COONEY: I understand.

20 .

21 CHAIRMAN: It's my error.

22 .

23 MR. COONEY: There is a lot being said. It's difficult
24 to pick it all up. I quite understand.

25 .

26 Mr. Gogarty, I want to put another matter to you now. You
27 speak very highly of Superintendent McElligott, isn't that
28 right?

29 A. Yes.

3 240 Q. And I think he is the member of the -- well he is the
31 senior member of the Garda Siochana who has had most
32 contact with you, isn't that correct?

1 A. That's correct.

241 Q. I think he first saw you perhaps early in 1997, isn't that

3 right?

4 A. That's right.

242 Q. And since that time, you have had many, many contacts with

6 him?

7 A. Personally and in correspondence, yes.

243 Q. And in correspondence?

9 A. That's right.

1 244 Q. And certainly your meetings in context with him go into

11 double figures at least, don't they?

12 A. Oh they would, yeah and then through my solicitors as well.

1 245 Q. Yes, and he had been up to Newry to see your solicitors in

14 Newry, isn't that right?

15 A. That's right.

1 246 Q. He had exchanged a long correspondence with them, isn't

17 that right?

18 A. Some correspondence with them, yeah.

1 247 Q. And I take it --

20 A. That should be read into the Tribunal, I feel. Maybe...

2 248 Q. I take it then that you both like and trust Superintendent

22 McElligott?

23 A. I did, I have great trust for him, great respect for him.

2 249 Q. And you regard him as a very good police man?

25 A. Oh first class, first class.

2 250 Q. And who has all of the qualities that you'd expect in a

27 senior officer including detail to accuracy, isn't that

28 right?

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

3 251 Q. The reason why I am asking you these questions, Mr.

31 Gogarty, is that Superintendent McElligott also records you

32 as saying to him that Sergeant Sherry had been bribed.

1 Now, do you question what Superintendent McElligott had
2 written down?

3 A. I feel I would at this stage. I'd like to see that -- I
4 didn't read that statement, honest to God.

252 Q. Well, I will read out the section --

6 A. Could I have a look at it?

253 Q. No, I am going to read it out.

8 A. You can't be selective. I don't want to be selective.

254 Q. Mr. Gogarty, I am reading out to you the portion of the
10 statement which deals with this and he says, he is
11 referring --

12 .

13 MR. CALLANAN: This is a statement. I think Mr. Cooney
14 at the very least should identify the document.

15 .

16 CHAIRMAN: Mr. Cooney is asking a question. He is
17 formulating a question based upon a portion of a written
18 statement. He is entitled to do that. We will see what
19 flows from that.

20 .

2 255 Q. MR. COONEY: Now, Superintendant McElligott is writing
22 about the interview which he had with you on the 15th
23 February, of -- sorry, I beg your pardon on the 15th
24 February of 1997. Do you follow me, Mr. Gogarty?

25 A. I do.

2 256 Q. And also present at that interview was Inspector
27 Harrington?

28 A. That's right.

2 257 Q. Do you recall that?

30 A. That's right.

3 258 Q. Now, I have already put to you what Inspector Harrington
32 recorded you as having said about Detective Sergeant Sherry

1 but you say that's not true, isn't that right?

2 A. That's right.

259 Q. Okay. Now, this is what Inspector McElligott recorded you
4 as having saying. "On the 15th February, 1997, Inspector
5 Harrington, Raheny station, and I met James Gogarty by
6 appointment at his residence, Mount Prospect Avenue,
7 Clontarf. At this meeting, I outlined the purpose of our
8 visit and set out the approach to be taken in relation to
9 taking his statement. Mr. Gogarty pointed out that he was
10 talking to us "on a confidential basis" and that we were
11 not to act on these talks."

12 .

13 Now, let me pause here for a moment. Is that an accurate
14 record of what you said to him?

15 A. That would be accurate.

1 260 Q. He then continues. "He said he would be willing to make a
17 statement if given immunity from prosecution." Was that an
18 accurate recording of what you said?

19 A. That's not accurate.

2 261 Q. Okay. He is wrong there. He then records you as saying,
21 I quote now from Superintendent McElligott's statement.
22 "He also sought a copy of the Garda investigation file --

23 A. I did.

2 262 Q. Just a moment please, let me finish "He also sought a copy
25 of the Garda investigation file --

26 A. Who is 'he'?

2 263 Q. He is referring to you.

28 A. Oh me, yeah --

2 264 Q. He, that's you, Mr. Gogarty, "He also sought a copy of the
30 Garda investigation file in relation to the threatening
31 phone calls from Mr. Joseph Murphy Jnr." Now I want to
32 pause here and ask you is that an accurate recording of

1 what you said at the meeting?

2 A. That's very accurate because that was the primary issue

3 that I was raising with him at the meetings, you see.

4 That was the issue.

265 Q. All right. So we have established now that in that

6 respect at least Superintendent McElligott was accurately

7 recording what you were saying to him?

8 A. Completely accurate, yeah.

266 Q. Superintendent McElligott now continues in his statement

10 and I am quoting; "He disclosed details of the background

11 to the Court proceedings which led to the telephone call

12 from Joseph Murphy jnr. on the night of the 19th June,

13 1995."

14 A. I did?

1 267 Q. Yeah.

16 A. Yeah.

1 268 Q. And again, Superintendent McElligott is accurate in

18 recording that?

19 A. Oh yeah.

2 269 Q. His statement continues, and I am now quoting from

21 Superintendent McElligott's record of what he says you said

22 to him. Quote from the statement; "He" -- that's you, Mr.

23 Gogarty -- "He claimed that Detective Sergeant Sherry was

24 corrupt and had been bribed because he did not investigate

25 the incident properly." Is that an accurate statement?

26 A. I don't believe I said that, honest to God. I

27 said -- what I said was that my recollection is this, that

28 it was the bane of my life to get it investigated, his

29 conduct, and what he was charged... and I felt and I

30 pointed it out to him that there was such credible evidence

31 that Murphy was obstructing the course of justice and

32 interfering with witnesses and I wanted to see the

1 contemporaneous files that would have been in the Howth
2 Garda Station of what Mr. Sherry had recorded at that time
3 and his comrades, you know, and what he told to me was, he
4 assured me, Mr. Gogarty, that by the time he was finished
5 and we were finished the interviews, over a period, that he
6 said I would have no worries about my anxiety to get the
7 Garda files. And that's in a letter from me to him as
8 well too. That's in a letter from me to him as well
9 too. Could I see the letter too as well? You see, there
10 is so many letters there -- I was a devil to write
11 letters. But there is so many letters there you know,
12 contemporaneous letters, some of them not answered, you
13 know. And I think he would agree, because he didn't deny
14 it, that I'd say 95 to 97 percent of my discussions with
15 him over the first four meetings related to Mr. Sherry's
16 investigations, into the intimidation that were causing us
17 terrible concern and that we had no protection. I
18 couldn't go out at all, out the front door. That's the
19 way we were living. And even I suggested that at this
20 late stage, the crime doesn't go away and that it was
21 possible that it could be reviewed and that Murphy would
22 still be charged and brought within the jurisdiction of the
23 country here so that --

24 .

25 CHAIRMAN: Mr. Gogarty, I think you are straying very far
26 from the question you were asked. Perhaps Mr. Cooney
27 would repeat the question because I think you have
28 forgotten it by now.

29 .

30 MR. COONEY: Yes I will, Mr. Chairman. I asked you, Mr.
31 Gogarty, did Inspector McElligott accurately record what
32 you said to him about Sergeant Sherry being bribed and

1 being corrupt?

2 A. I feel he is not accurate in it, no, but I am not
3 suggesting that it was done to just to damage me, it's my
4 recollection and his would be somewhat different you know.

270 Q. Then can we summarise this, Mr. Gogarty, you never made any
6 allegation of corruption or bribery against Sergeant Sherry
7 to either Detective Garda McEneaney to Inspector Harrington
8 or to Superintendent McElligott, is that right?

9 A. Well I suppose you know, I don't know how I explained these
10 things.

1 271 Q. Well truthful --

12 A. I will tell the truth. That I felt I may have said a lot
13 of things but I felt that probably it could easily be
14 implied all right, that that was at the back of my mind, do
15 you know? But even to this day I feel strongly that it
16 was an error of judgement and I repeat but I accept with
17 the recent explanations we got that there was no improper
18 influences brought to bear on him. That he made an error
19 of judgement. I am saying that with all due respects and
20 that's as far as I can go.

2 272 Q. I think, Mr. Gogarty, you know well, Mr. Gogarty, that
22 that's not an answer to the question I have asked you. I
23 asked you a very specific question and it's this. I will
24 repeat it. Are you saying that Detective Garda McEneaney,
25 Inspector Harrington, Superintendent McElligott were all
26 inaccurate when they record you as levelling accusations of
27 bribery and corruption against Sergeant Sherry?

28 A. Of I don't remember making an allegation of bribery and
29 corruption. If I did, I am terribly sorry but I don't
30 believe I did it.

3 273 Q. Again that's not an answer to the question I have asked
32 you.

1 .

2 MR. GALLAGHER: I think in fairness he has answered the
3 question three times in fairness.

4 .

5 MR. COONEY: He hasn't, with respect.

6 .

7 CHAIRMAN: If you can get a more cogent answer, I wish you
8 good fortune.

9 .

10 MR. COONEY: I will try it once more, Mr. Chairman.

11 A. The best way to get it is when cross-examining me, is to
12 read all the documentation contemporaneous at the time.

1 274 Q. Mr. Gogarty, look, this is what we have been reading for
14 the last twelve months.

15 A. You are preventing full disclosure. Let's be candid about
16 it. You wouldn't let me read in the Conroy's affidavit
17 which would tell a lot of the truth. Don't be laughing at
18 me now please. With all due respects. You have treated
19 me as a criminal already by your earlier references, you
20 know. And I have to be very careful with you, so I
21 have.

2 275 Q. Indeed you don't, Mr. Gogarty --

23 A. I am not trying to be telling lies, but I have to be
24 careful of you, so I have.

2 276 Q. All right, Mr. Gogarty. I will just ask you one more
26 time. Assume for a moment, indeed it will be a fact that
27 Detective Garda McEneaney, Inspector Harrington and
28 Sergeant McElligott will be giving evidence at this
29 Tribunal at some later stage.

30 A. Yes, and that will be grand.

3 277 Q. And if they say under oath that you made these specific
32 charges of bribery and corruption against Sergeant Sherry,

1 would they be lying in the witness-box?

2 A. That would be fair enough. I am not suggesting that they

3 be doing, but let them give direct evidence and be

4 cross-examined.

278 Q. No, no, no, I am asking you would that be true or false

6 evidence?

7 A. I beg your pardon?

279 Q. Would that be true --

9 A. It's not for me to judge. That's the man that's going to

10 judge.

1 280 Q. You were there, Mr. Gogarty.

12 A. I am not going to judge.

1 281 Q. Would that evidence be false or true?

14 A. What?

1 282 Q. Would that evidence be false or true?

16 A. I don't know what you want me to say. All I am saying is

17 this, that if the truth was to be told, it has to be told,

18 the whole lot of it and they can give direct evidence and

19 be cross-examined and let the Tribunal then decide on that

20 and if I am in the dock, then that's another day's work, so

21 it is.

2 283 Q. You see, Mr. Gogarty, I think that from the very beginning,

23 you were aware --

24 A. Sure I think an awful lot of blooming things --

25 .

26 CHAIRMAN: Please, Mr. Gogarty, let's have some order in

27 the proceedings.

28 A. I am sorry, Your Honour.

29 .

30 MR. COONEY: Just listen to me for a moment, Mr. Gogarty.

31 I suggest to you that you knew that your charges against

32 Sergeant Sherry were untrue. You knew that they would be

1 an embarrassment to you in this Tribunal and you have been
2 attempting to avoid that embarrassment by A, saying that
3 you never made these allegations to the three members of
4 the Gardai in question and (B) you have been attempting to
5 avoid the embarrassment by suggesting that it wasn't until
6 five or six weeks ago that you learned of the reasons why
7 Sergeant Sherry decided not to prosecute Mr. Murphy.

8 A. I have no fear of being embarrassed. I am at the end of
9 my tether with you. I am not afraid of being embarrassed.

1 284 Q. You have said, Mr. Gogarty, on Day 12 I think when you
11 dealt with this matter and again this morning, is that you
12 didn't know the reasons why Sergeant Sherry decided not to
13 prosecute Mr. Murphy until four or five weeks ago, isn't
14 that right?

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

1 285 Q. Well I suggest to you that that is simply a misleading
17 answer and that you were well aware from a number of
18 different sources both of Sergeant Sherry's decision and
19 his reasons for it.

20 A. Produce them so. Produce them here.

2 286 Q. I am suggesting it.

22 A. Sure you are a devil for making suggestions. Produce them
23 to back up what you are suggesting --

24 .

25 CHAIRMAN: Mr. Cooney is entitled to conduct his
26 cross-examination as he desires and kindly answer the
27 question he asks.

28 A. I am trying...

29 .

30 CHAIRMAN: Now, Mr. Cooney, would you put one of the
31 sources before we lose ourselves again.

32 .

1 MR. COONEY: I am, Mr. Chairman, but I am going to lay the
2 ground work for this.

3 .

4 CHAIRMAN: Certainly.

5 .

6 MR. COONEY: Mr. Gogarty, are you now saying, without
7 equivocation or qualifications, that you never learned of

8 Sergeant Sherry's reasons for his decision until four to

9 five weeks ago?

10 A. Could you produce the source of it, please?

1 287 Q. No. Is that your evidence?

12 A. Could you produce the sources -- you are referring to

13 sources.

14 .

15 CHAIRMAN: Mr. Gogarty, I hate interrupting your answers,

16 but on this occasion, it's a simple question. Do you say

17 it was four or five weeks ago was the first occasion which

18 you knew -- became aware of the reasons why Sergeant Sherry

19 did not proceed?

20 A. That's right.

21 .

22 MR. COONEY: I see.

23 .

24 CHAIRMAN: Could we then put the source, please, before we

25 lose ourselves.

26 .

27 MR. COONEY: Mr. Chairman, I am. I am going to do it. I

28 put it to you that you were informed directly and

29 personally by Detective Sergeant Sherry of his reasons and

30 I also put it to you that your solicitor was informed of

31 them. Now, is that correct or incorrect?

32 A. Well, I can't speak for my solicitor. I will speak for

1 myself. What -- if you said he told me, that's incorrect,
2 because that's not the way I interpreted what he told me.
3 He told me at the time that he had -- he had a discussion
4 with somebody in the DPP's office at a social function and
5 he raised the matter with him and they had a chat about it
6 and they came to the conclusion that there wasn't
7 sufficient evidence to warrant submitting a full file.
8 That's what that man told me at the time. And I wrote to
9 my solicitor and told him that, at that time. That's in
10 1984. Look at the letters.

1 288 Q. Let's just stop for a moment here now, Mr. Gogarty. First
12 of all, you do agree that you had a conversation with
13 Detective Sergeant Sherry about his decision not to take
14 criminal proceedings against young Mr. Murphy?

15 A. Certainly.

1 289 Q. You had such a discussion?

17 A. Yes, and sorry, there is a letter on file where I wrote to
18 my solicitor immediately setting out what I believed,
19 Sergeant Sherry told me. That's on file in 1994. Are
20 you saying I was concocting that as well?

2 290 Q. I just want to establish this point. That he personally
22 conveyed his decision to you, is that right?

23 A. Yes.

2 291 Q. He did, okay.

25 A. Which to me was completely different to what I read a
26 couple of months ago.

2 292 Q. Just let me move on from there. I also want to put it to
28 you that when he, in person, told you of his decision not
29 to prosecute, he also gave you his reasons.

30 A. I told you what the reasons were. They are in a letter I
31 wrote to my solicitors. I told you. Could we have it?

3 293 Q. Let me put it to you now and I am quoting from Detective

1 Sergeant Sherry's own statement.

2 A. Could I have a look at that too?

294 Q. No. I am going to put it to you and if I am inaccurate,

4 Mr. Gallagher, who is counsel for the Tribunal whose

5 witness you are, will correct me. It's tab 41.

295 Q. I am now going to put to you from Detective Sergeant

7 Sherry's statement.

8 .

9 CHAIRMAN: Would you kind enough to tell me what page? 1,

10 2, or 3 --

11 .

12 MR. COONEY: I beg your pardon, oh yes, I am on page 3, on

13 the third page.

14 .

15 CHAIRMAN: Very good.

16 A. What's the date of that statement?

17 .

18 MR. COONEY: Don't ask me questions, Mr. Gogarty.

19 A. Why not?

20 .

21 CHAIRMAN: Mr. Gogarty, you are not allowed to ask

22 questions from counsel who is cross-examining you. It's

23 part and parcel of the rules of procedure.

24 A. Oh sorry. I thought --

25 .

26 MR. CALLANAN: Chairman, I do think it's perfectly

27 reasonable if the witness asks that the document that is

28 being put to him that is not being proved in evidence, if

29 he asks what is the date of that document or for that

30 document to be identified, in my submission that is a

31 question put by Mr. Cooney and he is not entitled to

32 withhold an answer.

1 .

2 MR. COONEY: This is a document, Mr. Chairman, which has
3 been given to us by the Tribunal.

4 .

5 CHAIRMAN: First of all --

6 .

7 MR. GALLAGHER: It's related to the Tribunal in response
8 to the affidavit sworn by Mr. Gogarty and whilst it is
9 undated, one can only infer that it was prepared subsequent
10 to the circulation of the affidavit at the end of last
11 year.

12 .

13 MR. COONEY: Well that suggests --

14 .

15 CHAIRMAN: Nobody here knows unless you can clarify.

16 .

17 CHAIRMAN: Well we can't either.

18 .

19 MR. COONEY: I was supplied by the documents from the Garda
20 Siochana. I presume Mr. Gallagher is not questioning the
21 accuracy of the documents?

22 .

23 CHAIRMAN: Nobody is questioning the accuracy. Let's get
24 on with the case.

25 .

26 MR. COONEY: I will, Mr. Chairman, I will. Now on page 3,
27 Sergeant Sherry says he discussed the case with Detective
28 Garda McEaney. Then he says "Following the discussion
29 and having reviewed the evidence, I was satisfied that no
30 threat existed to Mr. Gogarty. I made the decision not to
31 investigate the matter further and I based my decision on
32 the following..."

1 .

2 Now, I just want to pause there. I am going down to a
3 later stage where he says "I subsequently visited Mr.
4 Gogarty in his home to inform him of my decision" and you
5 agree that he did do that?

6 A. He did, yeah.

296 Q. And he goes on to say "I explained my reasons to him." You

8 disagree with that?

9 A. First of all, what's the date -- when did he make the
10 statement?

11 .

12 MR. GALLAGHER: I think in fairness to the witness he
13 should, because Mr. Cooney has jumped from a situation
14 where he was talking about the decisions and the reasons
15 for it. He doesn't give the reasons. Then he goes
16 down --

17 .

18 MR. COONEY: I am going to come to the reasons.

19 .

20 MR. GALLAGHER: I think in fairness the witness should
21 have a copy of this page of the statement.

22 .

23 MR. COONEY: There is no requirement when counsel is
24 cross-examining out of a document to put that document to
25 the witness unless it's intended to put it into evidence.

26 I don't intend to do it.

27 .

28 MR. GALLAGHER: The Tribunal intends to put it into
29 evidence.

30 .

31 MR. COONEY: Then you should have put it in when you were

32 leading your own evidence through this --

1 .

2 CHAIRMAN: Gentlemen, let's not continue this
3 discussion. We want to find out, first of all, what
4 reasons Mr. Sherry gave to this witness and as to whether
5 they compare with the reasons in this statement.

6 .

7 MR. COONEY: That's what I am coming to do now,
8 Mr. Chairman. Now, I am quoting. He says "I made the
9 decision not to investigate the matter further and I based
10 my decision on the following reasons. 1: There was a very
11 obvious conflict of evidence available.

12 2: The alleged culprit resided in England which was
13 outside our jurisdiction.

14 3: Mr. Murphy, the alleged culprit, had freely admitted
15 making the phone call despite the fact that he was not
16 obliged to talk to us.

17 4: I was also aware that Mr. Murphy had denied the
18 allegations and given an undertaking not to have any
19 further communications with Mr. Gogarty except through
20 solicitors.

21 5: I was aware that there was a High Court appeal pending
22 between the parties and I did not think it would be prudent
23 for the Gardai to become embroiled in a civil matter.

24 .

25 My decision not to proceed further with the investigation
26 was based on my professional judgement as a member of the
27 Garda Siochana of 23 years' experience at the time. My
28 assessment of the case was based on a thorough examination
29 of facts available to me and no influence from any other
30 person or outside agency was brought to me on me; good, bad
31 or indifferent. The decision was mine and mine alone not
32 to proceed with the investigation."

1 .

2 I want to pause here. Do you remember the five reasons
3 which I just read out to you?

4 A. I heard you say them now.

297 Q. Now I have to put it to you, Mr. Gogarty, that when
6 Sergeant Sherry visited you in your home and told you what
7 his decision was, he also told you what the reasons were,
8 as I have outlined there. Do you agree or disagree?

9 A. I disagree. I will tell you why, because I will tell you
10 what. First of all, both Mr. McEneaney and Sergeant Sherry
11 promised me that they'd send a file to the DPP, the DPP,
12 and they didn't. And his reason was that he had discussed
13 the matter at a social function with an officer of the DPP
14 and they agreed among themselves that there was a couple of
15 things that wouldn't warrant further investigation,
16 including that my wife Anna wasn't an independent witness
17 and a few things like that and concurrently with that, I
18 wrote to my solicitor, spelling out, I think I numbered
19 them, what Mr. Sherry had told me. Could I see that
20 letter please? That's an important letter. A very
21 important letter.

2 298 Q. All right, is this a letter --

23 A. To Mr. Hegarty.

2 299 Q. This is a letter of the 3rd August of 1994?

25 A. Roughly about that time. Could I read that?

2 300 Q. This is document --

27 A. Would that be the one?

2 301 Q. I don't know if this document... Yeah, this is -- the
29 reference is JG 10/56

30 .

31 CHAIRMAN: Mr. Cooney, I think we can make the document
32 available from here, from this side of the house.

1 .

2 MR. COONEY: Very well.

3 .

4 CHAIRMAN: Just, it will have to be printed. Now, would
5 you confirm the reference please?

6 .

7 MR. COONEY: Yes, I will, Mr. Chairman. The reference is
8 obviously a Tribunal reference, it's JG 10-56.

9 .

10 CHAIRMAN: We will get that printed. It's a matter of
11 two or three minutes.

12 .

13 MR. COONEY: All right, Mr. Chairman. Well then just
14 perhaps, I will leave that for a moment.

15 .

16 CHAIRMAN: Leave that for a moment and come back to it.
17 Mr. Gogarty we are getting a copy of the letter for you.
18 We don't have it immediately available. It will be
19 available within five minutes.

20 A. That would be grand. I'd like to see it.

21 .

22 MR. COONEY: While we are waiting for that, Mr. Gogarty, we
23 have just established definitively that you said that
24 Sergeant Sherry never gave you those reasons in the course
25 of his visit to you, is that right?

26 A. That's what I recollect, yeah.

2 302 Q. Okay. Now he also, I think -- your then solicitor Mr.
28 Hegarty on your instructions wrote to complain about the
29 decisions.

30 A. He wrote twice.

3 303 Q. Yes.

32 A. He wrote two letters which are important and should be read

1 in too as well.

304 Q. We understand about that but I just want to establish the

3 fact and I think, as a result of these letters, Detective

4 Sergeant Sherry got in touch with your solicitor and

5 explained his reasons, isn't that right?

6 A. Informally.

305 Q. Yes.

8 A. He said it was informal.

306 Q. And Mr. Gallagher has read out a memo by Mr. Hegarty of

10 that meeting, isn't that right?

11 A. Yeah, and it's an undated memo.

1 307 Q. Yes?

13 A. To my recollection.

1 308 Q. Well, are you criticizing Mr. Hegarty for this?

15 A. Somewhat, yeah.

1 309 Q. I see.

17 A. Somewhat.

1 310 Q. Lack of trust, is that right?

19 A. Well no, but I think -- the way I look at it is this, there

20 is a way of doing things. I am not a saint either, but

21 for a solicitor you see, that he wrote first of all

22 formally, I don't know the date of the letter, and he got a

23 formal reply from Sergeant Sherry, is that correct? You'd

24 know this. Oh God you should.

2 311 Q. Please -- Mr. Gogarty, I just want to put it to you that in

26 addition to Sergeant Sherry giving you his reasons why he

27 was not prosecuting personally, he also gave your solicitor

28 the reasons. Now, do you agree or disagree with that?

29 A. I'd like the three letters to be read into the Tribunal.

3 312 Q. Will you please answer my question? Did he or did he not

31 in detail explain to your solicitor why he was not

32 prosecuting?

1 A. I believe he did, but my solicitor didn't tell me.

313 Q. Your solicitor didn't tell you?

3 A. Yeah, that's right.

314 Q. Is this one of the reasons why you lacked some trust in Mr.

5 Hegarty, is that correct?

6 A. Yeah, that's right, part of it, certainly, certainly.

315 Q. So we had Sergeant Sherry behaving, at least making

8 judgement, you aver, according to your use of terms and you

9 now had your solicitor acting less than in a trustworthy

10 fashion for you, is that right?

11 A. The way I put it, was less than diligent, I think that's

12 the way I put it.

1 316 Q. The words you used was that he fell short in trust.

14 A. But on the basis that he wasn't diligently pursuing my

15 interests. That's what I thought.

1 317 Q. I have to put it to you, Mr. Gogarty, is that when you

17 don't get your own way, nobody's reputation is safe from a

18 savage verbal assault by you.

19 A. That's what you are saying, is it?

2 318 Q. That's what I am putting to you.

21 A. That's what you are saying. I can't change your mind.

2 319 Q. You see, I am putting it to you that you attempted to

23 destroy the good name of Sergeant Sherry and jeopardise his

24 career and you are now attempting to damage the reputation

25 of your former solicitor, not for any good or valid reason,

26 but for selfish personal reasons of your own.

27 A. Completely incorrect. Based on -- I am talking about what

28 arose and my feelings because of, I felt, questionable

29 conduct. On both parts, questionable conduct.

3 320 Q. You see I have to put it to you that in one document given

31 to us by the Tribunal, it's an attendance by Mr. Hegarty on

32 you, that perfectly summarises your attitude and approach

1 when you don't get your own way, to put it in simple
2 childish terms.

3 A. Everybody has an opinion.

4 .

5 MR. CALLANAN: Please, Mr. Chairman, can I just say -- I
6 appreciate that in relation to the letter that is currently
7 under discussion, that Mr. Gogarty asked that it be
8 produced. As I understand the position, Mr. Cooney has
9 just made reference to another document which is a
10 privileged document made in respect of which, in respect of
11 which a claim of privilege was made in the affidavit of
12 discovery of Mr. Gogarty. That is not a document which
13 Mr. Cooney should have.

14 .

15 MR. COONEY: It couldn't have been. Mr. Callanan can't
16 have it both ways --

17 .

18 CHAIRMAN: Just a moment. This is a matter on a
19 solicitor's file, isn't it?

20 .

21 MR. COONEY: Yes.

22 .

23 CHAIRMAN: It's and an attendance between solicitor and
24 client.

25 .

26 MR. COONEY: Yes.

27 .

28 CHAIRMAN: Presumably relating to a matter, the subject
29 matter of this question. And presumably Mr. Gogarty was
30 in his solicitor's office for a purpose, which was legal
31 advice.

32 .

1 MR. COONEY: Yes.

2 .

3 CHAIRMAN: In those circumstances, doesn't it fall within
4 the privilege --

5 .

6 MR. COONEY: No, it doesn't, Mr. Chairman

7 .

8 CHAIRMAN: Why?

9 .

10 MR. COONEY: First of all, documents to which the same
11 privilege might attach have already been opened, for
12 instance, Mr. Gallagher has already opened an attendance of
13 Mr. Hegarty's on this witness and put into evidence.
14 That's the first thing I will say.

15 .

16 Secondly, Mr. Chairman, privilege cannot be claimed
17 selectively. There was no objection to Mr. Callanan when
18 the Tribunal counsel opened attendances made by Mr. Sheedy,
19 Mr. Gogarty's present solicitor, in 1989. Now, it's
20 either all documents are privileged or they are not. You
21 cannot waive privilege in respect of some documents and
22 then seek to impose it on other documents.

23 .

24 The second point, Mr. Chairman, is that privilege doesn't
25 apply to these proceedings. It would be privileged in
26 relation to proceedings which are then being contemplated
27 and which were in fact instituted by Mr. Gogarty against
28 Mr. Murphy arising out of the telephone call.

29 .

30 CHAIRMAN: First of all, would you clarify one thing for
31 me, are you saying this this document was opened by the
32 Tribunal, this document that you are about to refer to?

1 .

2 MR. COONEY: Yes.

3 .

4 CHAIRMAN: Then can we have the reference?

5 .

6 MR. COONEY: This was in volume 12 and Mr. Gallagher

7 introduced this document. It's on page 41, but page 43

8 which have identified it. Yes, it's an attendance of the

9 2nd November by Mr. Hegarty of -- 2nd November, 1994.

10 That has been fully opened and introduced into evidence.

11 Now the attendance which I am now going to put to this

12 witness, relates to, it's dated the 14th November, it's 12

13 days later.

14 .

15 MR. GALLAGHER: I haven't seen this --

16 .

17 CHAIRMAN: Can I hear counsel for the Tribunal on this?

18 .

19 MR. GALLAGHER: I haven't seen or at least, if I have seen

20 the document in question, I haven't seen it this morning.

21 I don't know what document Mr. Cooney is referring to.

22 .

23 MR. COONEY: It's a document, Mr. Chairman, it's a document

24 contained in the book entitled "Reference Documents: 7th

25 January, 1999" given to us by the Tribunal at the

26 commencement of the hearing. That's where we found it and

27 that's why -- that's one of the reasons why I am entitled

28 to use it.

29 .

30 MR. CALLANAN: I want to make absolutely clear I have not

31 waived privilege in relation to documents. Mr. Gogarty

32 has waived privilege where legal professional privilege

1 existed. Now if Mr. Cooney wants to embark on this line
2 and he wants to discuss with me a reciprocal waiver of
3 legal professional privilege, I am certainly prepared to do
4 so. I have done nothing to waive my professional
5 privilege and I do not do so in present circumstances.

6 .

7 MR. COONEY: If a person doesn't claim something when it's
8 being exercised, that amounts to a waiver, in my respectful
9 submission.

10 .

11 MR. CALLANAN: Quite clearly claimed in the affidavit,
12 it's item 1414, 7th November 1994 and a claim of privilege
13 is clearly made in the affidavit as Mr. Cooney well
14 knows.

15 .

16 MR. COONEY: Well it was discovered to us by the
17 Tribunal.

18 .

19 CHAIRMAN: It may have been discovered to you by the
20 Tribunal but if an accident occurred, I think this should
21 be discussed between the two of you over lunch time and you
22 can deal with the matter tomorrow morning because we are
23 coming up to the one o'clock mark. Now, you can deal with
24 it tomorrow morning. You can find another subject for the
25 next quarter of an hour, but I want it cleared up between
26 the two of you. Or alternatively, we will be sitting here
27 at 2.15 on other matters and you can discuss it between now
28 and then.

29 .

30 MR. COONEY: What I can do now is, we have this letter, the
31 handwritten letter and so I will deal with that,
32 Mr. Chairman. This is a letter -- by the way,

1 Mr. Chairman, this is a document over which privilege too
2 could be claimed but it's not being claimed.

3 .

4 CHAIRMAN: This document has been -- the witness himself
5 has asked for this document. I can't very well deal with
6 privilege where the witness who wrote the document sends it
7 to his solicitor and purports to want to use it. I am not
8 going to get involved in a question of privilege about that
9 document.

10 .

11 MR. COONEY: I am not requesting that, Mr. Chairman, if you
12 just listen to me for a moment. The point I want to make
13 is this, Mr. Chairman, a witness or client cannot be
14 selective about privilege, produce one document which he
15 thinks is to his assistance --

16 .

17 CHAIRMAN: You will discuss that with your colleague at
18 the moment and we will resolve it if necessary at 2.15.

19 Let's go on to this document now.

20 .

21 MR. COONEY: This is a letter written to you, Mr. Gogarty,
22 to your solicitor dated 3rd August 1994. It's headed "Re:
23 threatening telephone calls from Mr. Joseph Murphy Jnr.

24 .

25 "Dear Michael,

26 Further to my telephone conversation with you yesterday
27 when I told you of the visit to me on Monday, 1st August,
28 by Detective Sergeant Sherry and Detective Officer
29 McEneaney, with brief details of the conversation, I list
30 herewith the details of Detective Sergeant Sherry's
31 statement to me, to the best of my recollection.

32 .

1 1: That he had spoken on the phone to Mr. Murphy.
2 2: That Mr. Murphy did not deny making the telephone
3 calls.
4 3: That Mr. Murphy did not deny making the threats but
5 they were idle threats and that he had no intention of
6 carrying them out.
7 4: That Murphy disputed mine and Anna's version of threats
8 and that he had two witnesses to the telephone calls.
9 5: That Murphy said that his motive for the calls was his
10 annoyance at subpoenas having been served on individuals
11 who had no involvement in the dispute between us.
12 6: Detective Sergeant said A, he did not get a written
13 statement from Murphy, B, he hadn't got the names of the
14 witnesses referred to by Mr. Murphy.
15 7: Detective Sergeant Sherry said Murphy give him a verbal
16 undertaking, not written, that he would make no more
17 threatening phone calls and that any ongoing communication
18 would be through his solicitors.
19 8: Detective Sergeant said he decided there was
20 insufficient evidence to support the charge against Murphy
21 and that my wife Anna would not be considered an
22 independent witness.
23 9: He said he had not furnished a file on the matter to
24 the DPP but he discussed the details with an official of
25 the DPP, as he was, and the official told him he would need
26 more supporting evidence before a charge would be
27 commenced.
28 10: Detective Sergeant Sherry said he had personally
29 decided to take no further action and he considered I
30 should pursue the matter with my solicitor and he said he
31 could cooperate with my solicitor and fill him in on his
32 role to date.

1 .
2 "I think I have covered the main thrust of the conversation
3 with the Gardai and would be obliged if you write to
4 Detective Sergeant Sherry for his account of the foregoing
5 as recounted by me. Please let me know when you have word
6 back from Detective Sergeant Sherry."

7 .
8 Now, there Mr. Gogarty, you are recounting to your own
9 solicitors details of the visit which you had from
10 Detective Sergeant Sherry and Detective Garda McEneaney,
11 isn't that right?

12 A. That's right.

1 321 Q. In which he had fully explained to you the background for
14 his decision, isn't that right?

15 A. Well it purported to, but it wasn't satisfactory to me.

1 322 Q. Of course not. We understand that?

17 A. Because he had promised -- he'd send the file to the DPP
18 formally but he even didn't discuss it formally. He
19 discussed it informally with the DPP. That's my
20 recollection and I wrote that on the the 3rd August, 1994.

2 323 Q. Then following your instruction to your solicitor -- did
22 you read them all?

2 324 Q. I read out the entire letter. Following your -- following
24 that letter, your solicitor wrote to Detective Sergeant to
25 expand on it, isn't that right?

26 A. That's right, that's right. And have we a copy of that
27 letter?

2 325 Q. And you also discussed the possibility of a private
29 prosecution, isn't that right?

30 A. Oh yes, yes.

3 326 Q. And you were advised against that, weren't you?

32 A. I was, yeah.

327 Q. You were told by Detective Sergeant Sherry why he was not
2 going to prosecute and his reasons for it and I have also,
3 it was put to you when you contemplated a private
4 prosecution, you were advised against that as well, isn't
5 that correct?

6 A. That's correct. What's wrong with that?

328 Q. I want to bring all of that back now to the statement which
8 you made under oath at this Tribunal, that you were unaware
9 of Detective Sergeant Sherry's reasons for his decision not
10 to prosecute until five or six weeks ago. I put it to you
11 that that's hocus pocus, you were always aware of it?

12 A. I say they are not rational reasons to any man in the
13 context of what we are doing here today. They are not
14 rational reasons. If Murphy was charged, as he should be,
15 even if it was prima facie and brought within this
16 jurisdiction, we would not be here today. That's all I am
17 saying.

1 329 Q. That's the whole point is it, Mr. Gogarty. If you don't
19 get your way, you will ruin other people's reputation out
20 of frustration, isn't that right?

21 A. What is wrong with them, that letter? What is wrong with
22 it? Is that an attempt to get my own way? It's an
23 attempt to get justice and proper regard for criminal
24 conduct.

2 330 Q. I suggest that you were seeking vengeance --

26 A. You can suggest until the cows come home.

2 331 Q. Let me finish please, Mr. Gogarty. I suggest that you
28 were seeking vengeance against Joseph Murphy Jnr because of
29 the telephone call and when Sergeant Sherry wouldn't
30 deliver to you on the vengeance that you were seeking, you
31 decided to destroy his reputation by making these very
32 serious allegations against him.

1 A. You can suggest anything and you can use the word vengeance
2 if you like. I was going through the courts of this land
3 to get what I considered justice. And I am entitled to do
4 that and I will continue to do that until I get justice and
5 I am going to intervene now please, if you don't mind me, I
6 am going to intervene --

332 Q. Mr. Chairman --

8 A. Please, I must do this because --

9 .

10 CHAIRMAN: Mr. Gogarty --

11 A. Yes, I will tell you what Mr. Justice, that Mr. Cooney --

12 .

13 CHAIRMAN: Please --

14 A. Mr. Cooney intervened the last day --

15 .

16 CHAIRMAN: Mr. Cooney, would you please allow me at least

17 hear what the man is about to say. I can only know it

18 when he says it.

19 A. The last day when I was giving direct evidence, Mr. Cooney

20 intervened --

21 .

22 CHAIRMAN: No, no I am not going to go back into something

23 that happened on another day.

24 A. I want to clarify my position because he put a spin doctor

25 effect on it.

26 .

27 CHAIRMAN: Mr. Gogarty, your counsel no doubt in due

28 course in time will clarify that when he is dealing with

29 you. I can't have you interrupting and coming back on

30 something that was dealt with two days ago. It will be

31 dealt with by your counsel and no doubt you will give him

32 precise instructions in that regard. But I conduct these

1 proceedings and I decide what order they are done.

2 A. I am very sorry --

3 .

4 CHAIRMAN: That's all right.

5 A. But I was doing it because --

6 .

7 CHAIRMAN: I understand. We will leave it there?

8 A. Can I explain myself?

9 .

10 CHAIRMAN: No, I appreciate that you want to get this

11 matter clarified. In due course your counsel no doubt

12 will do it for you on your instructions.

13 A. As a result of the last day --

14 .

15 CHAIRMAN: Please, Mr. Gogarty, I have made a ruling that

16 I am not allowing this intervention. Now, it doesn't mean

17 that you won't get an opportunity in due course to, through

18 your counsel, to air the matter.

19 A. Thank you very much. Thank you very much.

20 .

21 MR. COONEY: The point I was making to you, Mr. Gogarty, is

22 that you will go to any lengths, including jeopardising a

23 police officer's career in your pursuit of vengeance?

24 A. Sorry, I will just answer that question. I will fight to

25 death's door to stop people destroying the roof over my

26 head and breaking every bone in my body and I have no

27 apologies for that. No apologies whatsoever and to cause

28 me the distress they caused.

2 333 Q. I put it to you this was an offence which you said might

30 result in a person being bound over to the peace?

31 A. That's right.

3 334 Q. Bound over to the peace?

1 A. That's right.

335 Q. And for that objective, you were prepared to sacrifice the

3 career of a serving police officer, is that right?

4 A. Well, I believed that if it was brought, even on that basis

5 where he was bound to the peace, it would have instigated

6 proper investigations into the background of fraud,

7 conspiracy to fraud and the whole lot of Murphys'

8 conduct.

336 Q. All right. Let me give you another example of the sort of

10 lengths you'd go to and the way you damage people's

11 reputations if you don't get your own way, Mr. Gogarty.

12 As we already know, you had been -- you established contact

13 with Deputy Tommy Broughan in, sometime in 1995?

14 A. Anything wrong with that?

1 337 Q. Pardon?

16 A. Anything wrong with that? He is an elected

17 representative.

1 338 Q. Please just answer my question. That is fact, isn't it?

19 A. I am telling you there is nothing wrong with it. That's

20 my answer to the question

21 .

22 CHAIRMAN: The answer is the affirmative. Somewhat

23 convolutedly.

24 .

25 MR. COONEY: You see, I have to suggest that you first went

26 to him not to tell him about any payments to politicians

27 for corrupt purposes but to complain about the inactivity

28 of the guards in prosecuting Mr. Murphy Jnr, isn't that

29 correct?

30 A. To get an explanation, that's correct, that's correct.

3 339 Q. You asked him to take it up with the authorities, isn't

32 that right?

1 A. That's correct.

340 Q. And he asked a number of questions of the minister for
3 justice?

4 A. Yeah, that's correct.

341 Q. And you weren't satisfied with the answers you got?

6 A. No, sure you read the answers yourself. Would you be
7 satisfied with them?

342 Q. No, no, please just answer the question. You were not
9 satisfied?

10 A. No, my solicitor wasn't satisfied.

1 343 Q. Again I have to put it to you that --

12 A. Mr. Broughan wasn't satisfied.

1 344 Q. Let me finish. Let me ask the questions that, arising out
14 of your frustration at the failure to get what you thought
15 you were entitled to get, you levelled charges against
16 other people of grave misconduct, isn't that right, and
17 without any evidence to support them?

18 A. I raised issues that were questionable and should be
19 investigated.

2 345 Q. Let me quote a letter which you quote on the 29th December
21 of 1966 to Mr. Broughan. It's an exhibit in his affidavit
22 and he says, "Dear Mr. Broughan -- it's page 28,
23 Mr. Chairman.

24 .

25 CHAIRMAN: Sorry, what's the date of it?

26 .

27 MR. COONEY: It's the 29th December of 1996.

28 .

29 CHAIRMAN: Thank you.

30 .

31 MR. COONEY: Chairman, this was a document given to us by
32 the Tribunal, but we don't have a filing reference on it.

1 But it's document number 29 in the booklet containing
2 Deputy Broughan's statement of evidence, Mr. Chairman.

3 .

4 MR. GALLAGHER: It's out of sequence, datal sequence in
5 Deputy Broughan's affidavit.

6 .

7 CHAIRMAN: All right, we have found it.

8 .

9 MR. GALLAGHER: Can the witness be given a copy of this
10 letter please? (Document handed to witness.)

11 .

12 MR. COONEY: Now Mr. Gogarty, this is a letter which you
13 wrote to Mr. Broughan and you had a lot of correspondence
14 with him?

15 A. That's correct.

1 346 Q. And you had a lot of meetings with him?

17 A. That's correct.

1 347 Q. And in fact he took a lot of notes of what you said at
19 these meetings?

20 A. That's correct.

2 348 Q. He was extremely diligent in the way...

22 A. Very good, very good.

2 349 Q. Okay. This is one of the letters you wrote to him and
24 it's the 29th December and at this stage you'd have been in
25 communication with him for about a year and a half?

26 A. I beg your pardon?

2 350 Q. At this stage by the time of this letter, you had been
28 dealing with Deputy Broughan for about a year and a half?

29 A. Probably.

3 351 Q. Okay. This is what you wrote "Dear Mr. Broughan, we are
31 sorry to have to bother you again with our problems but it
32 appears that despite your efforts, the minister and the

1 powers that be are deliberately evading action to address
2 our complaint."

3 .

4 Now I want to pause there and ask you this, Mr. Gogarty,
5 what minister were you referring to, Mr. Gogarty?

6 A. The minister of that time.

352 Q. For which portfolio?

8 A. Oh justice, justice.

353 Q. And who was that minister?

10 A. Oh that would have been Mrs. Owen, is it?

1 354 Q. All right. The letter continues "The ministers and the
12 powers that be are deliberately evading action to address
13 our complaint and are equally indifferent to the stress and
14 trauma they are causing us by what we feel is very
15 questionable treatment of our well-founded fears."

16 Now I want to pause there and ask a moment --

17 .

18 MR. GUERIN: Sir, in light of the matters which have
19 arisen, I have an application to make. The individual
20 which has just been named by Mr. Cooney is not represented
21 before the Tribunal and it's my application, Sir, that if
22 this matter is proceeded with, that an opportunity should
23 be made available to that individual to apply for
24 representation before the Tribunal. To apply for limited
25 representation and the representation would be limited to
26 the questions of propriety in which matters such as this
27 should be opened to the Tribunal.

28 .

29 MR. COONEY: I am not making any accusations against Mr.
30 Broughan. Of course, Mr. Chairman, I want to make that
31 very clear. I don't accept there is any validity in this
32 for a moment. This is part of this gentleman's

1 position.

2 .

3 CHAIRMAN: Mr. Gallagher?

4 .

5 MR. GALLAGHER: It's now one o'clock. It may be that the

6 letter -- it's a five-page letter. It seems to me that

7 it's going to take some considerable time to read out. I

8 think perhaps we might wish to take time to read it

9 yourself to determine whether or not it is appropriate to

10 accede to the application.

11 .

12 CHAIRMAN: Very well, I will deal with this matter

13 tomorrow morning.

14 .

15 MR. COONEY: But, Mr. Chairman -- with respect,

16 Mr. Chairman, it's my cross-examination. I'd like just to

17 finish this topic, having opened it. I don't want to

18 leave it hanging in the air overnight.

19 .

20 CHAIRMAN: Why not?

21 .

22 MR. COONEY: Because it's not appropriate. It's not

23 normal practice.

24 .

25 CHAIRMAN: An objection has been made by a person should

26 have representation.

27 .

28 MR. COONEY: Who is this gentleman representing here at the

29 Tribunal?

30 .

31 CHAIRMAN: He is a solicitor representing --

32 .

1 MR. GUERIN: May it please you, Sir, I am counsel, I hold a
2 brief purely for the purposes of watching --

3 .

4 CHAIRMAN: I am aware you hold a watching brief.

5 .

6 MR. COONEY: For whom, could we find out?

7 .

8 CHAIRMAN: For Fine Gael.

9 .

10 MR. COONEY: Well first of all, Mr. Chairman, may I say, I

11 am not making any allegation against Mrs. Owen. I am

12 raising this matter in the context of an allegation being

13 made by this witness, in order to demonstrate his tendency

14 to accuse people in the wrong when he doesn't get his own

15 way. That's the only reason I am opening this letter and

16 I think I'd like to just finish this letter, I will finish

17 my cross-examination on this letter, Mr. Chairman.

18 .

19 CHAIRMAN: All right, I will let you read the letter, and

20 deal with it -- if any point arises as to representation,

21 we can deal with that later.

22 .

23 MR. GUERIN: Might I just address you on that point?

24 .

25 CHAIRMAN: No is the answer to that. If a problem

26 arises, it can be sorted out and Mrs. Owen can be given an

27 opportunity to reply through you in due course.

28 .

29 MR. GUERIN: Sir, my concern, Sir, is that the letter

30 contains potential allegations against an individual who is

31 not represented before the Tribunal. The very reading of

32 the letter is one of the procedural matters with which I am

1 concerned, with which I think my client ought to be in a
2 position to make submissions to the Tribunal.

3 .

4 MR. GALLAGHER: Sir, as you are sitting at a quarter past
5 two, and I don't wish to interrupt anybody's
6 cross-examination, it's now just gone one o'clock. You
7 are sitting at a quarter past two to deal with
8 applications. Clearly the cross-examination is not going
9 to conclude today and I think perhaps you might wish to
10 take time to consider the contents of this letter --

11 .

12 CHAIRMAN: I think that would be the prudent course.

13 .

14 MR. COONEY: Very well, Mr. Chairman. I respectfully
15 agree. .

16 .

17 MR. GALLAGHER: I take it Mr. Gogarty can be released
18 until ten o'clock tomorrow morning.

19 .

20 CHAIRMAN: Ten o'clock tomorrow morning.

21 .

22 THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

23

24

25

26

27

28

29

30

31

32

1 THE TRIBUNAL RESUMED AS FOLLOWS AT 2:15AM:

2 .

3 MR. BIRMINGHAM: Before the Tribunal resumes its business,

4 perhaps there is a matter I might mention briefly. You

5 recall when the Tribunal first sat, representation was

6 granted to Fine Gael on whose behalf I appear led by Mr.

7 Frank Clarke and instructed by Mr. Kevin O'Higgins,

8 solicitor, and you will be aware as well the Tribunal, of

9 course, made clear that that didn't involve representing

10 all or any individual Fine Gael public representative.

11 Nonetheless, obviously the party has a concern its public

12 representatives wouldn't be mentioned in a situation where

13 they didn't have notice of that fact and were perhaps

14 matters damaging to them might be introduced, in a sense,

15 in extraneous fashion.

16 .

17 Now, the specific matter that brings me here this afternoon

18 is the fact that I understand this morning references were

19 made to a Fine Gael public representative and as it happens

20 the Fine Gael deputy leader. Now, I have spoken to Mr.

21 Cooney and I understand within the course of his

22 cross-examination this matter arose and as it happens, he

23 has been able to fully reassure me as to the circumstances

24 which the issue arose and where matters are going from here

25 and I have no problem about that but perhaps I could

26 explain my concern and my client's concern is that matters

27 critical, damaging of the character of public

28 representatives shouldn't be introduced in a situation

29 where those public representatives would have no knowledge

30 of the matters that are going to be introduced and where

31 there will be no specific allegations against them.

32 .

1 I would ask, Chairman, that in the course of any of the
2 cross-examinations that are going to take place that that
3 would arise, that persons not before the Tribunal were
4 introduced on an extraneous basis, that that matter might
5 be deferred and you will give Mr. Clarke or myself an
6 opportunity to come here to seek limited representation
7 strictly limited to the question of the appropriateness of
8 those persons being mentioned at this stage. We wouldn't
9 be seeking to argue the merits or demerits of the matters
10 that had arisen but simply appropriately apply the
11 procedure but as I say, in terms of what arose this
12 morning, I have no particular applications to make but I
13 thought I might clarify the situation.

14 .

15 CHAIRMAN: Mr. Bermingham, I hear what you say and will be
16 fully in agreement with the approach outlined by your good
17 self, that no person should be held up in any way to
18 criticism or public podium unless they were made aware in
19 advance of the situation, particularly public
20 representatives. So far, first of all, I think the better
21 way of approaching it is that no person should be named in
22 a pejorative sense without notice to that person so that
23 they can take whatever action they feel appropriate and I
24 will invite counsel who may be coming on to documents, it
25 may or may not arise, might be good enough to flag the fact
26 that a particular person is in that category, in which case
27 we can avoid the matter, shall we say, for the moment until
28 they have been appropriately notified, if it is appropriate
29 at all they should be ever named in public because there is
30 an element of satisfaction on my part that any persons
31 named, this should be observed at all times. I hope that
32 would reassure you and we will try and keep in liaison with

1 your solicitors.

2 .

3 MR. BIRMINGHAM: That more than meets my requirements.

4 In fact, we had intended to have some limited

5 representation present in a sense of holding a watching

6 brief during the course of the cross-examination but I

7 think on the basis of what you have said, that won't be

8 necessary.

9 .

10 CHAIRMAN: Now we will do our best but Homer can nod, in

11 any circumstances.

12 .

13 MR. BIRMINGHAM: Perhaps in that situation we will keep

14 our watching brief.

15 .

16 CHAIRMAN: Thank you very much. Mr. Cooney, you were

17 going to say something?

18 .

19 MR. COONEY: I'd like to say, if I may, if I introduce any

20 of these matters, it's not for the purpose of sustaining in

21 any way any allegation made against them. I am merely

22 doing it with regard to credibility and nothing else and I

23 regret if I caused any embarrassment to Mrs. Owen by the

24 mention of her name today. That was not my intention, it

25 was for a completely different purpose but I have to say,

26 Mr. Chairman, this may arise again.

27 .

28 CHAIRMAN: I can see that.

29 .

30 MR. COONEY: But I won't do it for the purpose of

31 embarrassing anybody. It's for the purpose of either

32 testing this witness or another witness's

1 creditabilities. It's for that reason only.

2 .

3 CHAIRMAN: Well, your watching breach, just keep an eye on

4 that. Any reasonable applications will be given full

5 attention.

6 .

7 MR. BERMINGHAM: Thank you very much, Sir.

8 .

9 MR. GALLAGHER: Sorry, I think if any individual is going

10 to be named in that fashion, I think that that fact should

11 at least be flagged to counsel to the Tribunal beforehand

12 so that an appropriate application can be made to you if

13 necessary or a matter, the matter can be resolved in some

14 other way.

15 .

16 CHAIRMAN: We will play it by ear. It's the only thing

17 we can do. I can see the problems Mr. Cooney would have,

18 but at the same time, there is a, we will just have to play

19 it by ear.

20 .

21 MR. COONEY: I understand, Mr. Chairman, as I say, we have

22 no interest in the wide world of mentioning anybody's name

23 but, in fact, the mention of these people has come from Mr.

24 Gogarty and sometimes it may be --

25 .

26 CHAIRMAN: Still, we should try to deal with it in as

27 appropriate a manner as possible.

28 .

29 MR. COONEY: I respectfully agree, Mr. Chairman. My

30 clients most of all feel very sensitively by having

31 unfounded charges made against them, we sympathize with

32 other people in the same boat.

1 .

2 MR. O'DONOGHUE: My application I mentioned to you last
3 week.

4 .

5 CHAIRMAN: Mr. O' Donaghue, I read your written
6 submissions on this matter. Do you wish to add anything at
7 all? They are very comprehensive.

8 .

9 MR. O'DONOGHUE: They are something that should be heard
10 in public.

11 .

12 CHAIRMAN: I have no objection to hearing them --

13 .

14 MR. O'DONOGHUE: What I intended to do was basically read
15 them into the record and may wish to expand on them
16 somewhat. I had a brief conversation with Mr. Gallagher
17 over the telephone yesterday, I don't precisely know what
18 his attitude or response will be obviously but it will be a
19 matter ultimately for your good self to decide in relation
20 to it but it's an application which is of most serious
21 consequence for my clients and it's an application which,
22 depending on the outcome of it, has ramifications for what
23 happens afterwards so I should open the entire application
24 to set the --

25 .

26 CHAIRMAN: I don't see any good reason why you should go
27 into nine pages, ten pages. I think you can summarize the
28 situation briefly and leave it at that and I will indicate
29 to you what my approach to the matter would be.

30 .

31 MR. O'DONOGHUE: Very good, Sir, I am happy to do that.
32 Sir, the circumstances in relation to the application which

1 is one that to discharge my client's participation from
2 these proceedings commences, Sir, with the letter from the
3 Tribunal in October notifying Mr. Sweeney that he had been
4 the subject of allegations by Mr. Gogarty in his sworn
5 statement of, I think, the 12th October. Sir, you have a
6 copy of the letter obviously that the Tribunal sent to Mr.
7 Sweeney allowing him limited representation and advising
8 him of the allegations that had been made by Mr. Gogarty
9 against him.

10 .

11 Now, my instructing solicitors, Messrs. Matheson Ormsby
12 Prentice came on record for Mr. Sweeney on that occasion
13 and a statement was prepared and submitted to the Tribunal,
14 Sir, with an indication from Mr. Sweeney that he was
15 prepared to assist and cooperate with the Tribunal insofar
16 as he possibly could in any manner he could possibly do,
17 Sir.

18 .

19 Now, it was also intimated to Mr. Sweeney on the letter
20 from the Tribunal solicitor, Sir, that the allegations that
21 were being made against him came within the purview of the
22 Terms of Reference as set out at paragraphs 4 and 5 of
23 Section A of the amended Terms of Reference. Now, these
24 have been summarized, Sir, in the written submissions which
25 have been given to you but they basically relate to
26 payments made to political parties, politicians on public
27 occasions by Mr. Gogarty... or connected persons or
28 companies and it goes on to deal with obviously the motive
29 for such payments and how the recipients of such payments,
30 with any involvement in relation to the lands, 726 acres,
31 were influenced by such payments and the second term of
32 reference of note, Sir, is the fifth one and that is that

1 the Tribunal was charged with identifying and reporting
2 upon acts associated with the planning process amounting to
3 corruption or in other ways, coming in the way of
4 performance of duties.

5 .

6 Now, Sir, what has happened over the course of seventeen
7 days, Mr. Gogarty has given evidence in relation to a
8 number of matters, the only matter which I am concerned of
9 course related to Mr. Sweeney. And at paragraphs, pages 5
10 and 6, Sir, of that written submission, I hope I have
11 fairly summarized the evidence and I have given the
12 specific volume page and question number references that
13 have been made by Mr., in transcripts made by Mr. Gogarty
14 about and concerning Mr. Sweeney. Obviously I am
15 concerned only with those references which show Mr. Sweeney
16 in an adverse light and I am not concerned with any other
17 references to him. But as I say, Sir, I believe I have
18 fairly summarized what those allegations are and they, in
19 many respects, Sir, are of a vague variety.

20 .

21 They spoke of "questionable conduct in the management of
22 the company" and they tend to be very often hearsay or
23 hearsay upon hearsay, where Mr. Gogarty says that he was
24 told by Mr. Frank Reynolds that such and such a thing
25 happened or that somebody else said to Mr. Frank Reynolds
26 who then reported to the witness, Mr. Gogarty.

27 .

28 So we have, Sir, hearsay and hearsay upon hearsay. The
29 first of those allegations related to, as I say,
30 questionable management by persons including Mr. Sweeney in
31 the company JMSE and that Mr. Sweeney, amongst others, was
32 'ripping off the Murphys', is the way Mr. Gogarty put

1 it. He (Mr. Gogarty) also made other allegations that Mr.
2 Sweeney, as part of the management team, was in collusion
3 or cahoots with the trustees who owned the Murphy companies
4 in participating in and concealing fraud which was
5 affecting the Murphys' personal interests in these
6 companies. He further dealt with the proceedings that
7 were taken by JMSE against himself and Mr. Murphy and
8 others in June of 1988 and the manner in which they were
9 resolved with a number of the management team leaving the
10 company with the exception of Mr. Sweeney who, on Mr.
11 Gogarty's evidence, stayed on until the earlier part of
12 1989.
13 .
14 Mr. Gogarty has also acknowledged in the course of his
15 evidence that Mr. Sweeney was one of the persons to whom
16 Mr. Murphy considered selling the company by way of
17 management buy-out at or around the time of his leaving
18 JMSE in 1989.
19 .
20 Now, Mr. Gogarty makes a variety of other small side issue
21 allegations against Mr. Sweeney, not of a very
22 controversial nature. He, Mr. Gogarty, complains of his
23 tardiness in sorting out the ESB and finalising the ESB
24 account, the Moneypoint account and he also complains that
25 he was perhaps instructed in his own inquiry into the
26 financial transaction of JMSE during the financial year
27 1987 by - he is Mr. Gogarty, I beg your pardon - by Mr.
28 Sweeney allegedly destroying documents which he had removed
29 from Santry and brought to the associated AGSE company in
30 Fleetwood in England.
31 .
32 Now, these are relatively minor matters, Sir. Mr. Gogarty

1 has also made oblique reference and not an explained one,
2 that is explained in any detail about a slush fund.
3 Again, Sir, page 6 of the written submission, the
4 references to the transcript where Mr. Gogarty deals with
5 these matters have been given and I have quoted from them
6 at some length. What Mr. Gogarty has said about that is
7 that he was told by Mr. Copsey at one time in the basement
8 of Mr. Copsey's premises that a slush fund had been
9 operated. He then says that he made a note in 1989 that
10 he raised this question of slush funds with Mr. Bates who
11 was the auditor of JMSE and he says that he raised this
12 matter about slush funds admitted by Sweeney of which
13 Copsey had plenty of evidence and documentation and I have
14 set out the full quote there, Sir, in relation to that
15 matter.
16 .
17 Now, none of this has been explained in any depth nor has
18 Mr. Gogarty gone on to say at any stage that Mr. Sweeney
19 was actively involved in any slush funds for the purpose of
20 making payments to politicians or planning officials for
21 the purpose or benefit of either himself or JMSE or any
22 related company or undertaking.
23 .
24 Now, that is in some way, Sir, the allegations that have
25 been made against Mr. Sweeney. All of the allegations
26 emanate exclusively from Mr. Gogarty. There are a variety
27 of other witnesses who might well have something to say
28 about these matters but in all of their statements and
29 again, I have adverted to this matter in the written
30 submissions, all of them either contradict Mr. Gogarty or
31 have something different to say about them so it would
32 appear as matters now stand, no further or other allegation

1 will be made against Mr. Sweeney relating to these
2 matters.

3 .

4 Now, for the record, Sir, I have said and I repeat again
5 that Mr. Sweeney denies these allegations, lest there be
6 any doubt about that at all. And I will, of course, deal
7 with them in the course of his evidence should it become
8 necessary for him to so but, Sir, I say it will be wrong to
9 require him to remain as participant to these proceedings
10 and to have to deal with these matters in evidence for a
11 number of reasons that I have set out at pages 7 and
12 subsequent pages of the written submission, Sir.

13 .

14 The Oireachtas, Sir, has charged you with undertaking
15 certain inquiries. The inquiries are set out in the
16 amended, in the two -- together which incorporate the
17 amended Terms of Reference of this Inquiry and have charged
18 you, Sir, to inquire urgently and in as economical a manner
19 as possible, consistent with the fair examination of the
20 matters referred to you.

21 .

22 Now, Sir, that must mean that certain limits will have to
23 be placed upon the purview of the inquiries that you
24 undertake. It cannot be an unlimited inquiry and
25 obviously it must be one that you, in your discretion,
26 consider to be consistent with the fair examination of the
27 matters that are referred to you.

28 .

29 Now, the difficulty that Mr. Sweeney faces is that here are
30 a number of vague and utterly unsubstantiated allegations
31 made against him, they are primarily allegations based on
32 hearsay or hearsay upon hearsay and it is just impossible

1 for Mr. Sweeney to meet such allegations properly and
2 fairly. How can he cross-examine Mr. Gogarty and suggest
3 to him that his belief, be it a genuinely held belief or
4 mistaken one, is incorrect when such a belief is based upon
5 something that somebody told him from something that was
6 told to that person by somebody else? It is not only
7 unfair but quite impossible for Mr. Sweeney to meet such
8 allegations properly and fairly.

9 .
10 There is not a single shred of documentation evidence or
11 tangible evidence or direct evidence of any sort put up by
12 Mr. Gogarty that Mr. Sweeney can fairly meet. Now the
13 further difficulty, Sir, is that Mr. Sweeney simply cannot
14 afford, as a professional engineer who is employed in the
15 construction industry, he is a PAYE taxpayer, he cannot
16 simply afford to attend at this inquiry instructing
17 solicitors and counsel indefinitely. It may well be, Sir,
18 that because of his cooperation and the assistance he has
19 given and will give to the Tribunal, he will be entitled to
20 his indemnity in respect of costs at the end of day but as
21 you made perfectly clear, that must be for determination at
22 the end of the day. In the meantime quite clearly Mr.
23 Sweeney has worries and concerns about attending here and
24 instructing a solicitor to be present to represent his
25 interests and not only does he have to concern himself
26 about the financial aspect of that, Sir, but he has to
27 concern himself about devoting a portion of his life to an
28 inquiry in connection with which he is only vaguely and
29 peripherally bound up.

30 .
31 Now, Sir, the biggest reason that we say that Mr. Sweeney
32 should be discharged from these proceedings at this stage

1 is that all of the allegations made against him fall not
2 only outside the Terms of Reference but well outside the
3 Terms of Reference. It would take a very large stretch of
4 the imagination to tie any of these allegations in with any
5 of the matters with which the Oireachtas has charged you,
6 Sir, to inquire. It would be wrong, in my respectful
7 submission, for this Tribunal to embark upon and inquiries
8 which do not bear directly on and do not assist you in
9 coming to appropriate conclusions with respect to those
10 matters that are set out very specifically in the amended
11 Terms of Reference.

12 .
13 And the allegations such as they are, albeit that they are
14 vague and what not, some of them are allegations, Sir, of
15 criminal conduct on the part of Mr. Sweeney, for instance,
16 that he was ripping off the Murphy company, in effect, it's
17 an allegation of embezzlement against him. Now, Sir, I
18 say that there is no warrant at law by which this Tribunal
19 or any tribunal can conduct an inquiry into criminal
20 matters which were not within the Terms or Reference or
21 intimately bound up with the Terms of Reference that are
22 set out for it by the Oireachtas in the first instance, and
23 in anticipation of what Mr. Gallagher may say about this,
24 that includes also any matters which simply go to credit.

25 .
26 The question of the credibility of witnesses has always,
27 Sir, throughout the history of the laws of evidence is
28 regarded as a lateral issue, that means it must be
29 collateral to something else. There is no other issue
30 between Mr. Gogarty and Mr. Sweeney. There is nothing to
31 determine between them which will be assisted by an inquiry
32 into the relative credibility of either of them. So I

1 say, Sir, that by no stretch of the imagination can these
2 allegations such as they are, being made by Mr. Gogarty
3 about Mr. Sweeney assist you in coming to appropriate
4 conclusions with respect to the matters with which you are
5 charged to investigate and therefore you should not embark
6 upon any further investigation of them.

7 .

8 The further matter, Sir, is this; that if we are not
9 discharged from these proceedings at this stage, it will of
10 necessity mean, Sir, that you have decided that the issues
11 which are raised, the allegations raised by Mr. Gogarty are
12 matters which Mr. Sweeney must answer. In order to answer
13 the ones, particularly the ones in relation to the
14 financial irregularity, it would be necessary for Mr.
15 Sweeney to bring a motion before this Tribunal to have
16 documents which are in possession of JMSE and documents in
17 the possession of Copsey Murray, compelled by -- have
18 their production compelled by this Tribunal so that they
19 can be examined and so that we can see if there is any hard
20 direct and independent evidence to support the allegations
21 that Mr. Gogarty is making.

22 .

23 I would also require, Sir, having done that exercise, that
24 the Tribunal would then retain or engage the services of a
25 firm of forensic accountants so that all of these financial
26 documents, receipts, invoices, all being conducted and what
27 not, can be properly and professionally evaluated so that
28 the Tribunal has a good and independent view as to whether
29 these financial irregularities which were alleged took
30 place or not. We do know from Mr. Gogarty's own evidence
31 a variety of these matters have already been investigated
32 vainly, it would seem, by Bates & Company and perhaps by

1 Ernst & Whinney although nobody has been able to turn up
2 the reports in relation to these people. Mr. Gogarty
3 accepts he was told on a number occasions when these
4 investigations were being carried out that they came to
5 nothing, no financial irregularity could be proved or could
6 be found but, Sir, this will be the inevitable consequence
7 of my client not being discharged at this stage.

8 .

9 He is entitled, Sir, to be discharged from these
10 proceedings at the earliest possible opportunity. It's
11 quite clear, Sir, that the Tribunal is quite directed and I
12 don't criticize it, he should have been brought in and
13 granted limited representation in the first place but the
14 reasons for that grant have now ceased to apply in the
15 circumstances. He is in the position of somebody against
16 whom no allegation is made which is connected or remotely
17 connected with the Terms of Reference of the Tribunal and
18 therefore he should be discharged and he should not have to
19 await the outcome of the cross-examination of Mr. Gogarty
20 or the outcome of evidence-in-chief and cross-examination
21 of any other witnesses to this inquiry before receiving
22 such a discharge, Sir.

23 .

24 If it should happen in the course of either the
25 cross-examination of Mr. Gogarty or in the course of
26 examination of other witnesses that matters arise which are
27 adverse to Mr. Sweeney's interest and in respect of which
28 Mr. Sweeney should be given an opportunity to come before
29 you and make representations, well then that should be done
30 at that stage, Sir, but he should not be kept in a limbo at
31 the present time in relation to allegations which are
32 vague, unsubstantiated and which have nothing whatsoever to

1 do with the Terms of Reference of the Inquiry.
2 .
3 So, Sir, I ask you to make rulings in accordance with the
4 specific matters, specific submissions that I have made at
5 pages 9 and 10 of the written submission, that is to say
6 that you will rule now that (a) Mr. Sweeney has no
7 allegations to meet which come within the Terms of
8 Reference (b), that the reason for granting limited legal
9 representation to Mr. Sweeney have now ceased to apply (c)
10 that his evidence will not be required in the further
11 investigations and inquires to be conducted by the Tribunal
12 and (d) that should any matters arise in the course of the
13 inquiry which require either reconsideration of the
14 granting of legal representation or the taking of evidence
15 from Mr. Sweeney, his solicitors will be duly notified.
16 They are my submissions, Sir.

17 .

18 CHAIRMAN: Thank you.

19 .

20 MR. GALLAGHER: Sir, I do not propose to comment on the
21 summary of the evidence of Mr. Gogarty as set out in Mr.
22 O'Donoghue's memorandum. But the fact that I do not do so
23 does not imply I either accept or agree or disagree with
24 his summary.

25 .

26 The position is that Mr. Gogarty is giving evidence. His
27 evidence has not concluded. It is also the position that
28 the Tribunal's inquiries are continuing and statements are
29 being circulated as they become available and further or
30 other evidence relevant to Mr. Sweeney may or may not be
31 given. It is, in my respectful submission, relevant for
32 you to hear evidence as to the motives of various

1 individuals at various times because such evidence may
2 assist you in establishing the facts that you are charged
3 with establishing under the Terms of Reference.

4 .

5 It is the case that Mr. Sweeney will almost certainly be
6 called to give evidence. He has circulated or he has
7 furnished a statement to the Tribunal, a relatively short
8 statement which he denies that he made any statement of the
9 type referred to by Mr. Gogarty in Mr. Gogarty's
10 affidavit.

11 .

12 For all of those reasons, I suggest that the application is
13 premature, that it should not be acceded to at this
14 stage. I would add that if Mr. O'Donoghue takes a view
15 that no damage to his client's reputation has or is likely
16 to be adduced and if he feels that it is not necessary or
17 appropriate for him to cross-examine Mr. Gogarty or any
18 other witness, that there is no reason why he should not,
19 if he obtains his client's instructions to do so, absent
20 himself and the other members of his legal team from the
21 Tribunal and if they should chose to do so, it may be that
22 the Tribunal could arrange to provide them with a copy of
23 the transcript of the evidence given each day so that if
24 anything does emerge in the course of evidence, that they
25 would be alerted to it and would be able to take such steps
26 in relation to such evidence as they might consider
27 appropriate.

28 .

29 That certainly would be one way of minimising costs and
30 would perhaps facilitate Mr. O'Donoghue and his client in
31 relation to their attendance at the Tribunal.

32 .

1 I say that this application is premature. It should not be
2 acceded to at this stage and I offer the option of a daily
3 transcript to Mr. O'Donoghue as an alternative to
4 continuing to remain at the Tribunal on a daily basis.

5 .

6 MR. O'DONOGHUE: Sir, in reply, what Mr. Gallagher doesn't
7 deal with and that is the submissions that I have made that
8 none of these allegations relate directly to the Terms of
9 Reference.

10 .

11 Now, I have flagged that if you do not rule in my favour in
12 that regard, Sir, I would have to take further proceedings
13 in terms of getting an order pending production of
14 documents and Mr. Gallagher hasn't dealt with that and it
15 is a matter that will cause quite a degree of difficulty
16 both for the Tribunal and for my clients in the
17 long-term.

18 .

19 Now, simply absenting myself and looking at the transcripts
20 from time to time, although obviously I would be very
21 grateful for any assistance Mr. Gallagher and the Tribunal
22 team can give us to minimize costs, will not meet my
23 objections and if I do not get the ruling which I desire
24 today, then I am still -- and I simply cannot take the
25 risk no more than Mr. Bermingham could take the risk in his
26 application earlier here when you said perhaps he should
27 have a watching brief, if my client remains in the frame
28 and the allegations made against him are deemed to have a
29 bearing upon the amended Terms of Reference, then it simply
30 won't be a matter I stay away and keep an eye on the
31 transcript from time to time. It simply won't meet
32 matters.

1 .
2 What will meet matters is if I am discharged and as Mr.
3 Gallagher said, if matters should arise in the course of
4 cross-examination or in the further investigations which
5 the Tribunal is conducting which are adverse to Mr.
6 Sweeney, well then certainly I will be the first to be back
7 here, Sir, on the briefest of notice to deal with those
8 matters but there's no necessity to keep me here in the
9 frame at the present time.

10 .
11 MR. CALLANAN: Chairman, I have no wish to prevent Mr.
12 Sweeney being here, he has elected to seek representation
13 --
14 .

15 MR. O'DONOGHUE: Sorry to cut across My Friend but I do
16 have an objection to him making any representation in
17 relation to this matter. This is a matter between me and
18 the Tribunal. It's not a matter for any other party in
19 this inquiry to state whether I should be present and
20 that's the objection I make to his intervention at this
21 stage.

22 .
23 MR. CALLANAN: I have no intention of intervening in the
24 matter but I was very surprised by the ambit of the
25 application made by Mr. O'Donoghue which was effectively an
26 attempt to limit the ambit of the Tribunal's inquiry at a
27 time when it doesn't seem to me that it could be rationally
28 done. I have no idea where the cross-examination of Mr.
29 Cooney is going to take us and I simply say that it would
30 not, in my submission, be appropriate to accede to the
31 extremely ambitious and unusual form of application which
32 Mr. O'Donoghue has made effectively at this stage to

1 delimit the ambit of the Inquiry.

2 .

3 MR. O'DONOGHUE: Sir, just in relation to that, I think

4 you should disregard that submission --

5 .

6 CHAIRMAN: Mr. O'Donoghue, thank you very much. It's my

7 function to inquire into the various matters set out in the

8 amended Terms of Reference and broadly speaking, I would

9 consider the evidence of Mr. Sweeney is necessary to assist

10 me in that inquiry. Mr. Sweeney was managing director of

11 JMSE for approximately seven years from 1982 to 1988.

12 During that period of years, I do not know at this point in

13 time what matters may arise involving him. I think it is

14 pertinent he should at least be au fait with what is

15 happening. It's entirely a matter for Mr. Sweeney whether

16 he wishes to avail of the right to cross-examine Mr.

17 Gogarty, whether he wishes to attend or be legally

18 represented. I am satisfied at this moment it would not

19 be appropriate to rule in the manner requested by Mr.

20 O'Donoghue because apart from anything else, Mr. Sweeney

21 undoubtedly will be required to give evidence to the

22 Tribunal to assist the Tribunal in its inquiries and I say

23 that in the full knowledge that Mr. Sweeney has indicated

24 that he will do so with every desire to cooperate.

25 .

26 I think at this stage, it would be further, it would be

27 absolutely premature to direct a ruling of the nature which

28 is being sought. I am very conscious of the cost factor

29 and I see no reason why solicitors with or without the

30 assistance of counsel, if they receive a transcript, a

31 relatively inexpensive thing, per day, that they can't keep

32 the situation adequately monitored. And that's the

1 situation at the moment. I will arrange for a transcript
2 to be furnished daily to his solicitors. The transcript,
3 as far as I know, usually becomes available somewhere
4 around 4 o'clock in the afternoon when they have an
5 opportunity to look through it and certainly if for any
6 reason I have any notice that your client is likely to be
7 affected and I think it's upcoming, I will take every step
8 to ensure what I can to advise the solicitors
9 accordingly. That's my ruling.

10 .

11 MR. O'DONOGHUE: Following from that, could you indicate a
12 time and place at which we might then make an application
13 for discovery of all the other documentation that I
14 signalled in the course of the application?

15 .

16 CHAIRMAN: I think that's a matter for correspondence with
17 the Tribunal's legal team first of all asking for detailed
18 documents and seeing if you can get them by consent without
19 any order or otherwise. You can... your desire to
20 facilitate each other.

21 .

22 MR. O'DONOGHUE: May it please you, Chairman.

23 .

24 CHAIRMAN: Very good. The Tribunal is adjourned until ten
25 o'clock tomorrow morning.

26 .

27 THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
28 THURSDAY, 18TH FEBRUARY 1999 AT 10:00AM.

29

30

31

32