

1 THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY, 23RD FEBRUARY,  
2 1999 AT 10AM:

3 .

4 REGISTRAR: Application in respect of Mr. Connolly, a  
5 witness to the Tribunal.

6 .

7 MR. COONEY: Mr. Chairman, with your permission Mr. Herbert  
8 with deal will this matter on our behalf.

9 .

10 CHAIRMAN: Well I have received submissions on behalf of  
11 your good selves and on behalf of Frank Connolly. Unless  
12 there is something which you want to add to those  
13 submissions, do you really wish to address the Tribunal?  
14 It's a matter for yourselves. You are very welcome...

15 .

16 MR. HERBERT: I agree with you, Chairman, just to say that  
17 you asked for very short submissions. So we have --

18 .

19 CHAIRMAN: You very kindly gave them to me.

20 .

21 MR. HERBERT: We shortened our submission very greatly. I  
22 can give you specific reference just to questions and pages  
23 of the transcripts if it will assist you in any way.

24 .

25 Mr. Chairman, we don't wish to make a very great issue of  
26 this but we would feel that in the interests of the  
27 Tribunal protecting its own fairness and protecting itself,  
28 that all we are asking for in effect, the two precepts  
29 should go forth from this query and if I may summarise  
30 them;

31 .

32 That is, if witnesses, whether journalists or not, should

1 not give evidence other than to the Tribunal in its public  
2 sittings or if you wish, if you direct in private sitting  
3 and that journalists should not distort the evidence  
4 actually given at these public sittings of the Tribunal, in  
5 particular, so as to present or express or imply the  
6 support a particular viewpoint. That that is all we  
7 require, Mr. Chairman in the interest of basic fairness.  
8 We don't want to make any greater issue than that.

9 .

10 CHAIRMAN: Thank you very much. Mr. O'Toole, you have  
11 already made submissions. I take you don't want to add to  
12 it.

13 .

14 MR. OTOOLE: Mr. Chairman, I don't particularly wish to  
15 add to the actual statement we made. I appear, I should  
16 say, instructed by Michael Farrell of Michael Hanahoe &  
17 Company, solicitors for Mr. Connolly, who is a journalist  
18 with the Sunday Business Post.

19 .

20 CHAIRMAN: Yes, I appreciate that. I am fully aware of  
21 that.

22 .

23 MR. OTOOLE: Now, however, the particular points which  
24 Mr. Herbert is pressing were not communicated to us until  
25 after 5 p.m. --

26 .

27 CHAIRMAN: Mr. O'Toole, I appreciate that. I am fully  
28 aware that you were writing or making your submissions in  
29 the absence of knowing what any of the others were going to  
30 say. But be brief, this is not the end of the world in  
31 any respect.

32 .

1 MR. O'TOOLE: Only to that extent, Chairman, and I  
2 appreciate the strictures on time.

3 .

4 We would wish to reply to the further -- to the points  
5 being made relevant to the transcript of Mr. Connolly's  
6 broadcast on the Eamon Dunphy programme.

7 .

8 CHAIRMAN: Well frankly, I have noted the two sides, two  
9 versions which are very adequately covered in the two  
10 submissions, and I have read them and I have come to a  
11 conclusion.

12 .

13 MR. O'TOOLE: Well then if I may say one word,  
14 Mr. Chairman, that is that Mr. Connolly in acting as a  
15 reporter on an evening drive-time radio programme, did not  
16 in any way contravene the liberty he has as a reporter to  
17 truly report the facts and to make the minimum account that  
18 he did make on request by Mr. Eamon Dunphy who was a very  
19 perceptive interviewer on that programme and if -- I can  
20 leave it at that, if that's the desire of the Tribunal.

21 .

22 CHAIRMAN: Thank you very much, Mr. O'Toole.

23 .

24 MR. O'TOOLE: Thank you.

25 .

26 CHAIRMAN: Before actually making any comment on the  
27 events in question, I think it is appropriate that I should  
28 draw attention to the situation of the media in courts in  
29 Ireland and to say that the situation before the Tribunal  
30 is not quite the same.

31 .

32 The matter has been dealt with in a decision, in fact a

1 decision of my own, as delivered on the 16th June, 1995 and  
2 while this related to a courtroom situation, in fact to the  
3 Central Criminal Court, I think the principles set out in  
4 it are appropriate.

5 .

6 I am quoting from the transcript:

7 .

8 "In my view, the particular circumstances of this case are  
9 appropriate to acknowledge the role of the broadcast and  
10 print media in reporting trials. The presence of the  
11 media in court, their fair and accurate reporting of any  
12 proceedings, and subsequently fair conduct on any legal  
13 issue, evidence or persons involved in the administration  
14 of justice, is an indispensable aid to the system of  
15 justice in this country.

16 .

17 The legal philosopher, Jeremy Bentham, once wrote that

18 "Publicity is the very soul of justice. It is the  
19 keenest spur to exertion and the surest of all guards  
20 against improbity. It keeps the judge himself, while  
21 trying, under trial."

22 .

23 Article 34.1 of the constitution requires that our system  
24 of justice is to be administered in public. This core  
25 value has been reaffirmed in a succession of judgements in  
26 our superior courts and most recently in the Supreme Court  
27 decision in *Irish Press PLC -v- Ingersoll Publications*  
28 (1993), ILRM 747. In my view, criminal trials derive a  
29 legitimacy and integrity from being conducted in public.

30 This core value has been neatly summarised by Judge Bertha  
31 Wilson in *Edmonton Journal -v- the Attorney General for the*  
32 *State of Alberta* (1989), 64 DLR (4th) 577, a decision of

1 the Supreme Court of Canada, where she stated:  
2 .  
3 "... The public interest in open trials and in the ability  
4 of the press to provide complete reports of what takes  
5 place in the courtroom is rooted in the need (1) to  
6 maintain an effective evidentiary process; (2) to ensure  
7 judiciary and juries that behave fairly and that are  
8 sensitive to the values that are espoused by society; (3)  
9 to promote a shared sense that our courts operate with  
10 integrity and dispense justice; and (4) to provide an  
11 ongoing opportunity for the community to learn how the  
12 justice system operates and how the law being applied daily  
13 in the courts affects them."

14 .  
15 The media have always enjoyed a special position in Irish  
16 courts. In practice, where the facilities allow, there  
17 are areas of our courtrooms which are for all practical  
18 purposes "press benches". Many modern statutes which  
19 require the exclusion of the public from particular forms  
20 of proceedings provide that bona fide members of press may  
21 nonetheless remain in court to hear, observe and report  
22 these proceedings.

23 .  
24 The reason why the courts have accorded to the media this  
25 special position is encapsulated by Lord Donaldson, the  
26 former Master of the Rolls in the Attorney General -v-  
27 Guardian Newspapers Limited, (No. 2) (1988) 3 All ER 595  
28 when he stated at page 600 of the report;

29 .  
30 "...[the special position exists]... not because of any  
31 special wisdom, interest or status enjoyed by proprietors,  
32 editors or journalists. It is because the media are the

1 eyes and ears of the general public. They act on behalf  
2 of the general public. Their right to know and their  
3 right to publish is neither more or less than that of the  
4 general public. Indeed it is that of the general public  
5 for whom they are trustees."

6 .

7 Since the decision in Kennedy -v- Hilliard (1859) 10 ICLR  
8 195 the Irish courts have recognised that matters  
9 published or spoken in court "cannot be made the subject of  
10 an action for defamation".

11 .

12 "In my view the role of the media in relation to court  
13 reporting is not confined to ensuring that any matter  
14 broadcast or published is fair and accurate and  
15 contemporaneous. The due administration of justice is  
16 itself is a matter of public interest and hence the subject  
17 matter of fair comment by the media. Subject to the  
18 courts' primary constitutional duties to ensure a fair  
19 trial for persons who stand accused in criminal proceedings  
20 and to tenaciously protect the integrity of a trial, the  
21 proceedings itself, the verdict of the jury, and any  
22 decision of a judge is a matter of fair comment by the  
23 media.

24 .

25 In practice, fair comment concerning criminal proceedings  
26 may, as a general rule, only be published after the  
27 conclusion of those proceedings. In an appropriate case,  
28 the courts may have to exercise the discretion to discharge  
29 a jury and in some cases, stay criminal proceedings where  
30 the nature of the publicity either prior to or during a  
31 trial has created a real risk that a fair and impartial  
32 trial is no longer possible. In the experience of this

1 court, these situations infrequently occur."

2 .

3 I actually, in the 18th December, in this Tribunal said the  
4 following:

5 .

6 "On the role of the media, a question the Tribunal readily  
7 accepts both the importance and the role of the media in  
8 educating and influencing public opinion. This role is  
9 specifically acknowledged in the language of Article  
10 40.6.1.i of the constitution. The media enjoys a  
11 continuing right to freedom of expression that to be any  
12 way meaningful must include a right to report, comment and  
13 criticize. This Tribunal in common with any other public  
14 entity in this State can legitimately be the subject of  
15 adverse media comment. The Tribunal does not make the case  
16 that it is immune from the ordinary course of media  
17 reporting comment and criticism.

18 .

19 Turning to the present situation, I say I have read the  
20 submissions from all parties concerned and I recognise in  
21 Mr. Connolly's submission were made without the benefit of  
22 the detail of the submissions on behalf of JMSE.

23 Mr. Connolly is the journalist who first published  
24 Mr. Gogarty's story since sometime in 1996. As a result  
25 of this, he has become involved in this Tribunal as a  
26 witness as to facts. Mr. Connolly is a working journalist  
27 and has been engaged by the radio station, Today FM, to  
28 comment on the proceedings of the Tribunal on a daily  
29 basis.

30 .

31 On behalf of JMSE, it is complained that Mr. Connolly does  
32 not confine his comments to the evidence given on a

1 particular date but that he introduces material which may  
2 be the subject matter of his own evidence and/or which is  
3 biased.

4 .

5 It seems to me that it would not be appropriate for me to  
6 direct that Mr. Connolly should desist from commenting on  
7 the proceedings of the Tribunal in his capacity as a  
8 journalist, merely because he is a witness before this  
9 Tribunal in respect of certain factual events. Clearly it  
10 is in everybody's interest, including those of  
11 Mr. Connolly, that any comments which he makes are accurate  
12 and confined to the actual evidence which has been given  
13 and the proceedings at the Tribunal. The proceedings of  
14 the Tribunal are not subject to the sub judice rule.

15 Furthermore this is not the situation where a jury might be  
16 inappropriately influenced by any statement concerning its  
17 proceedings. Consequently do I not propose to make any  
18 form of order at this stage in this matter and I hope that  
19 that is an end to the matter. Thank you.

20 .

21 We have just finished on time, if you are ready to go on.

22 .

23 MR. GALLAGHER: Yes, Sir.

24 .

25 CHAIRMAN: Do you want me to rise for five minutes?

26 .

27 MR. GALLAGHER: Perhaps just for five minutes.

28 .

29 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED

30 AS FOLLOWS:

31 .

32 CONTINUATION OF CROSS-EXAMINATION OF MR. GOGARTY BY



1 MR. COONEY:

2 .

3 MR. COONEY: May it please you, Mr. Chairman. Good  
4 morning, Mr. Gogarty. I hope you are feeling better than  
5 you were on Friday morning last.

6 You remember, Mr. Gogarty, that when we finished on  
7 Thursday last, I was taking you through the second article  
8 which had been written by Mr. Connolly and published in the  
9 Sunday Business Post of the 7th April of 1986, you recall  
10 that?

11 A. I recall that, yeah.

12 1 Q. And I think you had had a copy of that article in front of  
13 you at the time, isn't that right?

14 A. I think I had. (Document handed to witness.)

15 2 Q. And I had already dealt with the fact that you had told  
16 Mr. Connolly and he published in that article that there  
17 were three directors present and I think you said that was  
18 a mistake, isn't that right?

19 A. That's correct.

20 3 Q. Now the article, and I had been asking you some questions  
21 about that aspect of the article when the Chairman  
22 adjourned the sittings for that day, I want to continue on  
23 and refer to one or two other matters in the same  
24 article. And in the second column you will see,  
25 Mr. Gogarty, Mr. Connolly writes as follows: "His  
26 understanding was that the rezoning would be achieved over  
27 a period of years at a cost to the developers of 1,000 per  
28 acre in payoffs." Do you see that?

29 A. That's correct, yeah.

30 4 Q. And the person he is referring to there is you, isn't that  
31 right?

32 A. That's correct, yeah.

1 5 Q. And was he recording -- was he reporting you accurately in  
2 what he states in that paragraph?

3 A. Well I wouldn't dispute it, but that's his recollection.

4 What are you talking about now?

5 6 Q. Pardon?

6 A. What are you implying now?

7 7 Q. No, just listen to the questions please, Mr. Gogarty. I

8 simply asked you did Mr. Connolly there record accurately

9 what you had told him?

10 A. Well seemingly that's his recollection.

11 8 Q. No, no that's not what I am asking you, Mr. Gogarty. I am

12 asking you in that paragraph, did Mr. Connolly report

13 accurately what you had told him?

14 A. I accept what he says, I accept what he says.

15 9 Q. No, no, do you accept it as an accurate report of what you

16 had told him?

17 A. Well, my recollection mightn't be a hundred percent on

18 that, you know.

19 10 Q. Well you see, what he says there, in detail is he says that

20 you told him that the payoff was to be £1,000 per acre.

21 A. Well my recollection, it was £2,000 an acre.

22 11 Q. Well that's what you have told the Tribunal in the course

23 of your evidence. And I think you said it on other

24 occasions. I want to ask you, did you tell Mr. Connolly

25 on this occasion that the alleged payoff was to be £1,000?

26 A. Well Mr. Connolly is quoting me. I will presume he will

27 be coming into the box and be telling his side of it. I

28 can't speak for him.

29 12 Q. I fully appreciate that, Mr. Gogarty, but what I am asking

30 you is to explain the discrepancy between what you told him

31 on that occasion and what you said on other occasions.

32 A. Well on other occasions I probably was elaborating.

1 13 Q. You were which?

2 A. Elaborating.

3 14 Q. Sorry?

4 A. Elaborating.

5 15 Q. Well I mean I say, it's not a question of elaboration,

6 there is one statement of fact here in this article and

7 there are other different statements of fact on other

8 occasions. Now, did you give him that statement of fact?

9 A. I don't recollect that, to tell you the truth.

10 16 Q. Well then, is the Tribunal to assume then that Mr. Connolly

11 noted you incorrectly?

12 A. I can't assume anything. You are assuming it.

13 17 Q. Please, Mr. Gogarty, let's try and start on a good note.

14 Mr. Connolly, he either recorded you accurately or he

15 didn't.

16 A. Well he will swear to that.

17 18 Q. No, no...

18 A. I can't recollect that. That's not my recollection.

19 19 Q. All right. Well you see I have to suggest to you,

20 Mr. Gogarty, that here again we have another example of you

21 giving a statement of fact which conflicts with a

22 subsequent statement of fact, isn't that right?

23 A. That's your interpretation.

24 20 Q. No, isn't that the fact?

25 A. It's not a fact, no, no. I don't agree with you.

26 21 Q. Okay.

27 A. You are making suggestions all over for the last

28 fortnight.

29 22 Q. Well, Mr. Gogarty, you understand that I am entitled to ask

30 questions on behalf of my clients and you must answer

31 them.

32 A. And I am entitled to consider what you are doing. I am

1 taking you as being the role of a prosecutor.

2 23 Q. I think, Mr. Chairman, at this stage in the proceedings, it

3 might be as well if Mr. Gogarty was retold our respective

4 roles in this and that he must answer my questions,

5 Mr. Chairman.

6 .

7 CHAIRMAN: Mr. Gogarty, Mr. Cooney is not a prosecutor.

8 He is representing another party or another participant

9 might be a better word, who has a different view to what

10 you say is the situation. He is trying to find out

11 whether you agree with that view or whether you differ with

12 that. That's essentially what he is doing. He is not

13 prosecuting anybody. Nobody whatsoever in this hall is

14 being prosecuted for anything. It's an inquiry as to

15 fact, to find out what happened on a particular occasion of

16 a particular event.

17 A. That's my recollection.

18 .

19 MR. COONEY: Now the article continues, Mr. Gogarty, as

20 follows: "The developer who organised the meeting

21 indicated that the politician was anxious to get money

22 urgently to cover election costs." Can I just pause

23 there. You told Mr. Connolly that the developer in

24 question, that's Mr. Bailey, had told you that the

25 politician, and we now know to be Mr. Burke, was, according

26 to go your account, anxious to get money urgently to cover

27 his election costs.

28 A. That's what Mr. Bailey said.

29 24 Q. And the election in question was to be held on the 15th

30 June of 1989, isn't that correct?

31 A. Well, somewhere around that time, I couldn't tell you the

32 date.

1 25 Q. I see. And then the paragraph continues "The payments  
2 were partly intended to cover the payment to other named  
3 councillors who would support rezoning motions, he says."  
4 Now, again Mr. Connolly appears to be reporting what you  
5 said to him, that the payments were partly intended to  
6 cover the payment to other named councillors who support  
7 rezoning motions, is that right?

8 A. That's what Mr. Bailey said to me.

9 26 Q. And did he name other councillors?

10 A. He did.

11 27 Q. And did you give the names of those councillors to  
12 Mr. Connolly?

13 A. I did.

14 28 Q. I see. But the names of these other councillors have  
15 never been published, have they?

16 A. No, because it was Mr. Bailey's word to me and I had no  
17 reason to publish them.

18 29 Q. I know that, but nonetheless that didn't prevent you from  
19 passing them on to Mr. Connolly, did it?

20 A. No.

21 30 Q. And when you passed them on to Mr. Connolly, did you do it  
22 in the expectation that he would publish those names  
23 eventually or that the entire story would remain anonymous?

24 A. No, I was telling him what Mr. Bailey told me. I don't  
25 know what happened after that.

26 31 Q. You see, were these councillors named at any subsequent  
27 time, do you know?

28 A. Subsequent time?

29 32 Q. Yes, by Mr. Connolly.

30 A. They could have been, now, could have been.

31 33 Q. You know Mr. Burke was named and Mr. Bailey was named?

32 A. That's right.

1 34 Q. And you had named yourself and you also named one of my  
2 clients, Mr. Murphy Jnr, isn't that right?

3 A. That's correct, yeah.

4 35 Q. Were these other councillors who were alleged to be  
5 receiving part of the alleged payoff ever named?

6 A. I named them to Mr. Connolly.

7 36 Q. Yes...

8 A. And Mr. Bailey had named them to me.

9 37 Q. But were they ever named in public?

10 A. Not to my recollection.

11 38 Q. Did you ever take up with Mr. Connolly in the course of  
12 your many -- in the course of your frequent meetings with  
13 him why the names of these other alleged recipients of  
14 corrupt payments were not named by his newspaper?

15 A. You'd have to ask Mr. Connolly that. I don't know.

16 39 Q. I am asking you, did you ever take it up with Mr. Connolly?

17 A. No, I didn't, no.

18 40 Q. Did you ever name other politicians to Mr. Connolly?

19 A. No, not to my knowledge now.

20 41 Q. Did you ever act as a conduit --

21 A. I beg your pardon?

22 42 Q. Did you ever act as a conduit for information to

23 Mr. Connolly about other politicians more prominent than  
24 simply local authority councillors?

25 A. I could have done in passing, but that's not my  
26 recollection.

27 43 Q. Well, do you recall the Sunday Business Post of May 31st,  
28 of 1988?

29 A. Well, I know about a lot of papers. Jesus, you'd have a  
30 pain in your face from reading papers.

31 .

32 CHAIRMAN: Have you got a copy?

1 .

2 MR. COONEY: I haven't got a copy yet, Mr. Chairman. I  
3 will get one. This is a front page article of the 31st  
4 May, 1988.

5 A. Are we finished with this?

6 44 Q. Yes.

7 A. Sorry. Thanks very much.

8 45 Q. It says "More politicians got payoff says man who named  
9 Burke", that's you, isn't it?

10 A. Could I read that for a second?

11 46 Q. I will --

12 A. No, could I read it?

13 47 Q. I will just read it out to you for the moment. Just

14 listen to me carefully. I will read it slowly to you.

15 The headline is in black type across the front of the page,

16 it says "More politicians got payoff says man who named

17 Burke." Then underneath that there is a secondary headline

18 which is as follows, Mr. Gogarty "Gogarty names conduit for

19 now political payments." Did you supply this information

20 to Mr. Connolly?

21 A. I could have.

22 48 Q. No, you either did or you didn't --

23 .

24 MR. CALLANAN: It's highly unfair that the article is not

25 put to the witness. The witness -- he has been put a

26 headline from an article written by a journalist. He has

27 asked to see the article and he is entitled, in my

28 submission, to see a copy of the article. This is a

29 grossly unfair procedure.

30 .

31 CHAIRMAN: First of all, Mr. Cooney, as the presiding

32 member, I don't have the article in front of me and I can

1 hardly adjudicate on anything, any complaint that is made,  
2 I think it's only reasonable I should be given a copy.

3 .

4 MR. COONEY: Yes. I am arranging that, Mr. Chairman. I  
5 think there is no reason why I couldn't continue  
6 cross-examining this point --

7 .

8 CHAIRMAN: Mr. Cooney, objection has been taken. I am  
9 not in a position to fairly adjudicate as to whether you  
10 are right or anybody else is right.

11 .

12 MR. COONEY: Clearly, Mr. Chairman, you are not suggesting  
13 I am misquoting from a newspaper in front of me, are you?

14 .

15 CHAIRMAN: Mr. Cooney, I am not suggesting anything. I  
16 am simply saying I am at a disadvantage. Why shouldn't I  
17 be put at the same advantage as yourself?

18 .

19 MR. COONEY: Of course. I am arranging to have copies.

20 .

21 CHAIRMAN: We will wait for two or three minutes because  
22 it only takes two or three minutes to be done.

23 .

24 MR. COONEY: While that's being done, I will move on to  
25 another article.

26 .

27 CHAIRMAN: Very good.

28 .

29 MR. COONEY: Can I just, while we are waiting for this to  
30 come, Mr. Gogarty, is it the position that in addition to  
31 eventually naming Mr. Burke and Mr. Bailey and Mr. Murphy

32 Jnr and yourself and other people, that you also named



1 other people to Mr. Connolly?

2 A. That's quite possible.

3 49 Q. Now, this is either a fact or it isn't, Mr. Gogarty. Did

4 you or didn't you?

5 A. I say it's possible, but I can't swear to it.

6 50 Q. Well, Mr. Gogarty, you either did or you didn't.

7 A. Well I will say I did sure. Would that satisfy you?

8 51 Q. No. No --

9 A. No, what do you want me to do?

10 52 Q. Mr. Gogarty, what I want to you do is give me as truthful

11 an answer --

12 A. I am giving as truthful an answer. That's why I am in

13 this box and if you brought in your men to give as truthful

14 an answer here, we'd know the full truth, not disclosure --

15 not hiding behind his disclosures and you have quoted me

16 and introduced --

17 .

18 CHAIRMAN: Mr. Gogarty, please, no more speeches,

19 please. Let's try to answer questions only. Your own

20 counsel will get an opportunity of clearing up any matters

21 which perhaps has been overlooked by your good self.

22 A. Please God, please God.

23 .

24 53 Q. MR. COONEY: Did you name other politicians?

25 A. I could have, I could have.

26 54 Q. Well now, that's not a correct or proper answer to my

27 question. You either did or you didn't.

28 A. Well you can ask me another 57 times like you did before

29 and I will tell you the same thing on oath, that I can't be

30 sure of that. I am not going to deny it. But I can't be

31 sure of it.

32 55 Q. I see. Well is it you can't be sure whether or not you may

1 have named other politicians, is that correct?

2 A. That's right.

3 56 Q. You may have done?

4 A. May have done, yes.

5 57 Q. But is it because you can't remember, is it?

6 A. Well it's not my recollection, no, I can't remember,

7 yeah. Is there any harm in that?

8 .

9 CHAIRMAN: Please don't start cross questioning counsel.

10 .

11 58 Q. MR. COONEY: You may have done so, but you don't recall, is

12 that right?

13 A. That's right.

14 59 Q. I see.

15 .

16 MR. CALLANAN: Perhaps a copy of the article could be put

17 to my client.

18 .

19 MR. COONEY: It will be given to him in a moment. I just

20 want to deal with another article first. I want to turn,

21 before I come to this article, Mr. Chairman, I want to

22 refer to an earlier article of the 11th May of 1997 which

23 was published in the Sunday Business Post. (Document

24 handed to witness, Chairman, and counsel.)

25 Do you want a moment to read that article, Mr. Gogarty?

26 A. If I can.

27 60 Q. It's headed "Fianna Fail politician in corruption probe"

28 and it's an article from the Sunday Business Post of the

29 11th May 1997. You have that in front of you?

30 A. That's right.

31 61 Q. Do you want an opportunity to read it?

32 A. I am reading it, yes. Yes, fair enough.

1 62 Q. This article was published about a year after the second of  
2 the two articles which were first published by Mr. Connolly  
3 in April of 1996, isn't that correct?

4 A. That would be correct.

5 63 Q. And I want to direct your attention to the second column in  
6 the article that you now have in your hand.

7 A. That's right.

8 64 Q. And there is a --

9 A. The second column?

10 65 Q. The second column, in the middle and it says as follows

11 "The company director says that the money in two cheques  
12 of £40,000 each were paid over by two persons active in the  
13 construction property sector, neither of whom can be named  
14 for legal reasons. He says that the transaction took  
15 place in the living room of the politician's home."

16 .

17 Now, here what Mr. Connolly is writing about is the  
18 transaction in Mr. Burke's home, isn't that right?

19 A. That's correct.

20 66 Q. And the company director he refers to in the first line of  
21 that paragraph is you, isn't that right?

22 A. That's correct, yeah.

23 67 Q. And it's also a fact, is it Mr. Gogarty, that in the  
24 interval between the previous article which was of the 7th  
25 April of 1996 and this article which was written just over  
26 a year later, you had had further meetings with  
27 Mr. Connolly, isn't that right?

28 A. I hadn't many meetings with him now. I had -- I spoke to  
29 him on the phone.

30 68 Q. All right. You had communications with him, isn't that  
31 right?

32 A. I had, yeah.

1 69 Q. And your then solicitors, Messrs Donnelly Neary and  
2 Donnelly in Newry had been in contact with Mr. Connolly as  
3 well, isn't that correct?

4 A. That's right.

5 70 Q. So he was getting information both from you and from your  
6 solicitors, isn't that right?

7 A. That's correct.

8 71 Q. And in this article, one of the facts which is stated is  
9 that there were two cheques for £40,000 each paid over to  
10 the politician in question, isn't that right?

11 A. That's what it says, yes.

12 72 Q. There is no doubt that that conflicts with the evidence  
13 which you have given to this Tribunal, isn't that right?

14 A. Well, yeah -- it adds up to £40,000 each, you know...

15 73 Q. Doesn't it conflict or contradict evidence which you have  
16 given to this Tribunal, Mr. Gogarty?

17 A. Do you mean I am telling a lie?

18 .

19 CHAIRMAN: Please Mr. Gogarty, please, the question is  
20 simple.

21 A. It conflicts. It does. It does.

22 .

23 CHAIRMAN: It says two cheques while in fact you gave a  
24 different version.

25 A. It conflicts.

26 .

27 CHAIRMAN: Let's get on.

28 .

29 MR. COONEY: I know Mr. Chairman, with respect it's not me  
30 who is delaying the cross-examination. If you look through  
31 the transcripts of the last two days and study the answers,  
32 I think you will see that with respect, Mr. Chairman.

1 Well I have to put it to you, Mr. Gogarty, that here again  
2 you have given information which conflicts and contradicts  
3 with information which you have given on other occasions,  
4 isn't that right?

5 .

6 MR. CALLANAN: That is an outrageous procedure. If I  
7 refer Your Lordship to the original article which  
8 Mr. Cooney put. 31st March, 1996. He refers to cash and  
9 cheques worth £40,000. Now Mr. Connolly goes on to  
10 paraphrase that or to put that in a different way in an  
11 article of the 11th May 1997. If Mr. Connolly read that  
12 article out, it would be perfectly clear it was not based  
13 on the fresh interview with Mr. Gogarty and indeed all that  
14 is referred to is a conversation with his solicitor. It's  
15 a grossly misleading procedural cross-examination in my  
16 submission. The tenor of this is to give the suggestion  
17 that Mr. Gogarty in the first instance gave an incorrect  
18 version and, secondly, that the article of the 11th May  
19 1997 is based on a fresh interview when it's manifest to  
20 Mr. Cooney that that's not so.

21 .

22 CHAIRMAN: Mr. Callanan, that is a matter that is properly  
23 dealt with by you in re-examination or examining your own  
24 witness. Mr. Cooney has to have liberty to conduct his  
25 cross-examination as he wants. Now, there may be  
26 circumstances where it is less than accurate in his  
27 approach to it. That's how he presents it. You can  
28 clear it up and I will take note of what Mr. Cooney says  
29 and what you say and adjudicate on it in due course.

30 Thank you. Mr. Cooney...

31 .

32 MR. COONEY: I thought, Mr. Chairman, that if there was any

1 objection to be taken, it would be taken by counsel for the  
2 Tribunal.

3 .

4 CHAIRMAN: I have already dealt with the matter and, I  
5 hope, satisfactorily.

6 .

7 MR. COONEY: Of course, Mr. Chairman, but I do resent  
8 Mr. Callanan saying that I am misleading the witness when  
9 that's a patently false accusation.

10 .

11 CHAIRMAN: Mr. Cooney, that is open, but it's in fact more  
12 likely it is an encapsulation of two conversations, doesn't  
13 necessarily follow that you are right, he is wrong.

14 .

15 MR. COONEY: No, but he is correct, Mr. Chairman, is that  
16 this article which was based on further contact between  
17 Mr. Connolly and this witness and between his solicitors  
18 who were feeding information to Mr. Connolly, contains a  
19 statement of fact which conflicts with evidence which is  
20 already given. I am asking --

21 .

22 CHAIRMAN: There is no doubt it does, I accept that  
23 proposition, but surely how it comes to conflict is really  
24 a matter to be asked to Mr. Connolly when he is in the  
25 witness-box.

26 .

27 MR. COONEY: No. Sorry, with respect --

28 .

29 CHAIRMAN: Why not?

30 .

31 MR. COONEY: Because Mr. Connolly, presumably and again  
32 according to -- please, Mr. Chairman -- Mr. Gogarty has

1 already stated that Mr. Connolly was a journalist of  
2 accuracy and honesty and integrity who recorded everything  
3 he said faithfully and honestly and accurately. Now here  
4 we have Mr. Connolly apparently, not apparently but  
5 actually saying that this witness told him that the payment  
6 was in the form of a cheque for £40,000 each. Now,  
7 Mr. Chairman, you will recall that in his direct evidence,  
8 Mr. Gogarty elaborated on the form of payment and he talked  
9 at some length about the £30,000 cash had been obtained by  
10 Mr. Reynolds and Mr. Copsey. That he counted it, that it  
11 was put into an envelope and that then it was supplemented  
12 by a cheque for £10,000. He also stated that Mr. Bailey  
13 gave an envelope to Mr. Burke on that occasion. He said  
14 that he couldn't see what was in the envelope but he  
15 believed it was cash and that that envelope was actually  
16 larger in size than the envelope which --

17 .

18 CHAIRMAN: Mr. Cooney, at this point in time, I know that  
19 evidence nearly as well as that I know the Lord's Prayer.  
20 And the circumstances here is a statement which says  
21 £40,000 by way -- sorry, £80,000 by way of two cheques.  
22 There is a variation in how it was carried out. The  
23 writer is the writer, Mr. Connolly. How he came to put  
24 that in is something which Mr. Connolly should be talking  
25 about, not this witness.

26 .

27 MR. COONEY: Of course, and I will ask him or one of my  
28 colleagues will ask him about this when the time comes,  
29 Mr. Chairman. But equally, Mr. Chairman --

30 .

31 CHAIRMAN: It is true to say that on its face this is not  
32 the same as was in the earlier article. It is not the

1 same as has been alleged to have been the position by this  
2 witness who was present according to himself and it is to  
3 be noted that there is a conflict. Now, could we get on  
4 to something slightly more germane?

5 .

6 MR. COONEY: Well, with respect, Mr. Chairman, these  
7 conflicts are a matter of exceptional importance to my  
8 clients because it demonstrates that this witness is not  
9 reliable, that he gives different accounts of this  
10 transaction on different occasions and there are  
11 exceptional -- and there are material differences which  
12 are, of our view, of some importance. That's why I am  
13 bringing them up, Mr. Chairman. And, Mr. Chairman, A, I  
14 would have passed from the point probably ten minutes ago  
15 if Mr. Gogarty would give me a proper answer to the  
16 question and B, if Mr. Callanan did not insist on one of  
17 his inane interjections.

18 .

19 CHAIRMAN: Please, let us not get personal between counsel  
20 or anybody else in this Tribunal and that is a ruling which  
21 must be respected.

22 .

23 MR. COONEY: Yes, Mr. Chairman, and I have listened to your  
24 ruling and I will respect it, but I hope other counsel do  
25 as well.

26 .

27 MR. GALLAGHER: Sir, can I just intervene to say very  
28 briefly that Mr. Cooney has said that this witness has  
29 acknowledged that Mr. Connolly was a man of honesty and  
30 integrity and my recollection is that Mr. Cooney put that  
31 as a fact to this witness and he accepted it. It is not  
32 my recollection that this witness accepted that, and I



1 quote from Mr. Cooney says, "Mr. Connolly faithfully and  
2 honestly recorded" everything that was said to him. I  
3 think that the transcript will bear out what I say.

4 .

5 CHAIRMAN: Thank you very much. Mr. Cooney.

6 .

7 MR. COONEY: And also Mr. Cush reminds me -- may I finish,

8 Mr. Chairman, please?

9 .

10 CHAIRMAN: Could we get on with the evidence?

11 .

12 MR. COONEY: Please, Mr. Chairman --

13 .

14 CHAIRMAN: No, I have had enough of these arguments about

15 this. I have indicated my position that the situation is

16 that I have heard the evidence, I have heard the

17 conflict. I note the conflict and in due course in time I

18 hope that when Mr. Connolly is in the witness-box, you will

19 clarify the situation.

20 .

21 MR. COONEY: Sorry, Mr. Chairman, I have to say again with

22 respect that you appear to miss my point. It's not what

23 Mr. Connolly was saying, Mr. Chairman. It's what this

24 witness has said to Mr. Connolly on earlier occasions which

25 conflicts with his evidence.

26 .

27 CHAIRMAN: I accept that. But he also depends upon

28 what's being recorded accurately by Mr. Connolly on this

29 occasion.

30 .

31 MR. COONEY: Yes, of course, and this is a point which will

32 be put to Mr. Connolly when he comes to give evidence, but

1 at the moment the state of the evidence is, from this  
2 witness, is that Mr. Connolly is a reporter whose accuracy  
3 and truthfulness can be relied upon.

4 .

5 Now I want to turn to another article, Mr. Gogarty, and  
6 that's an article which was published in the Sunday  
7 Business Post on the 10th August of 1997.

8 (Article handed to witness, Chairman and counsel.)

9 .

10 I want to refer to just a few brief passages in this. I  
11 think it's unlikely that Mr. Gogarty would need to read the  
12 entire of the article, it's a very long one. However, if  
13 you insist, that can be done.

14 .

15 CHAIRMAN: As far as I am concerned, unless it becomes  
16 impossible to follow your question or he can't follow your  
17 question, there is no reason why you shouldn't take the  
18 course you suggest.

19 .

20 74 Q. MR. COONEY: May it please you, Mr. Chairman.  
21 Mr. Gogarty, the article now, I am drawing your attention  
22 to one which appeared on the 10th August of 1997, and was a  
23 front page article and then on the inside pages, there is  
24 an article which contains a very long interview between you  
25 and Mr. Connolly, do you remember that?

26 A. Well, it wasn't a personal interview, my recollection. It  
27 wasn't a personal interview.

28 75 Q. Well there is just a few things I want to ask you about.  
29 If you turn over to the second page --

30 A. This page here? Small page?

31 76 Q. No, it's a larger one than that. It's got a heading "The  
32 other side of the coin. Gogarty denies a vendetta against

1 Burke. Frank Connolly talks exclusively to Jim Gogarty,  
2 the man identified by Foreign Affairs Minister Burke last  
3 Thursday as his chief accuser..." Do you see that?

4 A. That's right.

5 77 Q. Do you have that in front of you?

6 A. Yes.

7 78 Q. Okay. Do you see in the second paragraph of that page, it  
8 says "In the course of a lengthy interview with the Sunday  
9 Business Post, Gogarty has insisted that he was primarily  
10 concerned with what he claims were serious differences he  
11 had with his former employers, the Santry firm, Joe Murphy  
12 Structural Engineers. Gogarty, who was a managing  
13 director of JMSE for some years, said he had been concerned  
14 primarily with what he claims was his treatment with  
15 JMSE. He claims JMSE will not finalise his pension  
16 arrangements in 1990." Do you see that? Can you follow  
17 that, Mr. Gogarty?

18 A. I can, yeah.

19 79 Q. In fact, did you tell Mr. Connolly that JMSE would not  
20 finalise your pension arrangements in 1990?

21 A. Sure that's the truth.

22 80 Q. Did you tell him that?

23 A. I did.

24 81 Q. I see. But weren't your pension arrangements finalised in  
25 1990 and didn't you execute a discharge in receipt?

26 A. Well, sorry, there was serious problems arose following  
27 that. My heart was broke. I signed a discharge on the  
28 basis that it was an honourable position on both sides and  
29 behind me back, they were doing the dirty on me with the  
30 Revenue.

31 82 Q. Well there was a dispute --

32 A. That's the evidence that's there.

1 83 Q. There was a dispute about the P60 and a correct one which  
2 was issued to you, isn't that right?

3 A. They were defrauding the Revenue.

4 84 Q. But the final financial payments had all been agreed with  
5 you in 1990?

6 A. It wasn't, because the P60s were not clear because they  
7 were using them to defraud the Revenue and that's recorded  
8 there.

9 85 Q. Were the financial arrangements completed in 1990?

10 A. They weren't completed because there was an understanding  
11 on my side anyway that they were being honourable and I  
12 signed a discharge and when I found it out about the P60s,  
13 I felt that they found that they were negotiating with the  
14 Revenue and conspiring with the fellow directors to defraud  
15 the Revenue and involve me in a conspiracy. A  
16 conspiracy. The evidence is there.

17 86 Q. Mr. Gogarty, were the final payments that you were to  
18 receive from JMSE agreed in 1990 and acknowledged by you as  
19 such?

20 A. That's different to the what you have said about the final  
21 transaction. It was never final until 1994 when the judge  
22 confirmed what I was saying was the truth.

23 87 Q. Well then it's your view that your pension arrangements had  
24 not been finalised in 1990, is that right?

25 A. Not in my understanding of what it means, a pension that I  
26 could go home and rest my head on the pillow and go asleep  
27 an not worry about the blackguards what they were doing to  
28 the Revenue behind my back.

29 88 Q. Did you receive any other payments after 1990 from JMSE?

30 A. I received, in 1994 I received my costs.

31 89 Q. No, no, I mean any other payments in respect of your  
32 pension agreements with JMSE after 1990.

1 A. No, in May 1990, I got the ESB money and I started to draw  
2 my pension in May 1990. That was eight months after it  
3 should have been paid.

4 90 Q. But by 1990, all of the payments that were to be made to  
5 you had been made, isn't that right?

6 A. Oh correct, yes, yes.

7 91 Q. And there were no further payments made to you after 1990  
8 other than the consultancy agreement -- consultancy  
9 payments which were agreed to be paid over a five-year  
10 period, isn't that right?

11 A. And my costs in the court decision.

12 92 Q. But personal payments to you, isn't that right?

13 A. They were personal payments to me, my costs.

14 93 Q. And all of those personal payments had been agreed and paid  
15 to you in 1990, isn't that right?

16 A. That's correct, yeah.

17 94 Q. And the only outstanding matter was a dispute between you  
18 and JMSE as to which of the companies should provide you  
19 with the P60, isn't that right?

20 A. And you are describing that as a simple matter? It was a  
21 very serious matter.

22 .

23 CHAIRMAN: Mr. Gogarty, would you mind answering the  
24 question and not asking whether he thinks it's a serious  
25 matter or not. He wouldn't be asking the question if he  
26 didn't think it was a serious matter.

27 A. Yeah, I want to put it in the context.

28 .

29 95 Q. MR. COONEY: And the P60 gave rise to litigation?

30 A. Yes it did, of course.

31 96 Q. Which continued until 1994, isn't that correct?

32 A. Yeah, that's right.

1 97 Q. But the outcome of that P60 litigation didn't make any  
2 difference to the amount of monies which you received under  
3 the agreement that was concluded in 1990, isn't that right?

4 A. Money wasn't all my worries. It's your man's threats.  
5 Your client's threats and continuing threats and vicious  
6 threats that he would destroy me, because I was pursuing my  
7 legal entitlements in the courts.

8 98 Q. The question I asked you, Mr. Gogarty, is that the  
9 outstanding matter was which company should provide you  
10 with the P60 form, isn't that right?

11 A. You are putting a black and white situation, take the  
12 context of it. If the evidence is with you -- you have  
13 the evidence, Mr. Cooney. Only you are trying to prevent  
14 full disclosure. This is as true as God that's what's  
15 wrong. Come the day you will recognise it, you will  
16 recognise it, Mr. Cooney.

17 99 Q. Am I correct in saying that the only issue from the  
18 financial point of view that there were no financial issues  
19 outstanding at that stage, the only issue was which of the  
20 companies should issue you with the P60?

21 A. Money wasn't my sole worry at that time. I was worried  
22 about what they were trying to do to involve me defraud the  
23 Revenue by saying I signed the waiver to help them to  
24 defraud the Revenue. Evidence will be produced to prove  
25 that effect. You have that yourself, Mr. Cooney.

2 100 Q. How much money did you receive from JMSE by the time you  
27 signed the discharge, Mr. Gogarty?

28 A. I got about £105,000.

2 101 Q. You got £300,000 made into a pension.

30 A. Sorry, that was -- I am talking about cash.

3 102 Q. No, no, I want the full value of the benefits which you had  
32 received in 1990 and which you referred to in this

1 article.

2 A. I will be pleased to tell you.

103 Q. Just listen to me now. £300,000 had been paid into a

4 pension fund, isn't that right?

5 A. That's right.

104 Q. You had received £215,000 being part of the commission on

7 the payments from the ESB?

8 A. That was a gross payment.

105 Q. Yes.

10 A. Gross.

1 106 Q. You had about £100,000, perhaps less than that from the

12 pension fund established for you in Jersey, isn't that

13 right?

14 A. I beg your pardon?

1 107 Q. You also received funds from a trust which had been

16 established for you in Jersey, isn't that right?

17 A. £100,000?

1 108 Q. Yes.

19 A. Who told you that?

2 109 Q. I am asking you, is that the fact?

21 A. You check it. I am telling you it's not a fact.

2 110 Q. Well how much was it then?

23 A. Well it's debatable. You can check with Mr. Murphy. He

24 is the man that says he put it in.

2 111 Q. How much did you get from the fund in Jersey?

26 A. Well, I will tell you now my accountant would tell you

27 really because he handled the situation, so he did.

2 112 Q. Well --

29 A. But I know that we brought back, I think it was, 80 or

30 £100,000.

3 113 Q. Where did you bring it back to?

32 A. I brought it back to the Isle of Man.

114 Q. Did you have an account in the Isle of Man?

2 A. No, no, I hadn't but I was advised to open one to transfer  
3 the trust, Murphy opened the trust. He controlled the  
4 trust. And Conroy controlled him and he would come in  
5 with Joe Murphy Snr and I was advised that they had control  
6 over the trust and I should be very concerned to get it out  
7 of Guernsey quickly so that they couldn't exercise control  
8 over it and I was introduced to a Mr. Doyle in the Bank of  
9 Ireland in the Isle of Man and he said he would accommodate  
10 me and we transferred the money to the Bank of Ireland and  
11 later on, I declared it in the amnesty and I cleared all my  
12 accounts and...

1 115 Q. I just want to establish for the moment, Mr. Gogarty, how  
14 much you got from the fund established by your employers in  
15 Guernsey. How much did you get in the end?

16 A. How much did I get out of it? Are you talking about  
17 interest as well as everything else or what was put in is  
18 this?

1 116 Q. Yes. What did you take out of the Guernsey and transfer  
20 to the Isle of Man?

21 A. The first was I think, it was something either or 80 or  
22 £100,000, £105,000.

2 117 Q. In sterling?

24 A. I couldn't swear to that. I suppose it was sterling,  
25 yeah. My accountant will be giving evidence to this  
26 effect.

2 118 Q. And that became your property to dispose of as you wanted  
28 to, isn't that right?

29 A. That's correct, yeah.

3 119 Q. And in addition to that then, you had a five years'  
31 consultancy at £23,500 per annum?

32 A. That's correct.



120 Q. Which comes to a total of £117,500, isn't that right?

2 A. Well you'd know, I didn't add it up.

121 Q. Then the fifth item was you got a new car, taxed and

4 insured which cost about 34 to £36,000?

5 A. That's correct.

122 Q. So I suggest that by the middle of 1990, you had received

7 financial benefits from your employers to the amount of

8 about £760,000, isn't that correct?

9 A. That's possibly correct, yes. It didn't cost them a penny

10 anyway.

1 123 Q. Well I have to suggest to you that it was wrong to say to

12 Mr. Connolly when he was writing this article that your

13 pension arrangements had not been finalised when you had

14 received benefits to that extent in 1990, isn't that

15 correct?

16 A. Well, I don't look at it that way at all.

1 124 Q. Were you -- did you believe that your employers owed you

18 more money?

19 A. Yes, I did.

2 125 Q. How much more?

21 A. Well I couldn't go into a whole lot of detail. The first

22 thing they did me out of was that under the consultancy

23 agreement, I was advised to provide a service to Lajos

24 Holdings Limited, the holding company, and any of its

25 subsidiaries and in particular Joseph Murphy Structural

26 Engineers and AGSE Limited. Now, Mr. Cooney, wait till I

27 tell you this now, you see, in July, the 6th July, 1989 --

28 Frank Reynolds will confirm this -- 1989, before I

29 signed -- at the time I was about to resign my

30 directorship, after the 3rd July meeting, board meeting or

31 some say it wasn't a board meeting. But I was called by

32 Roger Copsy to attend a meeting of Lajos Holdings Limited

1 for the purpose of setting AGSE Limited out of the trust,  
2 the Irish trust into an English trust which completely  
3 distanced AGSE from the Irish group and the Irish trust.  
4 You can check it out yourself. But anyway, and then they  
5 insisted on me doing work for them which I wasn't legally  
6 obliged to do and I had told them that, I told Joe Murphy  
7 about it and he says I'd be paid for it, but the son, your  
8 client who still has a threat over me rejected my claim and  
9 my solicitor advised me I had a valid claim. My only  
10 alternative was another legal case and I couldn't be --  
11 afford to be running the risks of losing what I had to  
12 fight them blackguards, with the result that that claim is  
13 still outstanding and legally and morally it's due to me  
14 and the evidence will prove that by their actions and  
15 questionable conduct, they did sold that company out of the  
16 Irish trust to distance themselves from any obligations  
17 they'd have under my agreement. Don't be telling me what  
18 they did.

1 126 Q. Have you finished?

20 A. I have, well for a while.

2 127 Q. Isn't the position then, Mr. Gogarty, that you believed you  
22 were due further sums of money and you had been thinking  
23 constantly about this from that time down to the present  
24 day?

25 A. Well Junior grudged every penny I got and said it was a big  
26 thing out of the company but the fact is this, that I  
27 negotiated with the ESB on the final claim on a contract in  
28 Moneypoint, which even in the books, it wasn't shown as a  
29 sum of £42,000 and I finished up, through the good auspices  
30 of Brendan Merry, a former chairman of the Institute of  
31 Chartered Surveyors, and I gave him the information and we  
32 negotiated it for about six months from April or May 1989

1 to September 1989 and it finished up that the final account  
2 disclosed that the ESB were paying us £560,000 plus VAT.  
3 That's on the record. And it was my hard work and good  
4 work got that money, got that money for them. And Senior  
5 or Junior was saying I did well. I got my entitlements  
6 but far less than my entitlements, morally and  
7 legitimately. And that man begrudged me 4 or £500  
8 expenses on my consultancy in the Circuit Court in 1994.  
9 Talk to your client about these things too as well, you  
10 know... I could go on for this and you tell me I am  
11 rambling but the rambling will come to a finish when the  
12 evidence is brought in here at the end of the day. Now I  
13 am making a political statement.

1 128 Q. Are you finished now, Mr. Gogarty?

15 A. Nearly. It depends on you.

1 129 Q. I don't know, Mr. Chairman, whether you think this is in  
17 accordance with the dignity and decorum of this Tribunal.  
18 I respectfully submit that it isn't.

19 .

20 CHAIRMAN: You made that submission already, thank you  
21 very much.

22 .

23 MR. COONEY: Mr. Gogarty, just to summarise, the position  
24 then is, or is it that you not only hold feelings of  
25 resentment against Mr. Murphy Jnr in relation to the  
26 telephone call but you hold feelings of resentment against  
27 him because you believe that he deprived you of some  
28 payments to which you say you are entitled, is that  
29 correct?

30 A. Well that and include his vicious threats. His vicious  
31 threats to deny me what I was morally and legally entitled  
32 to.

130 Q. I see. So you have at least two causes of resentment you  
2 say against Mr. Murphy Jnr. A, arising out of the  
3 telephone call for which you believe he should have been  
4 prosecuted and B, you believed that some payments which you  
5 should have received and which he didn't authorise being  
6 given to you, is that right?

7 A. What's the last part of your question?

131 Q. B, that there were some further payments which you believed  
9 you should have received but which you believed he was  
10 responsible for you not getting?

11 A. Well that's part of it. That's the whole story. I think  
12 you should have said that I resented deeply the conduct of  
13 him and his fellow directors, Roger Copsey and the fellow  
14 directors in involving me in a conspiracy to defraud the  
15 Revenue. That's the evidence that's there and will come  
16 out.

1 132 Q. Just to summarise the position now again, Mr. Gogarty, and  
18 I will leave this then. Is it that you have feelings of  
19 resentment towards young Mr. Murphy because of the  
20 telephone call which he made to you and because you  
21 believed that you were entitled to other payments which he  
22 prevented you getting, is that right?

23 A. There is other things too, if you want to go into them.

2 133 Q. Which have caused a feeling of resentment against  
25 Mr. Murphy?

26 A. They did of course.

2 134 Q. I see. All right.

28 When you had been talking to Mr. Connolly, were you also  
29 talking to other journalists?

30 A. No, not when I was talking to Mr. Connolly.

3 135 Q. I see. Do you remember making contact with the Sunday  
32 Times?

1 A. I didn't make contact with the Sunday Times.

136 Q. Who made contact on your behalf to the Sunday Times?

3 A. Mr. Neary, on my behalf.

137 Q. When did he do that?

5 A. Well I'd say that was -- I'd say it was late 1995.

138 Q. What was the purpose of him contacting the Sunday Times?

7 A. Well at that time, we were trying to get what we believed  
8 was a rational explanation as to why Murphy wasn't charged  
9 with his vicious threats and intimidation and obstructing  
10 justice, interference with witnesses, which he admitted,  
11 which he admitted and was caught red handed but anyway...

1 139 Q. Do you remember getting a letter dated 10th October of  
13 1995, from the Sunday Times and signed by Allen Ruddock,  
14 the Irish editor and addressed not to your solicitors but  
15 to you at Renvyle, Sheilmartin road, Sutton, County Dublin?

16 A. I do indeed.

1 140 Q. This says as follows "Dear Mr. Gogarty, I am writing to  
18 confirm that in exchange for your meeting with Maeve  
19 Sheehan and our Allen Ruddock and any other authorized  
20 representative of the Sunday Times and providing them with  
21 certain non-public confidential documents relating to  
22 alleged bribery of senior ministers in the Irish  
23 government, the Sunday Times agrees not to publish or  
24 divulge the said information to any third party without  
25 your consent. For your part, you warrant you will not  
26 discuss the information with any other newspaper or media  
27 organisation until such time as our discussions are  
28 concluded. You also warrant that any non-documentary  
29 information you provide will, to the best of your  
30 knowledge, be true and accurate; that any documentary  
31 evidence you provide is authentic. Do you find these  
32 terms acceptable, please sign the enclosed copy of this

1 letter and return it to me. Yours sincerely Alan  
2 Ruddock", copy to Mr. Kevin Neary of Donnelly Neary  
3 Donnelly?

4 A. Could I have a copy of it to have look at it?

141 Q. Yes.

6 A. There is a couple of letters there.

142 Q. First of all, how did that letter come to be written

8 directly to you, Mr. Gogarty?

9 A. Will you show it to me first?

1 143 Q. A copy of this is on the discovery document. It's 1871.

11 A. Am I finished with this thing?

1 144 Q. Yes, you can leave that down for the moment. Do you

13 remember receiving that document?

14 A. Could I have a look at it?

1 145 Q. No, do you remember -- we will get you a copy of it now in

16 a moment --

17 A. I remember -- my recollection is that there are two or

18 three letters.

1 146 Q. There are others and I am going to open those to you now.

20 A. So I have to take them in context.

2 147 Q. But I want --

22 A. And I am entitled to that from fair play? A level playing

23 pitch?

2 148 Q. I want you to tell the Chairman in what circumstances that

25 letter came to be written to you.

26 A. Could I have a look at the letter?

27 .

28 CHAIRMAN: Just a moment, we are finding difficulty in

29 finding the document. Would you have a copy --

30 .

31 MR. COONEY: It's in the Tribunal discovery, Mr. Chairman,

32 and it's -- it's a document which was discovered to us.

1 It's in Book 6, it's document number 1871 and there is  
2 subsequent correspondence as well.

3 .

4 Mr. Gogarty, can you recall the circumstances in which you  
5 received that letter?

6 A. Am I entitled to wait till I see the letters?

149 Q. Well if you need it to revive your memory, yes, but do you  
8 remember it without having seen it?

9 A. I need it -- give us a level playing pitch. A level  
10 playing pitch. Oh you may laugh... You may laugh, you may  
11 laugh --

12 .

13 CHAIRMAN: Mr. Gogarty, the letter, copy letter will be  
14 got, you will be given it.

15 .

16 MR. COONEY: He has it now, Mr. Chairman. Do you want to  
17 read it before I ask you any questions about it,  
18 Mr. Gogarty?

19 A. I want to read it, yes.

2 150 Q. It's a letter of the 10th October, on the headed notepaper  
21 of the Sunday Times, addressed to you, Mr. Gogarty. Have  
22 you seen it?

23 A. I am reading it now, yes. Yes, now...

2 151 Q. You have read it?

25 A. Yes.

2 152 Q. Would you describe the circumstances --

27 A. I beg your pardon?

2 153 Q. Would you describe the circumstances which led to the  
29 writing of that letter to you? What meetings had you had  
30 with the Sunday Times or what negotiations had you been in  
31 with them?

32 A. Well, my recollection is this, that I was advised to

1 consider talking to the Sunday Times by Mr. Neary because  
2 he indicated that we, at that time, we were trying to get,  
3 as I say, explanations why Murphy wasn't charged and my  
4 recollection, he says, the only way you will get it is to  
5 go public, use the press.

154 Q. If you look at the first paragraph in that letter, it seems  
7 that the copy which you were discussing with the Sunday  
8 Times at that stage was "Information and documents relating  
9 to the alleged bribery of senior ministers in the Irish  
10 government".

11 A. That's right.

1 155 Q. Now, had you been in direct communication with either  
13 Mr. Ruddock or Ms. Sheehan at the time of that letter?

14 A. Had I been in --

1 156 Q. Direct communication with Ms. Sheehan or Mr. Ruddock at  
16 that time?

17 A. I was in communication with -- Ms. Sheehan asked to see me.

1 157 Q. Had you spoken to her before receiving that letter?

19 A. I had, yes.

2 158 Q. And did you tell her that not one but a number of senior  
21 ministers in the Irish government had been allegedly  
22 bribed?

23 A. Well, I didn't, because -- if you go to the whole thing,  
24 there is another letter and there is notes on the back of  
25 it that immediately gave me concern because she was  
26 misquoting me and, in fact, she apologised in a letter for  
27 it. So be careful about what you are saying. Don't be  
28 selective --  
29 .

30 CHAIRMAN: Please, Mr. Gogarty. We must have some  
31 discipline.

32 A. But there is letters there --



1 .

2 CHAIRMAN: Yes, we will get the letters, but we must not  
3 have a situation where you are shouting at counsel.

4 A. I am not shouting. I am only trying to get my point  
5 across. And there is another letter there where she  
6 apologised for it because I hadn't referred to people in  
7 that government.

8 .

9 CHAIRMAN: Will you just relax and we will get all these  
10 up in due course.

11 .

12 MR. COONEY: That letter of the 10th October was replied to  
13 on your behalf by Donnelly Neary and Donnelly on the 20th  
14 October 1995, is that right? You have a copy of that  
15 letter?

16 A. Have I a copy of it?

1 159 Q. Yes. It's the 20th October. It's addressed to the  
18 Sunday Times.

19 .

20 MR. GALLAGHER: Mr. Gogarty, I think, does not have a copy  
21 of that letter.

22 .

23 MR. COONEY: It's the next one.

24 .

25 CHAIRMAN: He doesn't have a file in front of him. We  
26 will give it to him. (Document handed to witness.)

27 .

28 MR. COONEY: Have you got that letter now, a short one?

29 A. It's a short one.

3 160 Q. And it's written on your behalf to the Sunday Times by your  
31 Newry solicitors, it says "Our client: Mr. James Gogarty"  
32 then it says, "A copy of your letter of the 10th October

1 addressed to our clients has been passed to us for our  
2 comment. Generally we have no problem with the terms of  
3 the letter other than it omits to incorporate in it an  
4 indemnity in the event of publication, indemnifying  
5 Mr. Gogarty, his estate and our firm both in our personal  
6 and professional capacity in respect of any costs incurred  
7 or damages awarded in respect of any libel or defamation  
8 proceedings issued either in the United Kingdom, Republic  
9 of Ireland or elsewhere arising out of the contents of any  
10 such article published by yourselves. We presume you have  
11 a standard form of such indemnity and we would require a  
12 signed copy of the same."

13 .

14 So your solicitor was really asking for an indemnity in  
15 case you or he were sued for defamation arising out of any  
16 article published on the basis of information supplied by  
17 you, isn't that right?

18 A. Well they were my legal advisers, yeah.

1 161 Q. All right. Now the next letter then is 1984 and this  
20 again is addressed to you at your address in Sutton.

21 A. Yes, I met her twice, that girl, I think.

2 162 Q. It's written by Ms. Maeve Sheehan who was then a journalist  
23 employed by the Sunday Times?

24 A. Yes.

2 163 Q. Have you a copy of that letter in front of you now? .

26 It's dated 25th October. It says, "Dear Mr. Gogarty,  
27 following our conversation on Monday, here is an amended  
28 version of the letter which was sent to you by the Irish  
29 editor, Allen Ruddock. A copy of this letter has also been  
30 forwarded to Kevin Neary at his Newry office. I presume  
31 you are still awaiting a detailed response from the  
32 minister on the Garda's failure to pass a file onto the DPP

1 following threats made to you and your family. I  
2 understand well your reasons for wanting the matters of the  
3 Garda investigation cleared up before you proceed with the  
4 other aspect of your story. You said on Monday protection  
5 of yourself and your family must take priority.

6 .  
7 "I have to discuss the matters of protection in detail with  
8 my editor Allen Ruddock to see what the Sunday Times can  
9 arrange in this regard. I will keep you posted in this  
10 over the next few weeks."

11 .  
12 I just want to pause there for a moment, Mr. Gogarty. Had  
13 you asked the Sunday Times to provide some protection for  
14 you?

15 A. They offered it. I expressed my concern in the letter.

16 That was my immediate concern, my protection against that  
17 blackguard.

1 164 Q. And they were contemplating offering you protection, is  
19 that right?

20 A. They were, well they were considering, you see that there,  
21 yes.

2 165 Q. "Meanwhile I have been talking to Colm and Michael who were  
23 anxious that I do a story on Sunday which relates to new  
24 allegations received by their solicitors in recent weeks.  
25 In particular they are two new allegations in particular  
26 which provide very strong support for your own story."

27 Again, who are Colm and Michael?

28 A. They are two barristers. They were involved in that --

2 166 Q. What are their second names, Mr. Gogarty?

30 A. Oh, one of them was Michael Smith.

3 167 Q. And do you remember the name?

32 A. The other Colm MacEoghaidgh, is that right?

168 Q. I don't know. But were they the ones who caused the  
2 publication of the advertisements in the newspapers  
3 offering a reward of £10,000?

4 A. That's correct.

169 Q. I see. And did you meet them then after you became a  
6 client of Donnelly Neary and Donnelly?

7 A. I did, I was encouraged to meet them.

170 Q. Did you have many meetings with them?

9 A. Two.

1 171 Q. Two, I see. And the letter continues "These allegations  
11 relate to two people, one of whom is former county  
12 councillor who also claims to have witnessed on several  
13 occasions monies being passed onto the same former minister  
14 who was named by you. What I propose to do for Sunday is a  
15 story laying out these new allegations which clearly add  
16 credence to your claims. In the story I would also use  
17 information about threats made against you which are now a  
18 matter of public record after the Prime Time broadcast on  
19 the subject. It will give briefly the background to the  
20 threats made against in your subsequent correspondence to  
21 the minister from whom you are still awaiting a detailed  
22 response. I also want to write that you are considering  
23 High Court action if the Garda investigation to these  
24 threats is not passed onto the DPP. I have discussed with  
25 this Kevin Neary who was happy enough with it.  
26 Confidentiality of course is guaranteed and no names will  
27 be used. I will write to you over the next couple of  
28 weeks to keep you posted on any other developments. Let  
29 me know when ready to meet me again." Then she gives other  
30 information. "Just in case you don't have my home number,  
31 here it is... You must be under enormous pressure at the  
32 moment. I want you to know that I appreciate the time you

1 have given me to discuss this matter. I look forward to  
2 meeting you again."

3 .

4 Now do you know if Ms. Sheehan did publish any story?

5 A. I beg your pardon?

172 Q. Do you know if Ms. Sheehan in or about that time did

7 publish any stories or write any stories for the Sunday

8 Times which repeated or published your allegations?

9 A. I am not sure now. I don't think so, because she had no

10 permission from me.

1 173 Q. I see. Well is it the position then that she didn't

12 publish anything about that time, is that right?

13 A. Yes.

1 174 Q. Okay.

15 A. And do you know the other reason why?

1 175 Q. Now, did the correspondence continue on then --

17 .

18 MR. GALLAGHER: I think witness said that he wants to add

19 to his reply, that she didn't.

20 .

21 MR. COONEY: If he wants to add to it, I am not going to

22 stop him. But I am not going to ask any questions from

23 him either.

24 A. No, but there is another letter and there is notes on the

25 back of one letter.

2 176 Q. There is another letter that's dated 27th October of 1995

27 and a short letter from Donnelly Neary and again they refer

28 to the facts of the thing written by Ms. Sheehan to you.

29 He says "We confirm on behalf of Mr. Gogarty we give no

30 authority at the present time to publish any story based on

31 information received from Mr. Gogarty or this firm. We

32 have pointed out to you that we require a written indemnity

1 from the Sunday Times before Mr. Gogarty will consider  
2 giving consent."

3 .

4 MR. GALLAGHER: Sorry, what page number is that?

5 .

6 MR. COONEY: That's 2889. Now, did you ever get the  
7 written indemnity that you required about a possible  
8 defamation act?

9 A. No, because I told her I wouldn't talk to her any more,  
10 because she had two things. I felt she had breached my  
11 confidence and she had misquoted me.

1 177 Q. How had she breached your confidence?

13 A. I will tell you how she breached my confidence. Because  
14 the first thing was that we had been talking confidentially  
15 and I found out that she had gone to Mr. Broughan with whom  
16 I had been talking confidentially.

1 178 Q. Who is Mr. Browne?

18 A. Mr. Broughan.

1 179 Q. Pardon?

20 A. Mr. Broughan.

2 180 Q. Oh Mr. Broughan, sorry, Mr. Broughan the TD?

22 A. The TD and she hadn't my authority to discuss my affairs  
23 with him at all and I feel that that is correct and it was  
24 professionally incorrect for her and she accepted and there  
25 is a letter apologising for it. Do you know.

2 181 Q. Perhaps there is, I don't have that.

27 .

28 MR. GALLAGHER: That's on 1890.

29 A. So I finished. There is notes on the back of the thing,  
30 contemporaneous notes.

3 182 Q. I don't have that letter but if Mr. Gallagher wants to

32 introduce it --

1 A. Where I wasn't happy with her.

183 Q. I do have that, I beg your pardon. This is a letter of  
3 the 31st October where Ms. Sheehan says "I write to  
4 apologise for causing you so much anxiety --

5 A. Could I have a copy of that letter? (Document handed to  
6 witness.) I will read it.

184 Q. She says --

8 A. I will read it. "Dear Mr. Gogarty --

185 Q. No, no, I will read the letter.

10 A. I'd like to read it. Is there anything wrong with I  
11 reading it? "Dear Mr. Gogarty, I write to apologise to  
12 you for causing you so much anxiety last week, following  
13 the letter I wrote you. I also want to apologise for not  
14 apologising for the error in the letter we sent you  
15 regarding the terms on which we could meet in future.  
16 When I wrote to you last week, it was with a proposal to  
17 write an article on the planning issue. As you know, I  
18 have been eager to do this for sometime. I propose  
19 including information regarding your case which is already  
20 in the public domain following the Prime Time report and  
21 media coverage. I also refer to other information which I  
22 accept is not in the public domain and which I discussed to  
23 you in confidence last Monday.

24 .

25 "I did not publish the piece at your request, nor will any  
26 information regarding your case be published until such  
27 time as you are ready to give your consent.

28 .

29 "I realise that you are under immense stress and that your  
30 primary concern is the safety of yourself and your  
31 family. You have been generous with the time you have  
32 given me. I am sorry for having added to your pressure."

1 And that's when I finished with her.

186 Q. All right. It seems then that communication was resumed

3 with Ms. Sheehan, certainly by your solicitors, in or about

4 the middle of 1997, about a year and a half later, isn't

5 that right?

6 A. Well that wasn't with my permission.

187 Q. Well, there are attendances by Donnelly Neary and Donnelly

8 on Ms. Sheehan of the 16th July, '97, the 30th July 1997

9 and 19th August 1997. I wonder, Mr. Chairman, if we could

10 have these.

11 .

12 CHAIRMAN: It might be an appropriate time to break for

13 ten minutes.

14 A. Sorry, are these --

15 .

16 CHAIRMAN: We will get the documentation now. We are

17 going to have a break, Mr. Gogarty, for ten minutes.

18 .

19 .

20 .

21 .

22 .

23 .

24 .

25 ..

26 .

27 .

28 ..

29 .

30 .

31 .

32 .



1 .

2 .

3 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED

4 AS FOLLOWS:

5 .

6 MR. COONEY: May it please you, Mr. Chairman. There was

7 some reluctance to give me the attendances but I gather I

8 can have them now.

9 .

10 CHAIRMAN: You can have them all right. Have you read

11 them?

12 .

13 MR. COONEY: Yes I have, but I don't have a copy of it.

14 I was shown them but I wasn't --

15 .

16 CHAIRMAN: I appreciate what you mean. Have you had an

17 opportunity of understanding --

18 .

19 MR. COONEY: Yes.

20 .

21 CHAIRMAN: Well the situation is how can they be evidence

22 against this witness in any form?

23 .

24 MR. COONEY: Well, Mr. Chairman, I am referring to these

25 as an introduction to an article that appeared in the

26 Sunday Times and I want to ask some questions --

27 .

28 CHAIRMAN: It seems to me these documents here reflect the

29 views of two people, namely the maker of the attendance,

30 Mr. Kevin Neary, and the other person who he is talking to,

31 how do they -- what they thought, how can they affect this

32 witness?

1 .

2 MR. COONEY: But the point is, Mr. Chairman, is that these  
3 articles were then, these attendance were succeeded by two  
4 articles published in early August, 1997 in the Sunday  
5 Times which are relevant and there's clearly a link between  
6 those two published articles and these attendances.

7 That's the first point, Mr. Chairman.

8 .

9 The second point, Mr. Chairman, Mr. Gogarty has already  
10 agreed that Donnelly Neary & Donnelly were negotiating on  
11 his behalf with various newspapers including the Sunday  
12 Times and --

13 .

14 CHAIRMAN: I frankly find it hard to see they are  
15 assisting in any way. I have read the documents, they are  
16 views expressed by a journalist to a solicitor or a  
17 solicitor to a journalist but both these people recorded on  
18 paper and that's it. Now, you are perfectly entitled, of  
19 course, to put another article which appears in the Sunday  
20 paper, the source of the article but how can you get any  
21 benefit from a conversation between two people which didn't  
22 include this man?

23 .

24 MR. COONEY: But the solicitor was the agent of this  
25 man.

26 .

27 CHAIRMAN: Whether being the agent but -- as I understand  
28 and perhaps you can correct me if I am wrong in this, that  
29 you are purporting to indicate this is the mind set or  
30 viewpoint of this witness. Is that the effect?

31 .

32 MR. COONEY: It's reflected in instructions he gave to the

1 solicitor.

2 .

3 CHAIRMAN: No it isn't. That's not instructions given to

4 the solicitor.

5 .

6 MR. COONEY: We know, Mr. Chairman --

7 .

8 CHAIRMAN: That's by the solicitor of a conversation he

9 had --

10 .

11 MR. COONEY: But the views being reflected by the

12 solicitor, Mr. Chairman, are the views which he got from

13 Mr. Gogarty, Mr. Chairman, and as part of a continuing

14 sequence of events.

15 .

16 CHAIRMAN: Mr. Cooney, with all due respects, that's about

17 as third hand information you could possibly get.

18 .

19 MR. COONEY: With respect, he was Mr. Gogarty's agent and

20 he has admitted it was for the purpose of communicating

21 with these newspapers and other newspapers. The reality is

22 this firm of solicitors in Newry weren't just providing

23 legal services to Mr. Gogarty, they were also providing

24 services of a public relations sort in the sense they were,

25 on his specific instructions, negotiating with at least two

26 newspapers, the Sunday Times and Sunday Business Post and

27 were also providing information at his behest to

28 journalists employed by these newspapers. And that's

29 clear from --

30 .

31 CHAIRMAN: Frankly I can't see the point but I mean, with

32 that famous phrase, de bene esse.

1 .

2 MR. COONEY: The point, I will return to the fundamental  
3 point, there was contradictions between what was published  
4 in these articles and what was sworn to by Mr. Gogarty in  
5 this Tribunal.

6 .

7 CHAIRMAN: But the whole point about that, Mr. Cooney, is  
8 that there is a capacity or a potential embarrassment for  
9 error on the part of the recorder of those as -- for the  
10 potential of inaccuracy by the witness who is in the  
11 witness-box. Either you bring those in and you say did he  
12 get it wrong or did you tell him that?

13 .

14 MR. COONEY: I respectfully submit we should start on the  
15 assumption that it's corrected first before the error is  
16 established. Now, so far on the question of the accuracy  
17 of these articles, we have established, Mr. Chairman, that  
18 the witness whose words are being reported in the newspaper  
19 articles was of the opinion the journalist was both  
20 accurate and honest and would not misquote him. Please  
21 let me finish. I don't see, Mr. Chairman, why he should  
22 assume there's an error, rather than assume they are  
23 inaccurate and if it is an error, let it be demonstrated.

24 .

25 CHAIRMAN: Mr. Cooney, carry on because...

26 .

27 MR. COONEY: Mr. Chairman, I fail to understand, Mr.  
28 Chairman, why you should approach these articles on the  
29 basis they are erroneous --

30 .

31 CHAIRMAN: I am not approaching on the basis of erroneous,  
32 I am approaching on the simple basis you have a witness who

1 here says one thing, you said it, you cross-examined and  
2 you found out a certain amount of information. Likewise,  
3 if you want to find out whether the article is erroneous or  
4 not, you must then go to the other half of the product of  
5 that article which is the writer and they say no, that's  
6 not what I got, then we have something but simply putting  
7 that memorandum to Mr. Gogarty doesn't seem to me to get us  
8 anywhere except losing a good half hour.

9 .

10 MR. COONEY: But it seems to me, Mr. Chairman, there are  
11 contradictions now established between what Mr. Gogarty  
12 said to this Tribunal and what he said on other  
13 occasions. There may be outside possibility that he was  
14 reported erroneously on the other occasions. That would  
15 have to await the evidence from the reporters, one of whom  
16 has already furnished a Statement of Evidence but at the  
17 moment, Mr. Chairman, the evidence is that on the earlier  
18 occasions, at the moment the position appears to be what he  
19 stated on earlier occasions which was correctly reported.  
20 That's as it is at the moment and is something which I  
21 respectfully submit you will have to take into account when  
22 weighing up what credibility to give to his evidence at the  
23 end of the day.

24 .

25 CHAIRMAN: Very good. Carry on.

26 .

27 MR. COONEY: Now, Mr. Gogarty, I think --

28 .

29 MR. GALLAGHER: I think, in fairness, so that the record  
30 might record these attendances, it might be desirable that  
31 they be read into the record in their entirety. They have  
32 not been circulated to anybody as yet, only Mr. Cooney has

1 seen them and nobody else has seen them and apart from

2 counsel --

3 .

4 CHAIRMAN: If anybody has any problems with them at a

5 later stage, I will give them an opportunity to look at

6 them but at this moment in time, they don't seem to me to

7 have that great a determination that will affect anybody

8 else.

9 .

10 MR. CALLANAN: I am not maintaining any claim to privilege

11 in respect of those documents.

12 .

1 188 Q. MR. COONEY: Mr. Gogarty, do you recall articles being

14 written in the Sunday Times in August of 1997 by Maeve

15 Sheehan and Rory Godson?

16 A. In 1997?

1 189 Q. Yes.

18 A. I don't, I stopped talking to Maeve Sheehan in the end of

19 1997 and I told her I would never talk to her again and Mr.

20 Neary had that instruction from me as well.

2 190 Q. Do you know that Mr. Neary did in fact talk to her in the

22 course of 1997?

23 A. I believe it now.

2 191 Q. Yes. And do you know that she wrote articles --

25 A. But not on my instructions.

2 192 Q. Not on your instructions, I see. So when he spoke to her

27 in or about August, 1997 he was acting outside the ambit of

28 the instructions that you had given?

29 A. Well, I went to Mr. Neary to act for me in my High Court

30 proceedings against Murphy junior. That was my retainer

31 with him, exclusively. I don't deny that he was at the

32 same time acting for our two friends, Mr. MacEoghaidh and

1 Mr. Smith and as a result of that, I met them but I had  
2 only two meetings with them and it was evident to me and  
3 they accepted that we had both different agendas. My  
4 agenda was my problems with Murphy and the fact that there  
5 was a threat hanging over me and he hadn't been charged on  
6 what I believe was credible evidence and I retained Mr.  
7 Neary to issue High Court proceedings, sorry, Mr. Hegarty  
8 had done it but what was outstanding was Mr. Neary was to  
9 submit a Statement of Claim. That was my sole concern at  
10 that time. Wittingly or unwittingly we got caught up in  
11 this corruption, it wasn't my fault, it was your client and  
12 Mr. Redmond started it all in 1988 but anyway --

1 193 Q. Mr. Chairman, all I asked was whether or not Mr. Neary was  
14 acting outside the ambit of his instructions in  
15 communicating with Ms. Sheehan.

16 .

17 CHAIRMAN: He was. You got the answer he was.

18 .

19 MR. COONEY: Perhaps he could stop and I will ask another  
20 question.

21 .

22 CHAIRMAN: Do you not think that's as a result of your  
23 question?

24 .

25 MR. COONEY: Are you saying when a purely factual question  
26 is asked as that question was --

27 .

28 CHAIRMAN: I can't do more than try and keep order and if  
29 you ask questions which give a lot of scope for answer, I  
30 have to accept it.

31 .

32 MR. COONEY: I asked the simplest straightforward factual

1 question; was Mr. Neary outside the ambit?

2 .

3 CHAIRMAN: As I understand the answer when it's distilled,

4 it amounts to yes, they were outside the instructions and

5 that seems to me to destroy the premise you were

6 advancing.

7 .

8 MR. COONEY: That's the end of it but I respectfully

9 suggest there's no need for the long rambling answers we

10 have got but I can't interrupt the witness. Were you

11 aware of the story which Ms. Sheehan wrote together with

12 Mr. Godson and published in the Sunday Times on the 3rd

13 August of 1997?

14 A. No, I wasn't interested, I told you I finished with Ms.

15 Sheehan on a reasonably amicable basis. She apologised for

16 her omission and errors and misquoting me and I expressed

17 to her that she had breached our confidence and I had

18 nothing more to do with her.

1 194 Q. And were you unaware of the story which was published the

20 following Sunday in the Sunday Times, this time written by

21 her and a Mr. John Burns?

22 A. It didn't bother my head, to tell you the truth.

2 195 Q. You were not aware at that time either, were you, that your

24 solicitor had been in communication with Ms. Sheehan?

25 A. No, I wasn't.

2 196 Q. Were you aware that at the beginning of 1998, Ms. Sheehan

27 had left the Sunday Times and had gone to the Sunday

28 Tribune?

29 A. Well, I learned later that, I learned it later.

3 197 Q. -- Were you --

31 A. Because I tell you as well too, I should tell you that we

32 were in Clontarf, we moved from Sutton, we had to sell the



1 house in Sutton and we moved to Clontarf and we were there  
2 almost a year and I tell you nothing but the truth, she  
3 called a number of times and represented herself as this,  
4 that and the other. She was never admitted or spoken to  
5 other to than by my wife because I had no interest in  
6 talking to her and I think that's why she may have gone to  
7 Mr. Neary -- I had nothing to do with her from 1995.

198 Q. Did she write to you on the 7th January, 1998 to your  
9 address at Mount Prospect Avenue in Clontarf? Were you  
10 living there at the time?

11 A. I was, yes.

1 199 Q. And do you recall receiving a letter from her which was  
13 dated the 7th January - she put down 1997 but then put 8  
14 instead of 7, she made a mistake and forgot about the new  
15 year - do you remember receiving that letter?

16 A. I have only a brief recollection. I wasn't interested in  
17 her. She was pestering the house and I had no need to  
18 talk to her. I didn't want to talk to her so I didn't  
19 bother my head with her. She cannot say she ever got  
20 access to me from 1997, she couldn't have --

2 200 Q. Can I read the letter?

22 "Dear Mr. Gogarty, since I spoke to you last I have left  
23 the Sunday Times to join the Sunday Tribune. I don't know  
24 whether you dealt with this newspaper in the past but I  
25 would be very grateful if you could help me in my first  
26 week in a new job. I am writing an article for this  
27 Sunday's paper on the Planning Tribunal. I have a story  
28 prepared but I am stuck on one important issue. I know you  
29 would be able to help me if it were not inconvenient for  
30 you. I would be very grateful if you would give me a  
31 call. My query would just take a few minutes.

32 Be assured that any discussions would be in confidence. My

1 telephone numbers are..." And she gives them. Then she  
2 continues;  
3 "I hope you do not object to my writing to you like this.  
4 I do not mean to intrude on your family at what I am sure  
5 is a difficult time.  
6 Regards and best wishes,  
7 Maeve Sheehan"

8 And that letter was written on Sunday Tribune official note  
9 paper, do you remember getting that?  
10 A. I do and I dismissed that. That just shows you how she  
11 was pestering me and annoying us.

1 201 Q. You didn't talk to her at all?

13 A. No, I did not at all and I think that girl would have to  
14 admit that.

1 202 Q. Do you mean you weren't aware of the fact that two days  
16 later on the 9th January, she had been in discussion with  
17 your Newry solicitor?

18 A. Much later I heard that, much later.

1 203 Q. Well, it seems --

20 A. Twelve months later that.

2 204 Q. It seems there's an attendance of the 9th January, 1998 of  
22 conversation between Mr. Neary and Ms. Sheehan. Were you  
23 aware of that?

24 A. No, no, no.

2 205 Q. I see. Did you see the story Ms. Sheehan published in the  
26 Sunday Tribune on the 11th January, 1998?

27 A. I didn't bother my head.

2 206 Q. Was it ever drawn to your attention at all?

29 A. What is...

3 207 Q. Was it ever drawn to your attention?

31 A. Not to my knowledge, no.

3 208 Q. Can I give you a copy of it now. (Document handed to

1 witness.) You need only be concerned with the first  
2 column on the first page.

3 A. I am anxious that you are not selective, you know. Could  
4 I read the whole lot?

209 Q. There is no need to read the whole lot.

6 A. Why do you say that?

210 Q. There's only one part I want to put to him, Mr. Chairman,  
8 but however, I am in your hands.

9 A. Tell me what part you want to put.

1 211 Q. Mr. Chairman, may I put the section I require or should Mr.  
11 Gogarty be allowed read the entire of the article?

12 .

13 CHAIRMAN: Well, Mr. Cooney, provided I can follow because  
14 this is the first time...

15 .

16 MR. COONEY: All I want to do, Mr. Chairman, is to refer  
17 to two paragraphs in what is a very long article. That's  
18 all, Mr. Chairman.

19 .

20 CHAIRMAN: Could you tell me where they are?

21 .

22 MR. COONEY: They are the first two paragraphs.

23 .

24 CHAIRMAN: Those two there.

25 .

26 MR. COONEY: The first two paragraphs to the right of the  
27 picture of the writers Ms. Sheehan and Martin Wall, they  
28 are the two paragraphs. May I put those, Mr. Chairman,  
29 without having the entire article read?

30 .

31 CHAIRMAN: Would you permit me to read it because  
32 otherwise I can't authorise it?

1 A. Is it the first two paragraphs? I beg your pardon, which  
2 should I read?  
3 .

212 Q. MR. COONEY: The first two paragraph.

5 A. The first two paragraphs.  
6 .

7 CHAIRMAN: Mr. Cooney, as far as I can see, there's no  
8 good reason why you shouldn't.  
9 .

10 MR. COONEY: Very well, Mr. Chairman, could I open these  
11 paragraphs, Mr. Gogarty?

12 A. Would you give me a chance to read them please?

1 213 Q. Sorry, yes.

14 A. Well, of course, I see a lie there first of all.

1 214 Q. Just read them and I will ask the questions, Mr. Gogarty.

16 Have you finished reading those paragraphs?

17 A. No, I haven't.

18 .

19 CHAIRMAN: Mr. Cooney, we can entertain ourselves by  
20 looking at your very good photograph on the second page,  
21 for the moment.

22 .

23 MR. COONEY: Mr. Chairman --

24 A. Go ahead.

2 215 Q. Have you read them?

26 A. Yes.

2 216 Q. I will read them out. "Late last year a former local  
28 authority official called to the comfortable north Dublin  
29 home of an elderly acquaintance whom he had not seen for  
30 years. He was out of luck. James Gogarty, a retired  
31 executive with a construction firm and a key witness in the  
32 Planning Tribunal which opens this week was not in. The

1 former civil servant left a note including his telephone  
2 number asking Gogarty to get in touch. Gogarty must have  
3 been surprised at finding the missive in his hallway on his  
4 return. He did not return the call."

5 This is clearly the call to your house by Mr. George  
6 Redmond, isn't it?

7 A. Pardon?

217 Q. This is a reference to the visit to your house by Mr.

9 George Redmond, isn't that correct?

10 A. In '98, was it?

1 218 Q. Yes, this is what the writer is referring to in that

12 paragraph, isn't it?

13 A. Yes, but when did Redmond call --

1 219 Q. Well, according to your evidence, the 12th September last  
15 year.

16 A. 1998, is it?

1 220 Q. Sorry, 1997.

18 A. Yes.

1 221 Q. All right, the article continues --

20 A. Sorry, wait until I see now, wait now. And this article  
21 is 1998.

2 222 Q. That's on the 11th January, 1998. The date is on the  
23 left-hand side.

24 A. Redmond called in 1997, you say.

2 223 Q. That's what the writer is referring to there.

26 A. It's in the Tribunal's possession that's the note he  
27 left.

2 224 Q. Yes, yes. That's what the writer is referring to.

29 A. It's his writing.

3 225 Q. Mr. Gogarty...

31 A. And it's dated.

3 226 Q. Isn't that what the writer of the article is referring to

1 in the first paragraph?

2 A. I don't know, you'd want to ask her.

227 Q. All right.

4 .

5 MR. GALLAGHER: 12th August, 1997 was the date of the

6 note.

7 A. I beg your pardon?

8 .

9 MR. GALLAGHER: The 12th August, 1997.

10 A. 1997, yes.

11 .

1 228 Q. MR. COONEY: The article continues, "One of Gogarty's last

13 meetings with the official was in 1988 to discuss a problem

14 with planning permission on a 70 acre site in north

15 Dublin. The land had lain idle for years and the planning

16 permission was about to lapse. Local Authority rules

17 required a new planning application - both costly and risky

18 because local residents might object. A business

19 associate referred Gogarty to the official who could help.

20 The official had years of planning experience. He told

21 Gogarty that he could arrange for the planning permission

22 to be renewed for a fee. They agreed to meet in the lobby

23 of the Clontarf Castle Hotel in north Dublin where the

24 official briefed Gogarty on the deal. Gogarty handed him

25 £25,000 in cash."

26 .

27 Now that story was published in January of last year, over

28 a year, Mr. Gogarty, were you aware of the publication of

29 that story at the time?

30 A. No.

3 229 Q. Never?

32 A. It's the first time I saw it.

230 Q. This is the first time you heard about it?

2 A. Yes.

231 Q. And it has never been brought to your attention?

4 A. No.

232 Q. Up until this very moment, is that right?

6 A. That's right.

233 Q. I see. And you have had legal representation, I think,

8 since about this time of last year, is that right?

9 A. I beg your pardon?

1 234 Q. You have had legal representation since this time last

11 year?

12 A. Since this time last year?

1 235 Q. Yes, is that right?

14 A. Since this time last year. No, I hadn't.

1 236 Q. All right. When did Donnelly Neary & Donnelly cease to

16 act for you?

17 A. They ceased to act, I'd say, in around January or February

18 of last year, twelve months ago.

1 237 Q. I see. Because we know from the discovered documents that

20 this article was preceded by some form of communication

21 between Sheehan, Ms. Sheehan and your firm of solicitors

22 Donnelly Neary & Donnelly, they didn't inform of you of

23 that meeting and the solicitors never brought the contents

24 of this article to your notice, is that right?

25 A. No, that's right.

2 238 Q. Neither your former solicitors nor your present solicitors?

27 A. No, that's right. Well, I seen this today now.

2 239 Q. That's the first time you have seen it?

29 A. Yes.

3 240 Q. And the allegation contained in it that you had paid

31 £25,000 to a planning official in Clontarf Castle?

32 A. I don't know where she got that.

241 Q. You don't know.

2 A. She will come in and give evidence.

242 Q. Okay. All right. Now, Mr. Gogarty, there are one or two

4 other contradictions in your evidence I want to draw your

5 attention to. I have already asked you about meetings

6 which you had with Inspector Harrington. You remember me

7 asking you about that?

8 A. Yes.

243 Q. Last week?

10 A. I remember you asking me.

1 244 Q. And my questions on this occasion were directed to whether

12 or not you made accusations of bribery and corruption

13 against Sergeant Sherry, isn't that right?

14 A. That's correct I believe.

1 245 Q. And we went into that in some detail.

16 A. Well, we never did go into the full detail because I think

17 at that time I told you that I hadn't studied them at all

18 and I told you the circumstances why I hadn't studied them

19 and --

2 246 Q. Mr. Gogarty, perhaps Mr. Gallagher your own counsel may

21 want to come back to that when they start to cross-examine

22 you but at the moment I want to turn to another matter.

23 A. Sorry, could I finish that?

2 247 Q. Which you said --

25 A. You can't skip over that. I want to explain it now. And

26 I'd like to see that document, them statements of Mr.

27 Harrington, because I haven't seen them but I believe,

28 sorry, I have scanned them and I believe that all them

29 statements, I am not imputing any misconduct but all them

30 statements were written after I swore my affidavit and they

31 were furnished to the Guards. All them statements were

32 furnished since then and I am not imputing any misconduct



1 but I am saying to you that they are not my recollection  
2 but there was one statement that I scanned and it was a  
3 statement from a Sergeant Sherry, or sorry, Sergeant  
4 McNerney I think it was. Could we have a look at that  
5 statement?

248 Q. Mr. Chairman, I want to ask the witness some questions in  
7 relation to --

8 .

9 CHAIRMAN: First of all, what is the date of the  
10 statement? Who made it? And let's try find out what it's  
11 about.

12 .

13 MR. COONEY: It's Statement of Evidence of Inspector  
14 Gerard Harrington and I don't know --

15 .

16 CHAIRMAN: One of the documents on the Garda file?

17 .

18 MR. COONEY: Yes, it's tab 43.

19 A. You see, I want to emphasise you are talking about an  
20 interview and a statement with Mr. Harrington. I am  
21 telling you and I believe Mr. Harrington will agree when he  
22 comes into the box, that I never met Mr. Harrington on his  
23 own, on his own.

2 249 Q. Now, Mr. Chairman --

25 A. I met him with Superintendent McElligott.

26 .

27 CHAIRMAN: Mr. Gogarty, would you please listen to the  
28 question that is going to be asked. First of all, I think,  
29 have you got a copy of this statement for him?

30 A. Could I get a copy of it?

31 .

32 MR. COONEY: Inspector Harrington is one of -- tab 43.

1 .

2 MR. GALLAGHER: Tab 43 of the Garda statements.

3 (Document handed to witness.)

4 .

5 MR. COONEY: In any event, Mr. Chairman, what I want to do

6 is ask him whether or not he made a particular statement to

7 Detective Harrington during the course of an interview and

8 he doesn't need the statement to answer that question.

9 .

10 CHAIRMAN: What's the question?

11 .

12 MR. COONEY: The question is, did you, on the 22nd

13 February of 1997, in the course of an interview with

14 Detective Inspector Harrington, say to him that you

15 yourself had given Ray Burke £30,000?

16 A. No, that's not my recollection. Sorry, what date is on

17 this?

1 250 Q. Just listen to my question.

19 A. Yes.

2 251 Q. Did you say to Detective Inspector Harrington during the

21 course of an interview which he had with you at your home

22 on the 22nd February of 1997 that you had given to Mr. Ray

23 Burke, you, personally, had given to Mr. Ray Burke the sum

24 of £30,000?

25 A. Well, I was a party to it.

2 252 Q. No, no.

27 A. Yes -- sorry, hold on a second now please, please, please.

2 253 Q. Did you say that or did you not?

29 A. Please, please, please. I may have said it but it wasn't

30 £30,000 in cash and there was a cheque.

3 254 Q. No, no. What Detective Inspector Harrington has noted you

32 down as saying, and I will quote now from his statement, he

1 said that you, Mr. Gogarty, he said that "he himself gave  
2 Mr. Ray Burke TD, £30,000." Now, did you say to Inspector  
3 Harrington that you yourself gave to Mr. Ray Burke a sum of  
4 £30,000?

5 A. I was present and I was a party to it.

255 Q. We know that you say you were present. That's not in  
7 dispute but what is in dispute is who else was present?

8 A. I beg your pardon?

256 Q. What is in dispute is the identity of the other people who  
10 were present and who gave the money to Mr. Burke.

11 A. That would be correct.

1 257 Q. Now just listen to me for a moment.

13 A. Yes.

1 258 Q. Did Inspector Harrington note you down correctly in saying  
15 that you yourself had given £30,000 to Ray Burke, TD?

16 A. Are you saying he noted it down?

1 259 Q. Yes.

18 A. At the meeting?

1 260 Q. Yes.

20 A. Incorrect, I have to say. I am sorry I have to say it,  
21 incorrect.

2 261 Q. Okay. You disagree with that. All right. Was the  
23 topic of a payment of a specific sum to Mr. Ray Burke  
24 raised at that meeting between you and Inspector  
25 Harrington?

26 A. Oh it was, but sorry, don't leave out Superintendent  
27 McElligott who did all the talking.

2 262 Q. Just let me now deal with Inspector Harrington. You have  
29 got your own counsel and the counsel Tribunal will deal  
30 with any points they feel should be dealt with. I am just  
31 asking you this, did you discuss with Inspector Harrington  
32 the details of the alleged payment to Mr. Burke?

1 A. Not at that meeting. I had about -- Mr. Harrington  
2 attended three meetings, first of all with Superintendent  
3 McElligott and then he dropped out.

263 Q. Would you please answer the question I have asked you now,  
5 Mr. Gogarty. Did you discuss with Inspector Harrington  
6 details of the payment made to Mr. Burke?

7 A. Well, what I am saying is this; that I was at the  
8 discussions, the first three meetings Mr. Harrington was  
9 present, all the discussions took place between myself and  
10 Superintendent McElligott and Mr. Harrington didn't  
11 contribute to it. That's what I am saying and I am  
12 swearing to that.

1 264 Q. Did you discuss at these meetings at which Inspector  
14 Harrington attended, details of the payment made to Mr.  
15 Burke?

16 A. I did, yes.

1 265 Q. All right.

18 A. Yes.

1 266 Q. Did you discuss the amount of the payment to Mr. Burke?

20 A. I did, yes.

2 267 Q. Did you say who was present when the payment was made to  
22 Mr. Burke?

23 A. I believe I did, yes.

2 268 Q. Who do you say you named as being present?

25 A. Myself, Junior, Ray Burke and Mr. Bailey.

2 269 Q. Well now, I have to put it to you that you did not mention  
27 Mr. Murphy junior on that occasion.

28 A. You have already put it to me several times.

2 270 Q. I am putting it to you that you did not mention that on  
30 that occasion?

31 A. I did, I did.

3 271 Q. Did you mention the sum which you say was paid over on that

1 occasion?

2 A. I didn't. My recollection is I said there was 30,000 in

3 cash and there was a £10,000 cheque and I believed, I

4 believed that that was matched by Mr. Bailey. That was

5 matched by Mr. Bailey.

272 Q. We take it then that you told the two members of the Gardai

7 Siochana including Inspector Harrington is that the sum of

8 £40,000 was paid over to Mr. Burke?

9 A. That's my recollection.

1 273 Q. Apart from the £40,000 which you believe was paid by Mr.

11 Bailey?

12 A. That's right.

1 274 Q. So that Inspector Harrington in failing to note £40,000 and

14 noting £30,000 is incorrect, is that right?

15 A. It's not my recollection.

1 275 Q. No, no. Do you say that a he noted down inaccurately what

17 you said on that occasion?

18 A. He noted that here? Is it in this statement?

1 276 Q. Yes.

20 .

21 MR. GALLAGHER: The witness said Mr. Harrington did not

22 take notes down.

23 A. He made no notes of the meeting at all.

24 .

2 277 Q. MR. COONEY: All right. He noted it in his Statement of

26 Evidence.

27 A. Oh yes --

2 278 Q. Is that an inaccuracy?

29 A. Sorry, that was the last, end of last year after I

30 furnished me own affidavit.

3 279 Q. How do you know that?

32 A. I was told.

280 Q. Told by whom?

2 A. What?

281 Q. Told by whom?

4 A. My solicitors gave me this.

282 Q. How do your solicitors know when Inspector Harrington wrote

6 down his notes of his conversation with you?

7 A. Well, the Tribunal maybe should know.

283 Q. The fact that we were furnished with it in November last

9 doesn't mean that that's when the note was written.

10 .

11 MR. GALLAGHER: Sir, I said in the course of the evidence

12 that these statements had, in fact, been furnished in

13 response to Mr. Gogarty's evidence. I said it in open, in

14 the course of the hearing of the Tribunal.

15 .

16 MR. COONEY: Of course. Is Mr. Gallagher saying now this

17 is not a contemporaneous note and cannot be relied upon?

18 .

19 MR. GALLAGHER: I am not saying that. Mr. Cooney should

20 not attribute words or motives or views to me. I am

21 simply stating a fact, my understanding from Miss Butler,

22 counsel for the Gardai Siochana, that these statements were

23 prepared and furnished to the Tribunal following the

24 circulation of Mr. Gogarty's evidence. I am not saying

25 anything, I haven't said anything about those statements

26 and whether or not they can be relied upon.

27 .

28 MR. COONEY: Is Mr. Gallagher saying that they are not

29 reliable?

30 .

31 MR. GALLAGHER: I am not saying anything about it.

32 .

1 MR. COONEY: Then why is he interfering?

2 .

3 CHAIRMAN: Mr. Cooney, Mr. Gallagher is recording to you

4 or reciting to you our information in relation to the

5 source of the statements. We can not say when they were

6 prepared but they certainly were circulated to us after

7 this affidavit was circulated to the Gardai. They are

8 also undated.

9 .

10 MR. COONEY: Mr. Chairman, it seems to be an extraordinary

11 thing that this Tribunal, through you as Chairman and

12 through its leading counsel, should attempt to undermine

13 the accuracy of a statement made by the Garda -- please

14 let me finish --

15 .

16 CHAIRMAN: I am not undermining the accuracy of

17 anything.

18 .

19 MR. COONEY: Please let me finish.

20 .

21 CHAIRMAN: I want to be heard. Mr. Cooney, what I have

22 said is this; that this statement, the circumstances under

23 which they came to us, I simply point out that they are not

24 dated. I do not undermine anybody's statement. Let's be

25 quite clear about this. I regard it as being an insulting

26 remark by you.

27 .

28 MR. COONEY: Isn't it extraordinary that counsel for the

29 Tribunal have not attempted to interview the Guards and

30 clear up this point because we know that it is invariably

31 their practice particularly in an important issue like this

32 -- sorry, if your assistant has to say something Mr.

1 Chairman, we should hear it in public.

2 .

3 CHAIRMAN: No.

4 .

5 MR. COONEY: With respect, Mr. Chairman, if you are  
6 getting advice from a member of the Tribunal team, we  
7 should hear it in public. You know, Mr. Chairman, that  
8 guards make statements or take notes of interviews which  
9 they have. It is to be assumed that the statement which  
10 Inspector Harrington has recorded in his Statement of  
11 Evidence is from a note which he made contemporaneously.  
12 It seems to me that this is a very important matter and I  
13 am surprised it's raised by you or lead counsel to the  
14 Tribunal without having first ascertained it and to do it  
15 in such a way that casts doubt on it. I would like, Mr.  
16 Chairman, this is a very important matter to me because you  
17 know, Mr. Chairman, from the Statement of Evidence which we  
18 have given to you is that Murphy junior's account is that  
19 he wasn't there and it's also the evidence of other sources  
20 that the only payment made to Mr. Burke was a sum of  
21 £30,000.

22 .

23 This statement by Inspector Harrington corroborates that  
24 and it's for that reason I should be allowed put it to the  
25 witness without the validity of the statement being  
26 questioned by you, Mr. Chairman.

27 .

28 CHAIRMAN: I have not questioned the validity of the  
29 statement. I have merely pointed out and I repeat this,  
30 that the statement is not dated. You are advancing the  
31 statement as a contemporaneous account of what Inspector  
32 Harrington found on the occasion of an interview on a



1 particular date. I know not whether it is taken at that  
2 stage, if it's taken from notes or whether it was compiled  
3 from recollection. That's all I am saying.

4 .

5 MR. COONEY: Mr. Chairman, if you look at the statement,  
6 you will see it's a narrative account in chronological  
7 order by Inspector Harrington of his visits and meetings  
8 with Mr. Gogarty, starting off with his first meeting of  
9 the 10th February and continuing down to describe his  
10 subsequent meetings. Now I think, Mr. Chairman, it is  
11 fair to assume that when a Garda Inspector makes a  
12 Statement of Evidence, that he refers to his original notes  
13 and that the Statement of Evidence is comprised on that,  
14 Mr. Chairman. Now, if there's any doubt about that, Mr.  
15 Chairman, I would be very surprised that the Tribunal  
16 hadn't inquired into this matter because it must have been  
17 apparent to the Tribunal when they received this statement  
18 that it was a matter of some crucial importance. Now,  
19 could I continue the cross-examination?

20 .

21 MR. GALLAGHER: Sir, I want to say I am not questioning  
22 Inspector Harrington's statement and I do not impugn it in  
23 any way and I reject any suggestion to the contrary.

24 A. And I am not either, only I'd like to see the notes.

25 .

26 CHAIRMAN: At the moment I want the question answered.

27 .

28 MR. COONEY: Well, the question I am putting to him is  
29 this, Mr. Chairman, is, are you saying, Mr. Gogarty, that  
30 you did not tell Inspector Harrington that you yourself  
31 paid a sum of £30,000 to Ray Burke, TD?

32 A. I am saying that my discussions at that time were directly

1 with Superintendent McElligott and Mr. Harrington made no  
2 contribution. He was a listener and he was at three  
3 meetings and there was a fourth meeting then with Mr.  
4 McElligott on his own and then there was a fifth and  
5 probably a sixth and it was then that Mr. McElligott made  
6 notes, made notes and when I sought a copy of those notes,  
7 he -- he got around giving them to me, he was just  
8 assuring me that I'd be happy with his investigation into  
9 the conduct of Detective Sherry and I accepted that. And  
10 his own investigation was ongoing and when my, both my and  
11 my solicitor at that time asked for a copy of the notes he  
12 had taken so that we could incorporate them into a formal  
13 statement, having checked them against -- because my  
14 discussions with Superintendent McElligott was, from  
15 recollection, I never touched documents or referred to  
16 documents and he then described that, what I call the  
17 statement, as aide memoirs, an aide memoir.

18 .

19 CHAIRMAN: Mr. Gogarty, can I fairly understand your  
20 answer to the question, did you advise Inspector Harrington  
21 and/or Superintendent McElligott that you gave £30,000?  
22 And the answer you give is no, as far as you recall?

23 A. It's not complete.

24 .

25 CHAIRMAN: Is that a fair summary when we cut out all the  
26 other -- is that a fair summary?

27 .

28 MR. GALLAGHER: Mr. Gogarty, Mr. Justice Flood is asking  
29 you a question.

30 A. Sorry, I thought he was asking Mr. Cooney. Sorry.

31 .

32 CHAIRMAN: Mr. Cooney has asked you has Inspector

1 Harrington correctly recorded the text of a conversation  
2 which you had with him and Superintendent McElligott?

3 A. My recollection is not correct.

4 .

5 CHAIRMAN: That's four words we took two hours to get  
6 to. Try and answer questions shortly and at this stage we  
7 are just gone beyond one o'clock and we will rise for the  
8 day.

9 .

10 THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,  
11 WEDNESDAY, 24TH FEBRUARY, 1999 AT 10AM.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32