

1 THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 24TH FEBRUARY, 1999,

2 AT 10:00 AM:

3 .

4 MR. COONEY: Mr. Chairman, before resuming the cross-examination

5 of Mr. Gogarty, there is one matter I want to mention briefly and

6 it follows on the ruling which you made yesterday morning in

7 relation to the matter being mentioned by Mr. Connolly's

8 contribution to the radio programme on Thursday evening last.

9 Now, this matter was again -- this matter was referred to during

10 Mr. Dunphy's programme yesterday evening and a number of seriously

11 misleading statements were made which reflected on what

12 Mr. Herbert and myself were trying to do.

13 .

14 I'd like to draw these to your attention. Mr. Dunphy said as

15 follows: "Our friend, Mr. Cooney, wanted revenge when commenting

16 on the Tribunal on this programme and elsewhere," this Mr. Dunphy

17 addressing Mr. Connolly.

18 .

19 In the course Mr. Connolly replied, he says: "The legal team for

20 JMSE asked that, because I am a witness, that I be precluded from

21 commenting on the Flood Tribunal proceedings."

22 .

23 And later on he also says: "And I think that we will leave

24 what's -- attempts by JMSE to silence me because they argued as a

25 witness that perhaps I might not be fully impartial in my

26 reporting of these proceedings."

27 .

28 That's a totally false statement of our position in relation to

29 the objection which we made. We made no criticism of Mr.

30 Connolly as a commentator, except in relation to the programme in

31 which he participated on Thursday last. We know that

32 Mr. Connolly's participated in many other programmes. We have no

1 criticism to make of his participation in his other programmes.
2 Our criticism was restricted to the programme on Thursday last and
3 only because in our view, he had misquoted the evidence which had
4 been given that day; and at worse than that, by referring to the
5 evidence which he himself will be giving to the Tribunal.

6 .
7 It is therefore false of this programme to suggest that we were
8 trying to silence Mr. Connolly or trying to gag him in any way.
9 I want to make that point publicly, Mr. Chairman.

10 .
11 CHAIRMAN: I can make no comment. First of all, I want to see
12 the transcript, see what was said yesterday. I don't know
13 whether I should have a copy here of what he did say and I'd have
14 to -- before making any decision whatsoever, I would hope that no
15 prejudicial remarks would ever be made by anyone in relation to
16 matters which have not been canvassed before the Tribunal.
17 Obviously, as I said in what I said yesterday, this Tribunal is
18 subject to comment and criticism like any other public
19 institution.

20 .
21 MR. COONEY: We were quite satisfied with what you said yesterday,
22 Mr. Chairman, and with the general principles which you
23 enunciated. Our dissatisfaction arises with the false spin which
24 was put on what you said in the programme yesterday evening.

25 .
26 CHAIRMAN: As I say, I am making no comment until I see the
27 text.

28 .
29 MR. COONEY: We will furnish --

30 .
31 CHAIRMAN: I will take into account what you say, Mr. Cooney. I
32 am not in any way rejecting that. I just don't want to say

1 anything off-the-cuff without seeing both sides.

2 .

3 MR. COONEY: It's a minor matter, Mr. Chairman, and I don't want

4 to elaborate --

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6 CHAIRMAN: It's a matter of principle.

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8 MR. COONEY: I simply don't like false statements being attributed

9 to me over the public airwaves.

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1 CONTINUATION OF CROSS-EXAMINATION OF MR. GOGARTY BY MR. COONEY:

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3 1 Q. Mr. Gogarty, this morning I want to ask you some further questions

4 about a matter which I raised with you yesterday and that's the

5 story which appeared in the Sunday Business Post on the 31st May

6 of last year. You remember I mentioned this article to you

7 yesterday, Mr. Gogarty?

8 A. Yes.

9 2 Q. And I'd like to give you a copy of this. I am not sure if you

10 have one, Mr. Chairman.

11 .

12 (Article handed to witness and Chairman and counsel.)

13 .

14 Now, I am going to -- first of all, to read out the entire of the

15 portion of the article which refers to my clients, Mr. Gogarty,

16 and then I want to ask you some questions about it. The

17 headline: "More Politicians Get Payoffs Says Man Who Named

18 Burke." Then the subheadline saying: "Gogarty Names Conduit For

19 New Political Payments."

20 .

21 And the story is written by Frank Connolly and Mark O'Connell and

22 it reads as follows:

23 .

24 "Former executive Jim Gogarty says a number of politicians

25 receive monies from its employers Joseph Murphy Structural

26 Engineers. Gogarty's earlier claim that he witnessed the payment

27 of £80,000 to Ray Burke in July, 1989, forced the Fianna Fail

28 Foreign Minister's resignation last year.

29 .

30 "In what may become a more explosive political controversy than

31 the series of allegations which led to Burke's resignation last

32 year, Gogarty has named a man he says acted as a conduit for

1 payments to a number of politicians.
2 .
3 "The politicians include a senior member of Fianna Fail, and a
4 Senior Fine Gael politician. The allegations were made in
5 discussions between Gogarty and the Sunday Business Post which
6 began more than two years ago. However, the man Gogarty named as
7 the person who made the payments on behalf of JMSE has denied that
8 he paid the politicians.

9 .
10 "Gogarty has suggested that specific payments were made in return
11 for assistance in the accusation and retention of properties which
12 were used by the company. They do not include the normal
13 considerations which were made by JMSE to local politicians which
14 were revealed last year. JMSE was also a major contributor to
15 Fianna Fail and the other political parties over the years."

16 .
17 Now, that ends the extract in this article that I want to ask you
18 about, Mr. Gogarty.

19 .
20 First of all, Mr. Gogarty, did you give information along the
21 lines contained in this article to either Mr. Connolly or Mr.
22 O'Connell?

23 A. Mr. Who?

24 3 Q. From Frank Connolly or Mr. Mark O'Connell.

25 A. Mark O'Connell?

26 4 Q. Yes, he is another journalist employed by the Sunday Business
27 Post, and he was a joint writer of this article together with
28 Mr. Connolly.

29 A. I never met Mr. O'Connell.

30 5 Q. Well then, did you give the information contained in this article
31 to Mr. Connolly?

32 A. I discussed these generally with Mr. Connolly, I am sure

1 Mr. Connolly will give his evidence of what happened.

2 6 Q. Mr. Connolly -- or Mr. Gogarty, this article contains quite fresh
3 and new allegations, quite different from the ones which you made
4 about alleged payments by my client to Mr. Burke. These alleged
5 payments to senior politicians, one Fine Gael and one Fianna
6 Fail.

7 .

8 Now, did you give Mr. Connolly the information upon which these
9 allegations are made in this article?

10 A. Oh, I probably did, it would be hearsay if one was told, you know.

11 7 Q. Now, the article says that the allegations were made in
12 discussions between Gogarty and the Sunday Business Post which
13 began more than two years ago. We know from your evidence on
14 other occasions and earlier on, Mr. Gogarty, that you first came
15 in contact with Mr. Connolly sometime around the beginning of
16 1996; isn't that right?

17 A. That would be correct.

18 8 Q. Then you had intermittent discussions and meetings with him in the
19 subsequent years; isn't that right?

20 A. That's correct.

21 9 Q. When, during those two years, and at which of those discussions
22 did you make these allegations?

23 A. Well, I couldn't pinpoint the date, you know, but it was an
24 ongoing thing between telephone calls and discussions, you know.

25 10 Q. You see, this is a story which broke, as the saying goes, in May
26 of last year after the establishment of this Tribunal, and it has
27 very specific allegations concerning payments allegedly made by my
28 clients to two senior politicians.

29 .

30 Now, what I want to ask you this, Mr. Gogarty, is: Had you given
31 that information to Mr. Connolly within a relatively short period
32 of the date of publication?

1 A. Which of your clients are you talking about?

2 11 Q. JMSE.

3 A. Who in JMSE, sorry?

4 12 Q. Just JMSE.

5 A. JMSE.

6 13 Q. This is my client and these are the people who are alleged in this

7 story to have made payments to prominent politicians, one Fianna

8 Fail and one Fine Gael. What I am asking you, Mr. Gogarty, was

9 this information given to you by Mr. Connolly upon which this

10 story was based, given to you shortly before the publication of

11 this article?

12 A. I'd say it was, yeah.

13 14 Q. Now, can you tell us about how long before the 31st May of last

14 year did you give this information to Mr. Connolly?

15 A. I couldn't be sure, I couldn't be sure. I accept his version of

16 it, you know.

17 15 Q. I am asking you this now, Mr. Gogarty, because these are very

18 serious allegations being made not only against my clients, but so

19 far unnamed politicians.

20 A. I couldn't specifically say the date.

21 16 Q. Not -- I can understand that you may not remember the precise

22 date. But can you say was it within a week or a fortnight of the

23 publication, before the publication?

24 A. I couldn't be sure. Honest to God. It could be a week or a

25 fortnight, you know.

26 17 Q. I mean, did you have any documentation containing the details or

27 similar details to those contained in this story?

28 A. Well, there was one particular document I had that --

29 18 Q. What document was that?

30 A. That was a document, it was a letter, I think, from -- from the

31 architect Jack Manning of Connolly -- of Conroy Manahan

32 Associates, who was involved with Conroy around that period from

1 '82 on, from the time he came in to the organisation, and it was
2 Frank Reynolds gave me this letter and he made some comments
3 himself and the letter is in with the Tribunal, where in respect
4 of the original permission on Forest Road, which was done by
5 Conroy and -- Conroy as an executive with JMSE and as a principal
6 of Conroy Manahan Associates and it appears from that letter, he
7 is, as was explained by Frankie to me, that he gave that to me
8 around about 1986 --

9 19 Q. What was the date --

10 A. Sorry, I will explain.

11 20 Q. Wait now, just tell me what's the date --

12 A. Could I get the letter?

13 21 Q. What is the date of the letter, Mr. Gogarty, approximately?

14 A. The letter would be going back to 1983 or '84, I think, you know.

15 22 Q. Are you saying that --

16 .

17 MR. GALLAGHER: Sorry, I wonder could the witness be shown a
18 letter which is letter number 1 in the reference books that were
19 circulated.

20 .

21 MR. COONEY: I don't have this.

22 .

23 CHAIRMAN: We will get it, Mr. , Cooney for you.

24 .

25 MR. GALLAGHER: It has been circulated.

26 .

27 CHAIRMAN: The reference is?

28 .

29 MR. GALLAGHER: It's page 1 of the book of extracts of the 7th
30 January.

31 A. I will read it. It's headed --

32 .

1 MR. COONEY: Just a second, till I get it.

2 A. Sorry, sorry.

3 23 Q. MR. COONEY: All right, go ahead now. Read the letter,

4 Mr. Gogarty.

5 A. Frankie gave this to me around about 1986. It's headed JG

6 Manahan --

7 24 Q. Give me the date of it first.

8 A. It's the 15/9/83. It says -- I didn't see that until 1996. It

9 says: "Re proposed development at Forest Road, Swords.

10 .

11 "Memo: To Grafton Construction Company Limited."

12 .

13 And in a kind of brackets, LC, would be Liam Conroy, because he

14 was the chief executive of Grafton.

15 It says: "Following discussions on a number of occasions with

16 Mr. Conroy, in which I suggested that the density of the above

17 development could be increased, thus raising the value of the

18 lands by at least a quarter of a million pounds.

19 .

20 "Accordingly, it have agreed that I should make a new planning

21 application to the county council.

22 .

23 "A complete new set of drawings were prepared and revised to

24 increase the number of sites to 206, was submitted to the Council

25 for Planning Permission and Building Bylaw Approval, and a

26 decision to grant permission was obtained on the 1/10/1982.

27 .

28 "However, a local resident objected to the development and

29 appealed it to An Bord Pleanala.

30 .

31 "Through certain 'channels,' I was able to discover in time, that

32 the board intended to turn down the planning decision but I was

1 eventually successful in having this reversed and full planning
2 permission was granted on the 21/6/1983 for the increased
3 development of 206 houses.

4 .

5 "The account will follow."

6 25 Q. That's a letter which is written in '93 which you say you got in
7 '96 from Mr. Reynolds.

8 .

9 MR. GALLAGHER: In '83.

10 .

11 MR. COONEY: '83, I beg your pardon. And you got it in '86 from
12 Mr. Reynolds?

13 A. Yes, that's right.

14 26 Q. And it's now among the documents which you furnished to the
15 Tribunal; is that right?

16 A. That's correct.

17 27 Q. And is this the documentary evidence upon which you relied when
18 you made -- when you gave Mr. Connolly the information which led
19 to the publication of this article in May of 1998?

20 A. That's right.

21 28 Q. And nothing else?

22 A. There could be another one, that was a very important one, because
23 to me it reads, do you know, it reads...

24 29 Q. First of all, Mr. Gogarty, what other -- did you give a copy of
25 that letter to Mr. Connolly?

26 A. I couldn't swear to it.

27 30 Q. Well now, Mr. Gogarty, I asked you what documentary information
28 did you have to support the story that Mr. Connolly wrote and
29 published last May in the Sunday Business Post and you referred to
30 that letter.

31 .

32 Now, did you or did you not give that letter to Mr. Connolly in

1 support of the story that he subsequently published?

2 A. I couldn't swear to it, I don't know.

3 31 Q. You don't. Well then, what information -- did you give him or
4 show him any other documents which supported or made out the story
5 that's in this newspaper?

6 A. Well, I'll tell you now, he came out to my house, I don't know the
7 date, but he came out to my house -- I think I'd only about two
8 personal meetings with Mr. Connolly, I think most of them was by
9 phone and the third meeting in Neary's office, but he came out and
10 I think he -- he will give evidence to this effect, he came out
11 and I had laid out -- I was expecting him and I laid out the table
12 with all the documents I had and I asked him to go through them.
13 I don't know what he went through, but he spent a bit of time
14 there and I would say that following that, he followed up with an
15 article. You'd have to ask him about what documents he saw and
16 took.

17 32 Q. I will, when the time comes, ask him about these, but what I want
18 to establish now is the basis upon which this story was published
19 in which serious, further serious allegations are being made
20 against my clients.

21 A. If I didn't give him that, or he didn't take it --

22 33 Q. Let me finish.

23 A. Sorry.

24 34 Q. You said to us a moment ago that the information contained in this
25 article was furnished by you to Mr. Connolly some short time
26 before the publication of the article; isn't that right?

27 A. That could be, yes, yes.

28 35 Q. That is the situation?

29 A. Yeah, yeah, I won't disagree with you, no.

30 36 Q. All right. Now, what form did that information take? Was it a
31 conversation that you had with him either face-to-face or on the
32 telephone or did it consist partly of conversation and partly the

1 production by you to him of documentation?

2 A. Basically conversation.

3 37 Q. Basically conversation?

4 A. Yes.

5 38 Q. All right.

6 A. And as I say, the only time he had seen documents was when he came

7 out to the house in Sutton and I laid them there out for him. He

8 will describe what he did himself.

9 39 Q. I am sure he will, Mr. Gogarty. You have already told us about

10 him being in your house inspecting documentation. Now, what we

11 have established then, Mr. Gogarty, is that this story is based

12 purely on a conversation that you had with him within some short

13 time before the publication of the story; is that right?

14 A. Well, following that, you see, and having chatted with Frankie,

15 and Frankie filling me in on the background to it, I challenged

16 Manahan and Conroy on it, you know.

17 40 Q. Mr. Chairman -- Mr. Gogarty, now please, I think you understand

18 perfectly the question which I am asking you. Can we establish

19 as a fact that the entire of this story is based upon a

20 conversation that you had with Mr. Connolly some short time before

21 its publication?

22 A. I will accept that. I accept that, I accept that, I accept that.

23 41 Q. Do you remember where this conversation occurred? Was it on the

24 telephone or was it face-to-face?

25 A. Well, both, because we elaborated -- I went over it several times,

26 you know, over a period where he was contacting me.

27 42 Q. Well, that means then that you met -- you spoke to him both on the

28 telephone and you met him face-to-face; is that right?

29 A. That's correct, yeah.

30 43 Q. Where did you meet him?

31 A. I will tell you I met him in that house, in my house.

32 44 Q. Again, this is a short time before the 31st May of '98; is that

1 right?

2 A. I couldn't swear to the date, but I am sure Mr. Connolly will

3 confirm it. He'd have notes of it. I didn't take a note.

4 45 Q. Who were the two politicians to whom you say my clients made

5 substantial payments?

6 .

7 MR. GALLAGHER: Mr. Chairman, I suggest that the politicians

8 should not be named at this stage unless they have already been

9 dealt with or unless allegations have been made in public against

10 them. I don't know who they are. And I think it would be

11 inappropriate that allegations should be made against persons who

12 have not been informed of the nature of an allegation being made

13 against them and have not been circulated and have not had an

14 opportunity of being represented here if they wished to be

15 represented. I can't see that it in any way inhibits Mr. Cooney

16 in his cross-examination. The allegation is that there are two

17 persons named. If there is basis for these claims, then no doubt

18 they will be dealt with in due course, but it can be dealt with on

19 the assumption that two persons were named.

20 .

21 CHAIRMAN: Mr. Cooney -- let's discuss this for a moment

22 please. Mr. Cooney, as I understand the jurisprudence, personal

23 reputations can and may well be ruined in the course of the

24 Tribunal, but that in all instances, every effort is made to

25 acquaint them of the fact that a charge is going to be laid and

26 therefore, that they have an opportunity to come in and defend

27 their reputation. That's as I understand the jurisprudence, in

28 the Red Cross case.

29 .

30 Now, in that context, this seems to fit absolutely squarely into

31 that situation. Now, I appreciate that you are very vigorous in

32 your cross-examination. This is a material portion. Do the

1 names assist you in any way as such or is it a matter, I will only
2 suggest, that you get confirmation that two politicians, by all
3 means if we can find out who they are, we can circulate them and
4 you can return to the matter. I want to give notice, if at all
5 possible, to a person who may be adversely affected by evidence of
6 which they have no notice. That's all I want to do, so far as
7 possible. I have no wish to in any way inhibit you.

8 .

9 MR. COONEY: I understand your point, Mr. Chairman, but you will
10 understand, Mr. Chairman, that I am concerned with this fact and
11 that is that in addition to the other very serious, and we say
12 false, allegations which Mr. Gogarty has made against us, he
13 published -- he made other ones which were published in a
14 newspaper to the public at large. He says that we, we, that's
15 JMSE, made substantial contributions to politicians for corrupt
16 purposes.

17 .

18 Now, I am raising this, Mr. Chairman, for two purposes.

19 .

20 I am, first of all, raising it to defend ourselves against that
21 allegation, and this I think we are perfectly entitled to do. I
22 am also raising it for the purpose of showing that it's pure
23 fantasy. For instance, Mr. Chairman, I believe that if this
24 Tribunal must have been aware of this, and yet clearly didn't
25 bother investigating it, Mr. Chairman, because it's not included
26 in the Book of Evidence which was circulated to us and which
27 contains the evidence which Mr. Gogarty is going to give against
28 us.

29 .

30 CHAIRMAN: Mr. Cooney, the Tribunal got a statement of evidence
31 by way of affidavit from Mr. Gogarty. We did not, and it would
32 be not part of our function, to cross-examine Mr. Gogarty in

1 relation to it. That's his Statement of Evidence and you are
2 doing a very fine job, if I may say so, of investigation by your
3 own right. I can't see that the defence of your clients is any
4 way enhanced by nominating or naming two politicians. It's
5 either true, what he says, or it's not. The naming doesn't
6 enhance that fact.

7 .

8 Secondly, as far as the two politicians are concerned, if it is
9 false, as you allege it is, they may get their names gravely
10 smeared. I see no function, no practical use, in pursuing the
11 actual names of the politicians. I have no objection whatsoever
12 of the whole texture, none whatsoever. I merely say that to you
13 as a matter of ordinary fair justice. Two unnamed people who may
14 or may not be -- sorry, justly accused. I don't know.

15 .

16 MR. COONEY: Whoever they are, Mr. Chairman, I have no doubt that
17 the accusation by Mr. Gogarty is completely and totally false.

18 But that's beside the point.

19 .

20 CHAIRMAN: That's your ex parte statement --

21 .

22 MR. COONEY: That's beside the point, Mr. Chairman, but in order
23 to defend myself against this am saying, and to demonstrate that
24 it's false and, therefore, to demonstrate that Mr. Gogarty's
25 credibility is seriously in question, I must, as a matter of fact,
26 Mr. Chairman, establish the identity of the people to whom I have
27 alleged to pass on large sums of money in the form of a bribe. I
28 mean, it is asking me to conduct my defence with one hand tied
29 behind my back if I can't do that. This is to demonstrate the
30 unreality of it.

31 .

32 Now, Mr. Chairman, it's unfortunate that these people should be

1 named. I want to make it clear that I don't believe there is any
2 truth in these allegations, but I need to know for the purpose of
3 demonstrating the absurdity of the story and the fact that that
4 man, Mr. Gogarty, will make these most absurd stories and that he
5 will be believed by gullible journalists who will publish this to
6 the world, Mr. Chairman. That's the point I want to make.

7 .

8 And I think, Mr. Chairman, I say with respect, Mr. Chairman, in
9 defence of my client, I must be allowed to explore this story in
10 full. I have no wish to embarrass any politician. My personal
11 belief is there is no truth in this. Whoever these people are I
12 don't believe it could or should reflect on them. I must, in the
13 interest of my client, fully explore this story, including
14 establishing the identity of the persons who allegedly received
15 these payments. Otherwise, Mr. Chairman, I cannot defend my
16 client against this charge and I cannot make the parallel point
17 that the charges are false and that this falsity is of a pattern
18 which, I will be asking the Tribunal to accept in relation to Mr.
19 Gogarty's evidence in general.

20 .

21 MR. GALLAGHER: Sir, can I say that it seems to me that there is
22 no good reason why Mr. Cooney cannot conduct his examination on
23 the basis that there is no truth in this report insofar as it
24 alleges that payments were made to two unnamed politicians. If,
25 in due course, the politicians are identified and they are
26 notified, then it may be appropriate to have them appear at the
27 Tribunal to give their version of events. But at the moment, it
28 seems to me, there is no reason why this cross-examination cannot
29 continue on the basis that Mr. Cooney has outlined, that is that
30 there is absolutely no basis for the report or for the information
31 which is alleged to have been furnished by Mr. Gogarty and that,
32 and on the basis that Mr. Cooney believes his client never made

1 such payments.

2 .

3 Mr. Gogarty had indicated that he had spoken with Mr. Reynolds, no
4 doubt that will be something that will be explored. At this
5 stage it can not advance, in my respectful submission, the
6 cross-examination by naming persons who, at this stage, certainly
7 are innocent so far as the Tribunal and everybody else is
8 concerned.

9 .

10 The probative value would be far outweighed by the damage to
11 reputations that might well arise and in those circumstances, I
12 suggest that you should not permit the persons concerned to be
13 named, whatever decision you might make at a later stage on the
14 matter.

15 .

16 MR. COONEY: Mr. Chairman, it seems that Mr. Gallagher is more
17 interested in protecting the identity of these unnamed politicians
18 from false accusations than he is in facilitating my defence of my
19 client. I am here now faced with this very serious case,
20 Mr. Chairman. I must defend my clients. It's an essential part
21 of the defence of my client, is to illustrate the falsity of the
22 accusations Mr. Gogarty is making, and this is one of them.

23 Suppose, just take this extreme example. Supposing one of the
24 politicians named was somebody who is plainly beyond suspicion,
25 like President Robinson or President McAleese. That would
26 demonstrate the absurdity of the accusation.

27 .

28 Similarly, that's why I need to get this information in order to
29 make the point which I must make in the interest of my client,
30 Mr. Chairman.

31 .

32 And, Mr. Chairman, would it assist if you heard this in private

1 perhaps?

2 .

3 CHAIRMAN: I think it would assist if I heard it in private,
4 because it is a very pejorative -- what's troubling me is that the
5 balance between the probative aspect and the pejorative aspect of
6 people who, as you point out, may be innocent. I am very very
7 conscious that people in public life --

8 .

9 MR. COONEY: I have no doubt of their innocence, Mr. Chairman,
10 because I believe this accusation is false. But what I need to
11 do, Mr. Chairman, is to identify all the elements, factual
12 elements, of the story in order to demonstrate its falsity.

13 .

14 CHAIRMAN: I don't want to in any way clear a public hall that is
15 full of people. Obviously, the only alternative I have is to sit
16 in my chambers inside and listen to and try and ascertain. I
17 think what I am going to do is rise for ten minutes and I want to
18 make certain inquiries.

19 .

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

21 .

22 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS
23 FOLLOWS:

24 .

25 CHAIRMAN: Mr. Cooney, I have thought about the matter and my
26 view of the matter is this, that this is apparently hearsay
27 evidence at its worst, it's verging on gossip and to in any way
28 permit a public representative's name to be in any way damaged or
29 apparently damaged would be quite, accordingly, I hold that the
30 evidence would be much more prejudicial and probative, and I am
31 ruling that the names should not be disclosed. Thank you.

32 .

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

2 .

3 46 Q. Mr. Gogarty I am going to continue to ask you questions about this
4 article, but I cannot now ask you to name the people, the two
5 persons, one in Fine Gael, one in Fianna Fail, who is alleged to
6 have received these payments, but you did furnish such names to
7 Mr. Connolly, did you?

8 A. I did. In fact, I should say that for the record, meetings with
9 Mr. Connolly, I now recollect that I had at least two meetings
10 with Mr. Connolly, but it was with -- in the presence of Tommy
11 Broughan who was feeling he could get nowhere, you know, and
12 Mr. Broughan and Mr. Connolly maybe will deal with that further.

13 47 Q. Well, they may do and when the time comes, I will deal with them,
14 Mr. Gogarty, but at the moment I am just concerned with what you
15 said about being the source of this story because you are the
16 source of this information on which this story is based. You
17 said at the same time you furnished this information to
18 Mr. Connolly, you also furnished to Deputy Broughan; is that
19 right?

20 A. Well, I don't know whether it was simultaneous, but there was two
21 meetings where we discussed the general situation which he was
22 trying to pursue on my behalf and was not very successful.
23 That's not to say that he didn't try very hard, and I don't know
24 who arranged the meeting with himself then and Mr. Broughan and we
25 had a few discussions, the three of us, you know.

26 48 Q. What I asked you, Mr. Gogarty, is this --

27 A. They told me things which is hearsay too, and...

28 49 Q. Please listen to me, Mr. Gogarty. Are you telling the Tribunal
29 that in addition to furnishing the information contained in this
30 article to Mr. Connolly, you also furnished it to Deputy Broughan?

31 A. I would have discussed it generally with Deputy Broughan.

32 50 Q. I am not asking you if you discussed it generally, Mr. Gogarty.

1 I think you well understand that. I am asking you specifically
2 if you also furnished this information to Deputy Broughan?

3 A. I'd accept I probably did.

4 51 Q. I am not asking you...

5 .

6 You probably did?

7 A. Yes.

8 52 Q. Now, I want you to be more specific, did you or didn't you?

9 A. How in the name of God can I be more specific? I am trying to
10 tell you the truth. I am not trying to evade anything, you know.

11 53 Q. Well, you certainly told it specifically to Mr. Connolly. Now
12 you introduced Deputy Broughan into this part of the examination
13 and I want to know, did you introduce it for the purpose of
14 diversion or for the purpose of saying that you also introduced --
15 you also told Deputy Broughan this piece of information?

16 A. No, for the purpose in case later on you tell me I didn't tell
17 everything and told lies.

18 54 Q. Did you tell Deputy Broughan the same details which you told
19 Mr. Connolly and which appear in this story?

20 A. I wouldn't rule that out.

21 55 Q. Well, it's probable that you did, is it?

22 A. Yes.

23 56 Q. All right.

24 A. Because there was such a lot of things happening at that time.

25 57 Q. When did you tell Deputy Broughan these details?

26 A. I beg your pardon?

27 58 Q. When did you probably tell Deputy Broughan the details which
28 appear in this story?

29 A. I couldn't identify the date.

30 59 Q. You don't know?

31 A. No.

32 60 Q. How close to the publication of the story was it?

1 A. I couldn't tell you, honest to God.

2 61 Q. Was it within weeks or months, can you tell us?

3 A. I'd prefer to leave it to Mr. Broughan and Mr. Connolly. Honest
4 to God.

5 62 Q. I am sure you would, Mr. Gogarty, but I am not going to allow you
6 do it. We will raise it with them when the time comes. I am
7 going to ask you when did you probably give to Deputy Broughan the
8 details which appear in this newspaper article?

9 A. Over that period of time.

10 63 Q. Sometime around May of 1998 or shortly before that; is that right?

11 A. Oh, I'd say sometime before that, oh I'd say sometime before that.

12 64 Q. Was it May or April or March?

13 A. It could have been in '87. '86, you know.

14 65 Q. '97 or '96?

15 A. '97 or '96, it could be.

16 66 Q. I see. So it could have been at any time two years before the
17 date of publication; is that right?

18 A. It could have been.

19 67 Q. And did you name the two politicians to whom my clients were
20 reputed to have given substantial contributions?

21 A. I told them what I was told. I didn't say personally that I had
22 any evidence that they were paid money. I was told it. I was
23 told it.

24 68 Q. Who told you?

25 A. Well, Frank Reynolds and also Conroy admitted that he was behind
26 this thing here, this thing here, Conroy...

27 69 Q. Mr. Gogarty, now, who is the conduit who is referred to in this
28 story?

29 A. The conduit? I didn't use the word "conduit."

30 70 Q. No, Mr. Connolly does. He says: "Gogarty names conduit for new
31 political payments."

32 .

1 Now, the story reads: "In what may become more explosive
2 political controversy in the series of allegations which led to
3 Mr. Burke's resignation last year, Gogarty has named a man, he
4 says, acted as a conduit for payments to a number of
5 politicians..."

6 .

7 Now, who is the man whom you named as the conduit?

8 A. The man that was feeding me all this bloody information was Frank
9 Reynolds over the years. And looking back, I was a bloody eejit,
10 but I was involved. I didn't get my pension and he was feeding me
11 stuff to bring it to my attention, his concerns about Conroy and
12 his other crowd, taking over Murphys and had took control of the
13 trust and that developed into we removing them. We got rid of
14 them. We got rid of them and got the trust back for Mr. Murphy.
15 And I am wondering was it right at the time to even go that far,
16 but that's the man that was responsible for keeping me informed.

17 .

18 CHAIRMAN: Mr. Gogarty, you are straying from the answer to the
19 question by a great deal. Please go back to the question.

20 .

21 MR. COONEY: Yes, I will.

22 71 Q. Mr. Gogarty, there is a very specific sentence in this article,
23 and I am going to read it to you again and then I am going to ask
24 you a question based on it. The sentence reads as follows:

25 "Gogarty has named the man, he says, acted as a conduit for
26 payments to a number of politicians..."

27 .

28 Who is the man whom you named to Mr. Connolly and who is referred
29 to in that sentence?

30 A. Well, the man that was giving me information was Frank Reynolds
31 and earlier then Jack Manahan told me about what was behind that
32 letter that he wrote and Conroy.

1 72 Q. The sentence I have read out to you refers to one single person,
2 Mr. Gogarty, as you well know. Now, I want you to tell the
3 Tribunal who is that person whom, according to this story, you
4 named to Mr. Connolly?

5 A. Well, I can't go further than what I am saying. I am not trying
6 to be evasive, you know. This should come out in evidence by
7 Mr. Connolly and also Frank Reynolds, you know.

8 73 Q. Mr. Gogarty --

9 .

10 CHAIRMAN: Mr. Cooney, may I invite you to put the question this
11 way: Who is the person who he says was the conduit? Because I am
12 very nervous that my ruling is going to be accidentally overturned
13 and I have notes --

14 .

15 MR. COONEY: I assure you I am not...

16 .

17 CHAIRMAN: I appreciate you don't, and I am not suggesting you
18 are. I am nervous. That's the whole point of that ruling, to
19 avoid any problem. The conduit is who you want to find out.

20 .

21 MR. COONEY: I wonder would you mind repeating the term -- I know
22 it's pretty difficult --

23 .

24 CHAIRMAN: I suggest to you, in every respect to you, would you
25 ask Mr. Gogarty, who is the person who he -- who is the person
26 named in the article who is said to be the conduit -- who he says
27 was the conduit?

28 .

29 74 Q. MR. COONEY: Who was the person named in the article whom you say
30 was the conduit?

31 A. Well, I consider it was Frank Reynolds.

32 75 Q. Okay. So now we have established then, have we, Mr. Gogarty,

1 that it was Mr. Frank Reynolds who told you that payments had been
2 made by JMSE to two Senior politicians, one in Fine Gael and one
3 in Fianna Fail; is that right?

4 A. That's what he had found out and told me.

5 76 Q. He is the person who told you that; is that right?

6 A. Yes.

7 77 Q. And he is the person that's been referred to in this sentence; is
8 that right?

9 A. Yes.

10 78 Q. I see. And it was on the basis of what he says Frank Reynolds
11 told you that you furnished this story to Mr. Connolly; is that
12 correct?

13 A. Well, I was concerned that I felt that on that information, that
14 there was a lot of things very questionable, and could be and
15 should be investigated.

16 79 Q. That is not an answer to my question, Mr. Gogarty. Please don't
17 look down at your team; look at me or elsewhere. You are saying
18 positively, that Mr. Reynolds told you that his employers, JMSE,
19 had made payments to senior politicians, including a Fine Gael
20 politician and a Fianna Fail politician; is that right?

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

22 80 Q. He told you that; is that right?

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

24 81 Q. When did he tell you that?

25 A. Oh, he told me that from the period 1986 --

26 82 Q. No, no. I am asking you when did he --

27 A. During that period he told me several times.

28 83 Q. He told you that, you say, in 1986; is that correct?

29 A. That's when it started, yeah.

30 84 Q. No, no, when -- I am asking you when, Mr. Gogarty, did he relay
31 this information to you, according to your account?

32 A. I'd say '86.

1 85 Q. You'd say '86?

2 A. Yeah.

3 86 Q. And on how many occasions did he say this to you?

4 A. I beg your pardon?

5 87 Q. On how many occasions did he say this to you?

6 A. Did I say to him?

7 88 Q. No. Did he say this to you?

8 A. Sure, Jaysus, he had my heart broke chasing me with information.

9 89 Q. Now, Mr. Gogarty --

10 A. That's a fact. Umpteen times over two years until we got rid of
11 Conroy and for the corrupt practice and bribery, the whole bloody
12 things.

13 90 Q. Several times or umpteen times he told you that?

14 A. Yes.

15 91 Q. Did he identify -- and don't name the people -- but did he
16 identify to you the politicians who were reputed to have sheaved
17 these payments?

18 A. He did, yeah.

19 .

20 CHAIRMAN: Please do not pursue that answer, because it is in the
21 teeth of the ruling which I have just made.

22 .

23 MR. COONEY: Mr. Chairman, I said specifically that he wasn't to
24 name that.

25 .

26 CHAIRMAN: I know you did. That is one question back. He has
27 given you the answer. He did name them and I do not want that
28 ruling to be overturned accidentally.

29 .

30 MR. COONEY: Mr. Chairman, it's not my intention to do that, and I
31 am trying to remain within the ruling, at the same time conduct
32 the cross-examination in my clients' interest, but it's not my

1 intention to do that.

2 92 Q. He named the two people. Now, don't mention them. Did he name
3 anybody else?

4 A. Oh, indeed he did.

5 93 Q. As receiving payments?

6 A. Well, questionable conduct.

7 94 Q. No, no. As receiving payments from JMSE?

8 A. I wouldn't go that far, but --

9 95 Q. Did he mention the amounts that these politicians are meant to
10 have received?

11 A. No, no.

12 96 Q. Did he say when these payments had been made?

13 A. Yes, over a period.

14 97 Q. What period?

15 A. Going back to 1982.

16 98 Q. So from 1982 until when, Mr. Gogarty?

17 A. Well, up until we got rid of Conroy.

18 99 Q. Well, just, without being pejorative, Mr. Gogarty, could you just
19 give us the date, from 1982 until when?

20 A. I couldn't give you the date. I'd be a genius if I could give
21 you the date. But I will tell you this -- sorry -- if it
22 helps -- sorry...

2 100 Q. Can you tell us approximately when Mr. Conroy left?

24 A. Mr. Conroy was ousted in 1988 and in 1988, I think I told you
25 there was an abortive shareholders meeting --

2 101 Q. We know all about that. All I want to do is establish the period
27 of time during which you say these payments were made, being made
28 to these two unnamed and unnameable politicians. So you say it
29 happened --

30 A. Going back --

3 102 Q. Let me finish now.

32 .

1 CHAIRMAN: That is not his evidence and it's not fair to put that
2 to him. He has said that he was told by Mr. Reynolds what had
3 happened and Mr. Reynolds said that this had started, as he
4 understood it, in 1982.

5 .
6 MR. COONEY: And I am asking him, for how long did -- all these
7 questions were posited on the assumption, false I may add, that
8 Mr. Reynolds gave this information to Mr. Gogarty.

9 .
10 CHAIRMAN: Sorry, may I come in here, Mr. Cooney? I have a note
11 here in my notebook, the letter, that's the Forest Road letter,
12 that was apparently he got that letter from Mr. Frank Reynolds in
13 1986. So isn't the answer to your question, from 1982 to '86,
14 seems to be the period which this happens.

15 .
16 MR. COONEY: That may be, Mr. Chairman, but may I say, with great
17 respect, that the witness said it happened between 1982 and the
18 date of Mr. Conroy's departure from JMSE which is '88. Now,
19 these are matters of detail which go to the accuracy of these
20 allegations.

2 103 Q. So, are you saying then, Mr. Gogarty, that Mr. Reynolds told you
22 that these two named -- these two unnamed politicians were
23 receiving regular payments from JMSE from 1982 until the date of
24 Mr. Conroy's departure from the company which is around 1988; is
25 that right?

26 A. No, I am not saying that at all.

2 104 Q. Well, what you are you saying then?

28 A. I am saying that he told me that politicians were being used for
29 various purposes to the benefit of JMSE and I will start and tell
30 you --

3 105 Q. I am not asking you about that, Mr. Gogarty. I am asking you
32 about the specific details contained in this article which is that

1 payments were being made by JMSE to two senior politicians, one in
2 Fine Gael and one in Fianna Fail.

3 .

4 Now, I am asking you this question, Mr. Gogarty, I want to
5 return -- I had asked you over what period of time you say that
6 Mr. Reynolds told you these payments were made and you said from
7 1982 until the date of Mr. Conroy's departure.

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

106 Q. So, these two senior politicians were receiving payments --

10 A. Oh, not the two of them, not the two of them.

1 107 Q. Well, how many payments do you say --

12 A. I couldn't tell you, honest to God. You'd have to ask Frank
13 Reynolds.

1 108 Q. No. Surely you asked Mr. Reynolds -- surely you asked him how
15 many payments had been made and how much they amounted to?

16 A. No, I didn't.

1 109 Q. You were chairman of the company at the time, weren't you?

18 A. I was, and I was being treated as a second-class citizen.

1 110 Q. You were chairman of the company who made rigorous inquiries into
20 the accounts and wouldn't sign the accounts because you didn't
21 consider them to be correct; isn't that right?

22 A. And I never got the proper information.

2 111 Q. Now, I suggest to you, I suggest to you that it is most unlikely
24 that you would not have asked Mr. Reynolds for further details
25 about these payments such as the amount of the payments and the
26 dates, even the approximate dates when they were made?

27 A. No.

2 112 Q. You never asked him either of those two matters?

29 A. No, no. Honest to God, I didn't give a damn about politicians, if
30 I could get my pension and get rid of the whole bloody lot of
31 them.

3 113 Q. So is it the position then, Mr. Gogarty, that when you gave this

1 information to Mr. Connolly to publish in the Sunday Business
2 Post, you hadn't been informed by this conduit, Mr. Reynolds, of
3 the amounts of the monies that are alleged to be paid to these two
4 senior politicians, nor the approximate dates upon which the sums
5 were made; is that right?

6 A. That is true, yes.

114 Q. So you knew at some period between 1982 and 1988, some unspecified
8 amount of money had been paid at some date in a period of six
9 years to two politicians; is that right?

10 A. That's my understanding, and it was supported by him describing
11 the circumstances which led him to believe that and led him to
12 tell me and get me interested in it.)

1 115 Q. If this is true, Mr. Gogarty, why weren't these allegations
14 contained in the affidavit of evidence which you submitted to this
15 Tribunal?

16 A. Well, I will tell you now anyway, I am giving them to you now...

1 116 Q. You know very well, Mr. Gogarty, that that's not a proper answer
18 to my question. I am suggesting to you that if what you are now
19 saying to the Tribunal is true, why wasn't it included in the
20 affidavit of evidence which, with the assistance of your
21 solicitors, you drew up and furnished to the Tribunal?

22 A. Because, well, first of all, anything that's in my affidavit is
23 sworn affidavit. I didn't put everything into my affidavit, not
24 deliberately. I didn't deliberately exclude anything and I
25 reserved the right to elaborate and expand on it later on as it
26 came back to me, and I am trying to do that now today and I will
27 keep at it with you for the next six weeks or six months with you,
28 I don't care, if the Lord spares me.

2 117 Q. This is not an elaboration or expansion or anything Mr. Gogarty.
30 This is a completely new allegation of corruption against my
31 clients and against two unnamed senior politicians.

32 .

1 Now, I am suggesting to you that if this allegation had any truth
2 or any basis of foundation of fact whatsoever, they would have
3 been included in the affidavit which was submitted on your behalf
4 to the Tribunal.

5 A. Not necessarily.

118 Q. You know that this Tribunal is charged with an inquiry into
7 corrupt or allegedly corrupt payments to politicians and
8 officials. You know that, don't you?

9 A. Yes, but I expect that it's involved in other serious crime as
10 well, which is very relevant to the whole situation.

1 119 Q. No. First of all, you are fully aware of the fact that the task
12 given to this Tribunal by our Oireachtas is to inquire into
13 allegations of corrupt or alleged corruption or corrupt payments
14 to politicians and officials, you are aware of that?

15 A. And bribery.

1 120 Q. You are aware of that?

17 A. I am, yeah.

1 121 Q. And you knew that from the moment the Tribunal was established, I
19 think, in the latter part of 1997, September of '97?

20 A. That's right.

2 122 Q. You knew that?

22 A. That's right.

2 123 Q. And you have been in consultation with members of the Tribunal
24 team; isn't that right?

25 A. That's correct, yeah.

2 124 Q. You met the Chairman on one or two occasions; isn't that correct?

27 A. I met the Chairman on one occasion.

2 125 Q. One occasion. Your solicitors had been in constant communication
29 with the Tribunal team; isn't that right?

30 A. I believe so, yeah. What's wrong with that?

31 .

32 CHAIRMAN: Just let's go on with the examination and not have a

1 discussion as to what is or is not wrong with it.

2 .

3 MR. COONEY: I didn't enter into that discussion.

4 .

5 CHAIRMAN: Please carry on.

6 .

7 MR. COONEY: Well, I do intend to continue.

8 .

126 Q. Your solicitors had been in constant communication with the
10 Tribunal; isn't that right?

11 A. I don't know. They will have to tell you themselves.

1 127 Q. You know very well that they have and that they furnished hundreds
13 of documents which belong to you to the Tribunal?

14 A. I see you have a barrow or something bringing them in, sure I see
15 them, I see them.

1 128 Q. Mr. Gogarty, do you really consider that's a proper answer to the
17 question I have asked you?

18 A. Well, what more do you want me to say? Will I put my hand up and
19 surrender or what? What?

2 129 Q. What I am asking you is this, I am endeavouring to establish the
21 depth and extent of the communication which you have had
22 personally or through your solicitors with the Tribunal.

23 .

24 And having done that, Mr. Gogarty, as you are perfectly well
25 aware, I intend to ask you then, isn't it extraordinary, having
26 regard to all of that, none of these allegations were ever
27 conveyed to the Tribunal?

28 A. Well, you are saying it's extraordinary. That's your opinion.

2 130 Q. When this story appeared, well after the establishment of the
30 Tribunal, did anybody seek to interview you about it?

31 A. Oh sure they did, I told that you.

3 131 Q. Who?

1 A. Didn't I tell you that Maeve Sheehan pestered me all over the
2 bloody place -- sorry, that was before, but she pestered me.

132 Q. Come on now, Mr. Gogarty. When this story appeared on the 31st
4 May last year, lead story in this newspaper, headlines right
5 across the page, did anybody, in any position of responsibility,
6 seek you out to interview you about these allegations and to put
7 some flesh on the allegations?

8 A. After this? Well, of course, the guards spoke to me, didn't
9 they?

1 133 Q. Did they speak to you about this story?

11 A. They could have -- oh sure, I told them about the media, yes. In
12 fact Superintendent McElligott will tell you, I am sure, in his
13 evidence, that he rang me and also wrote to my solicitor
14 confirming -- trying to assure me because of my stress, that he
15 had no hand, that the guards had no hand in what was being leaked
16 to the media. And that's in correspondence. The man was trying
17 to appease me in my distress, that he was to assure me, and I
18 wrote to him and I thanked him for that assurance, but I asked
19 him -- I said to him, I accept your personal assurance for your
20 part, but it would be wrong to tell me to accept your -- can you
21 assure me that the spin doctors out there will do the same? And
22 I asked him would he give to the media the same publicity of his
23 assurance as the media were quoting they had assurances from the
24 police, you know, about their sources and the leaks? Sure, I
25 went out of my way to facilitate people, to help people, to
26 consider and investigate all what I was saying. You call them
27 allegations. I will go along with that, but I am saying that
28 they were all unquestionable conduct, conduct that should be
29 questioned, including my own conduct. I am not...
30 .

31 CHAIRMAN: Mr. Gogarty, Mr. Gogarty, please, would you now
32 cooperate by answering a question that was put to you.

1 .

2 The simple question was: Did anybody, after the 31st May, 1998,
3 which is the date of publication of this article, interview you in
4 relation to your statement that people, that claims had been made
5 to a -- payments had been made to a number of politicians?

6 A. Not to my recollection.

7 .

8 CHAIRMAN: That's the question you were asked, that's the
9 answer. So can we move on, Mr. Cooney?

10 .

11 MR. COONEY: I beg your pardon?

12 .

13 CHAIRMAN: Can we move on from that subject?

14 .

15 MR. COONEY: Yes, I am anxious to move on, Mr. Chairman, as fast
16 as I can, I assure you.

17 .

1 134 Q. Mr. Gogarty, isn't it the fact that this story in the Sunday

19 Business Post is sheer fantasy on your part?

20 A. Fantasy and frolic? That's your judgement and I have to leave it
21 to the Tribunal to investigate the whole lot.

2 135 Q. Isn't it fantasy that was borne out of desire to cause further
23 damage to employers against whom you are pursuing a vendetta?

24 A. Not at all, not at all.

2 136 Q. There is no doubt for the last number of years at least, you

26 entertain a sense of grievance against JMSE and the people
27 associated with it, don't you?

28 A. Based on their conduct, their threats and intimidation, their
29 vicious attacks on me, the whole lot. I am human. I am
30 human. And I will go to my grave against that bloody vengeance
31 that is still holding over me. And what's more, you are telling
32 me that I ripped off the taxpayer with fraudulently getting

1 protection. I want to thank the Tribunal that directed that I be
2 protected for 24 hours and I am -- thanks be to God it is, because
3 what's appearing in the media there I want to be very careful of
4 myself. There was a man quoted in the paper the other day that
5 when he heard what happened over the weekend, he was shocked and
6 he said, we are facing Armageddon, and he says that there is
7 people out there now and they are wondering should they kill
8 themselves or kill George Redmond? That's in the paper quoted,
9 so it is, the other day. And how do you think I feel?

10 .

11 CHAIRMAN: Mr. Gogarty, would you please desist from commenting
12 what has been happening over the weekend and answer the questions
13 that Mr. Cooney is putting, because believe it or not Mr. Cooney
14 does want to get on. That's what he says --

15 A. That's no fantasy on my part.

16 .

17 CHAIRMAN: Then of course so did the snail trying to get to
18 Jerusalem want to get on.

19 A. I beg your pardon?

20 .

21 137 Q. MR. COONEY: Mr. Gogarty, I don't need to ask you any more if you
22 have a sense of grievance against your former employers, I think
23 that's very obvious. But what I am suggesting to you is that this
24 bit of fantasy which appeared in the Sunday Business Post in May
25 of last year grew directly out of your sense of grievance against
26 your employers and your desire to hurt them on every possible
27 occasion.

28 A. I deny it was a fantasy. It's a reality if you face the facts
29 and if you read -- you have documentation in your own possession
30 to support what I am saying, if you had the guts to allow full
31 disclosure. Full disclosure. But you are preempting it by
32 every bloody process, technicality and spin-doctoring. I see

1 them over there, but I will fight my corner. I will fight my
2 corner.

138 Q. Mr. Gogarty, if this story is not fantasy and it's true, why did
4 you wait for ten years and longer to release it into the public
5 domain?

6 A. Because I believe action should have been taken. If there was
7 action taken in 1994, I honestly believe I'd have been spared the
8 last five years and maybe you as well too and you wouldn't be here
9 earning the fees you are today.

1 139 Q. So again, Mr. Gogarty, this story appears in the National Press
11 damaging my clients' reputation because of the telephone call
12 which Mr. Joseph Murphy Junior made to you in June of 1994; is
13 that what it comes down to?

14 A. He had already damaged his reputation when he was charged with
15 assault back in the early years and you described it as a frolic
16 by him. If the truth was told, I had no firsthand information
17 about that case in which Murphy Junior was charged.

18

19 MR. COONEY: Mr. Chairman, I think he should be stopped --

20 A. Don't interrupt me now. I had no firsthand information.

21

22 MR. COONEY: Mr. Chairman, for the last four to five weeks Mr.
23 Gogarty has used his position in the witness-box to blackguard my
24 clients with that inference. This must stop, Mr. Chairman. It
25 offends against elementary rules of fairness and justice that a
26 witness should take advantage of his privileged position in a
27 witness-box to constantly blackguard people who are here in this
28 hall, sometimes I have to say to the amusement of the rest of the
29 people.

30

31 This must stop, Mr. Chairman. It's not fair to my clients who

32 would have to put up with this tarn of abuse for the last six

1 weeks. This witness is obliged to behave like any other witness,
2 to answer questions in a direct and straightforward manner and not
3 to behave as he has been doing. It's gone beyond the point of
4 humour, Mr. Chairman. This constant harassment of my clients in
5 the witness-box, it must stop.

6 A. This is not humour --

7 .

8 CHAIRMAN: Mr. Gogarty, please.

9 A. Sorry.

10 .

11 CHAIRMAN: Thank you for the lecture, proceed --

12 .

13 MR. COONEY: I don't intend --

14 .

15 CHAIRMAN: I have had enough of the lecture. You have repeated
16 it ad nauseam. I am doing my best to run the Tribunal with
17 courtesy to you and endeavouring to get the information out of a
18 difficult witness.

19 .

20 MR. COONEY: Mr. Chairman, I accept entirely --

21 .

22 CHAIRMAN: I have had enough of the lecture, thank you very
23 much. Let's get on with the business.

24 .

25 MR. COONEY: With respect, I think it's not fair that my clients
26 are continual blackguarded from the witness-box. I know he is a
27 difficult witness to control.

28 .

29 CHAIRMAN: Mr. Cooney, let me be quite clear about this.

30 Anything that has happened to your clients in the course of the
31 Tribunal, if it is not justified will be clearly denounced in the
32 report.

1 .

2 MR. COONEY: Very good, Mr. Chairman.

3 .

4 CHAIRMAN: Clearly and specifically denounced. I can do no more
5 than that than to justify what I find to be the truth.

6 .

7 MR. COONEY: I appreciate that very much, Mr. Chairman, and that's
8 just as I would expect from you, Mr. Chairman. But the point I
9 was protesting about, Mr. Chairman, is that Mr. Gogarty has
10 availed of the opportunity to blackguard my clients continually.

11 Now, I know he is an extremely difficult witness to control,

12 Mr. Chairman. Everybody finds that, but there should be a
13 limit. That's the only point I am making.

14 .

15 CHAIRMAN: Thank you.

16 A. What about you blackguarding me? .

17 .

18 CHAIRMAN: Now, please, Mr. Gogarty. One at a time. Could we
19 now get on with the relevant questions.

20 .

21 MR. COONEY: I pause in case there might have been an encore,
22 Mr. Chairman.

23 .

24 CHAIRMAN: The snail, of course, ultimately did get to
25 Jerusalem. You know that story.

26 .

2 140 Q. MR. COONEY: Mr. Gogarty, before this most recent exchange, I was
28 putting it to you that this story is a further example of the
29 vengeance which you are seeking against my clients because the
30 phone call which Mr. Joseph Murphy Junior made to you in June of
31 1994 --

32 .

1 CHAIRMAN: Mr. Cooney, that is, I think, the third time within
2 the last fifteen minutes you have put that particular question.
3 The answer is no, or words to that effect. Now, how many times
4 are you going to put the question in the hope of getting a
5 different answer?

6 .

7 MR. COONEY: Mr. Chairman, on the contrary. I haven't got a
8 positive answer one way or the other. All I have got is a stream
9 of abuse, Mr. Chairman.

10 .

1 141 Q. Isn't that the fact, Mr. Gogarty, that you are out to revenge
12 yourself because of a sense --

13 A. No...

14 .

15 MR. GALLAGHER: He now has said, no, it's not.

16 A. No, it's not --

17 .

18 MR. COONEY: Before I finished asking the question --

19 .

20 CHAIRMAN: Mr. Cooney, there has to be a limit to the number of
21 times you can protest your clients' innocence in this Tribunal.
22 Start off with the principle that they presumably are innocent.

23 .

24 MR. COONEY: I know that, Mr. Chairman. I appreciate that.

25 .

26 CHAIRMAN: But you repeatedly appeal to the jury who appear to be
27 the public and not me.

28 .

29 MR. COONEY: Mr. Chairman, I have no concern with the public.

30 They don't concern me in the least, Mr. Chairman. It isn't I who
31 am playing to the public galleries, Mr. Chairman. All right, I
32 will move on.

1 .

2 Mr. Gogarty, have you spoken to Frank Connolly since the

3 publication of this article?

4 A. I have seen him in the court.

142 Q. But not before the sittings of the Tribunal; is that correct?

6 A. I don't think so.

143 Q. This article states that the man in question whom we now know to

8 be Frank Reynolds has denied the story. If you look down at the

9 second last paragraph that says: "However, the man Gogarty named

10 as the person who made the payments on behalf of JMSE has denied

11 that he paid the politicians," that's Mr. Frank Reynolds, isn't

12 it?

13 A. Of course that's what he says, yeah.

1 144 Q. And it seems that Mr. Connolly got in touch with Mr. Reynolds and

15 asked him was there any truth in the story that you had given;

16 isn't that correct?

17 A. I don't know, I couldn't say. You will have to talk to

18 Mr. Connolly.

1 145 Q. Doesn't that follow from the article itself?

20 A. Well, I don't know, does it.

2 146 Q. Well --

22 A. That's may be theoretical, but is it factual? I don't know.

2 147 Q. Let's read it again: "However, the man Gogarty named as the

24 person who made the payments on behalf of JMSE has denied that he

25 paid the politicians." Now, that has to be Mr. Reynolds?

26 A. No, I don't know.

2 148 Q. Well, who else could it be?

28 A. I couldn't say. Sure I don't know

29 .

30 MR. GALLAGHER: Mr. Connolly wrote the article. I think it's

31 unfair to ask this witness to comment on what Mr. Connolly has

32 said. The article speaks for itself and it can be proved by

1 Mr. Connolly.

2 .

3 MR. COONEY: Surely I am entitled to probe the accuracy of the

4 story. Here is an important sentence --

5 .

6 MR. CHAIRMAN: The person to quote the accuracy is the person who

7 wrote it.

8 .

9 MR. COONEY: On the contrary, Mr. Chairman, it's person the wrote

10 it is simply a journalist who is skilled at writing. He is as

11 good as the information which he gets and the source of the

12 information here --

13 .

14 CHAIRMAN: Mr. Cooney, as a matter of probability, do you think

15 that that statement emanated from any further contact between Mr.

16 Gogarty and any -- and the person whom he alleged made the

17 statement? Do you think that happened as a matter of

18 probability? Isn't it much more likely that the source of that

19 is the writer of the story who may have said to himself to

20 inquire. Now, please, could we get on with this case.

21 .

22 MR. COONEY: It's as clear as daylight that that sentence was

23 written by Mr. Connolly as a result of contact which he made with

24 this man alleged to be Mr. Reynolds. Now, the next question

25 which occurs to me as being relevant is whether or not

26 Mr. Connolly went back to Mr. Gogarty and put Mr. Reynolds' denial

27 to him and established what Mr. Gogarty said in response to

28 that? Is that, with respect, Mr. Chairman, a reasonable

29 question, arising out of the article? May I ask that?

30 .

31 CHAIRMAN: I am not answering questions to you. You can ask the

32 questions. If I find them wrong, I will so state.

1 .

149 Q. MR. COONEY: Did you read that article, Mr. Gogarty?

3 A. I probably did. I have a pain in my face reading articles. So I

4 have. And reading about your side of it as well too.

150 Q. And did you pay any attention to that paragraph which says:

6 "However, the man Gogarty named as the person who made the

7 payments on behalf of JMSE has denied that he paid the

8 politicians"? Do you remember reading that sentence?

9 A. I beg your pardon?

1 151 Q. Do you remember reading that sentence?

11 A. I am not sure. I couldn't swear to it. I couldn't swear to it.

1 152 Q. Well, is it the first time then that you became aware of this

13 sentence in the article?

14 A. Well, you are bringing it back to me anyway.

1 153 Q. Did Mr. Connolly come back to you and say, oh, this man has denied

16 that he paid politicians on behalf of JMSE?

17 A. I don't think so.

1 154 Q. I see. You had no further contact with Mr. Connolly arising out

19 of this article then?

20 A. I don't think I had now, to tell you the truth.

2 155 Q. Mr. Gogarty, during the early part --

22 A. By phone -- there was contact by phone.

2 156 Q. During the earlier part of your evidence, Mr. Gogarty, you

24 referred to Mr. Frank Reynolds as an ally of yours?

25 A. Oh Jesus, I thought he was for years.

2 157 Q. And that was, I think, until December of 1990 when he became

27 managing director; is that right?

28 A. And about September/October 1990.

2 158 Q. Now, Mr. Reynolds had joined the company in 1968, in or about the

30 same time that you had; isn't that correct?

31 A. Yes.

3 159 Q. But in quite a different position; isn't that correct?

1 A. That's right.

160 Q. You had joined as managing director?

3 A. That's right, well, I was first joint managing director and then
4 managing director, yeah.

161 Q. So you were the boss in effect?

6 A. I was, yeah.

162 Q. And you remained Mr. Reynolds' boss until the time you resigned
8 from your managing directorship in 1982?

9 A. When?

1 163 Q. 1982.

11 A. That would be correct, yeah.

1 164 Q. What position did Mr. Reynolds first join JMSE in?

13 A. He joined JMSE as a plant fitter.

1 165 Q. And then over the succeeding years...

15 A. He was a good fitter, there is no doubt about it and a very hard
16 worker, applied himself religiously and worked very hard over the
17 years, and I think I gave him credit for that by recommending his
18 promotion right up to where he was managing director.

1 166 Q. So he had a number of promotions since he first went to work as a
20 plant fitter in 1968?

21 A. That's right, yeah.

2 167 Q. How many promotions did he have while you were managing director,
23 just approximately?

24 A. Probably four or five, you know. But Mr. Murphy thought a lot of
25 him as well, Senior thought a lot of him. He was -- he was from
26 the same country, Carrick on Shannon. You see he came from -- he
27 came from another of Murphy's companies actually. He was with
28 O'Shea and Shanahan for some years.

2 168 Q. He eventually became plant transport and construction manager?

30 A. Yes.

3 169 Q. That's the position he held when you retired as managing director
32 in 1982?

1 A. That's correct, I'd say, yes.

170 Q. That's the position he held for the next eight years until he

3 became managing director in 1990; isn't that right?

4 A. Well, he became a director actually informally, he became a

5 director -- an executive in 1988 and he was confirmed seemingly at

6 a board meeting, I think it was November/December 1988.

171 Q. I understand that. I just want to establish the point that from

8 the practical point of view, he was the plant construction and

9 transport manager until he became managing director; isn't that

10 right?

11 A. I would accept that.

1 172 Q. And that would give him responsibility for one certain sphere of

13 activity within the general activity of the company; isn't that

14 right?

15 A. Well, not one sphere. Because he was responsible for

16 construction, plant and equipment, the premises and the property

17 and plant. The whole lot.

1 173 Q. I will put it another way. He wasn't -- there were other people

19 who had responsibilities for other activities within the company?

20 A. Oh yes, there would have been, yes.

2 174 Q. So he didn't have exclusive authority over all activities of the

22 company, but over simply a section of its activities?

23 A. A fair section. A very fair section he deserved it at the time,

24 there is no doubt about that.

2 175 Q. You regarded him very highly?

26 A. Very highly, honest to God.

2 176 Q. And an honest and a truthful man?

28 A. I thought the world of him.

2 177 Q. Pardon?

30 A. I thought the world of him.

3 178 Q. And I presume that the high opinion you had of him was based --

32 A. From factual experience --

179 Q. To an extent on your belief that he is an honest and truthful man?

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

180 Q. And you could rely on his word?

4 A. I thought I could, yes, yeah.

181 Q. And that you never found him to be anything other than accurate

6 and truthful and honest in your dealings with him?

7 A. That's right. Oh, that's true, that's true.

182 Q. And it was these qualities which in part, at least, assisted him

9 to work his way up through the company?

10 A. Through the company, yeah.

1 183 Q. To his present position?

12 A. He deserved great credit.

1 184 Q. And you worked very closely with him?

14 A. Sure I did. Sure, I couldn't tell you how close we did -- sure,

15 we nearly slept together.

1 185 Q. And I think that for many years you were signatory on the cheques

17 for JMSE; isn't that right?

18 A. Well, I was one of about four or five signatory.

1 186 Q. But you had been signatory for a very long while on the cheques?

20 A. I was one of four our five signatories for a long time, yes.

2 187 Q. And I think it's called a mandated signature; is that correct?

22 A. That's right.

2 188 Q. And the banks must honour any cheque with your signature and that

24 of one of the other mandatory signatures?

25 A. That's right.

2 189 Q. And do you recall that in or about 1989, or shortly before that,

27 Mr. Reynolds became a mandated signatory of cheques together with

28 yourself?

29 A. And others.

3 190 Q. And others, do you remember that?

31 A. Sometime around that, yeah, oh yes, he became a signatory.

3 191 Q. But when Mr. Reynolds was required to sign a cheque, it would be

1 usually in relation to a particular sphere of activity within the
2 company, isn't that correct?

3 A. Not necessarily, once he was a signatory he could sign for
4 anything.

192 Q. I understand he could sign any cheque, but I suggest to you that
6 as a matter of practicality and ordinary course of events, the
7 cheques that he would usually -- not always, but usually sign
8 would be cheques for payments which would occur in the course of
9 his particular sphere of activity within the company?

10 A. Not necessarily. His mandate was unlimited, like my own. As
11 long as it was countersigned by another. It was unlimited, same
12 as myself.

1 193 Q. I understand that, Mr. Gogarty. Perhaps I am not asking you the
14 question very clearly. I am suggesting that while he had a
15 general mandate, from a practical point of view, the cheques which
16 he usually, not always, signed, were cheques which required to be
17 signed in the course of his particular sphere of activity within
18 the company?

19 A. He wasn't restricted in any way.

2 194 Q. Of course I appreciate he wasn't restricted, Mr. Gogarty. Again,
21 I am asking you this and I will leave it, whatever your answer
22 is. I am suggesting to you, that as a matter of practicality,
23 Mr. Reynolds usually, though not always, signed cheques which
24 required to be paid arising out of the activity within the company
25 for which he was responsible?

26 A. Well, you are a devil for suggesting. I am telling you he was
27 mandated to sign any cheque at all, as long as he was available
28 and it was countersigned. It was unlimited and in no way
29 restricted to any particular sphere of responsibility within the
30 company.

3 195 Q. All right.

32 A. And I can go no further than that?

196 Q. Well now, Mr. Gogarty, having established your high opinion of the
2 truthfulness and accuracy of Mr. Reynolds, I now want to come to
3 the critical part of this Tribunal insofar as my clients are
4 concerned --

5 A. That's right.

197 Q. And these are the events which occurred in or about the 8th June
7 of 1989. Now, I want to start by establishing the 8th June --

8 .

9 MR. GALLAGHER: Can I suggest, and I don't want to interrupt My
10 Friend. But this clearly is a crucial area and if it's going to
11 be interrupted -- it's undesirable that it should be interrupted,
12 so if you are going to have a break between now and one o'clock, I
13 suggest you have it now.

14 .

15 CHAIRMAN: All right. We will have a break. A ten- or
16 fifteen-minute break.

17 .

18 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS

19 FOLLOWS:

20 .

21 MR. COONEY: Mr. Gogarty. Shall I continue?

22 .

23 CHAIRMAN: Yes.

24 .

25 MR. COONEY: Mr. Gogarty, I now want to come and deal with the
26 events that occurred in or about the 8th of June, 1989 and you
27 know these are the critical matters insofar as this section of the
28 Tribunal's inquiry is concerned; isn't that correct?

29 A. That's correct.

3 198 Q. And essentially you made the charge that Joseph Murphy junior
31 participated in the payment of sums of money to Mr. Raymond Burke;
32 isn't that right?

1 A. That's correct.

199 Q. Not only did he participate in the actual payment but he was at
3 previous meetings which discussed the matter and which arranged
4 for the getting up of this sum of money; is that correct?

5 A. That's correct.

200 Q. Now, taking the 8th of June of 1989 as the reference date, that's
7 the date of the letter from Michael Bailey addressed to you; isn't
8 that right?

9 A. That's correct.

1 201 Q. And that's the day upon which you first saw the letter; isn't that
11 correct?

12 A. That's correct.

1 202 Q. Now, you say that Mr. Joseph Murphy junior was present in Santry
14 when you first saw that letter; isn't that right?

15 A. That's correct.

1 203 Q. And you also say that he'd been there at earlier meetings; isn't
17 that correct?

18 A. I believe so, yes.

1 204 Q. Well now, I want, first of all, to find out precisely what your
20 evidence is in relation to these earlier meetings. How many such
21 earlier meetings were there attended by Joseph Murphy junior, do
22 you say?

23 A. Well, I can't account -- I wasn't at all the meetings. They had
24 meetings with Mr. Bailey at which I wasn't present, but then I
25 was --

26 .

27 CHAIRMAN: Could we define who were they? He said they had
28 meetings with Mr. Bailey.

29 .

30 MR. COONEY: He said it?

31 .

32 CHAIRMAN: Yes. Other than -- when Mr. -- When Mr. Murphy junior

1 was not present. So first thing I want to know is who were they?

2 .

3 MR. COONEY: Who do you mean by they?

4 A. Frank Reynolds, Junior and Mr. Bailey.

205 Q. But I want, first of all, Mr. Gogarty, to establish the facts as

6 you say you remember them because you were there and saw what was

7 going on; do you understand me?

8 A. That's correct, yeah.

206 Q. As I said to you, I want to take the 8th of June as the reference

10 point. Now, how many meetings do you say you saw Mr. Murphy

11 junior attend prior to the 8th of June?

12 A. I couldn't be sure, only what Frankie told me. I think at least

13 there was two.

1 207 Q. No, no, I asked you at meetings where you saw him.

15 A. Oh, sorry, oh, sorry, oh, sorry. I say just two.

1 208 Q. All right. How long before the 8th of June did these meetings at

17 which you saw Mr. Murphy junior present occur?

18 A. Oh, I'd say -- it all happened within about a fortnight or three

19 weeks from the end of May to June, do you know, about three

20 weeks.

2 209 Q. That's not what I'm's asking you, Mr. Gogarty. I'm's asking you,

22 when, before the 8th of June, did these two meetings occur at

23 which you say you saw Mr. Joseph junior -- Mr. Joseph Murphy

24 junior present?

25 A. Within the previous two weeks.

2 210 Q. When? Within those previous two weeks?

27 A. Within the previous two weeks.

2 211 Q. When?

29 A. I couldn't narrow it down to the day.

3 212 Q. Do you know what day of the week the 8th of June was?

31 A. No. I couldn't swear to it.

3 213 Q. Well, I'll tell you now, Mr. Gogarty, that it was a Thursday.

1 A. Thursday, I take your word for it.

214 Q. Bearing that in mind, going back to the Wednesday, Tuesday, of
3 that week, did any of those two meetings occur on any of those
4 days?

5 A. They could have now, yes.

215 Q. Now, Mr. Gogarty, this is a matter of critical importance, as you
7 know, and you've levelled the most serious accusations against my
8 client and gave very specific evidence about this in answer to
9 Mr. Gallagher. I'm asking you to tell the Tribunal on which of
10 those three days, the Wednesday, the Tuesday or the Monday, do you
11 say this meeting occurred?

12 A. I couldn't say which day. It was in the previous few days
13 anyway. I couldn't say.

1 216 Q. Well then, is it your evidence then that the meeting -- one of the
15 meetings attended by Mr. Joseph Murphy junior occurred on either
16 the Wednesday, the Tuesday or the Monday; is that right?

17 A. Well, within the previous week.

1 217 Q. No, no, you said the previous two days a moment ago to me.

19 A. I couldn't pin it down to three days, honest to God.

2 218 Q. There are two meetings you say you saw Mr. Joseph Murphy junior?

21 A. That's right.

2 219 Q. When do you say the second of those meetings took place in
23 relation to the 8th of June?

24 A. I say only a few days before that.

2 220 Q. All right. So that would be, say, Monday, Tuesday or Wednesday;
26 is that right?

27 A. Could be, yes.

2 221 Q. Which of those days do you think is the likeliest?

29 A. I couldn't swear to it.

3 222 Q. It wasn't the day before, was it?

31 A. I wouldn't say so.

3 223 Q. It was more likely to be the Tuesday or the Monday; is that

00050

1 right?

2 A. Could be. Yeah. Could be.

224 Q. Could be.

4 A. Yes.

225 Q. But you don't remember; is that correct?

6 A. I can't pin it to the day.

226 Q. You see, you've given very precise evidence of the sequence of

8 events which occurred in or about this time already, Mr. Gogarty.

9 A. Oh, yes. In fact, there were a lot of events at that time --

1 227 Q. Sorry, go ahead.

11 A. Yes. At that time, there was the -- the pressure on me to

12 substantiate me reservations on the accounts that they were

13 pressing me to sign and I was doing my best to get information

14 from the audit and the accounts and all that and there was also

15 the question that I was attending -- I did a lot of work from home

16 because I was pursuing the claim on Moneypoint with Jim Veasey,

17 and of course the pension was in me head as well too. There were

18 a lot of things happening there that were very dramatic.

1 228 Q. I understand that, Mr. Gogarty, but I'll be frank with you now,

20 I want to pin you down as close as possible on the dates when you

21 say these meetings occurred at which a corrupt practice was

22 planned. Now, you must remember that.

23 A. I remember it. You're trying to pin me all the time sure. I know

24 that.

2 229 Q. Well, you believe it was sometime earlier in the week of the 8th

26 of June; is that right?

27 A. The previous week, yeah, that week, that week, seven or eight days

28 beforehand.

2 230 Q. Well now, you said to me a few moments ago a few days. Which is

30 it, Mr. Gogarty? This is essential.

31 A. I would say it was within the previous week, that previous week.

3 231 Q. Are you saying it was sometime between Wednesday the 7th of June

1 and the previous Wednesday, which is probably about the 1st of
2 June?

3 A. I'd accept that, yeah.

232 Q. Could that -- could the second, the last of these meetings, have
5 been as far away as a week of the 8th of June?)

6 A. Could be. Could be.

233 Q. And that's the second meeting, is it, which was attended by
8 Mr. Joseph Murphy; is that correct?

9 A. I'd accept that.

1 234 Q. No, I'm not asking to you accept it, I'm asking to you give
11 precise evidence.

12 A. I can't pin the date and the time.

1 235 Q. When did the first meeting occur?

14 A. The first meeting -- according to Mr. Bailey, there was several
15 meetings, some of which I wasn't at.

1 236 Q. No, you've's told us that you were present --

17 A. It was between the period -- the end of May, mid to end May and
18 the 8th of June.

1 237 Q. No, what you've's told us already, Mr. Gogarty, is that prior to
20 the 8th of June there were two meetings at which you saw
21 Mr. Murphy junior present; is that right?

22 A. That's correct.

2 238 Q. You already told us when you think the first one was, you said a
24 few days before the 1st, then you said a week. I'm now asking you
25 when did the first of those meetings occur?

26 A. I said to you, it would have been the previous ten days, the 8th
27 of June.

2 239 Q. I see. So is it the position then that these meetings within a
29 period of ten days dating back from the 8th of June, the second of
30 those meetings being either three days back from the 8th of June
31 or perhaps longer?

32 A. I'd say so.

240 Q. But you're not so sure?

2 A. No.

241 Q. Where did those meetings take place?

4 A. Santry.

242 Q. In your affidavit you said in May early June, 1989 at paragraph

6 43, "I attended several meetings which included Michael Bailey,
7 Frank Reynolds and myself and when at JMSE offices, Joseph Murphy
8 junior."

9 Now, I want to leave the meetings at Santry for a moment. You say
10 you attended meetings with Mr. Bailey both at the Skylon Hotel and
11 at his home; is that right?

12 A. That's true, yes.

1 243 Q. How many times were you at Mr. Bailey's home?

14 A. Twice.

1 244 Q. Before the 8th of June?

16 A. Before the 8th of June, yes. And once with Frank Reynolds.

1 245 Q. Now, you also say that the purpose of the meetings was to discuss
18 sale of land; is that right?

19 A. I beg your pardon?

2 246 Q. The purpose of the meetings was to discuss the sale of the land;
21 is that right?

22 A. Yes, in the context that there was evidently a serious difference
23 between the approach to selling the lands. You see, Senior was
24 anxious to get rid of the whole lot of them, because I think I
25 told you about he was worried about Conroy's affidavit, which you
26 wouldn't let me read, you know. If I could read that I could give
27 you an idea of what prompted Senior, do you know? He wanted to
28 sell the lands and distance himself from the Revenue, but all --
29 and get all his assets out of the country, that started it, after
30 Conroy made -- sued him in the Isle of Man.

3 247 Q. You see at paragraph 45 of your affidavit, Mr. Gogarty, you say:
32 "At a meeting with Michael Bailey in the JMSE office in Santry in

1 early June 1989, attended by Joseph Murphy junior, Frank Reynolds
2 and myself, there was a discussion about a specific proposal.

3 This proposal was that Michael Bailey would acquire 50% interest
4 in all the Murphy Group lands situated in north county Dublin if
5 either he, Michael Bailey, one of his companies procured the
6 necessary rezoning and planning."

7 Then you go on to say: "At that meeting Michael Bailey said if
8 such a 50/50 deal was agreed, he was prepared to spend £2,000 per
9 acre --

10 A. Spend up to £2,000.

1 248 Q. "... to get the necessary permission; this £2,000 per acre to be
12 used by him as required to ensure, through Ray Burke, that the
13 necessary rezonings were passed by the necessary majority of the
14 councillors of Dublin County Council. I, of course, knew Ray
15 Burke to be a Fianna Fail TD and a government minister."

16 Now, you say that at this meeting the intention to pay money to
17 Mr. Burke was discussed and formulated; is that right?

18 A. That's right, yes.

1 249 Q. Was that the first or second of the two meetings which you say
20 were attended by Mr. Joseph Murphy junior?

21 A. It was. But as you say also, he -- Frank had meetings with Bailey
22 and himself.

2 250 Q. No, no, I'm asking you now about meetings that you attended. Was
24 that the first or the second of such meetings?

25 A. On the 8th of June?

2 251 Q. No. Prior to the 8th of June.

27 A. I think -- well, it's all encapsulated in the letter. He referred
28 to several meetings - Mr. Bailey.

2 252 Q. I'm not asking you --

30 A. And he made the offer on that basis.

3 253 Q. I'm not asking you that, Mr. Gogarty. You already told the
32 Tribunal that prior to the 8th of June you attended two meetings

1 at which Mr. Joseph Murphy junior --

2 A. Yeah, I already said that.

254 Q. I'm asking you at which of those meetings did the events contained
4 in this paragraph in your affidavit of evidence occur?

5 A. Well, they were discussing both of them.

255 Q. At both meetings?

7 A. Yes. What was happening was -- I think I told you about Conroy's
8 affidavit and Senior wanted to sell the lands and it was --

256 Q. I know --

10 .

11 CHAIRMAN: Just answer the question.

12 .

13 MR. COONEY: Mr. Chairman, this is not in answer to the
14 question. This, again, is an expedition into other matters which
15 are not related to the question which I asked.

16 .

17 MR. GALLAGHER: It seems to me it's an explanation of what took
18 place at two meetings.

19 .

20 CHAIRMAN: The question is: I'm asking you at which of these
21 meetings did the events contained in this paragraph in your
22 affidavit of evidence occur? That's what the transcript says.

23 Now, would you answer that question.

24 A. At the two of them.

25 .

26 MR. COONEY: You didn't say that in your affidavit of evidence.
27 You said at a meeting and not two meetings. How is that?

28 A. What?

2 257 Q. In your affidavit of evidence you referred to a meeting, that is a
30 single meeting --

31 A. Well --

3 258 Q. Just, please. In your affidavit of evidence you refer to a

1 meeting, that is a single meeting. How is it now that there were
2 two meetings at which these proposals were discussed?

3 A. Because it was a development of the other meeting, you see. It
4 was a development. You see, as I said to you, Senior wanted an
5 outside sale and get rid of them and distance --

259 Q. You've's already told us that.

7 .

8 MR. GALLAGHER: I think in fairness --

9 A. Would you please give me a chance?

10 .

11 MR. COONEY: It's been said time and time again, Mr. Chairman.

12 I'm merely trying to establish -- I'm merely trying to establish
13 the sequence of events, the factual way in which they occurred at
14 that time.

15 A. That's what I'm trying to tell you.

16 .

17 MR. GALLAGHER: The witness is trying to say how it evolved from
18 one meeting to another and I think he should be allowed to deal
19 with that.

20 A. It was evident from what Frankie was saying that him and Junior
21 didn't want the lands sold because they saw big potential in
22 them. And this was the difference between Senior and Junior and
23 it was evident, I know, from Junior, he was ostracized from, in
24 effect, from society for the previous eight , ten or twelve years,
25 and he now was in control because he had control over the trust as
26 distinct from his father, but he wanted to bring his father along
27 with him, and he helped -- thought that I wanted to sell the
28 lands. And I didn't give a damn. And he wanted to see could I
29 win the father around to his proposition to either hold the lands,
30 not sell them, or at least get involved in a , in a two-way deal
31 where Murphys would still get a fair amount of potential from the
32 development later on as distinct from all the potential because

1 that's how Murphy worked. He built up a profile of lands with the
2 long-term object of maximizing any potential, not an immediate
3 one, you see. And there's no doubt about it, I would agree that
4 if I was a free agent, I would agree that he shouldn't sell the
5 lands. But they wanted to say that I was going along with Senior
6 to sell the lands and I felt caught in a situation between the two
7 of them. I didn't give a damn. But they were trying to get me to
8 go along. And I had no objections to what they did, whether they
9 sold them outright or whether they sold them on the basis of a
10 two-way agreement or anything. That's all I'm saying. And that's
11 what caused this proposition.

1 260 Q. The next event then was the arrival of the letter of the 8th of
13 June; is that correct?

14 A. That's correct.

1 261 Q. On the Thursday?

16 A. That's right.

1 262 Q. Now, I think you've already described to the Tribunal how you
18 say that Mr. Reynolds telephoned you; is that correct?

19 A. Phoned me, yeah.

2 263 Q. And said a letter had arrived addressed to you; is that right?

21 A. That's right.

2 264 Q. But he seemed to know that it had come from Michael Bailey; is
23 that correct?

24 A. Oh, he did. He opened it.

2 265 Q. He opened it even though it was addressed to you; is that right?

26 A. Sure we were both directors of the company. I didn't want to keep
27 anything to myself. I was quite open about it.

2 266 Q. Was it normal practice --

29 A. We had a very good relationship, myself and Frank. As you said
30 earlier on, I trusted him implicitly.

3 267 Q. Was it his normal --

32 A. I trusted him with private letters at the time.

268 Q. Did he open private letters at the time?

2 A. No, but I'd trust him to do it. I had nothing to hide.

269 Q. As a result of this telephone message then you arrived in in

4 Santry?

5 A. They wanted me in in the afternoon, after lunch.

270 Q. Were you given the letter?

7 A. I was shown the letter.

271 Q. And you read it?

9 A. Yeah.

1 272 Q. I think your evidence also is that by this stage Mr. Reynolds and

11 Mr. Murphy junior had acquired a sum of £30,000; is that right?

12 A. That's what he said. He had an envelope there.

1 273 Q. And you saw that and you counted it?

14 A. I counted it to the best of my ability.

1 274 Q. And then because it was 10,000 short, a cheque was obtained which

16 you signed together with Mr. Reynolds?

17 A. Junior requisitioned a cheque and Frank got down and got the

18 cheque book and there was a cheque written out and I signed it

19 with Frank, that's my recollection.

2 275 Q. And then that cheque was placed in the envelope and you left the

21 building that day?

22 A. In the envelope, yeah.

2 276 Q. Then you say that a few days later or a couple of days later you

24 got a telephone message from Frank Reynolds saying that the

25 meeting with Ray Burke was on?

26 A. Was organised and he was going to it.

2 277 Q. What day of the week was that on?

28 A. I couldn't tell you. It was a few days later.

2 278 Q. Well now, this is crucial and I think you probably appreciate

30 that, Mr. Gogarty. A few days -- you've's used the phrase "a

31 couple of days," you've used the phrase "a few days." Does that

32 mean one or two or three days?

1 A. I'll tell you now what might help you. If you say the 8th of June
2 was on a Thursday -- it definitely wasn't on the Friday and it
3 wouldn't be the Saturday or Sunday. So I would say it would be
4 the following Monday, Tuesday or Wednesday.

279 Q. I see.

6 A. That's my opinion.

280 Q. So that's what you define as a few days, a couple of days,

8 sometime the following week?

9 .

10 MR. CALLANAN: I don't think the phrase "a couple of days" was
11 ever used by Mr. Gogarty.

12 .

13 MR. COONEY: Yes, it is actually used. It is. It was used in
14 his direct evidence and it's on paragraph 50 in his own
15 affidavit. He's used a few days in his affidavit of evidence and
16 I'll be able to identify a portion of the sworn evidence which he
17 says "a couple of days," Mr. Chairman. If I can just have a
18 moment. Volume 5, page 41, at question 127. Mr. Gogarty is
19 giving evidence on this and he says --

20 .

21 CHAIRMAN: Is that the fifth day?

22 .

23 MR. COONEY: Yes, Volume 5. Question 127.

24 .

25 CHAIRMAN: What's the date of the transcript?

26 .

27 MR. COONEY: I'll look at my own.

28 .

29 MR. GALLAGHER: Day 5 is the 19th of January.

30 .

31 CHAIRMAN: Page 41?

32 .

1 MR. COONEY: Yes. Towards the bottom of the -- yes. I see it's
2 line 27, Mr. Chairman. It's a long answer in which Mr. Gogarty is
3 describing what happens. Page 41. And he says -- I don't want to
4 read out the entire answer but he says: "The meeting didn't
5 follow that so I checked the thing. I put the cheque in the
6 envelope and I left it on the table before I came away. I think I
7 closed, I'm not 100 percent sure, but that was the letter, and a
8 couple of days afterwards then the call came through, they had the
9 meeting set up."

10 So you've used the term "couple of days," you've used the term
11 "a few days". Mr. Gogarty I have to put it to you that a man as
12 precise as you, if you meant a week later you'd have said a week
13 later both in your affidavit of evidence and in your direct
14 evidence.

15 A. Not necessarily.

1 281 Q. Well, are you saying now that it was a week later and not a few
17 days or a couple of days?

18 A. Well, I'll tell you I hadn't the Oxford Dictionary with me to know
19 the words to use. I'm just telling you it was a few or couple of
20 days. And if the 8th was a Thursday, say it wasn't the Friday and
21 it wouldn't have been a Saturday or Sunday and it had to be then,
22 Monday, Tuesday or Wednesday the following week.

2 282 Q. Well, you see, Mr. Gogarty, you've been thinking about this case
24 and the allegations you're making for a very long while and you
25 prepared this very lengthy affidavit with the assistance of your
26 solicitors; isn't that right?

27 A. What do you imply by the assistance of my solicitors?

2 283 Q. With the assistance of your solicitors; isn't that correct?

29 A. I told them what I believe is my recollection.

3 284 Q. And the affidavit was typed out in your solicitor's office and you
31 were given it to read over before it was sworn; isn't that
32 correct?

1 A. And I swore it.

285 Q. But you had considered its contents before you swore it; is that
3 right?

4 A. Oh, yes, certainly.

286 Q. And the phrase "a few days later" describing when the meeting at
6 Mr. Burke's house took place, after the 8th of June, was a phrase
7 that you accepted and swore to; isn't that right?

8 A. That's right. That's right.

287 Q. Just as in your direct evidence, you used the phrase "a couple of
10 days later"; isn't that right?

11 A. That's right.

1 288 Q. And those two phrases I suggest in common parlance are
13 interchangeable --

14 A. In what? In what? I wasn't there.

1 289 Q. In common language, are interchangeable?

16 A. Oh, yeah. Are they? I couldn't say.

1 290 Q. And mean, a period of two to three days; isn't that right? That's
18 what they normally mean?

19 A. Would you object to my saying three or four days?

2 291 Q. Well, three or four days. Let's say two or three days.

21 A. Would you give me a chance, that on Sunday I wouldn't be going on
22 with that sculduggery.

2 292 Q. Do you accept that the common or ordinary meaning of the phrase
24 "few days" or "couple of days", to ordinary people means two or
25 three days?

26 A. I'll tell you the truth, I'm a devil for crosswords especially the
27 Irish Times crosswords and I have a dictionary, thesaurus, and
28 you'd be surprised how many different meanings you can put on the
29 word.

30 .

31 CHAIRMAN: Mr. Gogarty, you're being asked do you accept that the
32 phrase "a couple" and "a few" are interchangeable and they both,

1 one or the other, mean two or three days, is what you've been

2 asked. And I think you asked for four.

3 A. Yeah, I'd agree with that and exclude Saturday and Sunday.

4 .

5 MR. COONEY: When you were describing these events now

6 Mr. Gogarty, they're not amusing, as far as my client is concern.

7 A. They're not amusing to me either.

293 Q. Please listen to me now. We're engaged on a very serious matter

9 now and I want you to listen carefully.

10 A. That's right. That's right. That's right.

1 294 Q. I suggest that when I told you that the 8th of June was a

12 Thursday, you have decided to resile away from your description of

13 this meeting occurring at Mr. Burke's house a few days after the

14 8th of June and now you want to extend it to a week; is that

15 right?

16 A. I decided what?

1 295 Q. You have decided to back off the description of a few days --

18 A. I never backed off.

1 296 Q. Just let me finish.

20 A. I never backed off. Don't tell me that.

2 297 Q. Let me finish please, Mr. Gogarty.

22 A. Yeah, go on.

2 298 Q. I put it to that you, once I told you that the 8th of June was a

24 Thursday, you decided to back off the description of a few days or

25 a couple of days because you realised that that wasn't consistent

26 with the events which I'm now trying to establish; isn't that

27 correct?

28 A. You have more command of the English language than I have, so you

29 have.

30 .

31 MR. COONEY: Mr. Chairman, I don't know how concerned you are

32 with the dignity of these proceedings, but could I respectfully

1 suggest that these series of answers, Mr. Chairman, are simply not
2 consistent, either with the dignity of these proceedings or
3 elementary justice to my clients. And I respectfully suggest,
4 Mr. Chairman, that the time has come now when you impose the
5 threat, at least, of the serious sanction on this witness unless
6 he answers questions. So far in my cross-examination,
7 Mr. Chairman, we've been dealing with preliminary matters. I've
8 now come to the heart of my clients' case and I'm entitled to a
9 proper, sensible, fair answer to my questions and no more of this
10 rubbish, Mr. Chairman. Now, I respectfully insist upon that,
11 Mr. Chairman, and if this continues, Mr. Chairman, I'll seek a
12 remedy elsewhere.

13 A. And I'll go to Mountjoy if you like.

14 .

15 CHAIRMAN: Mr. Gogarty, now, let's have no more responses from
16 you. Just answers to questions.

17 A. I'm doing me best, honest to God. Honest to God I'm doing my
18 best.

19 .

20 MR. COONEY: Mr. Chairman, I respectfully ask that you tell
21 Mr. Gogarty if he persists with answers in this form in this
22 serious part of the Tribunal that you will treat his evidence with
23 disbelief or not entertain his presence in the witness box
24 anymore, because we've reached a stage, Mr. Chairman, where a
25 sanction of that seriousness is, in my respectful submission,
26 essential if justice is to be done.

27 .

28 MR. CALLANAN: There's no point Mr. Cooney is throwing a tantrum
29 every time he doesn't get the answer he wishes.

30 .

31 CHAIRMAN: First and foremost, I will decide how this Tribunal
32 goes and nobody else. I'm endeavoring to decide the evidence on

1 the facts. I will grant you that certain leeway has been granted
2 for the witness. I'm doing my best to control it without actually
3 interfering with his answers and his giving of them. We're' going
4 to have to sift through this transcript to try and get the facts.
5 I'm fully aware of that and it's going to be my job. I also do
6 appreciate that Mr. Cooney has a point that he is getting not
7 answers, he's getting replies, if I may call them that. I'll do
8 my best but there is a limit to the amount of interference which I
9 can participate. And I am not going to be directed by Mr. Cooney
10 as to what course of action I will take. I will take it according
11 as I see it and not as Mr. Cooney sees it. And if you want to go,
12 Mr. Cooney, to the High Court, you are welcome to go now.

13 .

14 MR. COONEY: Well, Mr. Chairman, may I say this to you with
15 respect --

16 .

17 CHAIRMAN: No, Mr. Cooney, that's my decision.

18 .

19 MR. COONEY: I understand that, Mr. Chairman, but I want to say
20 this. It's not a question of you reading the transcript later on,
21 Mr. Chairman. Of course I do understand that you'll read the
22 transcript when you're weighing up the evidence. That's not my
23 point, Mr. Chairman. My point is the effectiveness of my
24 cross-examination is being deliberately sabotaged by the manner in
25 which this witness chooses to answer my questions. That should
26 not be permitted because --

27 .

28 CHAIRMAN: There's a limit, Mr. Cooney, that I can impose on the
29 witness and at the same time allow the Tribunal to get the
30 evidence, which is what -- which is the object of my exercise.
31 I'm not concerned with whether you feel satisfied or dissatisfied
32 with how you are conducting cross-examination. I know it's

1 irritating to counsel to find yourself in the situation, I'm still
2 trying to find out what happened, to sift the sand to find out
3 what happened and I am not particularly interested in the public
4 appreciation of what's going on. I'm interested in what is going
5 down in the transcript which I'm going to have to literally go
6 through and try and make my mind up what did happen.

7 .

8 MR. COONEY: I understand that, Mr. Chairman, but as part of that
9 process, Mr. Chairman, I'm entitled to put my clients' case in
10 accordance with the standards and practices for
11 cross-examination. These are not now being observed in this case,
12 Mr. Chairman, in my respectful submission, and this is doing an
13 injustice for my clients. When I ask serious questions on the
14 most serious issue on this matter, I get answers which are
15 aggressive, inclined to be funny, appeal to the gallery, but do
16 not answer the point which I have to make, Mr. Chairman, and that
17 is not correct. The remedy -- I have no remedy for this,
18 Mr. Chairman. As in all these cases, it's the presiding judge or
19 chairman who has the remedy.

20 .

21 CHAIRMAN: I'll do my best to assist you to get justice for your
22 client and I don't see that to date your client hasn't got
23 justice. And I ensure you that there is an even balance between
24 all parties concerned. Now, you are fully aware from 17 days
25 experience, that the witness is a difficult witness to control.
26 You haven't succeeded in controlling him. I've got some control
27 from time to time. If I keep on interrupting, we will never get
28 an answer at all. Now, I'll do my best to assist you within
29 reason.

30 .

31 MR. COONEY: May it please, Mr. Chairman.

3 299 Q. Mr. Gogarty, you've now extended the phrase "few days" or "couple

1 of days" to a period of seven days; is that correct?

2 A. Well, I haven't extended it. I'm only telling you what I believe,

3 you know.

300 Q. Are you saying then that the meeting at Mr. Burke's house could

5 have occurred as late as the Wednesday of the following week?

6 A. That's right. If you take Saturday and Sunday out of it, it would

7 be running into nearly seven days.

301 Q. See, that was poling day, the 15th, and I suggest that that simply

9 could not happen, and this is an invention on your part to escape

10 the effect of the phrase which you've already used, namely a few

11 days or a couple of days.

12 A. When was poling day?

1 302 Q. The 15th of June of that year.

14 A. What day was that?

15 .

16 MR. GALLAGHER: That was a Thursday, Sir.

17 .

18 MR. COONEY: So are you saying that the meeting took place on the

19 day before poling day in Mr. Burke's house?

20 A. It could have. It was Monday, Tuesday or Wednesday.

2 303 Q. Because you see, you said, Mr. Gogarty, that part of your evidence

22 is that this meeting, this payment was urgently required by

23 Mr. Burke for his expenses; isn't that right?

24 A. That's what I was told. I didn't know whether it was true or not.

2 304 Q. And that it was urgent that the money be got to him; isn't that

26 right?

27 A. That's what Bailey says, I didn't say that.

2 305 Q. So you're now telling the Tribunal that the meeting occurred

29 either on Monday, Tuesday or Wednesday of the following week; is

30 that right?

31 A. That's what I believe, yeah.

3 306 Q. That's what you now believe.

1 A. I believed it then too.

307 Q. Why didn't you say that in your affidavit of evidence or in your
3 direct evidence.

4 A. Are you saying I deliberately left it out?

308 Q. No. I'm asking you why didn't you say that in your affidavit of
6 evidence or in your direct evidence?

7 A. I can't fully explain that, to tell you the truth.

309 Q. I suggest the explanation is this --

9 A. You're suggesting all the time --

10 .

11 CHAIRMAN: Please do not interrupt the question.

12 .

13 MR. COONEY: I suggest the explanation is that because the first
14 time you realised that the 8th of June was a Thursday was when I
15 put it to you sometime ago; isn't that correct?

16 A. It wasn't bothering me what the day was. You're suggesting that.

1 310 Q. You're now shifting your evidence to take account of that fact.

18 A. I haven't shifted my evidence. I haven't shifted my evidence.

1 311 Q. Mr. Gogarty, you have sworn to the Tribunal that this letter from
20 Mr. Bailey addressed to you was received by Frank Reynolds; isn't
21 that correct?

22 A. That's correct, yeah.

2 312 Q. Now, can you account, Mr. Bailey, for this contradiction --

24 A. Can I what?

2 313 Q. For this contradiction. In your draft affidavit, Mr. Gogarty, and
26 I'll read out exactly what you say.

27 .

28 MR. GALLAGHER: Can I have the reference please?

29 .

30 MR. COONEY: I'll give you the reference in a moment.

31 Yes, your draft affidavit --

32 .

1 CHAIRMAN: Could we have the document reference, please?

2 .

3 MR. COONEY: Yes, it's 293.

4 .

5 MR. GALLAGHER: It's in the book of documents circulated on the

6 7th of January of this year. And I think that the document should

7 be given to the witness because it is a draft. I don't know who

8 it is prepared by, but it should be...

9 .

10 MR. COONEY: Do you want the witness to have this draft?

11 .

12 CHAIRMAN: Yes, please.

13 .

14 MR. COONEY: He has it.

1 314 Q. I want you to turn to page 9 of that draft document. And about

16 four lines down, there's a sentence beginning with the word

17 "Mr. Murphy..." I'm going to read it from there.

18 "Mr. Murphy junior and Mr. Bailey..."

19 A. Sorry, I didn't get the page.

2 315 Q. It's page 9.

21 .

22 CHAIRMAN: Page 9 in the -- page 293. There may be a 293 written

23 in handwriting on it.

24 A. 293.

25 .

26 CHAIRMAN: Written in handwriting. And it's page 9 also at the

27 bottom of the page, in typescript. Sorry, you were referring us

28 to a particular area.

29 .

30 MR. COONEY: Yes. I want to set the context for the sentence I'm

31 dealing with.

3 316 Q. On the fourth line down, Mr. Gogarty, it reads: "Mr. Murphy junior

1 and Mr. Bailey were in agreement with the proposal and were hoping
2 to get Mr. Murphy senior to come around to it, admittedly on the
3 grounds that the way they were proposing the deal of the lands
4 with the Bailey company would distance the Murphy company from the
5 Revenue. I queried Mr. Bailey naively again on how he could be so
6 sure, and I asked him to put it to me in writing so that I could
7 clear my position with Mr. Murphy senior and Mr. Murphy junior
8 agreed with the suggestion.

9 I was somewhat surprised when a few days later I got a letter by
10 hand from Mr. Bailey confirming in such detail his proposals and
11 the mechanics by which he was so confident in getting the land
12 rezoned. Not surprisingly he stopped short of naming the
13 politicians but I was quite satisfied, taking his letter into
14 account in the context of our deep discussions, that the whole
15 subject of the agreement was seriously tainted and I was very
16 concerned about my own precarious position."

17 .

18 Now, that's a draft statement of your account which led to the
19 events of this Tribunal, prepared by you in August of '97.

20 .

21 MR. GALLAGHER: I think, in fairness, that wasn't prepared by
22 Mr. Gogarty. It's a draft affidavit. I'm not sure who it was
23 prepared by.

24 .

25 MR. COONEY: It's a draft in which he's giving a first account.

26 .

27 MR. CALLANAN: It's prepared by solicitors, Donnelly Neary and
28 Donnelly, which is headed "draft" quite clearly and was furnished
29 by the Tribunal in the book of evidence -- it's not signed by
30 Mr. Gogarty.

31 A. I never swore or signed it.

32 .

1 MR. CALLANAN: And I think --

2 .

3 MR. COONEY: Mr. Callanan is now giving evidence and shouldn't do

4 that, Mr. Chairman.

5 A. I'm telling you it wasn't signed or sworn.

6 .

7 MR. COONEY: That letter --

8 .

9 CHAIRMAN: You're putting the premises to contrasting what he has

10 sworn in his affidavit with what somebody from information given

11 by him drafted. Is that the situation?

12 .

13 MR. COONEY: No, Mr. Chairman. This affidavit is in the first

14 person singular, this document is in the first person singular.

15 It's T he refers to, T.

16 .

17 CHAIRMAN: Yes, I know that.

18 .

19 MR. COONEY: Somebody may have actually typed it out for him, but

20 it's plainly in his words, plainly in his words.

21 .

22 MR. GALLAGHER: Sir, that is --

23 .

24 CHAIRMAN: Excuse me. Mr. Cooney, you are of the order of 40

25 years a barrister. In that period of time I'm sure that you've

26 dictated affidavits in the first person from instructions received

27 from your client. Now, this is a draft affidavit. I have no

28 doubt the other affidavit was a draft affidavit at one stage. It

29 was then read, it was then corrected and it was sworn.

30 .

31 MR. COONEY: It's not a draft affidavit, Mr. Chairman, it seems

32 to me to be a draft statement of events.

00070

1 .

2 MR. GALLAGHER: It's headed "draft".

3 .

4 MR. COONEY: It's headed "draft", not draft affidavit, and it's
5 not numbered in paragraphs, it's a statement, which is headed
6 "draft".

7 .

8 MR. GALLAGHER: I take it, Sir --

9 .

10 CHAIRMAN: You're making the same point.

11 .

12 MR. COONEY: Why is Mr. Gallagher attempting to sabotage this
13 part of my cross-examination?

14 .

15 CHAIRMAN: Nobody's trying to sabotage any part of your
16 cross-examination.

17 .

18 MR. COONEY: It seems like it, Mr. Chairman.

19 .

20 CHAIRMAN: This is a typescript prepared presumably from notes or
21 by somebody and he was asked is it his. If he was changed it by
22 the time he got to swearing it, it's a matter of comment and I
23 accept that. Isn't that the situation?

24 .

25 MR. COONEY: Mr. Chairman, I want to put this to the witness.

26 .

27 CHAIRMAN: Will you put it to him?

28 .

29 MR. COONEY: Please, Mr. Chairman, Mr. Gallagher interrupts me,
30 Mr. Callanan interrupts me...

31 .

32 CHAIRMAN: Put it to him in the correct context.

1 .

2 MR. COONEY: Mr. Chairman, what is going on here? Are you going
3 to give us a chance to defend ourselves in this Tribunal?

4 .

5 CHAIRMAN: That is an insulting and insolent remark from you
6 consistent with the conduct to date by yourself in this Tribunal.

7 .

8 MR. COONEY: It's well justified, Mr. Chairman, by the --

9 .

10 CHAIRMAN: I'm adjourning this Tribunal now until such time as
11 you take care to apologise.

12 .

13 (PUBLIC APPLAUSE).

14 .

15 MR. COONEY: Round of applause, Mr. Chairman.

16 .

17 THE TRIBUNAL THEN ADJOURNED AND RESUMED AS FOLLOWS FOR A PUBLIC

18 ANNOUNCEMENT:

19 .

20 REGISTRAR: I've been instructed that the Tribunal is now
21 adjourned until tomorrow morning at 10 o'clock.

22 .

23 THE TRIBUNAL ADJOURNED TO THE FOLLOWING DAY, THURSDAY 25TH

24 FEBRUARY, 1999 AT 10:00AM.

25 .

26

27

28

29

30

31

32