

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

2 .

3 CHAIRMAN: Good morning everyone. When you are ready.

4 .

5 MR. GALLAGHER: Mr. Gogarty please.

6 .

7 JAMES GOGARTY, HAVING BEEN ALREADY SWORN, RETURNS TO THE

8 WITNESS-BOX AND CONTINUES TO BE CROSS-EXAMINED BY MR.

9 COONEY AS FOLLOWS:

10 .

11 MR. COONEY: Mr. Chairman, while Mr. Gogarty is coming to

12 the box there is just a matter. I would like to say when

13 you gave your ruling about the cross-examination, Chairman,

14 you said that counsel should sit down, I had intended to

15 ask your permission to stand - it is something I do all the

16 time.

17 .

18 CHAIRMAN: Certainly, yes. Are you ready?

19 .

20 1 Q. MR. COONEY: May it please you, Mr. Chairman. Mr.

21 Gogarty, when we were in cross-examination on Wednesday

22 last, I think we had established four essential facts about

23 the events which occurred in June of 1989. The first is

24 that a letter arrived, dated the 8th of June on the 8th of

25 June; isn't that right?

26 A. That is correct.

27 2 Q. The second and third facts are that the 8th of June was

28 preceded, you say, by two meetings which were attended by

29 Michael Bailey, Frank Reynolds, Joseph Murphy Junior and

30 yourself at which the payment to Mr. Burke was discussed;

31 isn't that right?

32 A. That is correct.

1 3 Q. And the fourth essential fact is that after the 8th of
2 June, the meeting with Mr. Burke took place; isn't that
3 right?

4 A. That's correct.

5 4 Q. And the fifth essential fact is that on the 8th of June,
6 when you arrived at Santry in response to the telephone
7 call from Mr. Reynolds, £30,000 in cash had been, or was
8 about to be obtained; isn't that right?

9 A. It was there in an envelope.

10 5 Q. It was there. And I think you say that you learned that
11 Frank Reynolds had obtained this £30,000 in cash from Mr.
12 Copsey; isn't that right?

13 A. Well from funds at Mr. Copsey's disposal.

14 6 Q. I see. If it was already there how did you know it had
15 been obtained from Mr. Copsey?

16 A. What? Frank Reynolds indicated it to me.

17 7 Q. I see. And then this money was checked by you to some
18 extent, a cheque for £10,000 was written out to cash, added
19 to the £30,000 and then you left and left the money behind
20 you; is that right?

21 A. That's correct, and I was waiting for a call then, you
22 know.

23 8 Q. And then you were waiting for a call. Now, I have to put it
24 to you, Mr. Gogarty, that to a very large extent each one
25 of these events that, as you have described it, is an
26 invention, it is a fabrication by you?

27 A. Oh sure you have said that before.

28 9 Q. Just answer my question?

29 A. It wasn't an invention.

30 10 Q. Okay; and I have to put it to you that Mr. Joseph Murphy
31 Junior had no hand, act or part in these events?

32 A. I don't accept that.

1 11 Q. And that in fact he wasn't present at either of the two
2 meetings which you described before the end of June, he
3 wasn't present on the 8th of June, and he wasn't present
4 during the visit to Mr. Burke's house?

5 A. That's not true.

6 12 Q. I have also to put it to you that Mr. Reynolds had no
7 involvement in these events, except in one small
8 particular, to which I will come to later on?

9 A. That's not true.

10 13 Q. I see. I put it to you that in fact the first time that
11 Mr. Joseph Murphy Junior ever met with Michael Bailey was
12 in the course of the arbitration proceedings which took
13 place three years later in 1992?

14 A. I don't know, that's his version.

15 14 Q. His evidence will be that he never met or knew of Mr.
16 Bailey except as a purchaser of the lands, but he never met
17 him personally until the arbitration proceedings arising
18 out of the sale of the lands had come on for hearing and
19 were settled towards the Autumn of 1992. Do you agree or
20 disagree with that?

21 A. I can't speak for Mr. Murphy.

22 15 Q. No. No.

23 A. I can only speak --

24 16 Q. Mr. Reynolds will also say that the first time he met Mr.
25 Bailey was in the summer of 1990 the following year, do you
26 agree or disagree with that?

27 A. I disagree with that.

28 17 Q. I see. Now, I want to ask you some questions about earlier
29 statements which you made about these events, because I
30 think you understand the importance of these events and
31 what took place precisely on the days in question, don't
32 you?

1 A. Well, without rambling, when you talk about importance, I
2 would may be explain what I consider was the importance, if
3 you don't mind?

4 18 Q. Well, if you want to and if the Chairman thinks that you
5 should, by all means.

6 .

7 CHAIRMAN: Provided you are reasonably - provided you are
8 reasonably brief you are certainly entitled to explain
9 yourself.

10 A. You see I had no interest in these lands as far as I am
11 concerned, first of all.

12 19 Q. I didn't hear that Mr. Gogarty, you said you had no
13 interest in these lands?

14 A. I had an interest in my pension. You see what was
15 happening was from 1988 I was trying to serve two masters,
16 Senior and Junior; and there was a major conflict of
17 interest between the two of them, and I was trying to
18 respond as best I could without antagonising them fully and
19 hoping that they would have responded and fulfilled the
20 promises that was made to me over the years for me
21 pension. Now, the situation was that you allege that I had
22 a frolic and control over the lands.

23 20 Q. I didn't use that word Mr. Gogarty, just for the record.

24 A. I am not rambling. The fact is this, that that dispute
25 between Senior and Junior involved the trust assets.

26 .

27 CHAIRMAN: Now Mr. Gogarty, I think you are going back on
28 the matter which you have canvassed on a number of
29 occasions already, I don't want to restrict you, but you
30 have already outlined this to us.

31 A. Yes.

32 .

1 CHAIRMAN: I don't want to in anyway restrict you but I do

2 think --

3 A. You see I was responding then to Junior and to Senior, to

4 attend meetings - to attend meetings and the contents of

5 those meetings was more important to me and more

6 significant to me than the dates; and I was responding to

7 them because Frank Reynolds was requesting me to do certain

8 things, come in to Santry for these meetings on Junior's

9 instructions, so I was following those instructions to the

10 best of me ability.

11 21 Q. You see I have to put it to you, Mr. Gogarty, that at the

12 time Mr. Murphy Junior was just about 26 or 27 years of

13 age, and he entered his father's businesses in the United

14 Kingdom and apart from being appointed a Director of JMSE

15 in 1988 during the boardroom battle, he had no

16 participation, good, bad or indifferent at that time in the

17 affairs of the Irish companies; now do you agree or

18 disagree with that?

19 A. That is not correct.

20 22 Q. Okay?

21 A. And I could explain it.

22 23 Q. Well, if you want to add to your answer do.

23 .

24 CHAIRMAN: On a very limited basis now please.

25 A. I beg your pardon?

26 .

27 CHAIRMAN: On a short basis certainly.

28 A. Well you see, it was back to the visit I made to Guernsey,

29 Mr. Murphy summoned me, for a better word, he summonsed me

30 to Guernsey on Saint Stephen's Day, 1987, and to bring

31 certain documents with me and to discuss the future of

32 Conroy and the crowd that had taken over his trust and I

1 went there and we spent four days there. Not at my wish
2 but at his order in fact, and the first three days the
3 discussions were how to get back the trusts and how to get
4 rid of Conroy and his gang; and Joseph Murphy was heavily
5 involved in it and was making a contribution to it, and
6 basically at the end of that meeting I was instructed to
7 come back to Dublin and liaise with Junior and Frank in
8 pursuing every angle to try and get rid of them; and Conroy
9 was discussed very much so at that time.

10 .

11 CHAIRMAN: Now I think that is an adequate explanation.

12 .

13 24 Q. MR. COONEY: May it please you Mr. Chairman. I have to
14 put it to you that during 1989 Mr. Murphy Junior was
15 employed solely in the English operations and in particular
16 in the Cable Lane part of Mr. Murphy's operations in the
17 United Kingdom?

18 A. I don't accept that.

19 25 Q. You don't accept that, all right. You have said just a
20 moment ago that you had no interest in the lands; isn't
21 that right, at that time?

22 A. Sorry, yes.

23 26 Q. And I think you also said in your evidence on Day 5, that
24 the lands were of secondary interest to you, isn't that
25 right?

26 A. That would be correct, yes.

27 27 Q. I see. So really you had, you are telling the Tribunal
28 that you had very little interest in the lands and what
29 happened to them or how they were disposed of; is that
30 correct?

31 A. They were peripheral because they were secondary to my
32 agenda. I was 72 years of age and I tried to get out. I was

1 interlocked into a situation that I couldn't get out of
2 without hoping that the Junior and Senior, particularly
3 Junior later on, would honour the agreement that was going
4 back to 1982 when I was 65.

5 28 Q. You see, I have to put it to you Mr. Gogarty, that you
6 conducted most, if not all, of the negotiations concerning
7 the sale of these lands to Bovale Limited and that you
8 decided the price?

9 A. Me?

10 29 Q. You?

11 A. Oh God bless us and save us not at all. In fact I will
12 explain again.

13 30 Q. You see there was a meeting in the office of Mr. Denis
14 McArdle on the 17th of August, 1992, in connection with the
15 arbitration proceedings, Mr. Gogarty?

16 A. '92?

17 31 Q. Yes; and this meeting was attended by Mr. Fred Duffy and
18 Mr. Kevin Duffy?

19 A. In?

20 32 Q. In Denis McArdle's offices?

21 A. On when?

22 33 Q. On the 17th of August, of 1992, did you understand me?

23 A. And was I present?

24 34 Q. No?

25 A. No.

26 35 Q. But you were present at other meetings -- and this meeting
27 was in relation to the ongoing arbitration between Bovale
28 and Lajos, the owners of the lands; you are aware of the
29 arbitration proceedings?

30 A. Well, I knew of them. I wasn't involved in them. I didn't
31 attend them, I was waiting to go into hospital. I was
32 waiting for a bed to go into the Mater Hospital at that

1 time.

2 36 Q. You see I have to put it to you that on that occasion Mr.

3 Duffy said that most of the negotiations concerning the

4 sale of these lands were conducted by you, and it was you

5 who decided the price with the Bailey's. Now, is Mr.

6 Duffy's recollection correct or incorrect?

7 A. No, it is not correct. It is correct. It would be correct

8 in a context, if I might explain?

9 37 Q. Well?

10 A. You see the situation - sorry --

11 38 Q. Go-ahead, Mr. Gogarty.

12 A. The situation was that Mr. Bailey, on several occasions,

13 told me and I believe he spoke to Junior behind me back,

14 that he didn't want to deal directly with Duffy Mangan and

15 Butler at that time.

16 39 Q. Mr. Bailey told you that?

17 A. Oh, yes several times. Duffy Mangan and Butler were

18 conducting the sale of the lands by privately pursuing

19 clients and they did pursue clients and got bids from

20 clients, but Mr. Bailey topped them bids, topped them bids

21 and they sold the lands to Bailey.

22 40 Q. Mr. Gogarty, all I am putting to you is a direct

23 statement. Now, you either agree with it or disagree with

24 it, and that is Fred Duffy said that most of the

25 negotiations were conducted by you and that it was you who

26 agreed the price with Bovale. Now, is that a true

27 statement by Mr. Duffy or is it not?

28 A. Well, I think I can't speak for Mr. Duffy you see, that's

29 the problem, I can only put it in my understanding on in

30 the context.

31 41 Q. Because --

32 A. Because the situation was that Duffy Mangan and Butler had

1 a bid, and Bailey topped that bid and they sold it to
2 Bailey on Mr. Murphy's instructions. And Mr. Murphy sold
3 it at a 30% discount on the reserve that was put on it by
4 Duffy Mangan and Butler. He dropped 30% on it to get rid
5 of them, on account of the Revenue that was after him at
6 the time.

7 42 Q. Mr. Gogarty, I asked you a very simple and very direct
8 question, was Mr. Duffy correct or incorrect when he stated
9 that you conducted most of the negotiations on the sale of
10 these lands and agreed the price?

11 A. Well, Lord have Mercy on him. He is not alive now that
12 man, you see; and I am not going dispute it, but I have to
13 explain the context of it.

14 43 Q. Just - Mr. Gogarty, I am asking you, this is a simple
15 statement of fact by Mr. Duffy. Now, it is either true or
16 it is untrue, it is either accurate or it is inaccurate?

17 A. Well, I say it is incorrect.

18 44 Q. It is incorrect?

19 A. Yes, I say it is incorrect. It doesn't go the full hog,
20 the full --

21 45 Q. Well then, is it the case then that you did not conduct
22 most of the negotiations with Bailey's and you did not
23 decide the price?

24 A. Oh, I conducted most of them with Bailey but not with any
25 other client.

26 46 Q. Well, are you now telling the Tribunal that you did in fact
27 conduct most of the negotiations for the sale of these
28 lands with the Bailey's?

29 A. Well, I was responding to Mr. Bailey who was pestering me,
30 and he made bids in writing and they were passed on to Joe
31 Murphy Junior and on to Duffy Mangan and Butler, and that
32 is as open as you could; and as open and available to

1 accountants or whatever you call it, that is accountants

2 that were on the record.

3 47 Q. Mr. Bailey --

4 A. Now don't confuse me now.

5 48 Q. Sorry, Mr. Gogarty. That was a slip of the tongue, Mr.

6 Gogarty?

7 A. Sure we all make slips of the tongue.

8 49 Q. Indeed we do Mr. Bailey, no Mr. Gogarty?

9 A. No better man.

10 50 Q. Mr. Gogarty, really it is a very simple question. Are we

11 now down to the position that you agree that you did

12 conduct negotiations with Bovale?

13 A. I never denied it, I never denied it.

14 51 Q. All right.

15 A. I never denied it and you are twisting it, that is the only

16 trouble.

17 52 Q. Just please listen to my questions. Can we now advance a

18 stage, the matter a stage further, and do you agree or

19 disagree that the negotiations which you conducted were

20 most of the negotiations leading up to the sale of these

21 lands?

22 A. That's correct, yes. Oh, yes.

23 53 Q. Could we also agree then that it was you who decided the

24 price at which the lands were to be sold?

25 A. No way, no way. Sorry --

26 54 Q. Go-ahead.

27 A. If I was a free agent I would tell Mr. Murphy to hold on to

28 the lands and find their full potential because that was

29 his strategic approach to buying lands. He had built up a

30 profile, if there was 170 acres of land and his own

31 strategy was to see them, rezone them over the long-term.

32 55 Q. Just --

1 A. And realise their full potential.

2 56 Q. Mr. Gogarty, I am trying to establish a simple fact and you

3 can agree with it or disagree with it. Mr. Fred Duffy

4 records you as being the person who decided the price, is

5 that accurate or inaccurate?

6 A. I can't speak for Mr. Duffy, you see that is the trouble.

7 57 Q. No. No, he is recording something which he said that you

8 did. Now, is his statement of what you did accurate or

9 inaccurate?

10 A. Well you see it is never black-and-white. You see the

11 situation is this, that I am saying to you on oath that Mr.

12 Duffy, in saying those particular few words was talking in

13 some context, but he is dead now and can't explain it and I

14 believe the man would honestly explain it.

15 58 Q. Well, Mr. Gogarty, it is a very simple fact which either

16 happened or didn't happen?

17 A. Well you are simplifying it, you know.

18 59 Q. Please listen to me now. It is a very simple fact which

19 either happened or did not happen. And that is that you

20 decided the price at which the lands were to be sold?

21 A. Completely incorrect.

22 60 Q. All right. Completely incorrect?

23 A. Excuse me a second, have a bit of sense, sorry for this

24 rambling you know; but are you suggesting to me that I

25 could determine the price, there was an auctioneer that had

26 a reserve on them, and that I would suggest any price

27 higher or lower than what was offered. The highest offer

28 was accepted.

29 61 Q. You see I am suggesting that in fact you did conduct the

30 negotiations, as you have agreed a moment ago, most of the

31 negotiations, and that an inevitable part of negotiations

32 and the culminations of the negotiations is either an

1 agreement or a disagreement on the subject of the
2 negotiations, namely the sale of the lands at a particular
3 price?

4 A. The lands were sold by Duffy Mangan and Butler and it is
5 recorded there, at the highest bid. At the highest bid it
6 is recorded.

7 62 Q. That is not the question I am asking, Mr. Gogarty. I will
8 just return to it just once more and then I will leave it.

9 You are saying that you did not decide the price at which
10 the lands were ultimately sold to the Bailey's?

11 A. No, I couldn't, I wouldn't have that authority.

12 63 Q. All right.

13 A. I wouldn't have that authority.

14 64 Q. All right. A meeting, according to Mr. Kevin Duffy, who is
15 still with us and who has made a statement; he says that on
16 Monday the 27th of November, of 1989, a meeting at his
17 offices took place?

18 A. That is correct.

19 65 Q. Now present at that meeting was James Gogarty, Michael
20 Bailey, Thomas Bailey and Fred Duffy?

21 A. That's correct.

22 66 Q. He will also say that he does not recall with certainty if
23 he was there at the very start of the meeting, but he does
24 recall being called into the meeting at which stage an
25 agreement had been reached for the purchase of the lands by
26 Michael Bailey and Thomas Bailey. Now, do you remember
27 that meeting and that agreement being concluded?

28 A. That's correct. Could I look at the letter?

29 67 Q. Pardon?

30 A. Could I have a look at the document?

31 68 Q. No, I am looking at Mr. Duffy's statement?

32 A. Can I see it?

1 69 Q. No. No, you can take it that I am quoting accurately from
2 the statement?

3 A. I don't know whether I trust you. I would like to read
4 it.

5 .

6 CHAIRMAN: Now please.

7 70 Q. MR. COONEY: It is in paragraph 30 of the statement of
8 evidence.

9 A. Can I read it?

10 71 Q. Just let's concentrate now on the matters which I have read
11 out to you, Mr. Gogarty. First of all, do you agree that
12 you were present at that meeting?

13 A. Of course I agree, why should I deny it?

14 72 Q. And do you agree that -- do you agree that at this meeting
15 an agreement for the sale of the lands was finally
16 concluded?

17 A. Fred Duffy discussed it with them and discussed their
18 offer.

19 73 Q. I didn't ask you about Fred Duffy's discussions at the
20 meeting, I am asking you, do you agree that at that meeting
21 final agreement was reached about the sale of the lands for
22 a sum of 2.3 million pounds?

23 A. Oh, yes. Oh yes I agree on that, yes.

24 74 Q. I will put it that you were the only representative from
25 the vendors of the land who were present on that occasion;
26 isn't that right?

27 A. Sorry, I was a consultant, I wasn't a director or an
28 employee I was a consultant.

29 75 Q. I didn't ask you that, I am asking you?

30 A. No, but I am just telling you the context of it.

31 76 Q. I am just putting it to you that at that meeting there was
32 no other representative present from the owners or vendors

1 of the land except you; isn't that right?

2 A. That is true, that is true.

3 77 Q. And I suggest that what occurred at that meeting, and what

4 you did at that meeting was a culmination of the

5 negotiations that you had been engaged with, continuously

6 with the Bailey's for many months; isn't that right?

7 A. I disagree.

8 78 Q. All right.

9 A. I disagree.

10 79 Q. We know we have already seen handwritten notes which have

11 been produced in evidence, Mr. Gogarty, covering a period

12 from a few days at the end of September of that year into

13 the first few days of October; you remember those

14 handwritten notes?

15 A. I do, yes.

16 80 Q. And those handwritten notes refer to at least four to five

17 contacts between you and Mr. Bailey during those few short

18 days; isn't that correct?

19 A. Or between Mr. Bailey and me, yes.

20 81 Q. Isn't that correct?

21 A. That's correct, yes.

22 82 Q. And I suggest to you that all of those contacts within that

23 short period of time had to do with the intended sale of

24 these lands to Bovale; isn't that right?

25 A. Yes; and they were originated by Bailey.

26 83 Q. And I suggest to you that you wouldn't have had so many

27 meetings with Mr. Bailey within such a short period of time

28 unless you were in charge of the negotiations and

29 conducting them; isn't that right?

30 A. Not necessarily, sure I had to respond to him, sure he was

31 pestering me, he was chasing me. I had to respond to him.

32 84 Q. You see Mr. Gogarty, if we come back to the famous letter

1 of the 8th of June which was in the Terms of Reference of
2 this Tribunal. That letter was addressed to you; isn't that
3 right?

4 A. That's right.

5 85 Q. And it refers to your lands and then it describes the
6 various locations; isn't that correct?

7 A. Well that's his wording, yes.

8 86 Q. Well that is how the letter was addressed to you; isn't
9 that correct?

10 A. That's right.

11 87 Q. And that letter goes on to say I refer to, and I am quoting
12 now "our many discussions about your lands"?

13 A. That's right, that's right, several discussions.

14 88 Q. Not several Mr. Gogarty, many, many discussions?

15 A. Well, I will take your word over it, sure we had an
16 argument over --

17 89 Q. Sorry, Mr. Gogarty, I didn't hear that remark?

18 A. We were coming - sorry, carry on, carry on.

19 90 Q. Yes. You see I want to put it to you that what that letter
20 said was "our many discussions". Now, did that accurately
21 describe the number of discussions which Mr. Bailey had had
22 with you about these lands before the 8th of June?

23 A. Well it would in a context, yes.

24 91 Q. Now I mean Mr. Bailey, I beg your pardon, Mr. Gogarty. Mr.
25 Gogarty, there are either, I mean this is a very simple
26 phrase, it has only one meaning, and that is that there
27 were many discussions?

28 A. I don't take your word for meanings because you have, you
29 have already sought the Bar Counsel to give you a form of
30 words.

31 92 Q. I will ignore this sort of remark.

32 A. Talk about words --

1 .

2 CHAIRMAN: Please Mr. Gogarty.

3 A. I beg your pardon sir?

4 .

5 CHAIRMAN: Please don't let's have an argument with Mr.

6 Cooney.

7 93 Q. MR. COONEY: Now, first of all do you agree or disagree

8 with the phrase used by Mr. Bailey in that letter to you,

9 that you had had many discussions prior to the 8th of June?

10 A. I don't disagree.

11 94 Q. All right.

12 A. I want to put it in context.

13 95 Q. Now let's, I mean the expression "many discussions" means

14 one thing and one thing only; isn't that right, Mr.

15 Gogarty?

16 A. Not necessarily.

17 96 Q. What else can it mean other than --

18 A. It could mean some, several, umpteen the whole bloody lot;

19 it could mean an awful lot of things and you are the best

20 man to know it, how to get different, around words.

21 97 Q. Mr. Gogarty, I want to ask you now about these many

22 discussions?

23 A. Certainly.

24 98 Q. Where did you have these discussions with Mr. Bailey?

25 A. Most of them on the telephone.

26 99 Q. Did you visit him in his home?

27 A. I did.

2 100 Q. Did he visit you?

29 A. In my home?

3 101 Q. Yes.

31 A. Oh that is long after, long after the sale.

3 102 Q. You know precisely the period of time that I am now

1 directing my questions to, Mr. Gogarty. I am asking you
2 did he also visit you in your home during which some of
3 these many discussions took place?

4 A. No.

103 Q. I see.

6 A. No.

104 Q. So you telephoned him, you went out to his house?

8 A. Sorry, he telephoned me?

105 Q. Yes; and you went out to his house; is that right?

10 A. Once, yeah.

1 106 Q. Just once?

12 A. Sorry, once on my own.

1 107 Q. Yes. I see. When did those many discussions start, Mr.

14 Gogarty?

15 A. They would have started from shortly after the end of April

16 or the, the end of April.

1 108 Q. I mean this is an important point now, Mr. Gogarty, and you

18 have a very good memory for some things now?

19 A. Fairly good.

2 109 Q. Can you remember when you first started these discussions

21 with Mr. Bailey about the sale of these lands?

22 A. Well, he was interested in those lands after, following on

23 from early or late April 1989. He had already bought lands

24 from Murphy in Forest Road.

2 110 Q. Late '88 I think?

26 A. Sorry '88 yes, from Copsey and he knew the whole scenario.

27 Excuse me.

2 111 Q. Yes, but what I am trying to establish Mr. Gogarty, is when

29 these many discussions referred to in that letter started

30 between you and Mr. Bailey?

31 A. I can't put a specific date on them, you know.

3 112 Q. Yes. There is no doubt that there was no auctioneer

1 involved in the sale of the other lands in 1988, the Forest
2 Road lands; isn't that right?

3 A. No, Copsey did that.

113 Q. No, I put it to you that it was you that negotiated
5 the sale of those lands?

6 A. In Forest Road.

114 Q. In 1988?

8 A. In Forest Road.

115 Q. Yes.

10 A. No, that is wrong and that will be proven wrong.

1 116 Q. Well, I put it to you that you conducted the negotiations
12 and you actually signed the contract for sale as well;
13 isn't that right?

14 A. Look at Mr. Cooney please, be fair.

1 117 Q. I am just --

16 A. Just be fair.

1 118 Q. You can deny, agree or disagree with my questions Mr.
18 Gogarty and I will move on to another topic?

19 A. Sorry, don't go away from that yet, I would like to explain
20 that Your Honor.

21 .

22 CHAIRMAN: All right, briefly, very briefly.

23 A. I beg your pardon?

24 .

25 CHAIRMAN: Briefly.

26 A. Briefly. I did negotiate the sale of Forest Road with Mr.
27 McArdle and we thought we had them sold and on Mr.
28 McArdle's instructions we attended a meeting in Smith Foy &
29 Partners in Fitzwilliam Square, when they thought we struck
30 a deal and Mr. McArdle shook hands on it and he nearly died
31 when we came back to his offices and I said "ring Copsey",
32 and Copsey told him that we had no authority to sell the

1 lands and I said "fuck Copsey" and he sold them, then I
2 signed a contract all right, but he sold them. Mother of
3 God please be fair, if anything be fair, you know.

119 Q. Mr. Gogarty, I think you have already told the Tribunal
5 that as a result of meeting Mr. Bailey about the sale of
6 the Forest Road lands in 1988 you developed a rapport with
7 him; is that right?

8 A. Well you could call it that, yes.

120 Q. Well, it is the word that you used Mr. Gogarty, a rapport?

10 A. Yes.

1 121 Q. And you did?

12 A. Yes, I did honestly. I had great respect for him.

1 122 Q. Yes. And the rapport implies a degree of friendship?

14 A. I beg your pardon?

1 123 Q. It implies a degree of understanding and friendship?

16 A. Yes, certainly, yes. Oh, yes I wouldn't deny that.

1 124 Q. So at the time you entered into negotiations with Mr.

18 Bailey for the sale of the lands, the main subject of this

19 Tribunal of Inquiry, you had developed a degree of

20 understanding and friendship with Mr. Bailey; isn't that

21 right?

22 A. That is true.

2 125 Q. Yes.

24 A. But it has slightly changed.

2 126 Q. And I suggest that it was that degree of understanding and

26 friendship which you had built up with Mr. Bailey which

27 lead eventually to the sale of the bulk of the lands to him

28 in November of 1989?

29 A. Not true, not true, because after the aborted sale of the

30 Forest Road lands where Copsey took over the negotiations

31 and he had to pay another hundred or £200,000 for them, he

32 was blaming McArdle and me for taking him for a ride. You

1 know? And that it did effect our relationships, and at the
2 same time I felt sorry for him that he was trumped up by
3 Copsey. I did.

127 Q. Oh no, but what you have already told the Tribunal, Mr.
5 Gogarty, is that as a result of meeting Mr. Bailey about
6 the sales of the Forest Road lands you developed a rapport
7 with him?

8 A. Oh, yes, sure what was wrong with that? Is that criminal -
9 what is wrong with that?

1 128 Q. I am merely trying to establish the fact and develop?

11 A. And I am trying to give you the facts and you are ignoring
12 them and I have made full disclosure of everything, even my
13 own personal private affairs and you have disclosed damn
14 all.

1 129 Q. And --

16 A. Damn all.

1 130 Q. Yes.

18 A. And if you didn't obstruct full disclosure I wouldn't be
19 here today, it would be all over a fortnight ago.

2 131 Q. I also have to now ask you some questions arising out of
21 this rapport that you developed with Mr. Bailey; and I
22 suggest to you, Mr. Gogarty, that that rapport and
23 everything implied and following from that rapport lead you
24 to a meeting with Mr. Bailey and Mr. Bailey only with Mr.
25 Raphael Bourke?

26 A. I beg your pardon, with who?

2 132 Q. With Mr. Burke, Mr. Ray Burke?

28 A. I don't know what you are getting at.

2 133 Q. All right. I will say it again, I will try and say it a
30 different way. I am suggesting that the rapport or
31 friendship which you developed with Mr. Bailey arising out
32 of the sale of the Forest Road lands in 1988, not only lead

1 you to negotiate with him, negotiate with him, and in that
2 could be included a deal in relation to the other lands,
3 but it also lead to an arrangement between you and Mr.
4 Bailey whereby you went to Mr. Burke's house in June of
5 1989 and paid him a sum of money. That's the point I am
6 putting to you?

7 A. Incorrect.

134 Q. Incorrect. All right. There is no doubt that since you
9 first met Deputy Tommy Broughan and subsequently Mr.
10 Connolly, the journalist, you have been giving details of
11 this meeting with Mr. Burke; isn't that right?

12 A. That's correct, yes.

1 135 Q. And you also met Superintendent McElligott and gave him
14 details; is that correct?

15 A. That's correct.

1 136 Q. And you also made a statement to your Newry solicitors
17 about these events; isn't that right?

18 A. Well, I wouldn't call it a statement. I answered
19 questions. I didn't dictate that.

2 137 Q. You see I just have to put it to you, Mr. Gogarty, that as
21 the months and years approaching this Tribunal have passed,
22 you have refined and added to your original statements
23 about these matters so that there are significant
24 differences between what you now tell the Tribunal and what
25 you told people at those earlier occasions?

26 A. I have elaborated on them. I elaborated on them.

2 138 Q. Yes; and you have elaborated and added and refined these
28 earlier statements all with one objective in mind, and that
29 is to implicate Mr. Joseph Murphy Junior into this visit to
30 Mr. Ray Burke's house; isn't that right?

31 A. Not at all, I was elaborating the truth.

3 139 Q. All right?

1 A. And sorry --

140 Q. Go-ahead, finish your answer?

3 A. In fact it wasn't until I got protection from the Tribunal,
4 24-hour protection that I felt any relief from your
5 clients' threats and intimidation and that I could speak
6 with some degree of freedom, degree of freedom.

141 Q. You see there is no doubt that in the early part of 1997
8 the Garda, but particularly Superintendent McElligott was
9 seeking a statement from you; isn't that right? In which
10 you would detail your allegation; isn't that right?

11 A. It was, there was a dual purpose in it, I think Mr.
12 McElligott will explain that. That arose -- I am rambling
13 now.

14 .

15 CHAIRMAN: No, carry on for the moment. Arose - what
16 happened?

17 A. Mr. McElligott's meeting followed, that was in February of
18 1997, and it followed a surprise visit to my house in
19 Clontarf by Detective Officer McEneaney who, out of the
20 blue, arrived at my house. I don't know where he got my
21 address or the telephone number, but that meeting in turn
22 followed representations by Mr. Brown to the Criminal
23 Investigation Bureau in Harcourt Street, when he arranged
24 with the people there that they would interview me, but not
25 by an officer below the rank of Superintendent; and I think
26 the man that he had contact with and written to was a
27 Superintendent McGee. You can check this out.

28 .

29 Superintendent McGee then for some reason and he wrote to
30 Mr. Brown I think, and he referred it back to the DMP (SIC)
31 when it was really a question for the Criminal
32 Investigation Bureau, and that is what lead to Detective

1 McEneaney calling to my --

2 .

3 CHAIRMAN: Get back to your interview with Superintendent

4 McElligott please.

5 A. I beg your pardon?

6 .

7 CHAIRMAN: Could you get back to the interview with

8 Superintendent McElligott. I understand that is the

9 background, could we get back to what happened at that

10 interview?

11 A. At that meeting, the first interview was, it was general

12 and we agreed that we were talking off the, confidentially,

13 because I think he will confirm that - my main issue

14 talking to him was to try and get an explanation for the

15 failure of the Guards to charge Murphy in 1994. I think he

16 will accept that and that I was looking for the Howth Garda

17 files on what happened.

18 .

19 CHAIRMAN: Now apart from that what else did you discuss

20 with Superintendent McElligott on that occasion?

21 A. Well, the first occasion we discussed only the talk about

22 the investigation that he would carry out into the

23 Detective Sergeant conducting --

24 .

25 CHAIRMAN: Apart from Detective Sergeant Sherry's conduct

26 did you discuss anything else with him?

27 A. Very much in general. It was the follow-on meetings where

28 it got more elaborate.

2 142 Q. MR. COONEY: You see, Mr. Gogarty, the point --

30 A. And he gave me an assurance at that time which lead to the

31 other meetings. He gave me an assurance at that time that I

32 would have no worries about he resolving to my satisfaction

1 the matter of the files, the Howth Garda files. He gave me
2 that assurance and I am sure the man will confirm that.

143 Q. Mr. Gogarty --

4 A. And he was accompanied by Detective Inspector Harrington.

144 Q. Mr. Gogarty, I just want to establish as briefly as I can
6 some fundamental facts. Superintendent McElligott's
7 involvement in this matter came because it was referred to
8 Harcourt Square; isn't that right?

9 A. It was initially referred to Harcourt Square.

1 145 Q. By Deputy Broughan?

11 A. By Deputy Broughan.

1 146 Q. And you wanted a policeman not below the rank of
13 Superintendent to take up the matter; isn't that right?

14 A. That's right.

1 147 Q. And Superintendent McElligott was the man who was assigned
16 to do that?

17 A. Sorry, the man seemingly that was sent to do it was
18 McEneaney, it was after McEneaney. You see this is the
19 problem. After Mr. Browne's intervention and talking to
20 Superintendent McGee and written letters between them,
21 instead of a Superintendent coming it was Detective
22 McEneaney that came to my house, which surprised me and to a
23 bit of an extent annoyed me because he was a Detective. I
24 was concerned about the failure of a superior officer to do
25 certain things, you see, and I felt that it should be a
26 Superintendent, and that is what lead to Superintendent
27 McElligott.

2 148 Q. Mr. Gogarty, forgive me for interrupting --

29 A. I am not rambling, they are the facts.

3 149 Q. All I want to establish, at your request Superintendent
31 McElligott was assigned to your case by the Bureau which
32 operates out of Harcourt Square?

1 A. I don't know who assigned him.

150 Q. But he was assigned?

3 A. Well, he must have been.

151 Q. All right.

5 A. Which was after Detective McEneaney's visit which was just

6 seemingly correcting a situation that Mr. Browne had

7 organised.

152 Q. Yes, but after his assignation to your case Detective

9 Superintendent McElligott had a number of interviews with

10 you and he also had correspondence with your solicitors in

11 Newry and he actually travelled to Newry to interview your

12 solicitors?

13 A. And I would like to get this correspondence and we would go

14 over it.

1 153 Q. Would you just please answer my question? I want to just

16 establish basic facts, are those facts correct?

17 A. Yes, they are correct certainly.

1 154 Q. And I say that during this time when these events were

19 taking place, one of Superintendent McElligott's principle

20 concerns was to obtain a written statement from you, in

21 which you outlined your allegations of corruption against

22 senior politicians and everybody else involved?

23 A. Not initially.

2 155 Q. But did he eventually?

25 A. Eventually, yes.

2 156 Q. Yes.

27 A. After the fifth meeting.

2 157 Q. And you know that there was correspondence between himself

29 and your Newry solicitors about the furnishing of a written

30 and signed statement; isn't that correct?

31 A. I do, and I would love you to read them into the record you

32 know.

158 Q. Just please answer the question?

2 A. Sorry, but you are evading me as well too, you know.

159 Q. Now I have to suggest to you, Mr. Gogarty, that you refused

4 to sign or to furnish a written statement, signed statement

5 to Superintendent McElligott until three conditions were

6 fulfilled to your satisfaction. (A) That Mr. Joseph Murphy

7 would be prosecuted arising out of the telephone call. (B)

8 That you would get a form of immunity from the Director of

9 Public Prosecutions in relation to whatever you said in the

10 statement. And (C) That you would be provided with

11 personal security by the Garda Siochana; isn't that

12 correct?

13 A. Basically correct, but in the context.

1 160 Q. Yes, but you had a statement ready and prepared to give to

15 the Guards when all of these conditions were met; isn't

16 that right?

17 A. No I hadn't, had I?

1 161 Q. Are you telling the Tribunal, Mr. Gogarty, that your

19 complaints and your account of what happened and which was

20 the subject matter of the inquiry into, inquiry by this

21 Tribunal was never reduced to writing?

22 A. Oh Superintendent McElligott took notes.

2 162 Q. No, I am not referring to that. I am referring to a long

24 narrative statement in which you describe in the first

25 person singular, the events which subsequently had been

26 aired but with differences at this Tribunal?

27 A. We had that the last day, yes.

2 163 Q. No. No, did you make such a statement?

29 A. That to me wasn't a statement and it was never read over to

30 me to look at it and check it out. That was never dictated

31 to me, I never signed it.

3 164 Q. I am not asking you that, I am asking you --

1 A. But they are relevant.

165 Q. All right.

3 A. They are relevant.

166 Q. Continue on.

5 A. They are relevant.

167 Q. All right. Did you make such a statement?

7 A. I read that, what you call is a statement.

168 Q. I didn't ask you if you have read it, Mr. Gogarty, and I

9 think you understand this now, I am going to keep at this

10 until I get an answer?

11 A. Good God, no better man.

1 169 Q. Did you tell me, did you make such a statement?

13 A. I did.

1 170 Q. All right.

15 A. If that satisfies you?

1 171 Q. Mr. Gogarty, it is not my satisfaction, it is the truth is

17 what we want here. To whom did you --

18 A. Sorry, the truth is in your records if you disclosed them,

19 oh Jesus, you have the truth. Don't stop obstructing

20 disclosure, give us full disclosure and you will have the

21 truth, in the name of God.

2 172 Q. To whom?

23 A. You can tell me that there is about umpteen versions of the

24 truth too as well.

2 173 Q. To whom did you make that statement, Mr. Gogarty?

26 A. It would appear to be to Mr. Cooney, sorry.

2 174 Q. A slip of the tongue Mr. Gogarty. To whom?

28 A. Was it Mr. Neary?

2 175 Q. I don't know, you tell us, I wasn't there, was it to Mr.

30 Neary your solicitor?

31 A. I don't know, I would like to get the statement, you know.

3 176 Q. We will come to the statement, I assure you in good time?

1 A. It would shorten the time if you did.

177 Q. Did you make that statement to Mr. Neary your then

3 solicitor?

4 A. Yes. Yes.

178 Q. And over a period of time, over a period of time?

6 A. It could be yes, yes.

179 Q. It could be. And this statement is dated the 28th of

8 August, of 1987; isn't that right?

9 A. I take your word for it.

1 180 Q. Yes; and this statement was being held by Mr. Neary for

11 production to the Guards if and when you had the three

12 conditions fulfilled that you required; isn't that right?

13 A. I don't think that is fully correct, Mr. Cooney. Because

14 if you read the records Mr. Neary and I personally were

15 asking Superintendent McElligott for a copy of his

16 statement, or his notes that he took down, and his reply

17 was that they were only an aide memoire and he wouldn't

18 give them to us. That is on the record.

1 181 Q. Yes.

20 A. I would love you to read the letters.

2 182 Q. Mr. Gogarty, there may be a bit of confusion between us

22 here?

23 A. I beg your pardon?

2 183 Q. There may be a little bit of confusion here between us?

25 A. I know there is, I know there is a hell of a lot of

26 confusion between us.

2 184 Q. I am not asking, Mr. Gogarty, about statements or notes

28 made by Superintendent McElligott. I am not at the moment

29 asking you about those, I will come to them, what I am

30 asking you about now and I think you understand this, Mr.

31 Gogarty, is about the statement which you made to Kevin

32 Neary your solicitor in Newry in August of 1997?

1 A. Fair enough.

185 Q. All right. Now, I am suggesting that you made that
3 statement, but you would not release it to the Guards who
4 were seeking it until the three conditions that I have
5 already referred to were fulfilled; isn't that right?

6 A. That is your suggestion.

186 Q. No, no?

8 A. You said you are suggesting it to me.

187 Q. Is it a correct suggestion?

10 A. Well, that is a different question now. I am not going to
11 speculate on your suggestions.

1 188 Q. No. No. Is that correct?

13 A. I am not going to speculate on your suggestions, I can't do
14 it. I can only give the version that I believe to be true.

1 189 Q. All right, well let's first of all - there is no doubt that
16 Superintendent McElligott wrote to your solicitor, Mr.
17 Neary, and said that the Director of Public Prosecutions
18 was prepared to give you immunity limited to anything which
19 was in your statement and which you might repeat at a
20 Tribunal; isn't that right?

21 A. That's correct.

2 190 Q. So --

23 A. But again could I say something?

2 191 Q. Yes, of course.

25 A. It may be, what do you call it? Cutting straws, but I
26 personally didn't seek immunity, but Mr. Neary as my
27 solicitor insisted that he would seek immunity on my
28 behalf. Now, that is in the regard and that is in the
29 letters.

3 192 Q. But your other two conditions at that stage remained
31 unfilled; first of all there was no prosecution of Mr.
32 Murphy Junior in respect of the telephone call; isn't that

1 right?

2 A. Well, not necessarily a prosecution, an explanation why he
3 wasn't prosecuted.

193 Q. All right.

5 A. You see a different thing now, be careful.

194 Q. Yes; and the third thing is that the Guards decided that
7 you did not need personal security to be provided by them;
8 isn't that right?

9 A. Well, they will give evidence themselves but again I would
10 also tell you that there was something slipped my mind
11 there -- oh sorry, it will come back to me.

1 195 Q. Well, interrupt me if it comes back to you?

13 A. Beg your pardon?

1 196 Q. Interrupt me if it comes back to you?

15 A. I don't intend to be rude to interrupt you, I am only
16 trying to put something in the context.

1 197 Q. Sure I understand that?

18 A. If that is being rude I apologise and I won't look to the
19 Bar Counsel for the forming of the words either.
20 .

21 CHAIRMAN: Please, Mr. Gogarty.

2 198 Q. MR. COONEY: Mr. Gogarty, can we just get back now to the
23 serious matters, because these are very serious matters to
24 my client?

25 A. They are all serious matters for me.

2 199 Q. I suggest to you that you prepared that statement dictated
27 to your solicitor but didn't release it to the Garda
28 Siochana because you were dissatisfied about the response
29 that you were getting from them to your three demands?

30 A. That would be correct basically, yes, that would be correct
31 basically.

3 200 Q. But there is no doubt that the statement which you gave to

1 Mr. Neary and which has been given to us is the truth;

2 isn't that right?

3 A. Yes, as I saw it at the time, yes.

201 Q. I mean --

5 A. You must remember too, you see the thing is this you know,

6 that what was annoying me and was upsetting me probably was

7 that I made a statement in 1994 and they were treating me

8 as an auld eejit, that they weren't taking me seriously,

9 and if it was dealt with at that time between, we wouldn't

10 be here today. I believe that is the truth, you know.

1 202 Q. Now can I just come to the statement. It is dated the 28th

12 of August of 1997, and it is described as a draft --

13 .

14 CHAIRMAN: Mr. Cooney, could you give us the reference?

15 .

16 MR. COONEY: Yes I will Mr. Chairman, it is in the book of

17 reference documents which were given to us by the

18 Tribunal. It is reference documents of the 7th of January,

19 of 1999, Mr. Chairman.

20 .

21 CHAIRMAN: Thank you. The 7th of January.

2 203 Q. MR. COONEY: And it starts at page 285 in that book.

23 .

24 CHAIRMAN: Thank you very much. Thank you.

2 204 Q. MR. COONEY: Mr. Gogarty, you see I want to put to you

26 that in that statement there are substantial differences

27 between what you later described as happening in or about

28 June of 1989 and important differences and I want to put

29 one of these to you now. That is at page 7. The last

30 paragraph - have you got a copy of it, Mr. Gogarty?

31 A. I have yes.

3 205 Q. Could you turn to page 7. It is at the bottom of the page.

1 A. Page, 285.

206 Q. Yes, it is also written in hand.

3 .

4 CHAIRMAN: Page 291?

5 .

6 .

207 Q. MR. COONEY: Yes. 291. You see that paragraph reads and

8 this is what you told your solicitor in sometime around

9 August of '79 or '97 rather; "While Duffy Mangan and Butler

10 were seeking bids and advising me of their progress, a Mr.

11 Michael Bailey resurfaced and expressed a keen interest in

12 all the lands to Mr. Reynolds and me. We referred him to

13 the auctioneers and Mr. Duffy showed him over all the lands

14 but said he made no bid. Instead he said he wanted to bide

15 his time as he had spoken to Mr. Murphy Senior and Mr.

16 Murphy Junior and felt he could do a deal with them

17 first". Do you see that paragraph?

18 A. Yes.

1 208 Q. You see "We referred him to the auctioneers and Mr. Duffy

20 showed him over all the lands but said he made no bid".

21 Are you there repeating what Mr. Duffy said to you?

22 A. Well, he made no bid at that time when we were talking

23 directly to Mr. Duffy.

2 209 Q. Now, if you turn on to page 9?

25 A. Page 200 and what?

2 210 Q. No, page 292 first of all. Now, at the bottom of the,

27 bottom paragraph there mentions discussions which you had

28 with Mr. Bailey about the rezoning of the lands and that he

29 could get 2,000 an acre, I don't want to read out of some

30 of those details to you?

31 A. You are going fast.

3 211 Q. Sorry, the last paragraph recounts what you say were the

1 discussions that you had with Mr. Bailey concerning the
2 rezoning of the lands; isn't that right?

3 A. Yes.

212 Q. Now, if we move over to the next page, this is just a
5 continuation of the discussions?

6 A. Page 293, is it.

213 Q. 293. And there is a sentence there which begins on the
8 second line; "He also said he could cross the political
9 divide because he contributed to other political parties.
10 He then said that he discussed it all with Ray Burke who
11 had agreed and was pressing him for an advance payment.
12 Mr. Murphy Junior and Mr. Bailey were in an agreement with
13 the proposal and were hoping to get Mr. Murphy Senior to
14 come around to it amicably on the grounds that the way they
15 were proposing to deal with the lands through a Bailey
16 company would distance the Murphy companies from the
17 Revenue".

18 .

19 Now this is the important sentence I want to ask you about
20 "I queried Mr. Bailey naively again on how he could be so
21 sure, and I asked him to put it to me in writing so that I
22 could clear my position with Mr. Murphy Senior, and Mr.
23 Murphy Junior agreed with the suggestion. I was somewhat
24 surprised when a few days later I got a letter by hand from
25 Mr. Bailey confirming in such detail his proposals and the
26 mechanics by which he was so confident"?

27 A. I beg your pardon now, read it out.

2 214 Q. I beg your pardon. I will go back to the beginning of that
29 sentence again?

30 A. Yes.

3 215 Q. "I queried Mr. Bailey naively again on how he could be so
32 sure and I asked him to put it to me in writing so that I

1 could clear my position with Mr. Murphy Junior, I beg your
2 pardon Mr. Murphy Senior and Mr. Murphy Junior agreed with
3 the suggestion. I was somewhat surprised when a few days
4 later I got a letter by hand from Mr. Bailey confirming in
5 such detail his proposals and the mechanics by which he was
6 so confident in getting the land rezoned".

7 Now that is the end of the quotation I want to put to you
8 Mr. Gogarty?

9 A. Yes.

1 216 Q. There you say two things, Mr. Gogarty?

11 A. Sorry, I can't hear you know.

1 217 Q. I beg your pardon?

13 A. Yes.

1 218 Q. There you say two things, you say first of all that you
15 asked Mr. Bailey to put his proposals in writing?

16 A. That's correct, yes.

1 219 Q. Now did you do that?

18 A. I asked him at the meeting.

1 220 Q. No, a specific question I am asking, Mr. Gogarty, is this;
20 did you ask Mr. Bailey to put these proposals in writing?

21 A. I did, yes.

2 221 Q. I see. Did you then get his proposals in writing by hand a
23 few days later?

24 A. That's right.

2 222 Q. I see, and I suggest to you that the clear meaning there is
26 "I got a letter by hand from Mr. Bailey", that you got the
27 letter and it did not arrive to Mr. Frank Reynolds nor was
28 it opened by Mr. Frank Reynolds as you have told this
29 Tribunal, it was delivered by hand to you?

30 A. That's incorrect.

3 223 Q. Well, why did you put that in that statement at that time
32 that it was incorrect.

1 .

2 MR. CALLANAN: Mr. Gogarty put nothing in the statement,
3 we were over this the last day. This is a statement
4 prepared by Mr. Neary, it is not a statement that was put
5 to --

6 .

7 CHAIRMAN: Just a moment please. As I understand the
8 basis of Mr. Cooney's cross-examination is based on that
9 Mr. Gogarty made this statement to his solicitor who
10 transcribed it or who put it together, and that this
11 statement was intended to be transferred when the
12 three-part agreement was reached. That's as I understand
13 the premise which Mr. Cooney has been putting to the
14 witness, and as I understand it the witness has broadly
15 accepted that premises. I hope I am being fair to the
16 witness in that, that is my understanding of the situation
17 to date.

18 .

19 MR. COONEY: I think that is correct Mr. Chairman.

20 A. I can't hear you at all.

21 .

22 MR. COONEY: It seems Mr. Callanan's view is of the view
23 that the truth can exist in draft form.

24 .

25 CHAIRMAN: Let's just stay with the facts.

26 .

2 224 Q. MR. COONEY: All right.

28 Mr. Gogarty, I want to return to the question I was asking
29 you. You said in this "I was somewhat surprised when a few
30 days later I got a letter by hand from Mr. Bailey
31 confirming in such detail his proposals". Now, you see
32 that statement?

1 A. Yes.

225 Q. Now, I suggest that that is quite different from what you

3 have told this Tribunal about the arrival of that letter?

4 A. I don't believe it is, no.

226 Q. Well, did you get a letter by hand?

6 A. Through Frank Reynolds, yes.

227 Q. But I suggest to you that if that were true, if that were

8 true you would have included that fact in this statement at

9 that time?

10 A. Well, I can only say that if I was a lawyer which your

11 competence I probably would, but I was only a layman and it

12 was delivered by hand to Frank Reynolds and I got it by

13 hand from Frank Reynolds when I went into the office.

1 228 Q. Well, I put it to you, Mr. Gogarty --

15 A. Sure you are putting an awful lot of things. Go on, keep

16 going.

1 229 Q. I put it to you, Mr. Gogarty, that if it was true that this

18 letter had come to you via Frank Reynolds you would have

19 put that in that statement?

20 A. I maybe probably should have or could have. I am telling

21 you if I was a lawyer with your competence you know.

2 230 Q. You see, I suggest to you that you subsequently decided to

23 involve Frank Reynolds in this because it was necessary to

24 sustain your invention to implicate Joseph Murphy Junior?

25 A. Oh not at all, oh not at all sure this will come out in

26 evidence, this will come out in evidence. The truth will

27 come eventually despite your brilliant attempts between

28 spin doctoring and raising objections, the whole bloody lot

29 will come out.

30 .

31 All I am surprised at is this, that to me like you are

32 stooping to a low level of indecency to obstruct the course

1 of justice by not disclosing all your hand and you have it
2 there and you have a lot more than what I am talking about
3 and it will confirm what I am saying. But please God, you
4 can only delay it, you can't stop it fully finally.

231 Q. You see, you do mention Mr. Frank Reynolds in other places
6 in this statement. You know that, don't you Mr. Gogarty?

7 A. Sure, I have gone over it since I came in here about our
8 relationship, with Frank Reynolds you know.

232 Q. Just please listen to the question I am asking Mr.
10 Gogarty. You do mention Frank Reynolds frequently in other
11 places in this statement of the August 1997, isn't that
12 right?

13 A. That's correct, yes.

1 233 Q. Now I suggest to you that if what you have told this
15 Tribunal was true and this letter came to you not directly
16 and by hand from Michael Bailey but via Frank Reynolds as
17 you have described to this Tribunal, you would have
18 mentioned that in this particular sentence in this
19 statement?

20 A. Not necessarily, not at all, not necessarily but Frank
21 Reynolds will be giving evidence hopefully.

2 234 Q. You see I have to suggest to you that you now decided or
23 that you decided some time ago to implicate Frank Reynolds
24 because that is part of the case you are so artfully
25 constructing against Mr. Joseph Murphy Junior?

26 A. Well, the reverse is true. It was Frank Reynolds who was
27 implicating me. The reverse is the truth.

2 235 Q. All right. Let's turn to another subject, just to test the
29 accuracy of your story about what happened in these
30 critical days. You have already told the Tribunal Mr.
31 Gogarty, that on the 8th of June the day upon which this
32 letter was written and received, a meeting took place in

1 JMSE offices in Santry; isn't that right?

2 A. That's correct, yes.

236 Q. At which, at which £30,000 in cash was present or

4 available?

5 A. In an envelope.

237 Q. Yes, in an envelope and that was undoubtedly your

7 recollection, is it that was on the 8th of June?

8 A. That's right, yes.

238 Q. And that on the same day a cheque for £10,000 in cash was

10 written?

11 A. Junior says they were short of £10,000.

1 239 Q. I understand that?

13 A. Yes.

1 240 Q. And that meeting ended when you left?

15 A. That's correct, yes.

1 241 Q. And then you got a phone call, you say later on from Frank

17 Reynolds to say the meeting with Ray Burke is set up, come

18 along; is that right?

19 A. That's correct.

2 242 Q. Now I suggest to you Mr. Gogarty that again you have given

21 a very different version of the sequence of events as they

22 occurred on this occasion, you did it to the policeman whom

23 you seem?

24 A. So, I beg your pardon.

2 243 Q. Did you - to the member of An Garda Siochana that you most

26 trust, that was Superintendent McElligott; isn't that

27 right?

28 A. Sure he will speak for himself.

2 244 Q. I know, it is not - of course he will speak for himself we

30 presume, and hope he will give evidence, we have no doubt

31 about that, but what I am asking you about now Mr. Gogarty

32 is what you told Superintendent McElligott, right? Do you

1 understand that?

2 A. Tell me what I told him.

245 Q. I am going to put it to you now. This Mr. Chairman, is to

4 be found at Tab 8 I think?

5 A. Can I have a copy of it?

6 .

7 CHAIRMAN: Is this a hand written document, is it a

8 handwritten document Mr. Cooney?

9 .

10 MR. COONEY: It is a handwritten document. Have you got

11 that document Mr. Gogarty?

12 A. Yes.

1 246 Q. MR. COONEY: Now that is a letter, document -

14 .

15 MR. CALLANAN: I want to know what the document is before

16 it goes in?

17 .

18 MR. COONEY: It is notes that were made by Superintendent

19 McElligott from an interview that he had with Mr. Gogarty

20 on the 11th of April of 1997. Now, you see that --

21 .

22 MR. CALLANAN: If Mr. Cooney could indicate where the

23 document is to be found?

24 .

25 MR. COONEY: It is in Tab 8.

26 .

27 CHAIRMAN: Book Two Garda documents, Tab 8.

2 247 Q. MR. COONEY: Now these pages are numbered as well at the

29 top I think, by Superintendent McElligott?

30 A. Would this be what he called his aide memoire.

3 248 Q. Well these are notes, first of all I think I don't want to

32 go over this ground again with Mr. Gogarty, but there is no

1 doubt that you have earlier agreed that at the interviews
2 that he had with you, that Superintendent McElligott took
3 notes; isn't that right?

4 A. Sorry?

249 Q. You have already agreed I think in the course of your
6 evidence to this Tribunal, that at the interviews which he
7 had with you Superintendent McElligott made notes; isn't
8 that right?

9 A. At the last two meetings, the last two meetings, and I
10 think we had six or seven meetings altogether.

1 250 Q. Well, here is a meeting of the 11th of April of 1997, and
12 these are notes we have been told which are in his
13 handwriting?

14 A. Yes. Now the 7th of April and the 11th of April, and the
15 first meeting was in February; wasn't it.

1 251 Q. That's correct, sometime in February?

17 A. Sorry, just to put it in the context was it about five or
18 six weeks before that, would that be correct.

1 252 Q. Mr. Gogarty, just please look at these notes now. You see
20 on page one it is notes of an interview with James Gogarty
21 on the 11th
22 .

23 CHAIRMAN: Mr. Cooney, I wonder - I don't want to
24 interrupt the sequence. We have been running for an hour I
25 just wondering should we take a short recess since we are
26 changing subject. Say a quarter of an hour?

27 .

28 MR. COONEY: Yes may it please you Mr. Chairman.

29 .

30 THE HEARING WAS THEN ADJOURNED FOR A SHORT RECESS AND
31 RESUMED AS FOLLOWS:

32 .

253 Q. MR. COONEY: May it please you, Mr. Chairman.

2 .

3 Mr. Gogarty, just before I go on to ask you some questions

4 about these notes, I want to ask you about another matter

5 which is relevant to the 8th of June, of 1989; I think you

6 stated on previous occasions but not to this Tribunal, that

7 you believed that on the evening of the 8th of June Mr.

8 Burke was going to appear on either a radio or television

9 interview --

10 .

11 MR. CALLANAN: That's simply not correct, that's a totally

12 incorrect statement, he never said on the evening of the

13 8th of June Mr. Burke was appearing --

14 .

1 254 Q. MR. COONEY: Mr. Callanan is quite right. On the day

16 upon which your meeting with Mr. Burke took place, you

17 stated, I think on earlier occasions, that you believed

18 that part of the rush in hearing this meeting was because

19 Mr. Burke had a scheduled appearance either on radio or

20 television; isn't that correct?

21 A. Well, he was making excuses, he was saying that he wanted

22 to get rid of us.

2 255 Q. No, no that's not the point I am asking about, Mr.

24 Gogarty. You stated on other occasions that you believed

25 that the rush about this meeting was due to the fact that

26 he had an appointment for a radio or television interview;

27 isn't that correct?

28 A. I didn't say I believed it.

2 256 Q. That's the impression you formed, isn't that correct? I

30 will find it in your affidavit of evidence?

31 A. I didn't say I believed it.

3 257 Q. Did you not report Mr. Burke as saying to you --

1 A. I mentioned that he was in a hurry to do something, I
2 thought it might have been a radio, television.

258 Q. Or television interview, I think you also said that he was
4 dressed as if he would be appearing on television; isn't
5 that right?

6 A. Did I say that?

259 Q. Yes?

8 A. That --

9 .

10 MR. CALLANAN: It would be proper if Mr. Cooney would
11 refer to the, whatever statement he was referring to.

12 A. I would have said compared to myself that he was well
13 dressed.

1 260 Q. MR. COONEY: All right, we will settle for that. In any
15 event you formed the impression, that one of the reasons
16 why Mr. Burke appeared to be under pressure on that day was
17 because he had an appointment in RTE or some broadcasting
18 station for either a radio or television interview; isn't
19 that right?

20 A. No, the impression I got was that he wanted to get rid of
21 us, that's the main impression.

2 261 Q. I understand that is correct but you also -- I understand
23 that is correct but you also formed the impression that he
24 had to appear on either radio or television that evening;
25 isn't that right?

26 A. I don't know.

2 262 Q. Well, that's what you said in your affidavit of evidence?

28 A. Did I say I formed the impression?

2 263 Q. Yes, I will just find it for you now.

30 A. I said he was looking at his watch and --

3 264 Q. Sorry, just give me a moment please

32 .

1 MR. GALLAGHER: 53.

2 .

265 Q. MR. COONEY: We will find it in the affidavit.

4 .

5 MR. GALLAGHER: Paragraph 53.

6 A. Could we see it? I don't know how this thing works, it is

7 getting me down.

266 Q. MR. COONEY: We will try and hurry it up.

9 A. Don't rush, don't.

1 267 Q. Yes, at paragraph 53 of your affidavit of evidence of the

11 12th of October last you stated; "Initially there was a

12 general conversation with Ray Burke saying that he had not

13 much time, we all understood as there was a general

14 election campaign going on at the time. To the best of my

15 recollection Mr. Burke added by way of explanation that he

16 had to do an interview for radio or television later in the

17 day"?

18 A. But you said I had the impression from -- you are a devil

19 at these sentences.

2 268 Q. Yes, indeed here are your words, Mr. Gogarty. You said;

21 "To the best of my recollection Mr. Burke added by way of

22 explanation that he had to do an interview for radio or

23 television later in the day"?

24 A. That was my recollection, he was mad to get away, looking

25 at his watch and got up and said we would have a quick cup

26 of tea and put the envelopes in a drawer.

2 269 Q. All right, because you see our inquiries have established

28 that Mr. Burke did appear on a television programme on the

29 evening of the 8th of June and did not again appear on

30 television until after polling day, which was on the 15th

31 of June?

32 A. I wouldn't dispute that.

270 Q. You see it is important for fixing the date of the meeting

2 that you had with Mr. Burke, now don't, there is no point

3 in looking down at your lawyers at this stage?

4 A. Sorry I am not, Jesus I am not looking at anybody, I am

5 looking at you and I have got a pain in my face looking at

6 you.

7 .

8 CHAIRMAN: Beauty is only skin deep Mr. Cooney.

9 .

1 271 Q. MR. COONEY: Well, I just want to put it to you, Mr.

11 Gogarty, that Mr. Burke did appear on television on the 8th

12 of June and no other time, according to our inquiries with

13 RTE, and that this, I suggest to you confirms our belief

14 that this meeting with Mr. Burke took place in his house on

15 the evening of the 8th of June?

16 A. I can't speculate on your suggestions, you are a devil for

17 suggestions.

1 272 Q. You don't agree, you say it took place a couple of days

19 later; is that right?

20 A. I suppose for the record, I suppose if he appeared on

21 television often, I don't know and radio, I couldn't be

22 specific about that.

2 273 Q. All right. On this issue of the 8th of June let's turn

24 now to the notes of the Detective Superintendent's

25 interview with you on the 11th of April, of 1997, and on

26 page 2, will you turn to page 2 of the notes please, are

27 you able to read the handwriting, Mr. Gogarty?

28 A. Not too well.

2 274 Q. All right, follow with me now. There is a paragraph, the

30 last complete paragraph states; "June 1989 - J Gogarty

31 states Michael Bailey and Joe Murphy saying Ray Burke

32 pushing for money for himself and other councillor, that is

1 Ray Burke had control of Dublin County Council". Again
2 recording you Superintendent McElligott writes; "June 1989
3 - Joe Junior Murphy, Frank Reynolds and J Gogarty were at
4 Santry"?

5 A. Worked.

275 Q. "Worked at Santry. Joe Junior Murphy talks of an earlier
7 meeting he had, of an earlier meeting that he had with
8 Michael Bailey, and told them that Michael Bailey had a
9 meeting arranged with Ray Burke for that evening, and that
10 he, Joe Murphy, was going to pay over 40 K, that Michael
11 Bailey was also going to pay over 40 K. This was a deposit
12 against a gross deal of £2,000 per acre over three or four
13 years. J Gogarty says Frank Reynolds then went to Roger
14 Copsey of Copsey Murray & Company and returned with 30 K in
15 a brown paper bag. J Gogarty saw the money being
16 counted. To make up the balance they wrote out a cheque
17 to cash for 10 K. As far as he could recall he, J Gogarty,
18 and Frank Reynolds signed it. The cheque was from an
19 account at AIB Talbot Street. After 4 p.m. same day,
20 Michael Bailey came to Murphy's offices and spoke with Joe
21 Junior Murphy and J Gogarty. Bailey said he could rely on
22 Ray Burke to come up with the planning zoning. Joe Junior
23 said they were willing to honour their side of the deal.
24 Joe Junior told J Gogarty to take the brown paper bag. Joe
25 Murphy Junior, Michael Bailey and Gogarty went"?

26 A. Sorry, you are going too fast.

2 276 Q. Sorry, I beg your pardon, I will go back to the beginning
28 of page 4?

29 A. Page 4?

3 277 Q. Page 4. "Joe Junior told J Gogarty?

31 A. I haven't page 4.

3 278 Q. It is numbered at the top of the page, Mr. Gogarty?

1 A. Sorry, yeah. Yeah.

279 Q. "Joe Junior told J Gogarty to take the brown paper bag.

3 Joe Murphy Junior, Michael Bailey and Gogarty went in
4 Bailey's car, Merc, to Ray Burke's house, Swords, it is a
5 detached house on the left-hand side. They were met by Ray
6 Burke, they went to a small room on the left-hand side of
7 the hall". Now, that ends the extract I want to ask you
8 about, Mr. Gogarty, and I suggest to you that there
9 Superintendent McElligott is describing events, all of
10 which occurred on the same day, that is the arrival at
11 Santry by you, and according to you Joe Murphy Junior and
12 Michael Bailey and subsequently Michael Bailey; that when
13 you went there Frank Reynolds went and got the £30,000 from
14 Roger Copsey, that on the same day --

15 A. What day is that now?

1 280 Q. I am suggesting to you it was the 8th of June. You see you
17 have already given evidence, Mr. Gogarty, listen to me now
18 for a moment please. You have already given evidence that
19 the 8th of June, the date of the letter from Bailey to you
20 was also the day when you received that letter and was also
21 the day when the money was obtained and counted in JMSE's
22 office in Santry; do you follow me?

23 A. That's correct, yeah that's correct.

2 281 Q. I am suggesting in this interview which you had with
25 Superintendent McElligott, you recounted these events to
26 him, and then you go on to say after 4 p.m. same day, you
27 go on to describe a visit to Ray Burke's house, in other
28 words I am suggesting to you --

29 A. Did it say "same day"?

3 282 Q. Yes, it does. "After 4 p.m. same day", look at the bottom
31 of page 3?

32 A. That's not correct, that's not correct, sorry.

1 .

2 MR. CALLANAN: It is clear the Superintendent said the
3 word is "some day" or "same day", I am not sure.

4 .

5 CHAIRMAN: You are talking about the bottom of page 3?

6 .

7 MR. COONEY: It can be very easily cleared up.

8 A. I would say it is some day, S.O..

9 .

10 MR. COONEY: The writer will be able to explain that.

11 A. You are implying something that I say is incorrect, you
12 know.

1 283 Q. MR. COONEY: I am putting to you that that note reads;

14 "After 4 p.m. same day, Michael Bailey came to Murphy's
15 offices and spoke with Joe Junior Murphy and J Gogarty, and
16 then following that discussion the trip to Ray Burke's
17 house took place".

18 .

19 Now, assume for a moment that Superintendent McElligott
20 will say that that word is "same" and not "some", will say
21 it was same and not say but some day, and that I suggest is
22 how the statement reads; but in any event if that is
23 correct, what you told Superintendent McElligott is that
24 the visit to Ray Burke's house occurred on the day that the
25 money was got, counted and supplemented by the cheque, and
26 that according to your earlier evidence, Mr. Gogarty, was
27 the 8th of June, the day of the letter from Michael Bailey
28 to you; isn't that correct?

29 A. Incorrect. Incorrect. First of all let's go back,
30 because you are after saying an awful lot like myself in a
31 few minutes. You assumed it. I can't speculate on what
32 you are assuming or what's in your head, I can't speculate

1 on that and it is not fair to ask me to speculate on it.

2 They come and give their version of it, my reading of that

3 may be -- you want them, what do you call the fellows that

4 make out writing? I say that's some day, but --

284 Q. Well now, I just put to you, and again this will be cleared

6 up; I put it to you directly, Mr. Gogarty, that during that

7 interview of the 11th of April, of 19 --

8 A. The 11th of April, in the name of Jesus where are we going

9 now?

1 285 Q. I have already said this to you.

11 A. The 11th of April, of 1997. You are confusing me now, you

12 are giving me a break.

1 286 Q. Take your time and be clear about it. What I am putting

14 to you, Mr. Gogarty, is that in this interview --

15 A. You are jumping from one statement to another, is that

16 right?

1 287 Q. In this interview you had with Superintendent McElligott on

18 the 11th of April, of 1997, you told him that the meeting

19 in Ray Burke's house occurred on the same day that the

20 money had been produced in the offices of JMSE, and that

21 day was the 8th of June. Do you understand my question?

22 A. Yeah, but I disagree with it.

2 288 Q. Did you tell him that?

24 A. I can't recall telling him that, no. I would say he

25 probably will explain that himself, you know.

2 289 Q. All right. Are you saying then what he recorded in this

27 note made contemporaneously is inaccurate?

28 A. I would say so, yeah.

2 290 Q. It is inaccurate?

30 A. Yes.

3 291 Q. All right. Let's turn to another detail on these notes

32 and then see which is inaccurate and which isn't. I want

1 first of all to remind you -- leave the notes aside for a
2 moment, I want to remind you of evidence you gave to this
3 Tribunal on Day 5 of the Tribunal, that's the day Mr.
4 Gogarty on which you described these events and in
5 particular the visit to Mr. Burke's house. Now, at page 44
6 of that transcript Mr. Gallagher asked you a number of
7 questions about your arrival at Mr. Burke's house, and he
8 said at page 44, Question 150 -- now, please listen to me
9 carefully, Mr. Gogarty.

10 .

11 "Did you recognise Mr. Burke or had you ever met him
12 before? Answer: I never met the man in my life and I
13 don't want to meet him again either.

14 Question: Did you recognise him as --

15 answer: I recognised him all right, he was a well-known
16 public figure.

17 Question: You are talking about Mr. Raphael to the best of
18 your recollection; is that correct?

19 Answer: Is that his name?

20 Question: Ray Burke?

21 Answer: Ray Burke, yes.

22 Question: And he was a well-known politician to you?

23 Answer: He was a Minister I think at the time.

24 Question: Okay. Now, when you arrived at Mr. Burke's
25 house you say you went to the door and you went in", and
26 you answered yes to that. Are you following me now, Mr.

27 Gogarty?

28 A. Yes.

2 292 Q. The next question you were asked by Mr. Gallagher is; "What
30 was said and by whom?" You answered, "Well, he introduced
31 the two of us into it". Question by Mr. Gallagher; "Sorry
32 who did?" Your answer; "Mr. Bailey". Question from Mr.

1 Gallagher to you; "What did he say?" And then you quote Mr.
2 Bailey verbatim, you say that Mr. Bailey said to Mr. Burke,
3 and I quote the words which you say he used "This is Jim
4 Gogarty, JMSE and this is Junior, Joseph Murphy Junior" ?

5 A. I accept that.

293 Q. That's the evidence you gave to the Tribunal; isn't that
7 right?

8 A. Yeah.

294 Q. So that Michael Bailey, according to this evidence, knew
10 Ray Burke but he was introducing you and Joe Murphy Junior
11 for the first time to Ray Burke; is that right?

12 A. That's the way it was.

1 295 Q. All right. Let's go back to page 4 of Detective
14 Superintendent McElligott's notes, the next paragraph, the
15 one immediately after the one I last read to you reads as
16 follows; "Michael Bailey introduced Joseph Gogarty as they
17 had never met before"?

18 A. Joseph who --

1 296 Q. "Michael Bailey introduced James Gogarty as they had never
20 met before. Ray Burke knew Junior"?

21 A. Did I say that?

2 297 Q. That's what --

23 A. Sorry, that's what the Superintendent -- yeah.

2 298 Q. That's what the Superintendent has noted you down as saying
25 now, Mr. Gogarty, so which of these statements is the
26 truth?

27 A. I believe that Joe Murphy didn't know him, but I couldn't
28 swear it.

2 299 Q. Why then did you invent this detail during the course of
30 your interview with Superintendent McElligott?

31 A. That's not an invention.

3 300 Q. It is a clear statement of fact which by your present

1 admission is untrue. It is -- it is there in
2 black-and-white, four words "Ray Burke knew Junior"; that's
3 what the Superintendent --

4 A. That's what Superintendent McElligott said.

301 Q. Is he mistaken in noting you down?

6 A. I think he could be mistaken yes, I want to be fair to the
7 man.

302 Q. Let's be fair to you, Mr. Gogarty, and be fair to my

9 client?

10 A. I wonder are you being fair to me?

1 303 Q. Look at the remainder of that sentence, the early part of

12 that sentence; "Michael Bailey introduced James Gogarty as

13 they had never met before". There is no doubt what

14 Superintendent McElligott recorded in that sentence is

15 accurate; isn't that right?

16 A. That's correct.

1 304 Q. You told him that; isn't that right?

18 A. I told him that, yeah.

1 305 Q. Isn't it extraordinary then that the next four words which

20 he adds to those words are inaccurate, in such an important

21 detail?

22 A. Well, you are saying it is extraordinary, I am not saying

23 it is extraordinary.

2 306 Q. You see, I have to put it to you, Mr. Gogarty, that here

25 again we have an example of your invention. Sometimes you

26 forget what you said earlier and you invent something else

27 to add or refine the lie which you are telling about my

28 client to this Tribunal?

29 A. That's completely incorrect and please God, please God you

30 will eat your words about inventions when you come to, when

31 we get full disclosure, you know.

3 307 Q. Well, you see, Mr. Gogarty, your evidence now, your

1 explanation depends on Superintendent McElligott being
2 mistaken in two important matters in his notes; isn't that
3 right?

4 A. Not necessarily, no.

308 Q. Well, you deny that he recorded you accurately when he
6 writes down you as saying "Ray Burke knew Junior"?

7 A. Yeah, I believe that.

309 Q. That's inaccurate?

9 A. I believe it is in the context, you know.

1 310 Q. Just, you are falling back on the context now, are you?

11 A. No I am not, for God sake no, I am not, I am not.

1 311 Q. Just as you say he is inaccurate when he records you as
13 saying that you went to Ray Burke's house after 4 p.m. on
14 the same day that the money was produced, we now know from
15 your evidence to be the June?

16 A. I can't speak for Superintendent McElligott, that's all I
17 am saying. If I could read a letter there, there was
18 correspondence between Superintendent McElligott and Mr.
19 Neary and correspondence between Mr. McElligott and me, and
20 I would love you to read that into the record, you know.

2 312 Q. You see, Mr. Gogarty, perhaps it is not necessary to remind
22 you of this, but when I was questioning you some days ago
23 about Inspector Harrington's evidence and the statements
24 which he made, you dismissed that because his evidence or
25 his statement was not based on contemporaneous notes, you
26 remember that?

27 A. Yes, the subsequent statement.

2 313 Q. And you, during the course of that piece of
29 cross-examination, Mr. Gogarty, you referred and relied on
30 the fact that Superintendent McElligott had made
31 contemporaneous notes of his interviews with you; isn't
32 that right?

1 A. No.

314 Q. But you did mention that?

3 A. What?

315 Q. That Superintendent McElligott had made contemporaneous

5 notes?

6 A. What he said was, this is what upsets me, he said when we

7 looked for a copy of them so that we could proceed to a

8 statement, he claimed that they were only an aid memoire

9 and he wouldn't give them to us, let's be candid about

10 that, that's it.

1 316 Q. I am putting to you, Mr. Gogarty, that when it suits you

12 and the particular piece of evidence that you have given at

13 the time, you will rely on Superintendent McElligott's note

14 and their accuracy. When it doesn't suit you you will then

15 say they are inaccurate in two important respects; isn't

16 that it?

17 A. With all due respects to you, you use a manipulation of

18 words and context to suit your programme and I have a

19 constitutional right to protect my integrity, just as much

20 as you have to protect your client and I am entitled to

21 that constitutional right.

2 317 Q. This case, Mr. Gogarty, is about truth.

23 A. Truth. And the truth is --

2 318 Q. This is what we are establishing.

25 A. The truth is that there was £40,000 paid to Ray Burke but

26 you said it was out of my money on a frolic it was paid to

27 him, he acknowledges that he got it but he is disputing a

28 cheque. They are the truth, Bailey summarised all the

29 meetings in his letter of the 8th of June, I didn't invent

30 that letter, he invented, he wrote it or his solicitor

31 wrote it, and it comprises all the meetings that took place

32 between us, and the only thing he left out was the

1 politicians' names that he named that could get up the
2 votes for Ray Burke to put through rezoning, they are the
3 facts, they are the real facts, you know, they are the real
4 facts.

319 Q. Have you finished now, Mr. Gogarty?

6 A. Well, I am not too bad, you know.

320 Q. I want to go back now to the statement of the 27th of
8 August, of 1997?

9 A. Yes.

1 321 Q. And refer you to a passage in the statement that's relevant
11 to the subject matter I am cross-examining about. Have you
12 got the statement of the 27th of August?

13 A. No, that statement isn't, as I say it wasn't dictated by
14 me, I never read the statement, I never got an opportunity
15 to look at it, I never signed it, and while I agree with
16 the basis of it I should have an opportunity to look at it
17 and amend it, I never got that opportunity.

1 322 Q. Yes. I want you to turn now --

19 .

20 MR. GALLAGHER: Sir, this is on page 285 of the reference
21 documents that were circulated.

22 .

2 323 Q. MR. COONEY: I want you to turn to their two numbers, page
24 10 at No. 10 at the bottom of the page, Mr. Gogarty, also
25 in handwriting, 294.

2 324 Q. Do you say that, Mr. Gogarty?

27 A. Which one, 294?

2 325 Q. Have you got that?

29 A. I have, yeah.

3 326 Q. All right. I want you now to look at the top of the page,
31 I am going to read out what's written in that paragraph.
32 Again you are describing the events, the visit to Mr.

1 Burke's house and the events which preceded. You say in
2 the statement; "A couple of days later Mr. Reynolds told me
3 Mr. Bailey arranged a meeting with Mr. Burke because of his
4 continued pressure for money and asking me to call to
5 Santry, which I did. Mr. Murphy Junior was there, and
6 they told me they had got £30,000 cash in a hurry from Mr.
7 Copsey but were short of £10,000. Mr. Reynolds organised
8 a cheque for that amount of cash. To the best of my
9 recollection both of us signed it, as cheques required two
10 signatures. It would have been a JMSE cheque drawn on the
11 AIB in Talbot Street. They said Mr. Bailey was matching
12 the sum. Mr. Bailey arrived later and drove Mr. Murphy
13 Junior and me to Mr. Burke's house in Swords. Mr.
14 Reynolds said he was caught up in company business and
15 excused himself. Then Mr. Murphy told me to bring along
16 the envelope, which I did after checking its contents".
17 Then you refer to the famous remark. Again I have to put
18 it to you there, Mr. Gogarty, two years ago and much closer
19 to the event and before this Tribunal was facing you, you
20 say that the visit to Mr. Burke's house occurred on the day
21 that the money was obtained, the £30,000 in cash from Roger
22 Copsey and the cheque was signed by you and Mr. Reynolds as
23 you allege?

24 A. I don't say that, do I?

2 327 Q. That's exactly what you say?

26 A. What have I said? Read it again, a couple of days later.

2 328 Q. A couple of days later?

28 A. After the 8th of June.

2 329 Q. I agree. I am putting to you the events you already

30 describe as occurred on the 8th of June you describe as

31 occurring on the same day you went to Mr. Burke's house,

32 please you are not listening to me now?

1 A. I am listening to you.

330 Q. What I am putting to you is here you describe the gathering
3 of the cash in £30,000 from, you say from Mr. Copsey, and
4 writing and signing a cheque for £10,000, you describe.
5 Then you say on the same day that these events happened
6 Michael Bailey arrived and drove you and Mr. Joseph Murphy
7 Junior to Mr. Burke's house?

8 A. I don't say that.

331 Q. It is as clear as daylight in that?

10 A. No, it is not to me.

1 332 Q. You describe in narrative form?

12 A. A couple of days later.

1 333 Q. Yes, a couple of days later. I will read it to you again
14 in case I am being unfair to you. "A couple of days later
15 Mr. Reynolds told me that Mr. Bailey had arranged to meet
16 with Mr. Burke because of his continued pressure for the
17 money and asking me to call to Santry, which I did"?

18 A. Yeah.

1 334 Q. "Mr. Murphy Junior was there and they told me they had got
20 £30,000 cash in a hurry from Mr. Copsey, but were short of
21 £10,000 and Mr. Reynolds organised a cheque for that amount
22 to cash and to the best of my recollection both of us
23 signed it, as the cheques required two signatures". Now,
24 you are describing there a visit to the office in Santry
25 where you met, as you allege, Mr. Murphy Junior and Mr.
26 Reynolds. You also say that they had got £30,000 in cash
27 in a hurry from Mr. Copsey, then you go on to describe
28 signing a cheque together with Mr. Reynolds for £10,000;
29 isn't that right?

30 A. That's what's there.

3 335 Q. And then immediately after that, you say "Mr. Bailey
32 arrived later and drove Mr. Murphy and myself to Mr.

1 Burke's house". Now, I am putting it to you that that is
2 a continuous narrative of the events on a particular day,
3 which includes you arriving at Santry, the cash being
4 obtained, Mr. Bailey arriving and Mr. Bailey driving you
5 out to Mr. Burke's house. Now, you have earlier said that
6 these events, that the cash was got up on the 8th of June?

7 A. That's right, yeah.

336 Q. And I am suggesting to you, I am suggesting to you?

9 A. You are suggesting, yeah.

1 337 Q. That the visit, that the visit to Mr. Burke's house, took
11 place on the 8th of June?

12 A. No way, no way, no way, no way, no way.

1 338 Q. All right. You deny that?

14 A. I deny it, yeah.

1 339 Q. Mr. Gogarty, you have a very good memory for detail; isn't
16 that right?

17 A. Very good.

1 340 Q. And I think this is commented upon. I want to ask you
19 now, do you remember a very significant event which
20 occurred in the week of the 8th of June?

21 A. Well maybe you will remind me.

2 341 Q. No, now you have a very good memory and I suggest to you
23 that it is not something you would forget unless your mind
24 was preoccupied with other things?

25 A. I don't recall it at the moment.

2 342 Q. Well, I will remind you now. It is the death of Mrs. Mary
27 Elizabeth Flynn on the Friday the 9th of June. Do you
28 remember that now, Mr. Gogarty?

29 A. No I don't.

3 343 Q. Do you know who Mrs. Mary Elizabeth Flynn was?

31 A. I would expect she was a relation of the Murphy's.

3 344 Q. She was indeed. You know that Mr. Murphy Senior's first

1 wife died when Joseph Murphy Junior was a few months old,
2 and you know he was reared with his mother's people called
3 Flynn in Arigna, County Leitrim?

4 A. That's correct, I believe that.

345 Q. One of the people who looked after him so well, to such an
6 extent she was known as "granny" to the family, was this
7 lady Mrs. Mary Elizabeth Flynn?

8 A. And Una.

346 Q. We will leave Una out for a moment, I will come back to
10 your remarks about Una's funeral at a later stage. I want
11 to ask you this; you knew from your knowledge of the Murphy
12 family that Joe Junior was reared in Arigna in County
13 Leitrim?

14 A. I believed it, yeah.

1 347 Q. You knew it well?

16 A. I didn't know it well, I believed it because he was moving
17 around a lot.

1 348 Q. Because you see, Mr. Gogarty, the evidence here is
19 incontestable, that on Friday the 9th of June, of 1989,
20 this lady died and the removal of her remains took place on
21 Saturday the 10th of June, and her funeral took place on
22 Sunday the 11th of June and you attended the funeral?

23 A. Did I attend the funeral?

2 349 Q. Yes, you did and that will be the evidence?

25 A. Fair enough, fair enough, fair enough.

2 350 Q. Now, does this come back to mind, Mr. Gogarty?

27 A. In what context?

2 351 Q. No, do you know remember these events?

29 A. Then I say it wasn't on the 9th or 10th of June.

3 352 Q. What wasn't?

31 A. Ray Burke's meeting.

3 353 Q. Do you remember now the death of Mrs. Mary Elizabeth Flynn?

1 A. Yeah, you reminded me of it, yeah.

354 Q. You remember it now?

3 A. Yeah.

355 Q. Do you remember that you were at her funeral?

5 A. Would you believe it, I don't recollect the day but I

6 accept that I was.

356 Q. And that the funeral, the burial took place after mass on

8 Sunday in Arigna, and that the usual traditional meal was

9 held afterwards in a hotel in Carrick-on-shannon, but you

10 went to the funeral but did not go back to the hotel; do

11 you remember that?

12 A. I accept that, I don't remember it but I accept what you

13 are saying.

1 357 Q. All right. Let's just see now, you have such a keen

15 memory for all of the events of that week, Mr. Gogarty, in

16 which you seriously implicated my clients. Let's see how

17 keen your memory is for this event. The death of what was

18 in effect a very important member of the Murphy family, her

19 funeral which you attended. Now, what do you remember

20 about it now?

21 A. I just remember what you are telling me now.

2 358 Q. I see. Does it all come back to you now?

23 A. No, not necessarily, no, no.

2 359 Q. Are you saying that these things didn't happen?

25 A. I am not denying that it didn't happen.

2 360 Q. Are you denying that you went down to the funeral on Sunday

27 the 11th of June?

28 A. I don't know which day it was, I am not denying it.

2 361 Q. Do you agree that you were at the funeral?

30 A. I won't deny it.

3 362 Q. I am not asking you that. Do you remember being at the

32 funeral?

1 A. I don't actually remember at the moment being at the
2 funeral but I accept that I was.

363 Q. You see, I suggest to you that the reason why these
4 memorable events have left your memory, Mr. Gogarty, is
5 because you are so busy inventing other events for that
6 particular week?

7 A. Not at all. What you are saying is this, that the meeting
8 with Ray Burke didn't take place on the 9th, 10th or 11th,
9 I never said it did. I never said it did. I never said
10 it did.

1 364 Q. I am putting to you --

12 A. You are putting it to me but I never said it did.

1 365 Q. I am putting to you, Mr. Gogarty, that this memorable event
14 completely left your memory because you were concentrating
15 on inventing other events for that week?

16 A. Sure you are putting, attributing motives to me from the
17 very day you got up there, I expect you will go on, that's
18 your job and you are well paid for it, but I am entitled to
19 my side of the story, you know, that's all I have to say,
20 I'm agreeing that the Ray Burke meeting didn't take place
21 on the 8th, 9th, 10th or 11th, that's all I am saying, it
22 agrees with what the evidence is, that Ray Burke
23 acknowledges and Bailey acknowledges, Frank Reynolds got
24 the cheque and the bloody money.

2 366 Q. You see, neither Mr. Bailey nor Mr. Burke say that Mr.
26 Murphy Junior was at that meeting?

27 A. Beg your pardon?

2 367 Q. Neither Mr. Bailey nor Mr. Burke say Mr. Joseph Murphy
29 Junior was at the meeting?

30 A. That he, they said that, I expected that, that's right.

3 368 Q. So we have to look to other matters; isn't that right?

32 A. That's true.

369 Q. Then, when you discovered and I told you last week that the
2 8th of June was the Thursday, you shoved the meetings, the
3 preceding meetings back a bit and shoved the meeting with
4 Mr. Burke forward?

5 A. I resent that, I shoved nothing back, I will shove them up
6 your jersey before I am finished, I shoved nothing back or
7 forward.

370 Q. You see, I suggest to you, Mr. Gogarty --

9 A. I have a pain in my -- suggestions.

1 371 Q. I suggest to you, Mr. Gogarty, that if Mr. Burke -- I beg
11 your pardon, if Mr. Murphy Junior had been at a meeting in
12 Mr. Burke's house and if that meeting occurred on the
13 following Monday, Tuesday or Wednesday, you would have
14 placed that meeting in your earlier statements in relation
15 to Mrs. Flynn's funeral?

16 A. No not necessity.

1 372 Q. That would have been your reference point?

18 A. Dates were not significant to me, the contents of the
19 meetings were, the 8th of June was a significant day but it
20 was Mr. Bailey who made it significant, he made it
21 significant.

2 373 Q. You see I have to put it to you that dates are all
23 important, as you are aware?

24 A. They are coming up to be important now certainly.

2 374 Q. Yes, certainly. Because the evidence again will be and
26 this evidence will be very well corroborated, that Mr.
27 Murphy Junior had been in Ireland for a wedding on the
28 weekend before the 8th of June, that he returned to London
29 on the 6th of June to take up his ordinary employment with
30 his father's business?

31 A. I thought he was a labourer, a labourer coming over for a
32 frolic.

1 .

2 CHAIRMAN: Mr. Gogarty, please allow Mr. Cooney to ask you
3 the question and then answer it?

4 A. Sorry I humbly apologise.

375 Q. MR. COONEY: I will start again. The evidence will be
6 and it will be well corroborated, that Mr. Murphy Junior
7 had been in Ireland in Waterford at a wedding on the
8 weekend prior to the 8th of June, he flew from Dublin
9 Airport back to his work in England on the morning of
10 Tuesday the 6th of June, having come up from Waterford;
11 that on the 9th of June he received a telephone call from
12 one of his relatives in Arigna to tell him that Mrs. Mary
13 Elizabeth Flynn had died that day. On the following
14 Saturday he took a flight from London to Dublin Airport
15 where he hired a car and he drove down to Arigna where he
16 attended the removal on the Saturday. The same day he
17 arrived and the Sunday he went to the funeral, and on
18 Monday he returned to London, having returned his hire car
19 to Dublin Airport. That will be the evidence, Mr. Gogarty,
20 and it will be corroborated, so I want to put it to you,
21 that all of the stories which you have told to this
22 Tribunal and to the police and other people about Mr.
23 Murphy's involvement in this payoff to Mr. Burke is sheer
24 malicious invention on your part?

25 A. Completely untrue.

2 376 Q. And that he wasn't there?

27 A. Completely untrue.

2 377 Q. And again I don't want to go over this theme for too long,
29 is that your involvement of Mr. Murphy in these matters is
30 due to two motivations largely, (A) your desire for
31 vengeance against him and (B) to cover up your own
32 involvement in the payoff to Mr. Ray Burke?

1 A. Completely untrue, his vengeance against me which wasn't
2 pursued.

3 .

4 MR. COONEY: Just, could I have a moment, My Lord?

5 .

6 CHAIRMAN: Certainly, do you want to rise for five
7 minutes?

8 .

9 MR. COONEY: Yes, if you wouldn't mind.

10 .

11 CHAIRMAN: Now, five minutes or thereabouts please, Mr.
12 Cooney.

13 .

14 MR. COONEY: Yes, thank you.

15 .

16 THE HEARING THEN ADJOURNED FOR A SHORT RECESS AND RESUMED
17 AS FOLLOWS:

18 .

1 378 Q. MR. COONEY: May it please Your Lordship.

20 .

21 Mr. Gogarty, I now want to turn to what we contend are the
22 true events which occurred in that critical week in June of
23 1989, first of all I want to put to you the evidence which
24 will be given to this Tribunal by Mr. Tim O'Keefe. Do you
25 know who Mr. O'Keefe is?

26 A. I do.

2 379 Q. Yeah, he was an accountant employed in the firm of Copsey
28 Murray & Company; isn't that correct?

29 A. That's correct.

3 380 Q. And he was seconded from that company to JMSE; isn't that
31 right?

32 A. That's correct I believe, yeah.

381 Q. Yes. And he was involved in the preparation of the monthly
2 accounts, debt collection, creditor payments, wages and
3 valuation of work in progress; in other words he was
4 providing all the services which an in-house accountant
5 would give to a business of this sort; isn't that right?

6 A. I would assume because I wasn't much involved in the
7 day-to-day running.

382 Q. But nonetheless, you visited the premises quite often;
9 isn't that right?

10 A. I have good reason to remember, you know.

1 383 Q. Yes, because you see he was also very much concerned with
12 the financial affairs of JMSE; isn't that right?

13 A. That's correct.

1 384 Q. And he reported to his principal who would be Mr. Copsey;
15 isn't that right?

16 A. That's correct.

1 385 Q. And he would be reporting to him in respect of management
18 accounts and any issues which arose in relation to cash
19 flow; isn't that right?

20 A. That would be correct, yeah.

2 386 Q. But that he will also say that on a day-to-day basis, he
22 took instructions from you and Mr. Frank Reynolds. Do you
23 agree or disagree with that?

24 A. I would agree with that, yeah.

2 387 Q. So that on a day-to-day basis he did take instructions from
26 you and also from Frank Reynolds?

27 A. Not a day-to-day basis.

2 388 Q. That's how he puts it?

29 A. I know, sure he will be giving evidence.

3 389 Q. He will say that in June of 1989, he is not able to fix the
31 date, but we fix it from other documentation?

32 A. God he is in the audience in his own category now.

390 Q. He was asked by you to go to the AIB bank in Talbot Street
2 and pick up a sum of money from that bank and to deliver it
3 back to you at JMSE's premises. Now, that will be his
4 evidence?

5 A. So I believe, yeah.

391 Q. Well, have you been given a copy of his statement?

7 A. I have indeed and it is great reading.

392 Q. Yes, all right.

9 A. Great reading.

1 393 Q. So you know exactly what his evidence will be --

11 A. Well --

1 394 Q. Let me finish, you know what I am going to put to you;

13 isn't that right?

14 A. I have a good idea.

1 395 Q. So you are well prepared for this?

16 A. I don't sleep at night thinking of what you are going to

17 put to me.

1 396 Q. See, I want to put it to you that Mr. O'Keefe will say that

19 you asked him to attend at the AIB branch in Talbot Street

20 to pick up a sum of money; do you agree or disagree with

21 that evidence?

22 A. Could I read the statement please?

2 397 Q. No, you listen to the questions from me now, Mr. Gogarty; I

24 am putting the evidence of what will be a Tribunal witness,

25 obviously a witness who will support our case. I am

26 putting it to you line by line, you can either agree or

27 disagree with it. Did you ask him to go to the AIB bank

28 in Talbot Street to pick up a sum of money?

29 A. Not at all, not at all.

3 398 Q. He will also say that you asked him to deliver this money

31 back to him, back to you, that didn't happen either?

32 A. No.

399 Q. He will say that you arranged that somebody would accompany
2 him to the bank to drive him there, he doesn't know exactly
3 who it was, but it might have been Frank Reynolds. Do you
4 agree or disagree with that?

5 A. That's what he says.

400 Q. Okay? He will say that he attended at the bank, and he
7 will say that the money was available in cash and ready for
8 collection by him?

9 A. That's what he says, yeah.

1 401 Q. Yes. He will say that it was, his function was to check
11 the money that was made available and he is certain that he
12 checked it. He says that?

13 A. He is certain?

1 402 Q. Yes.

15 A. Well now, sorry could I intervene here please?

1 403 Q. Of course, yeah?

17 A. My recollection of reading the statement is that his only
18 recollection of these things, he is not sure and he is not
19 certain of the sums and he has no clear recollection.

2 404 Q. His evidence will be, Mr. Gogarty, that he can not be
21 definitive as to exactly how much money there was, he
22 assumes £20,000?

23 A. He assumes, yes.

2 405 Q. Okay? We will have other evidence in relation to £20,000?

25 A. Yeah, yeah.

2 406 Q. He says that he can recall collecting the money, putting
27 the same into a briefcase and then returning to the JMSE
28 premises where he met you and handed the money to you?

29 A. That's what he says.

3 407 Q. Is that all untrue?

31 A. Untrue, yeah.

3 408 Q. Incorrect?

1 A. I think he has what they call may be it is, I have it too

2 as well, a flawed memory, do you know?

409 Q. I see. Okay. He will also say that he was not a cheque

4 signatory at that time?

5 A. For instance he says he assumes it was £20,000 because

6 that's what we were all talking about at the time, isn't

7 that what he says?

410 Q. He says he can't be definite, but he assumes it was

9 £20,000?

10 A. Read on.

1 411 Q. No, no I am putting it to you.

12 A. Oh good God, you are afraid to read on, you are afraid to

13 read on, sure you are selective all the time.

1 412 Q. What Mr. O'Keefe will tell the Tribunal is that he can not

15 be definitive?

16 A. No.

1 413 Q. Let me finish, as to exactly how much money, but he assumes

18 it was £20,000, as that would appear to be the amount of

19 money now talked about. Now, let me pause for a moment,

20 Mr. Gogarty, let's not laugh too soon because there will be

21 other evidence to show there was a cheque for £20,000 drawn

22 on that day on the AIB account, but I will come to that in

23 a moment?

24 A. Produce all your evidence.

2 414 Q. Yes. He also says, Mr. Gogarty, that he was aware that you

26 personally dealt with all the property and any matters that

27 came to him relating to the property was given to you

28 because you were solely in charge of the properties and

29 administration of the properties, that will be his

30 evidence. Do you agree or disagree with that?

31 A. That will be his evidence and we will have to find out how

32 he became aware, all that will have to be found out but

1 that's his version and I am looking forward to the day when
2 he will be sitting here and I will be down there looking up
3 at him. I look forward to that day with pleasure, honest
4 to God.

415 Q. Mr. Gogarty, I am asking you a very simple matter of fact,
6 you can either agree or disagree, just listen to me?

7 A. What fact?

416 Q. Mr. O'Keefe will also tell the Tribunal, that when he
9 encountered any matters relating to the properties which
10 were owned by the Murphy Group, he referred them to you
11 because you had sole charge of the properties?

12 A. That will be his version but it will be interesting to see
13 how he became aware and what matters in relation to
14 property he brought to my attention, that will all come out
15 and I will be pleased to listen to him.

1 417 Q. I am just asking you, is he correct in his recollection
17 that you were in charge of all property matters and any
18 property matters which came to his attention he referred on
19 to you, that's all, it's a very straightforward question?

20 A. He is incorrect and that can be proven up to the hilt.

2 418 Q. Mr. O'Keefe will also say --

22 A. Yeah --

2 419 Q. -- that he has no recollection of the presence of Mr.
24 Joseph Murphy Junior in or about the premises in Santry in
25 1989 at this time. Is he also correct or incorrect in that
26 recollection?

27 A. Well, that's just because he has a poor recollection.

2 420 Q. Could it be -- are you suggesting that he has a poor
29 recollection?

30 A. In his own admission he has had a poor admission, poor
31 recollection in his own admission, read his statement. He
32 assumed that and he is not definitive about that, what do

1 you make about that being a concise recollection not being
2 definitive and all that class of bloody goings-on.

421 Q. Just this, Mr. Gogarty, his evidence to be Tribunal will be
4 that Joseph Murphy Junior was never about the premises in
5 Santry in 1989, now this conflicts directly with your
6 evidence. I am asking you do you agree or disagree with
7 this evidence which Mr. O'Keefe will give?

8 A. I totally disagree.

422 Q. All right. That's fair enough we have established that
10 point?

11 A. I have totally disagreed. Do you mind if I say a few more
12 words?

1 423 Q. It is for the Chairman, Mr. Gogarty, I don't mind.

14 A. It is interesting, a statement he starts off in June of
15 '89, he doesn't refer to being involved in the day-to-day
16 business from July of '88 when he handed to me an envelope,
17 a brown envelope that we are all talking about with 14 or
18 15 resignations that Copsey gave him to ask me to resign
19 from the company --
20 .

21 CHAIRMAN: Now, we have gone over this already in an
22 earlier part of your evidence, I have noted it and I will
23 take it into account in due course.

24 A. Sorry, I thought we didn't, sorry, I am very sorry. Very
25 sorry.

2 424 Q. MR. COONEY: Now, just who -- just bear with me for a
27 moment until I get --

28 A. I beg your pardon?

2 425 Q. Bear with me. Mr. Gogarty, you know, of course, that the
30 funds which were realised by the sale of the Forest Road
31 lands were paid into a client account held by Mr. Denis
32 McArdle, solicitor, with ICC Bank, that means Industrial

1 Credit Corporation. You know that?

2 A. I didn't know that.

426 Q. But you know the funds were, that there was, I think about

4 1.2 million was the price realised for the sale of those

5 lands; isn't that right?

6 A. Are we talking about the same thing?

427 Q. I am talking about the Forest Road lands sold in 1988?

8 A. Yes, now that's right, now that's right, but I don't know

9 where that money went.

1 428 Q. The evidence again will be that on Mr. Murphy Senior's

11 instructions they were paid by Mr. Denis McArdle into his

12 client account in the Industrial Credit Corporation?

13 A. Yes.

1 429 Q. Mr. McArdle will give evidence that on the -- wait until I

15 get it now, yes -- that on the 8th of June, of 1989, he

16 got instructions from Mr. Copsey that £30,000 was wanted on

17 that day, if possible a £10,000 cheque and £20,000 in

18 cash. He also noted the election was taking place on June

19 the 15th. He puts the word "contribution" with a question

20 mark after it. And then Mr. McArdle records himself as

21 telling Mr. Copsey; "I could not get cash but it would be

22 in the form of a bank draft". Now, I want to pause there

23 and put it to you that Mr. Copsey made this request for

24 this payment out of the funds in ICC at your request?

25 A. Now we are hearing things now.

2 430 Q. Just answer my questions now.

27 A. Sorry?

2 431 Q. Did you request Mr. Copsey to direct Denis McArdle to

29 obtain a sum of £30,000 from the funds which were in the

30 Industrial Credit Corporation bank?

31 A. I wouldn't direct that man to do anything because of his

32 earlier conduct, I had no trust in that man and that's, it

1 will come out in evidence.

432 Q. I take it that's a no answer to my question, is it? Do you

3 mean you didn't talk to Mr. Copsey and direct him or ask

4 him to obtain a sum of £30,000; is that right?

5 A. I did not at all, I wouldn't do that.

433 Q. All right. Did you have any dealings whatsoever with the

7 taking out of £30,000 from the account in ICC?

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

434 Q. You know nothing about it?

10 A. Well, only what I hear now, you know and what I read on Mr.

11 Copsey's statement, you know.

1 435 Q. You read the papers; isn't that right?

13 A. I have.

1 436 Q. You have indeed?

15 A. I knew this would come out and I am delighted, you know.

1 437 Q. Are you saying then, Mr. Gogarty, we will just establish

17 this point now early on; are you saying that you had no

18 knowledge, never mind any part, but no knowledge of the

19 withdrawal from the ICC account of a sum of £30,000?

20 A. I didn't know anything about ICC.

2 438 Q. You knew nothing about the withdrawal of money from the ICC

22 account, did you?

23 A. No, but what I knew was from Frank Reynolds' statement that

24 Mr. Copsey was holding funds some place.

2 439 Q. I am not asking you that, I am asking you at the time --

26 A. I am telling you all I knew.

2 440 Q. Mr. Gogarty, I am asking you this, it is a simple matter,

28 let's establish it. At the time these events occurred are

29 you telling the Tribunal that you had no hand, act or part

30 in the withdrawal of the sum of £30,000 from the account

31 held in ICC?

32 A. That's what I am saying, yeah.

441 Q. Nothing whatever?

2 A. Yeah.

442 Q. All right. Because you see on the same day, the 8th of

4 June, Mr. McArdle's secretary records a message from Mr.

5 Copsey, and Mr. Copsey said; "Forget the call of this

6 morning --

7 A. Forget what?

443 Q. "Forget the call of this morning".

9 A. What was that call?

1 444 Q. It was -- wasn't when he said the £30,000 should be

11 withdrawn from the ICC, I put it to you a few minutes ago.

12 Do you want me to put it to you again?

13 A. Yeah, yeah.

1 445 Q. There was a second message on the same day from Mr. Copsey

15 which was noted by Mr. McArdle's secretary which was;

16 "Roger Copsey says forget the call of this morning and at

17 his reasonable leisure draw up a cheque from client account

18 for £30,000 payable to JMSE. If you need a letter of

19 instruction or such like phone his secretary". Now, here

20 we have Mr. Copsey for the second time in the same day

21 getting in touch with Mr. McArdle. He says there is now no

22 urgency about this cheque for £30,000, so he can get it up

23 at his leisure and make it payable to Joseph Murphy

24 Structural Engineers; do you follow me?

25 A. I follow you, but I just don't understand it.

2 446 Q. All right, listen and we will come to it. You have also

27 seen, I take it, the bank statements of JMSE from the

28 Talbot Street branch?

29 A. I have seen the statement.

3 447 Q. Yes?

31 A. No, I have not, honest to God I haven't, no.

3 448 Q. Well, we will be putting these into evidence, and I think

1 the Tribunal has seen them. They show that on the 8th of
2 June two cheques, among a lot of other cheques, but two
3 cheques in particular were written on that account, one was
4 for a sum of £20,000 and in the next cheque, numerically
5 speaking was a sum of £10,000, you know that, don't you?

6 A. I don't know it but I accept what you are saying.

449 Q. And I said to you this cheque for £30,000 to be withdrawn
8 from the ICC accounts were to be paid into the JMSE
9 accounts to make up for the £30,000 which was being drawn
10 on the 8th of June; do you follow me?

11 A. I don't know, I don't know.

1 450 Q. You know nothing about that?

13 A. That will be explained by Mr. Copsy and Mr. McArdle, you
14 know.

1 451 Q. All right. Okay. Now, the next document that is on Mr.
16 McArdle's file, I want you to listen to this very
17 carefully, is that he had been told on the 8th of June
18 there is no urgency about this cheque now, at your leisure
19 get one up and make it out to JMSE?

20 A. What date was that?

2 452 Q. This is a message of the 8th June, the second message of
22 that day. Now, on the 12th of June Mr. McArdle writes to
23 Mr. Copsy and he says; "Re: Grafton lands at Swords, I
24 refer to our telephone conversation on Thursday last" that
25 was the 12th of June -- "I confirm I am sending a cheque
26 for £30,000 payable to JMSE directly to Jim"?

27 A. Fair enough, yeah.

2 453 Q. That's you, isn't it?

29 A. I would say it would be, yeah.

3 454 Q. Now, you said you had no hand, act or part in this
31 transaction, Mr. Gogarty. Now, I am suggesting to you that
32 it is as clear as daylight from this letter that you knew

1 about this payment and that there had been an arrangement
2 whereby you would receive the £30,000 and put it into the
3 JMSE accounts to make up for the two cheques which had
4 already been written for £20,000 and £10,000. Do you
5 agree?

6 A. I don't accept that, but I accept anything Mr. McArdle says
7 because he was a man of the highest integrity and my
8 relationship with him was and still is one of the highest
9 integrity. I accept what he personally says himself.

1 455 Q. Very well. Why would Mr. McArdle say in the letter of the
11 12th of June to Mr. Copey --

12 .

13 MR. GALLAGHER: I think in fairness Mr. McArdle is the man
14 to answer that question.

15 .

16 CHAIRMAN: Wait now, first of all let's find out what the
17 question is.

18 .

1 456 Q. MR. COONEY: Yes. If you had no implications, if you had
20 no hand, act or part in these transactions, Mr. Gogarty, I
21 suggest to you that Mr. McArdle will not be writing in his
22 letter of the 12th of June; "I refer to our telephone
23 conversation of Thursday last and confirm I am sending the
24 cheque for £30,000 payable to JMSE directly to Jim"?

25 A. Well, you have to ask Mr. McArdle that and who gave him
26 them instructions, you know.

2 457 Q. I am suggesting --

28 A. You are suggesting, I know that and I accept that and you
29 are entitled to.

3 458 Q. I am going to put my case to you, Mr. Gogarty, you can
31 agree or disagree with it, but I am suggesting to you that
32 you were centrally implicated in this series of

1 transactions, and that one of the factors which establishes
2 this is this letter and this reference to you, where you
3 are to get this cheque directly for £30,000 to reimburse
4 JMSE?

5 A. I disagree, but I accept everything Mr. McArdle says
6 because he put it in the proper context I am sure, you
7 know.

459 Q. All right. On the next day Mr. McArdle again writes to
9 Mr. Copey, the 13th of June, he says; "Re: Grafton
10 Construction Company/Reliable Construction. Further to my
11 letter of the 12th inst. the sum of 30,000 requisition from
12 ICC has now come to hand. I telephoned Jim to inquire
13 whether I should post it to him or if he would prefer to
14 have it collected, but he tells me he does not need it and
15 I shouldn't send it to you"?

16 A. What's wrong with that?

1 460 Q. Wait now a second, do you agree that you had a telephone
18 conversation with Mr. McArdle either on the 12th or the
19 13th of June in which he offered to post you the cheque for
20 £30,000 drawn on the account of ICC?

21 A. I will accept everything Mr. McArdle says.

2 461 Q. No, no, I know you do that. Can the Tribunal then take it
23 as a fact, that either on the 12th or 13th of June, you had
24 a conversation with Mr. McArdle in relation to this draft
25 or cheque for £30,000 drawn on the ICC account?

26 A. I can't speak for the Tribunal.

2 462 Q. No, no I am asking you, can the Tribunal accept that such a
28 conversation took place?

29 A. I say I can't accept for the Tribunal, I can't speak for
30 the Tribunal.

3 463 Q. All right, Mr. Gogarty. I put it to you that this is
32 clear and incontestable evidence, that you had been

1 involved in this transaction which in part at least
2 involved the reimbursement of JMSE by funds which had been
3 in ICC; isn't that right?

4 A. I don't know what you are implying, I just don't follow the
5 whole trend to tell you the truth.

464 Q. All right, we will take our time, Mr. Gogarty, and make
7 sure you do understand my point.

8 A. Yeah.

465 Q. We have already established that there was a request to
10 Denis McArdle to draw a sum of £30,000 from the funds which
11 were held in the ICC?

12 A. Not from me.

1 466 Q. No, no just, we know there is a request?

14 A. Not from me.

1 467 Q. No, no, I am putting it to you that that sum was originally
16 required urgently on the 8th of June but then the urgency
17 for this sum disappeared and it was now required less
18 urgently for the purpose of reimbursing JMSE for the
19 £30,000 which were drawn on its account, from its account;
20 do you understand?

21 A. There was no urgency on me.

2 468 Q. No, no, I am asking you to follow those sequence of events,
23 that's all I am asking?

24 A. It is hard to follow them knowing what I believe.

2 469 Q. What is unclear about that to you, Mr. Gogarty?

26 A. Well, what is unclear is this; that I have to hear or see
27 what went on between Mr. Copsey and Mr. McArdle, I accept
28 Mr. McArdle's side of it, but I wouldn't accept a word out
29 of Copsey's mouth to tell you the truth, not a word because
30 the blackguard was convicted of malpractice --

31 .

32 CHAIRMAN: Now please, let's keep gossip out of this.

1 A. But it is very relevant, I couldn't trust that man as far
2 as I could throw him, and I wouldn't be able to throw him
3 much further now so I wouldn't, that's the fact. Frankie
4 was the same and Gay Grehan was the same, let's be candid
5 about it.

470 Q. MR. COONEY: Mr. Gogarty, let's return to the matters I am
7 questioning you about, and that's what occurred during this
8 critical week in June of 1989. Do you accept that you had
9 a role to play in the financial transactions which took
10 place between JMSE and Denis McArdle at that time?

11 A. The only role I played was in responding to two bosses who
12 had a very serious conflict of interest, Senior and Junior,
13 and I was tied into it, that's -- and it was a -- now
14 whether they set me up as a patsy or not I don't know but
15 that was my role.

1 471 Q. No, I am asking you --

17 A. And I am answering you to the best of my ability.

1 472 Q. No, I am asking you about very specific and critical
19 matters, I am asking you this, and I think you understand
20 well; did you have a role to play in the series of
21 transactions which occurred in and about the 8th of June,
22 of 1989, and which involved as part of it the withdrawal of
23 £30,000 from the account in Industrial Credit Corporation?

24 A. I have told you my role.

2 473 Q. What was your role?

26 A. My role was peripheral, to respond to Junior and Senior, in
27 the hope that eventually they would honour their commitment
28 to me on me bloody pension.

2 474 Q. Mr. Gogarty --

30 A. That is a fact.

3 475 Q. Mr. Gogarty please now, let's stick to the point. What

32 role did you have to play in relation to this transaction?

1 A. The role I had to play was Junior's instructions to Frank
2 Reynolds to get me to come in and engage in those
3 activities, and I regret the whole bloody lot.

476 Q. Mr. Gogarty, I am not asking you about that and I think you
5 know it?

6 A. You are asking me for me role and I have told you, Mr.
7 Cooney.

477 Q. All right, let's go back a step further if we have to, Mr.
9 Gogarty. Did you have any role whatsoever to play in the
10 withdrawal of this sum of £30,000 from the ICC?

11 A. No.

1 478 Q. None in the world?

13 A. None in the world.

1 479 Q. Then, does it mean then that Denis McArdle is wrong when he
15 says at one stage he was going to send this cheque directly
16 to you and then in a later letter he says "I telephoned",
17 that he had a telephone conversation with you about this
18 cheque and what should be done with it?

19 A. I wouldn't suggest that that was involving me in any role
20 deliberately, no, I accept -- Mr. McArdle will explain his
21 side of it, and I say he is the one man in the whole outfit
22 that I would accept unreservedly, what he says
23 unreservedly.

2 480 Q. All right. Let's approach it from another direction.

25 A. God aye, this is the ambush now, is it?

26 .

27 CHAIRMAN: Please, please now. Listen to Mr. Cooney's
28 question.

2 481 Q. MR. COONEY: Did you have conversations with Mr. McArdle
30 concerning this cheque at that time?

31 A. Not to my recollection, but I will accept that if he rang
32 me that I would have answered him, and I accept his

1 explanation, honest to God.

482 Q. Are you saying now that these telephone conversations

3 certainly took place, because Mr. McArdle says they do, but

4 you don't remember them?

5 A. Yeah, I accept that, yeah.

483 Q. Okay. So we have reached the stage now that your memory is

7 completely blank in relation to this particular cheque and

8 this particular transaction; is that right?

9 A. Not blank, and if you say it is blank I can tell you honest

10 to goodness that it is not deliberately blank or being

11 deliberately evasive, I am not being evasive.

1 484 Q. I didn't ask you that. Is it your evidence to the Tribunal

13 that your mind is a complete blank in relation to this

14 transaction and any communication which you had with Mr.

15 McArdle about it; is that right?

16 A. Well me mind wasn't blank. I don't know in what context me

17 mind would be blank, you know, because me mind wasn't

18 blank.

1 485 Q. Again, you seem to have told us just a moment or two ago,

20 Mr. Gogarty, that you have no recollection of any

21 communication by telephone or otherwise with Mr. McArdle

22 concerning this withdrawal of £30,000 of the ICC. Now, am

23 I quoting you correctly?

24 A. That's correct, and I don't see anything sinister --

2 486 Q. Let's deal with the fact now. Now, you don't remember

26 anything of these conversations; is that right?

27 A. I don't recollect them, but if he said it I would agree

28 wholeheartedly with Mr. McArdle, I am telling you that.

2 487 Q. Mr. McArdle will give evidence eventually and he will give

30 evidence of the facts recorded in these memos?

31 A. I will rely on what he says.

3 488 Q. And he will say, it is obvious he will say that you in fact

1 had a central role to play in the withdrawal of this sum of
2 £30,000 from the ICC?

3 A. Will he say that?

4 .

5 MR. CALLANAN: This is completely --

6 .

7 CHAIRMAN: Mr. --

8 .

9 MR. CALLANAN: There is nothing in the statement from Mr.
10 McArdle to that, the letter on which Mr. Cooney is now
11 putting such a tenation is the 12th of June, of 1989, from
12 Mr. McArdle to Mr. Copsey. "I refer to our telephone
13 conversation of Thursday last and confirm I am sending a
14 cheque of 30,000 payable to JMSE directly to Jim". Now, Mr.
15 Cooney acts for Mr. Copsey, Mr. Cooney can put anything
16 that Mr. Copsey is going to say in that regard to the
17 witness. He is not entitled to put to the witness a
18 statement that Mr. McArdle or the documents will not be
19 making.

20 .

21 MR. COONEY: I don't say what Mr. Callanan is objecting to
22 on this occasion or the last occasion, it seems he is
23 objecting to take some pressure off the witness as he sees
24 it.

25 .

26 CHAIRMAN: Well, I am a little puzzled to -- would you
27 explain this to me, somebody; did this £30,000 cheque,
28 that's the ICC cheque, did it in fact go into the JMSE
29 account in the Talbot Street branch?

30 .

31 MR. COONEY: In which, Mr. Chairman?

32 .

1 CHAIRMAN: The Talbot Street branch where the other money
2 came out?

3 .

4 MR. COONEY: It did, Mr. Chairman, it is plainly -- it was
5 paid in to reimburse JMSE for the two sums of £20,000 and
6 £10,000 drawn out on the 8th of June, it is clear as --

7 .

8 CHAIRMAN: This was as a result of conversations held (A)
9 by Mr. Copey in the first instance with Mr. McArdle, Mr.
10 McArdle is saying in a letter of June, to Mr. Copey, he is
11 sending a letter of the 12th of June; "I confirm sending a
12 cheque for £30,000 payable to JMSE directly to Jim", which
13 presumably is directly to Jim at Santry where it is
14 addressed; is that so?

15 .

16 MR. COONEY: Yes, that's correct, Mr. Chairman.

17 .

18 CHAIRMAN: It ultimately gets into the appropriate
19 account.

20 .

21 MR. COONEY: Sorry?

22 .

23 CHAIRMAN: It ultimately gets into a JMSE account?

24 .

25 MR. COONEY: Yes. Mr. Chairman, the significance is
26 clear, there was a payment to be made to Mr. Burke, it was
27 £30,000, it was felt that this originally should come from
28 the ICC accounts, but then the second message on the 8th of
29 June says there is no urgency, because it is abundantly
30 clear when you examine the JMSE accounts at Talbot Street
31 two cheques sequentially were written on it of June, one
32 for £20,000 collected by Mr. O'Keefe and given to this

1 witness, and a cheque for £10,000 made out to cash. We
2 have the cheque stubs to establish that that is correct, so
3 this money from the ICC was being paid into JMSE's account
4 to reimburse those payments. We say Mr. Gogarty was in
5 charge of this entire operation, as Mr. O'Keefe's evidence
6 will bear out. He collected the cash and gave it to Mr.
7 Gogarty, and Mr. Gogarty went to Mr. Burke with this.

8 .

9 CHAIRMAN: I follow, that is correct. What is puzzling me
10 at all times is the original, the original operation which
11 was cancelled, the £30,000 request to McArdle came from
12 Copsey.

13 .

14 MR. COONEY: Yes, it was delayed, Mr. Chairman, not
15 cancelled. Mr. Copsey's evidence will be that this request
16 from him was as a result of a request from Mr. Gogarty.

17 .

18 CHAIRMAN: Mr. Copsey at that point in time was the General
19 Manager?

20 .

21 MR. COONEY: No, no, he wasn't, Mr. Chairman, with
22 respect, he was the Financial Director, not the General
23 Manager.

24 .

25 CHAIRMAN: But he was a person concerned with finance?

26 .

27 MR. COONEY: And a request for payment of money would have
28 to come through him.

29 .

30 CHAIRMAN: So he as a member of the firm in an official
31 capacity was clearly involved in the transaction or
32 precisely which way he went was another matter.

1 .

2 MR. COONEY: He was involved in the request, as he had to
3 be as a finance director to Mr. McArdle to drawdown
4 £30,000, but his evidence will be, Mr. Chairman you have
5 his statement, is that he did this at the request of Mr.
6 Gogarty.

7 .

8 CHAIRMAN: I see?

9 A. A fortnight ago you were saying it was my own money. A
10 fortnight ago you were saying --

11 .

12 MR. COONEY: Not at all, Mr. Chairman. It is a little
13 confusing I respectfully agree.

14 A. By God it is.

15 .

1 489 Q. MR. COONEY: I think, if it is thought about -- Mr.

17 Gogarty, I will come back to this point and then I will
18 leave it. I put it to you that as a matter of fact, and
19 as evidenced from the letters written by Mr. McArdle, you
20 had a role in the withdrawal of £30,000 from the funds
21 maintained in ICC?

22 A. I say you haven't all your facts.

2 490 Q. Do you deny that you played any such role?

24 A. I deny I played any major role, I was a peripheral role,
25 that's what I am telling you?

26 A. Do you?

2 491 Q. Do you now admit then that you knew about this withdrawal

28 and that you had some minor role to play?

29 A. I didn't know about that.

3 492 Q. You knew nothing about it?

31 A. No.

3 493 Q. I see.

1 A. All I knew from Frankie Reynolds was there was funds out
2 there and it was debatable what way Copsey was dealing with
3 them, because he was -- God, I don't want to say too much
4 because when we got rid of him in 1990 the Murphy's were
5 all excited, so was Frankie because they realised then he
6 was holding over a quarter of a million pounds and they
7 were wondering would they ever get it back, that will come
8 out in evidence as well too, you know, it is --

9 .

10 CHAIRMAN: Let's await it coming out in evidence but not on
11 a hearsay basis.

12 .

1 494 Q. MR. COONEY: You see, Mr. Gogarty, it is very hard to get
14 you to give me a reliable answer to these questions. I
15 want to ask you this, I mean, do you say that you had no
16 knowledge of this withdrawal of £30,000 from the ICC?

17 A. I had no knowledge of Copsey's conduct.

1 495 Q. Now come on, Mr. Gogarty?

19 A. Come on Mr. -- what do you call him, Mr. Cooney, come on
20 too and face all the facts.

2 496 Q. I asked you a very simple question. Do you deny any
22 participation in the transaction involving the withdrawal
23 of £30,000 from the ICC?

24 A. I had no role between McArdle and Copsey in withdrawing
25 that money. I didn't know where it come from, I was
26 relying on Frankie Reynolds that got these funds.

2 497 Q. Why do you think Mr. McArdle referred to you twice in these
28 letters, and in one of those occasions referred to a
29 telephone conversation he had with you?

30 A. Mr. McArdle will explain that when he comes in to the
31 Tribunal.

3 498 Q. He is not making that up, is he?

1 A. I never suggested that, I would be the first not to suggest

2 that, no, no.

499 Q. Did you know the -- it follows as day follows night, that

4 you did have communication with Mr. McArdle about this

5 withdrawal?

6 A. I don't know what you meant by day following night?

500 Q. That it is certain, it is certain?

8 A. What is certain?

501 Q. That you had communicated with Mr. McArdle about the

10 withdrawal of these funds?

11 A. Well look, I know I can't expect to convince you of

12 anything I say, I know that, so we are starting from square

13 one, you know, so either for you to convince me, of course

14 I won't convince you.

1 502 Q. We have got the position here where Mr. McArdle is, you

16 say, one hundred percent an honest and reliable man?

17 A. Yes, yes.

1 503 Q. Who says certain things in these communications which

19 involve you but you deny there was such an involvement?

20 A. I don't deny what McArdle says, never.

21 .

22 MR. CALLANAN: This is becoming absurd, Mr. Chairman. Mr.

23 Cooney is putting questions to the witness premised on the

24 basis that the letters show that Mr. Gogarty had an

25 involvement, they are -- in fact they say the reverse, he

26 has put this question around ten times.

27 .

28 CHAIRMAN: Mr. Callanan, in due course of time you will be

29 reexamining the witness and you can sort that out. Mr.

30 Cooney is at the moment presenting a particular premise to

31 the witness, whether he gets his answers to his

32 satisfaction is another matter, he shouldn't be interrupted

1 on that particular premise, as you can clarify that in due
2 course.

3 .

4 Mr. Cooney, if you are going to change subject, and it is a
5 matter for you, or if it is going to be a shortchange of
6 subject by all means do so, otherwise we are coming up to
7 the fatal hour of one o'clock.

8 .

9 MR. COONEY: I think no further progress will be made on
10 this subject. It might be a good time.

11 A. I can't hear you.

12 .

13 CHAIRMAN: We are going to close down for the day?

14 A. I will go on, I don't want to hold you up at all.

15 .

16 MR. GALLAGHER: Before you rise can I just say --

17 .

18 CHAIRMAN: Yes, Mr. Gallagher.

19 .

20 MR. GALLAGHER: Mr. Cooney has put to this witness an
21 account of the movements of Mr. Joseph Murphy Junior in the
22 week preceding the 8th of June, of 1989, and the succeeding
23 dates, that account is not included in the statement that
24 has been furnished to the Tribunal by Mr. Murphy, and so
25 far as the Tribunal is concerned it has heard that account
26 here today for the first time. I would ask that we be
27 furnished with a supplemental statement setting out the
28 details so they can be circulated to all concerned, and
29 they can, if appropriate, be checked out.

30 .

31 I should say that Mr. Sam Smyth did indicate on the RTE
32 Radio One news on the 25th of February, of 1999, that

1 evidence would be called by two priests who would say that

2 Mr. Murphy --

3 .

4 CHAIRMAN: Let's not go into what Mr. Sam Smyth is saying.

5 .

6 MR. GALLAGHER: I am saying the Tribunal hasn't been

7 furnished with it and it is desirable it should be

8 furnished as soon as possible.

9 .

10 MR. COONEY: Mr. Chairman, in our original letter to the

11 Tribunal we said we would like to reserve the position, we

12 will now furnish this information in detail to the Tribunal

13 and more than that, Mr. Chairman, we will also furnish the

14 corroborating documents.

15 .

16 CHAIRMAN: That's very fair. One other point, Mr. Cooney,

17 just a technical point; as a result of the, what I call the

18 Neary affidavit or draft affidavit being put to the

19 witness, the entire of that affidavit is now part and

20 parcel of the Tribunal's evidential base?

21 .

22 MR. COONEY: I assume so, Mr. Chairman.

23 .

24 CHAIRMAN: I don't want any confusion of that, the entire

25 of that, even though you didn't put it, once you put the

26 main theme of the affidavit the entire becomes part.

27 .

28 MR. COONEY: I accept that.

29 .

30 MR. CALLANAN: If I might make one point. If Mr. Cooney

31 is undertaking to furnish a statement and provide the

32 corroborating documents he should, of course, furnish all

1 of the documents relevant to the matters that are going to
2 be contained in the statement, that would seem to be in the
3 ambit of the Discovery Order already made, in other words I
4 don't know what documents Mr. Cooney is referring to, his
5 statement; "we will furnish the documents corroborative of
6 what is in the statement" falls short.

7 .

8 CHAIRMAN: I presume he is talking about witness statements
9 corroborative of the statements.

10 .

11 MR. COONEY: And some other documents.

12 .

13 CHAIRMAN: Well, the entirety of the documenttion and
14 potential evidence at this point should now be sent to us
15 for circulation. Could you achieve that?

16 .

17 MR. COONEY: We will certainly furnish to the Tribunal,
18 Mr. Chairman, and for circulation I suppose.

19 .

20 CHAIRMAN: Once it comes to us it has to, we have no
21 special relationship.

22 .

23 MR. CALLANAN: The documents should not be limited to
24 those deemed corroborative by Mr. Cooney, that's the only
25 point I am making.

26 .

27 MR. GALLAGHER: There is an outstanding matter in relation
28 to Discovery, and perhaps I can leave that until tomorrow
29 morning and hope that it can be the sorted out in the
30 meantime.

31 .

32 CHAIRMAN: Perhaps you can discuss -- the solicitors can

1 discuss it.

2 .

3 MR. GALLAGHER: Mr. Herbert and Mr. Hanratty have been

4 discussing it.

5 .

6 CHAIRMAN: Very well, we will leave it for final decision

7 tomorrow morning. Thank you very much. Until 10 o'clock

8 tomorrow morning. The tribunal is adjourned.

9 .

10 THE HEARING THEN ADJOURNED UNTIL 10AM ON THE 3RD MARCH,

11 1999.

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