

THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY, 1ST DECEMBER, 2000, at 9.30 A.M.:

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MS. DILLON: There has been a slight change in the order of witnesses, Sir. Mr. Patrick Taylor, who has come from England, is anxious to get back this morning. He has an urgent commitment in England. Provided nobody has any objection, it is proposed to take him first?

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I don't know if that affects any of the parties who have representation?

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CHAIRMAN: Anybody adversely affected?

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MS. DILLON: Mr. Taylor is represented by Mr. Ryan. Mr. Ryan has an application for limited representation, Sir. Mr. Mark Ryan from Whitney Moore & Keller.

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MR. RYAN: Good morning Chairman. I appear for Mr. Taylor and Capital Radio, and I would be looking for limited representation on the basis that my client wasn't compelled to come here, and is somebody who resides out of the jurisdiction, as does Capital Radio, and on that basis I'd be looking for limited representation.

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CHAIRMAN: Mr. Ryan, the principle of representation before this Tribunal is whether an individual is known to or is likely to be adversely affected by any testimony of others or any cross-examination that might adversely affect him, so that he can be examined by his own counsel, in other

words after the Tribunal has examined him. I am very unwilling to break with the precedent which I have set and set throughout - I want to make it clear, it has nothing to do with Mr. Taylor himself, I can assure you of that. I think perhaps, not only do I not have the power to grant costs or to give anybody an assurance of costs at any time. Obviously that matter will be dealt with at the end of time, and I thought that would be the time to make the application for costs as such. And I won't go further than say what I say in those circumstances.

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I have no doubt, a man coming from the other jurisdiction would have to accord, at least look on with considerable favour. Let's not put it any more firmly than that. I'd be reluctant to give you representation at this stage, unless you can indicate - this is a witness of fact - unless in some way his personal reputation will be affected. I know, unless Counsel for the Tribunal tell me, there is no suggestion - he is just literally a witness of fact. And that would be my approach to the situation.

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MR. RYAN: I appreciate that Chairman.

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CHAIRMAN: May I make the suggestion to you that perhaps you might, when this Tribunal comes to deal with applications for costs, perhaps you'd pay us a return visit, if I put it that way.

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MR. RYAN: Thank you Chairman.

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CHAIRMAN: Thank you.

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MS. DILLON: Mr. Patrick Taylor please.

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PATRICK TAYLOR, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS  
BY MS. DILLON:  
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1 Q. MS. DILLON: Good morning Mr. Taylor.

A. Good morning.

2 Q. I think that between 1989 and 1996 you were employed by  
Capital Radio plc as its Financial Director?

A. Correct.

3 Q. And I think in or around mid-1990 Capital Radio plc, which  
was a radio station and a public limited company in  
England, decided to make an investment in Century Radio in  
Dublin?

A. Correct.

4 Q. And I think that that arose initially as a result of  
communication or contact between Mr. James Stafford and the  
Managing Director, is that correct, of Capital Radio?

A. That is correct, yes.

5 Q. I think initially the view of Capital Radio was that they  
weren't interested in getting involved in the radio station  
in Ireland because of what they perceived as the "RTE  
position", is that right?

A. I think that's a fair summary, yes.

6 Q. But subsequently when it was proposed to change the  
legislation, Capital renewed its interest in investing in  
Century?

A. Yes, indeed.

7 Q. And am I correct then in understanding that the decision by  
Capital to invest in Century Communications was predicated  
upon a change in the legislation?

A. We wanted to see the commercial opportunities for the company to be more fairly balanced relative to the position of RTE, yes.

8 Q. And if the legislation had not been changed, and I am talking about the Broadcasting Act of 1990, Capital Radio plc would not have invested in Century Communications?

A. I think, bearing in mind the economic conditions at that time, that's correct.

9 Q. At that time Capital Radio was the biggest and most successful commercial radio company in the United Kingdom?

A. Yes.

10 Q. And I think that it had the licence for London, is that correct?

A. Yes, it did.

11 Q. And that would have been a very profitable licence?

A. Yes, indeed.

12 Q. So that the management and the people who were working with Capital Radio plc would have had a great deal of experience of running a radio station?

A. Yes. We certainly did.

13 Q. And running a radio station successfully?

A. Yes.

14 Q. What view did Capital form initially about Century's difficulties? To what did Capital attribute the difficulties that Century were experiencing?

A. In summary, we took the view that the launch of the station had not worked. There had been a considerable amount of promotion undertaken at the time of launch. That commitments had been made to advertisers in relation to the audience that would be delivered that weren't fulfilled and

the audience didn't reach the levels that were anticipated, and as a result, the revenues that followed didn't match the costs of the station. The station was also set up with a significant level of cost, particularly of people within it and it was clear that, as it was structured initially, it was unviable in the medium term at the least. And we took the view that in order to make the business commercially profitable in the longer term, we had to start rebuilding the whole station by reducing the number of people employed, by concentrating our efforts on building the quality of the output of the station, of the programming output and to try and build or rebuild the confidence of advertisers in the market place.

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I think over the period with which we were involved, during which we were involved, we began to see some progress in relation to the audience, albeit it was slow, as these things tend to be. I think one distinctive element of our investment was we did not have any view that this station could be turned around in a short term.

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When a radio station is launched and it has failed in its initial launch, it needs time to regain the confidence of the staff internally, to regain the confidence of the audience and then subsequently to regain the confidence of advertisers. And that, we thought, was going to be a long-term process, so we came into this business with a view to a long-term relationship in trying to rebuild the station.

15 Q. And was that a view that was shared by the founder

directors, Mr. Barry and Mr. Stafford, that the turn around would be a long process?

A. Well I think the answer to that is probably not. People have differing views. Some people are more optimistic than others, and I think there was a view held that the turn around could be quicker than was our view.

16 Q. In relation to the change in the legislation which predated your involvement with Century Communications, the passing of the Broadcasting Act of 1990, what was your understanding about how that had been achieved?

A. Very simple really.

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MR. WALSH: I think I'd object to the formation of that question. Perhaps he should be asked to give the facts, not give his opinion or understanding in the blind in the general way. He should go through it in a fact-by-fact basis, and if he doesn't know firsthand, you see, Mr. Chairman, it would be hearsay which I'd object to.

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17 Q. MS. DILLON: Did you have any discussions with Mr. Barry or Mr. Stafford about proposed changes in the legislation?

A. Well, I did not personally, no.

18 Q. Were you aware of any such discussions taking place between representatives of Capital Radio and representatives of Century Communications?

A. I am aware that Nigel Walmsly, in the initial review of the opportunity, concluded that the landscape for Century was not viable in our opinion and that that was one of the reasons given for not making the investment at that time that I am aware of.

19 Q. Subsequently, did you become aware that there had been lobbying in relation to changing the Broadcasting Act or the introduction of the Broadcasting Act of 1990?

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CHAIRMAN: Just a moment, Mr. Taylor, would you mind going back to your answer - "I was aware that Mr. Nigel Walmsly in the initial review of the opportunity concluded that the landscape for Century was not viable in our opinion. And that was one of the reasons for not making the investment at that time." When was "at that time"?

A. I think I am right in recalling that it was in the early part of 1990.

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CHAIRMAN: In other words, before the 1990 act had been introduced or passed?

A. Yes, I believe so.

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CHAIRMAN: Thank you. Sorry, I beg your pardon, Mr. Walsh, I just wanted to clear that up while it was on my mind.

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MR. WALSH: I have no difficulty with that. The next question that Ms. Dillon was asking again was a general question, and I would submit that she can't ask a general question which leads to this witness giving his opinion which is secondhand hearsay. He should be asked as to what facts he himself knows. If he doesn't know and has got factual evidence to give, so be it.

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CHAIRMAN: We will explore it on that basis first of all,



Ms. Dillon, and then move into opinion, if it arises from another --

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MS. DILLON: I am not asking this witness for his opinion at all, as Mr. Walsh well knows. I am asking him as a fact whether he knows lobbying was involved in relation to the passing of the Broadcasting Act and if so, we can explore the basis of that knowledge once he has answered.

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CHAIRMAN: I think that's admissible.

A. I think as a matter of fact I can say that I am aware that there was lobbying for changes in the Broadcasting Act, but if I could add that that is nothing unusual. I think all radio industries around the world that I am aware of, and broadcasting media generally, are involved in lobbying governments in relation to changes in broadcasting law. So that would not have been regarded as anything unusual by us.

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20 Q. MS. DILLON: Were you aware that Mr. Barry or Mr. Stafford had been involved in such lobbying?

A. Yes, we were.

21 Q. And - did you ever discuss this yourself with Mr. Barry or Mr. Stafford?

A. No, I didn't.

22 Q. So who told you that this had occurred?

A. It was part of the Executive Directors' discussion at Capital Radio led by Nigel Walmsly.

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MR. GAVIGAN: Mr. Chairman, on behalf of Mr. Stafford I'd

like to object to a question My Friend put. Perhaps the witness could be asked to clarify whether he was aware that Mr. Barry and Mr. Stafford, rather than Mr. Barry or Mr. Stafford were engaged in lobbying, to be fair to my client.

CHAIRMAN: Let's clarify that.

A. I could not be selective as to which of the gentlemen were involved.

CHAIRMAN: That clears the situation, leaves the nature of his response clear. Thank you very much.

23 Q. MS. DILLON: But it was a matter that was discussed by the directors of Capital Radio?

A. It wasn't a big issue as far as we were concerned, because to put it into context, we ourselves were involved in heavy lobbying of the British government for changes in the Broadcasting Act in the UK as well. So this was an activity that was totally normal as far as we were concerned.

24 Q. Sorry, there is one document in relation to that I should put to you. Could we have page 2672 please? This is a draft of a letter that was sent by Mr. Stafford in or around the 21st June, 1990, to Nigel Walmsly, who is the Managing Director of Capital Radio plc, and if we could scroll down to the very last paragraph in relation to that? Mr. Taylor, you will see that it sets out that while Mr. Stafford did not anticipate any difficulties in obtaining consent from the IRTC, "the transaction

nonetheless must remain subject to their approval, as indeed will the appointment of a Chief Executive and Head of Programming. What I would propose is to leave this offer with you for acceptance by 12 noon on Monday 25th, with a view to negotiating a detailed definitive contract with you next week for completion as soon as the pending legislation is enacted.

I anticipate that the legislation will be enacted before the end of the current Dail term, currently scheduled for the 5th of July, although it could run another couple of weeks beyond that date."

That would seem to suggest that the proposed investment by Capital was predicated upon the change in the legislation?

A. Oh yes, it was.

25 Q. That document also sets out that the offer that was on the table was for an investment of ú1.5 or ú1.25 million into Century by Capital Radio?

A. So it appears from that document, yes.

26 Q. I think that subsequently after the legislation was passed, that Capital Radio did in fact invest in Century Communications?

A. Yes, we did.

27 Q. And as part of the pre-contract work that was done, you commissioned a due diligence document by KPMG, Peate Marrock McClintoch, and the purpose of that exercise, as I understand it, Mr. Taylor, was to have carried out a fairly detailed analysis of the situation in Century Communications?

A. Yes, that's correct.

28 Q. In addition to that and running tandem with it, there was to be what was called a "letter of due disclosure", and the purpose of that document as I understand it, was for Century Communications to make disclosure of all liabilities and matters relating to the company that could affect Capital in making their investment?

A. Well, the purpose of a disclosure letter in relation to any sale and purchase agreement is that in the sale and purchase agreement, there would be warranties provided to the purchaser by the vendor, and the objective of a disclosure letter is to provide information to the purchaser that adds to the warranties that are given within that sale and purchase agreement. So it's a complementary document to the sale and purchase agreement that was at the heart of the investment that Capital made.

29 Q. And one of the matters that required to be disclosed in the disclosure letter were all debts due by the company?

A. In essence, yes.

30 Q. And that would include book debts and also shortfalls in the share capital account or money that was due to anybody from the company?

A. Well, I am not sure that I could answer that question. The purpose of the document is to complement the warranties given within the sale and purchase agreement.

31 Q. But the disclosure letter did in fact set out all of the debts that were due by Century Communications as of the date of the letter?

A. It set out all the debts that the directors of the company and the founders saw fit to disclose at that time in

relation to the warranties, it should have been full disclosure.

32 Q. And in effect, the disclosure letter was Mr. Barry and Mr. Stafford saying "This is, as far as we know it, the full extent of the liabilities of the company."?

A. That was our understanding, yes.

33 Q. The disclosure letter and indeed, the due diligence report by KPMG, both indicated that there was a shortfall in the share capital account. Do you have any recollection of that, Mr. Taylor?

A. I don't remember that specifically at this time I have to say.

34 Q. Well, if we --

A. And I am not quite sure what you mean by shortfall in the share capital of the company? Are you meaning that there was certain shareholders who hadn't paid up the cash to their shares?

35 Q. Yes. If we could have page 3784 please? Which is an extract from the KPMG report, and if we scroll down the page, we will see, at paragraph 612, that as of the 30th June, ú75,000 was outstanding on the share capital account.

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"We were unable to determine the split of this amount.

The amount outstanding at the 31st December, 1989, was ú120,000. This remains an unresolved audit issue relating to the statutory accounts."

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And if we go back to an earlier part in the same document, which is page 3776, and we look at paragraph 521, which is

also dealing with the shareholding in this case, it indicates that the shareholding that's held jointly between Mr. Stafford and Mr. Barry was €1,650,000 shares but there is uncertainty as to the allocation of shares between Mr. Stafford and Mr. Barry?

A. Well, I seem to remember this was a draft of the due diligence report, and whilst the draft document highlighted these issues, I seem to recall that all those issues were resolved prior to Capital's investment being made, and I would say that in the subsequent operation of Century, this issue wasn't one that was ever raised again. It was a matter that was resolved prior to the investment and was therefore, a closed issue.

36 Q. One of the matters that was identified by KPMG was uncertainty as to the allocation of shares between Messrs. Stafford and Barry?

A. Mm-hmm.

37 Q. Were you ever aware that there was another investor called Mr. John Mulhearn involved in Century Communications?

A. No.

38 Q. Was that disclosed either in the due diligence or in the disclosure documents?

A. No, I don't believe it was.

39 Q. At paragraph 522, it sets out that the directors subscribe their shares at 50 pence each, which would have meant that the initial total involvement of Mr. Barry and Mr. Stafford was €825,000?

A. Right.

40 Q. On the basis that shareholding was €1,650,000. That seems to follow?

A. Yes.

41 Q. Can you explain to us what you recollect was to be the investment by Mr. Barry and Mr. Stafford when Capital got involved?

A. I don't remember the precise figures, but I do remember that Capital Radio made its investment and there was then to be an additional investment by both the founders and there was a deferred payment element, I seem to recall, as well, but as to the detail, I must confess, I don't remember the precise information.

42 Q. Could we have page 226 please? The investment - this is a document that apparently was prepared by Mr. Stafford, and this sets out what was to be paid by Messrs. Barry and Messrs. Stafford, Mr. Wogan and Mr. De Burgh when Capital invested, and you will see that the institutions are put in there for ú300,000 but that they actually only subscribed ú222,000 with a shortfall of ú78,000?

A. Yes.

43 Q. Wogan was to subscribe ú50,000 and his shortfall was ú40,000. Mr. De Burgh was to put in ú25,000 and did so. Mr. Barry and Mr. Stafford were to put in ú825,000 which was the same as their original investment, but they actually subscribed ú943,000. And that, I suggest, Mr. Taylor, was because it was also a requirement in the investment agreement that Mr. Barry and Mr. Stafford would take up any shortfall in the investment?

A. Now that's something I don't remember offhand, but if it's in the investment agreement, then I can't disagree with you.

44 Q. I think the investment agreement provided that if there was

a shortfall on the investment by the institutions, that the shortfall would be taken up by Mr. Barry and Mr. Stafford?

A. Now that you mention it, there are bells ringing in my brain that says that's correct, but it's not something that I have thought about in the last eight years.

45 Q. That would appear to suggest therefore, because they were picking up the shortfall, that the total amount of their investment when Capital were investing in Century Communications was ú943,000, having picked up the shortfall?

A. Right.

46 Q. And I think it was provided that payments would be deferred, a certain amount of those payments would be deferred?

A. Yes.

47 Q. That there would be, ú690,000 of the 943,000 would be deferred and would be backed by way of bank guarantee?

A. Yes, I do remember that.

48 Q. And that would have required the investors, if there were three of them, to put up ú230,000 each by way of bank guarantee to guarantee the payment to Capital Radio on the 1st December, 1990, and the 1st February, 1991, which were the dates of the deferred payments?

A. I can't recall the split between the individual investors for that guarantee, but I do remember there was a bank guarantee for the deferred element.

49 Q. And that the deferred payments, the amount that was deferred out of the ú943,000 that was to be paid was a sum of ú690,000?

A. Mm-hmm, right.



50 Q. And that was to be paid in two equal installments, on the 1st December, 1990, and the 1st February, 1991?

A. Yes, those dates seem to be correct.

51 Q. And I think Capital required as consideration for the deferral of these payments, that there would be a bank guarantee in place to copperfasten the position or secure your position?

A. Well, we wanted to make certain that the company was going to receive those funds.

52 Q. So having deferred the ú690,000, the investors had to come up with a certain amount of cash on closing the sale with Capital?

A. Correct.

53 Q. Which would have been the difference between ú943,000 and ú690,000 which had been deferred?

A. Right.

54 Q. And that was ú253,000?

A. That seems to be correct.

55 Q. And therefore, subject to whatever other agreement there might have been, the amount of cash that was required by the investors on closing was ú253,000?

A. Right.

56 Q. There was, or was there an agreement that Mr. Barry and Mr. Stafford would be allowed to set off against that amount of money, money that they had given to the company to keep the company trading in the early part of 1990?

A. I seem to recall there was something of that nature, but that's recollection as opposed to known fact by me.

57 Q. So that --

A. And that would have been stated in the sale and purchase

agreement or the investment agreement at the time of Capital's investment.

58 Q. As a result of all of the investigations that were carried out, I presume that Capital were satisfied that they had as full a picture as possible in relation to the company that they were going to invest in?

A. One always invests in companies with a certain amount of due diligence. As you say, KPMG had undertaken an investigation and produced a report for Capital, as had incidentally, our lawyers looked into the legal aspects of this investment, so we were making the investment on the back of information that we had sought from those advisers, and felt that that was sufficient basis for us making the investment.

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When one invests into a company of this sort, you never have an expectation of knowing everything. That's one of the reasons why one puts warranties into the sale and purchase agreement and that's one of the reasons why one looks for the directors or the founders in this case, producing a disclosure letter. But even with those safeguards, there is always a risk that one doesn't know everything.

59 Q. Subsequent to the investment by Capital Radio, did Mr. Barry make a request for payment of monies from you or from Capital?

A. He did make a request for a payment a month or two after we had invested in the company, yes.

60 Q. And I think all of the investment matters were completed and concluded by the beginning of October of 1990?

A. I think that's right.

61 Q. So sometime subsequent to that, in the month following it, Mr. Barry made a request from you for a payment of ú40,000?

A. I recall that amount, yes.

62 Q. And what was your reaction to this request for payment?

A. Well, I remember quite clearly that what I wanted to have was substantiation of what this payment was for, and I was informed that this was in recompense of Mr. Barry and his personal staff in his own office working to manage and support Century Radio in the period prior to our investment and our taking up, when I say "our", I mean Capital Radio taking up their management contract.

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I asked Mr. Barry for confirmation of what the work was that had been done, and I asked for some sort of statement of the amount of time that had been incurred, and also what the rates of charging were for the individuals concerned. In other words, a time sheet costed. That was what I asked for.

63 Q. And did you get that?

A. No.

64 Q. Can we have document 748 please? This is a letter of the 21st December, 1990, Mr. Taylor, that you sent to Mr. Barry in relation to this claim for ú40,000. And in it you set out that on the previous day you had regrettably failed to resolve the matter, "...And may I say that there is absolutely no intention on our part to delay the resolution on this matter. I am sure you will agree with me that to defer a settlement can only damage our relationship, which certainly is not in the interest of Capital Radio. I am

afraid the fact is, as evidenced by the discussion at our breakfast meeting yesterday, that there are other matters that take priority in our discussions at the present time.

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It seems to me that there were two stages to this matter:

1. Is there a proper liability of the company?
2. If so, was that liability properly disclosed at the time of our investment and if not, then what redress exists under the investment agreement?

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As regards Item A, I think it important that we deal with this matter as we would with any other provider of professional services. Would you please therefore, let either myself or Colin have a detailed statement of the work that was done by your colleagues for the company. The more detailed you can make it the better, i.e. what was the nature of the services? Were they provided on a regular or sporadic basis? From where was the work undertaken? Who actually provided the services at what charge-out rate? Were there specific projects that gave rise to the work? Obviously we will also need to receive a VAT invoice from your company before payment can be made.

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As regards Item B, I believe it may be better to leave Mark Ryan and Enda to discuss the matter and see if they can establish whether or not there is a problem and if so, what the potential solution is."

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So here you were asking Mr. Barry to substantiate his claim

for €40,000, to produce the backup documentation and invoices in relation to the claim for €40,000, and you are indicating your view that it hadn't been disclosed prior to the investment agreement being signed?

A. That's correct.

65 Q. And in fact, I think it's not disclosed in the disclosure document, is that correct?

A. Well, I haven't had access to a copy of the final disclosure letter, but certainly my recollection is that it wasn't.

66 Q. And insofar as you have looked at the draft disclosure documentation which is all the Tribunal has, it's not disclosed there?

A. That seems to be the case.

67 Q. I think there was a draft response prepared to your letter of the 21st, and it appears to have been prepared by Mr. Stafford, and if we could have page 749 please, in which he is faxing to Ms. Maeve McManus, for Mr. Oliver Barry, a draft of his "suggested response to Patrick Taylor attached." That seems to suggest Mr. Stafford was involved in the preparation of the document. And on the following page, at 750, the draft sets out:  
"Thank you for your fax of the 21st December. I have already explained that these costs were my actual out-of-pocket expenses for the period during which I and my staff had to provide full-time management for the company.

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With regard to the costs which work out at €1,600 per week for 25 weeks, you will recognise that they have been

heavily subsidized by me personally by reference to your own consultancy agreement. There was never any question that these costs would be recovered from the company in the same way that the wages paid by James and myself would be apportioned, and that can be and will be confirmed at the January board meeting, after which I expect immediate settlement.

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I see no reason to involve Mark Ryan or Enda Marren in this matter."

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Do you recollect receiving that?

A. To be honest, I don't, but I received a lot of letters during that period and I haven't seen them for a long time, so - I am sure I did receive it, but I don't recollect receiving that letter.

68 Q. Ms. Hynes has given evidence to this Tribunal, and she was the Financial Controller of Century Communications, and her evidence was that she has no recollection of any such charges or costs being incurred by Mr. Barry during the period in question.

A. Mm-hmm.

69 Q. Were you ever furnished with any documentation in relation to this claim for €40,000?

A. I don't believe we were.

70 Q. Was it possible for you to resolve the matter yourself directly with Mr. Barry?

A. Well, I think the history of the incident shows that we weren't, because I didn't resolve it with Mr. Barry and I remember saying to him that if he needed the matter

resolving, then it was an issue that should be taken to the board to whom Capital reported under its management contract, and I believe that that is the way that it was ultimately resolved.

71 Q. There was a board meeting on the 10th January, 1991, at page 4714 please, at which you were present and Mr. Stafford and Mr. Barry, and if we turn to the minutes of that meeting, to page 4717, where Item 12, Roman Numerals 4 deals with "Amounts due to Mr. Oliver Barry." And that sets out that, "Mr. James Stafford raised the matter of monies due to Mr. Oliver Barry, representing expenses incurred by him prior to the Capital take-over. It was resolved that the matter be agreed between Mr. Barry and the company."?

A. I remember the matter being raised at a board meeting and from the evidence, it's clear that it was raised at the January board meeting. And I remember that at that board meeting the Board gave approval for the payment to be made.

72 Q. And I think subsequently on the 19th February, 1991, a cheque in the sum of ú40,000 was paid to Quality Artistes Management. It's at page 121 please. And that was the payment to Mr. Barry of the ú40,000 that he had been seeking?

A. That's evidently the case, yes.

73 Q. Were you ever given any explanation as to how this expense of ú40,000 was incurred by Mr. Barry subsequent to that date?

A. No.

74 Q. Did you ever have any discussion as to how that sum might have come to have been incurred by Mr. Barry with anybody

else in Century Communications?

A. I do recall at one stage later in the year being told that

this was --

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MR. WALSH: Again, Sir, this is hearsay.

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CHAIRMAN: It may be hearsay, but provided we identify the

source, I would be prepared to accept it. Because that

enables me to assess the value of the hearsay because I am

not bound by the hearsay rule, but obviously I have to have

regard --

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MR. WALSH: You have to take into account --

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CHAIRMAN: That's what --

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MR. WALSH: If he is asked proper questions in stages,

maybe we could deal with it in that way?

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75 Q. MS. DILLON: Did you have any discussion with anybody in

Century Communications about this €40,000 subsequent to it

being paid?

A. Yes, I do remember --

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CHAIRMAN: What was that person?

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76 Q. MS. DILLON: Who did you have that discussion with?

A. I think it was with Mr. Stafford.

77 Q. And can you tell the Tribunal what that discussion was

about?



A. Well, I think the discussion centred around the suggestion that that might have been a payment that had been made to assist in the work that was being done to change the legislation.

78 Q. What did you understand by that, Mr. Taylor?

A. Well, it wasn't a discussion - I mean, I remember that this discussion was - I would characterise it as a flippant comment. It wasn't a point of discussion as such. It wasn't one that we laboured on, it was simply a remark that was made during an extended discussion on a whole variety of issues.

79 Q. Mr. Stafford made the comment that these funds had been disbursed to facilitate the changing of the legislation, was that your understanding?

A. I think we need to put this into context. My job at the time was trying to assist Capital Radio in helping Century Radio develop its radio business. What went on in the past was a matter of tittle tattle as far as I was concerned. It was a matter of conjecture and frankly, it wasn't an issue that was of any great importance to us. There was an awful lot of comments being made about a variety of different things, and all I am saying is that I do have a recollection of a remark of that nature being made, but I would confirm that this wasn't an issue that really caused me or my colleagues any great - caused us any great attention. We were interested in getting the commercial side of Century Radio moving forward.

80 Q. And did the matter not cause you any great attention because it was in the past?

A. The reason given was not an issue that caused us great

concern. The issue that might have raised a question-mark was whether the ú40,000 was something that should have been disclosed prior to the investment and whether we had a warranty claim. It wasn't anything more than that as far as we were concerned.

81 Q. Can you recollect how long after the money was paid you had this conversation with Mr. Stafford?

A. Oh, it was quite a long time afterwards.

82 Q. Was it in the course of 1991?

A. Well, I think it was, because we ended our relationship with Century in 1991.

83 Q. And I think that relationship came to an end in or around the end of November of 1991?

A. Yes.

84 Q. So this conversation had taken place sometime between February and November of 1991?

A. Yes, and my recollection is that it would have been towards the end of that period rather than earlier.

85 Q. And in the course of that conversation, did Mr. Stafford indicate to you that that sum of ú40,000 were costs incurred by Mr. Barry in obtaining a change or a change in relation to the legislation?

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MR. WALSH: I am sorry, Sir, a leading question like that on a contentious issue should not be put. She should ask the witness what was said by Mr. Barry, or by Mr. Stafford. She can't be putting words into his mouth.

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CHAIRMAN: That is probably correct. It is somewhat loaded. It's a little bit loaded, the question. I think

it might be preferable --

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MS. DILLON: We were trying to establish who the payment was. The witness has already said that the discussions centred around the suggestion that it might have been a payment that had been made to assist in the work that was being done to change the legislation. What we are now trying to establish is who made that payment and what was indicated to him in the conversation with Mr. Stafford as to who had made the payment.

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It has now clearly been established that the ú40,000 was repaid to Mr. Oliver Barry, and that begs the question then as to whether or not he was told in the conversation with Mr. Stafford that Mr. Barry, as opposed to anybody else, had expended the money? I mean, that is his evidence already. He has said that the discussions centred around --

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CHAIRMAN: Let's clarify by asking him who did he understand had expended the money?

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86 Q. MS. DILLON: Who did you understand had expended the money?

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MR. WALSH: That would be his opinion. He should be asked was he given the identity of the person by Mr. Stafford who is alleged to have paid the money? His understanding is his opinion. That's a matter for you, Mr. Chairman.

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87 Q. MS. DILLON: Very good. We will deal with it in a different way. We are discussing the \$40,000 which had been made in February 1991 by Capital Radio/Century Communications to Quality Artistes Management. Quality Artistes Management was a company owned and operated by Mr. Oliver Barry, is that correct?

A. I believe that is correct.

88 Q. Prior to this payment of \$40,000, Mr. Barry had been seeking, as we have seen in the correspondence, a payment of \$40,000 from your company for work done and services rendered, is that correct?

A. We have discussed that and I have confirmed that's correct.

89 Q. Subsequently in the course of 1991, you had a conversation with Mr. James Stafford in which you discussed this payment of \$40,000?

A. Well, I think the term "Discussed" is overstating the point.

90 Q. Very good.

A. I think that during a conversation, it may have been over lunch or over dinner, a remark was made that was of the nature I have already mentioned. I think it's also right to say that it was one remark. There was no substantiation of it, there was no drilling into the detail of it. I have no recollection at all that any statement was made as to who had made payment to who. It was simply one comment in a delightful lunch or dinner.

91 Q. But the comment concerned this payment of \$40,000?

A. I believe so.

92 Q. Right. And Mr. Stafford and yourself were having a discussion in which this payment of \$40,000 was mentioned?

A. I believe so.

93 Q. And this was a payment that had been made by the company with which you had an involvement to Mr. Oliver Barry?

A. The payment that the company had made was in, apparently, in order to pay Mr. Barry, to compensate Mr. Barry for the time that he and his staff had incurred prior to the, our investment being made in Capital - in Century Radio.

94 Q. And Mr. Stafford, I think you have already said, made the suggestion that this might have been a payment that was made to assist the work that was being done to change the legislation?

A. That was the indication from this one-off remark.

95 Q. Did you understand to whom this payment might have been made?

A. No.

96 Q. Did you understand, from your discussion with Mr. Stafford, by whom the payment may have been made?

A. No.

97 Q. Did you have any view in the light of that about recovering or seeking to recover the €40,000?

A. No, because the €40,000 was an issue that was in the past. The issues relating to the company were very different six months later or whenever it was and frankly, the €40,000 claim was an issue that was dead and buried. We had put it behind us. We were getting on and trying to resolve the difficulties of the company at that time.

98 Q. But in your conversation with Mr. Stafford at that particular time, Mr. Stafford was clearly associating this payment of €40,000 or this repayment of €40,000 --

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MR. GAVIGAN: I don't think this witness can accurately comment on what association Mr. Stafford was making one way or the other. Surely that's a question for Mr. Stafford, not for this witness.

99 Q. MS. DILLON: In the course of your conversation with Mr. Stafford on that occasion, Mr. Taylor, when you were discussing the repayment of ú40,000 in February of 1991 to Mr. Oliver Barry, that was a discussion in which Mr. Stafford made a comment to the effect that that was in connection with obtaining a change in the legislation?

A. That was my understanding of this one-off comment, yes.

100 Q. I think subsequently Capital Radio and Century Communications fell out effectively or the matter didn't work out successfully and by November of 1991, Capital Radio had decided not to proceed with their proposed second round of investment of financing in Century Communications?

A. Yes, we found ourselves in a position where it was no longer tenable to put any further funding into the company.

101 Q. Can you explain to the Tribunal briefly the reasons that led to the decision as to why Capital would not continue to support Century Communications?

A. Well, the straw that broke the camel's back is the answer to your question, but I think one needs to look at the background that led up to that final decision. The reality is that the company had been struggling financially and the shareholders and the Board had been seeking a number of different ways to refinance the company for the longer term, and we found it extremely difficult to reach agreement, and it wasn't in respect of all the

shareholders, a harmonious debate over several months.

The relationship was strained and it was a very difficult and sad, frankly, round of negotiations.

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We ultimately found ourselves in a position where, with the intervention of the IRTC, we were able to reach agreement for a refinancing of the company, an agreement in principle I should have emphasised, as opposed to in detail, and that agreement was predicated, as far as we were concerned, on the understanding that there would be a mechanism found whereby Capital Radio could have an equity interest in excess of the limit that was currently permitted of, I seem to recall, 30 percent. Now, the mechanism for enabling that enhanced equity interest to be achieved was not one at that meeting which was identified, but the point of principle was laid on the table and was agreed. And on that basis, the parties did reach agreement in principle for the refinancing of the company and I seem to recall that that excluded Mr. Barry from any further investment in the company.

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CHAIRMAN: Do I understand you to imply that you were - you wanted a majority interest, in other words a controlling interest in the company?

- A. No, I don't believe that we were looking for a controlling interest. What I do recall with significant clarity, is that what we wanted to achieve was an appropriate return on the investment we were making in the company, and in view of the fact that the investment was one of a high risk nature, that equated to an equity investment as opposed to

pose a loan capital investment. And it was simply a question of return on investment.

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As a separate issue, we wanted to ensure that the management of the company in the future, was - the management control lines were clear, that we felt we had the ability to do that and would make the investment on that basis.

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CHAIRMAN: As far as you were concerned, harmony in relation to the operation of controls was manifest?

A. Yes. I think that we were on the verge of achieving a harmonious settlement to a somewhat troubled negotiation.

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CHAIRMAN: Thank you.

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102 Q. MS. DILLON: I think that subsequently did not come to pass, Mr. Taylor?

A. Sadly, that's correct.

103 Q. And I think that the IRTC, either altered their view or clarified the understanding in relation to the extent of the investment that would be allowed by Capital Radio in Century Communications, and that it would not be allowed to exceed 30 percent?

A. That's right, yes.

104 Q. And subsequent to that, Capital decided to effectively cut its losses and not continue with the proposed second investment?

A. Yes. Once that position was made clear to us, the basis of the agreement was null and void and we were back to



square one. We had been trying to save this company for months and we simply couldn't carry on. The company had no money.

105 Q. If I could take you back to February of 1991, some short time subsequent to the payment of these monies to Quality Artistes Management/Mr. Oliver Barry, there was a memorandum of understanding regarding the working relationship between Oliver Barry and the executives of the company drawn up. Do you remember that?

A. I do, yes.

106 Q. And could I have document 4719 please. And effectively this was providing for a change in status for Mr. Barry within the company and assigning him specific functions?

A. That's right.

107 Q. Can you explain what led to the entering into of this memorandum?

A. It was a compromise, I think is the fairest way of putting it. We wanted to run this business. We felt that we had the expertise to do that but nevertheless, we recognised and we, I would still recognise that when a foreign company comes into the country to try and operate a company in that jurisdiction, it needs local partners. In my current business, the same thing applies, and we needed to have the partnership with Mr. Barry and Mr. Stafford at that time in order to enable this company to progress. Mr. Barry was one of the founders of this company. He was a major shareholder in it and he felt that he had something to add to the development of the business. We wanted to work in harmony with the founders and we wanted to find a way to accommodate his perceived expertise within the market place

in Ireland.

108 Q. And I think you set out Mr. Barry's expertise at page 4720 at paragraph C, when you deal with Mr. Barry's responsibilities under the new reorganisation.

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"Oliver Barry will be appointed Deputy Chairman of the company. While he will not have line management for Century staff, he will support in an executive capacity the sales and promotion efforts to be undertaken by working with Ivan Tinman in the development of the overall plan referred to in this memorandum and all the various detailed projects that will flow from there."

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My understanding that "He will not have line management" is that he would not have people reporting to him, and he in turn would not be reporting, is that correct?

A. That's right.

109 Q. He would be to the left of the chain, as it were, chain of command?

A. If that's the way you are looking at the chart, yes.

110 Q. "It is also understood that Oliver Barry will be heavily involved in effecting introductions to, and the entertainment of, relevant persons within the media industry, potential advertisers and for liaison and relationships with government and government agencies."

A. That's right.

111 Q. So one of the areas of expertise that you felt Mr. Barry could benefit the company was in relation to his liaison and relationships with government and government agencies, and he was assigned that function?

A. Yes.

112 Q. Can I ask you, did the negotiations breakdown because - the final negotiations breakdown because Mr. Barry wasn't in a position to refinance the company or assist in refinancing the company himself?

A. Certainly that was a complication in those negotiations, yes.

113 Q. And if the refinancing was to take place without Mr. Barry being able to invest further monies, his equity would have been diluted?

A. Yes.

114 Q. Thank you very much, Mr. Taylor. There may be other people who wish to ask you questions and you could answer them.

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CHAIRMAN: Is any - does any other person want to ask questions?

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MR. GAVIGAN: I just have one question.

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CHAIRMAN: Just for a moment. Carry on.

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THE WITNESS WAS CROSS-EXAMINED BY MR. GAVIGAN AS FOLLOWS:

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115 Q. MR. GAVIGAN: Mr. Taylor, you gave a statement to this Tribunal, I think you may or may not have a copy of the statement before you?

A. I do.

116 Q. Could you confirm that you do?

A. I do.

117 Q. Could I just confirm to you the paragraph headed

"Background: Capital's Investment." And I think it's the second paragraph there where it starts "During the early part of 1990 Nigel Walmsly, the Managing Director of Capital, reported -" etc..

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Could I just bring you down to the middle of that paragraph beginning "Nigel Walmsly led the investigation into this investment opportunity, and I remember he turned it down quite promptly due to the unfair competitive position held by RTE."

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Now, without telling the Tribunal what Mr. Walmsly's opinion at that particular time was in relation to the unfair competitive position held by RTE, do you yourself have any opinion as to what precisely was referred to as the "unfair competitive position held by RTE"?

A. No I don't, actually. I simply recall this was the broad conclusion that Nigel Walmsly reached at that time.

118 Q. You didn't come to any conclusions in relation to that yourself?

A. No. From my recollection, where I sit today, I don't think that I was involved in any detailed way in that early stage round of discussions.

119 Q. Could I just ask you specifically, were you aware of any obligations placed on Century Radio that may or may not have been placed on other radio stations at that particular time?

A. No, I don't have any recollection of that.

120 Q. Thanks very much Mr. Taylor.

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CHAIRMAN: Mr. Taylor, first of all thank you for coming across and coming here this morning. It's been of great assistance to us, and I thank you a great deal. You are now free to go.

A. Thank you very much Chairman.

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THE WITNESS THEN WITHDREW.

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CHAIRMAN: I am going to rise for five minutes. Just a small matter I want to clarify.

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

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MS. DILLON: The next witness, Sir, is Mr. John Thompson from the Department of Finance. Mr. Thompson please.

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MR. WILSON: As with the other civil servants, I will be seeking limited representation on behalf of Mr. Thompson for the duration of his evidence.

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CHAIRMAN: As you know, the ruling is that unless he is in some way going to be affected personally, I don't normally grant it, but as I say, we will play it by ear.

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MR. WILSON: I don't anticipate that there will be any difficulty, Chairman, but in the other case, you did grant limited representation.

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CHAIRMAN: Well, my approach is basically, witnesses of

fact essentially don't get representation, unless there is some reason why they should be in some way adversely affected.

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MR. WILSON: I appreciate that.

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CHAIRMAN: We will play it by ear. If you feel there is a problem, you may intervene of course and feel there is a problem.

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JOHN THOMPSON, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS  
BY MS. DILLON:

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121 Q. MS. DILLON: Mr. Thompson, you are Principal Officer in the Department of Finance, Public Expenditure Division, and in 1986 and 1990 you were an Assistant Principal Officer in the Public Expenditure Division?

A. That's correct.

122 Q. You had particular responsibility for the vote in relation to the Department of Communications?

A. That's correct.

123 Q. And that would require you to analyse or scrutinise any changes or proposed changes that might involve capital expenditure or costs being incurred in relation to that department?

A. That's right, the expenditure on the vote generally, yes.

124 Q. In the normal course of events, Mr. Thompson, when a Memoranda for Government is prepared, it's circulated to all departments that might be affected, and if it involves any potential financial implications, it's circulated as a matter of course to the Department of Finance?

A. That's correct.

125 Q. In September of 1987, a memorandum was prepared for circulation to government in relation to the establishment of the introduction of local radio?

A. Yes.

126 Q. That document was a three part document and in the explanation that was attached to the heads of the bill, there was a reference that it was drafted in such a form as

to allow for the introduction of national radio, should that be desired?

A. That's correct.

127 Q. On receipt of that particular memoranda, when it was circulated, I think the Department of Finance suggested at that stage that consideration ought to be given to the sale of licences, local licences as it was then proposed?

A. When the memoranda reappeared in, I think October, for the first time the proposal was made that a national radio licence should be issued.

128 Q. Yes, we will come to deal with that in a moment, but we'll deal with the earlier memoranda which was September of 1987, when that was circulated. The Department of Finance had formulated a proposal?

A. Yes, of course. Sorry, I am mixing up the two documents. That's right, we did say that on the September memorandum, yes.

129 Q. And the idea behind that was, it would be getting money into the Exchequer and that this was a national asset that ought to be dealt with in this way?

A. That's right.

130 Q. It wasn't a view with which the Department of Communications or the Minister for Communications agreed at that time?

A. No. Their response was to the effect that this would confine local radio to those with substantial financial resources. I am not quoting word-for-word, but that was the tone of their response in the final memoranda, the final version of the memoranda, where the Department had the opportunity to comment on the observations.



131 Q. Subsequently, another Memorandum for Government was introduced, and this wasn't circulated due to the shortage of time, and that was the memorandum of the 16th November, 1987, dealing with the proposal to introduce national radio for the first time?

A. That's right.

132 Q. I think on receipt of the draft memorandum, you prepared a briefing document for your Minister for Finance, Mr. Ray MacSharry, at that time?

A. That's right.

133 Q. And as I understand, if sufficient time is given when the document is circulated, the suggestions of the Department are incorporated in the memorandum that goes to government, as happened in September 1987?

A. That's right. If there is time, a draft memorandum is circulated, observations are taken and then those observations and any replies or comments that the sponsoring department makes are in the final memorandum. That's what happened in the September version. This one of the time wasn't sufficient for that.

134 Q. You prepared a briefing document for Mr. MacSharry prior to him going to the Cabinet meeting on the 17th November, 1987?

A. That's right.

135 Q. Could we have document 6341 please? On the screen beside you, Mr. Thompson, is a copy of the memorandum that you prepared for the Minister for Finance in relation to the new proposal to introduce national radio.

A. That's right.

136 Q. I think in summary, that your view as set out in the

memorandum, was that the introduction of national radio might have an adverse effect on RTE which was not in a very healthy financial position at that time?

A. That's true. We saw national radio as a major increase in the level of competition that RTE would face. I have to say, we didn't foresee that what would be called "local stations" such as 98 FM or 104 in Dublin would be as commercially successful as they became, so we saw national radio as a complete change in the competitive environment that RTE would face.

137 Q. And you were of the view that this might affect RTE's profitability?

A. That's right.

138 Q. That might result in a request for a licence fee increase?

A. That's right.

139 Q. And that they might suffer a loss of advertising?

A. Yes. We envisaged, as you see in the document, we made rough estimates, no more than guesses really, at that time, as to how that might go. The costs of running RTE radio were fairly high and the advertising wouldn't quite have met that, as of course RTE had the benefit of the licence fee. But we were also concerned that RTE had substantial Exchequer debt, and we were naturally concerned that that would become repayable in due course.

140 Q. You estimated as a rough basis, that they would lose advertising of up to ú3 million a year?

A. Yes.

141 Q. And they were heavily indebted to the Exchequer in relation to capital expenditure and had, presumably, a scheme of repayments in place for capital borrowings to the

Exchequer?

A. That's right.

142 Q. And you were concerned that these might be put at risk?

A. That's right.

143 Q. Accordingly, you recommended to the Minister that

independent radio at national level "should not be  
proceeded with at present"?

A. That's right.

144 Q. And was the basis of that view that you expressed, the

potential effect that that might have on RTE?

A. Yes, it was.

145 Q. And indirectly the Exchequer?

A. Exactly.

146 Q. You also set out that, "When community and local radio have

had time to become established and operators have acquired  
experience, it may be possible to envisage national  
independent radio, especially if RTE is financially  
stronger by then. To proceed with national independent  
radio is likely to have serious financial consequences for  
RTE and indirectly for the Exchequer."

A. That's right.

147 Q. You also argued in this memorandum that, "The licences

should be sold to the suitable highest bidder."?

A. Yes, we did.

148 Q. Why was that your view?

A. Well, we had two reasons. One, that it would be a means of  
raising a certain amount of revenue for the Exchequer, and  
the introduction of the national licence seemed to us a  
good reason to raise this issue again, because the counter  
argument had referred to local and community radio, that is

on the original memorandum, so the existence of national radio which simply had to be commercial couldn't be a community based thing, seemed to us to be a good reason to raise this issue. Once again, there was an opportunity, we felt to raise a certain amount of money for the Exchequer and it also meant that a more simple process would exist where there would simply be a normal tendering process and the winner would be quite unambiguous.

149 Q. You say in your memorandum, "This would raise revenue and unambiguously decide on the allocation of commercial licences without suspicion of favouritism.", etc.

A. Yes.

150 Q. That was, one of the matters you were addressing there was the transparency of the methods in which these licences would be allocated?

A. Yes, I don't think "transparency" was a fashionable word at the time. But yes, that's what it would have had involved.

151 Q. I think subsequent to the meeting of the 17th November, it was decided to proceed with national radio - document 6343 - subject to further consultation between the Minister for Finance and the Minister for Communications?

A. Yes, that's the government decision of that date, yes.

152 Q. We have already seen in the Tribunal, Mr. Thompson, a letter that was sent on the 31st December of 1987 by Mr. MacSharry, then Minister for Finance, to Mr. Ray Burke, who was then Minister for Communications.

A. Yes.

153 Q. And that letter has its origin in the government decision of the 17th November, which provides that there will be

further consultation between the Minister and the Minister for Finance.

A. Yes.

154 Q. Is it normal for consultation of this sort to take place in correspondence between the relevant ministers?

A. Yes, it's quite normal. Sometimes when something comes to government, the Minister for Finance may not exactly oppose it, but say that there is some point he wishes to clear up and so on, and subsequently there can be either direct discussion or correspondence. It's quite normal.

155 Q. There is a handwritten memorandum of the 18th November, 1987, Mr. Thompson, which should come up on the screen. It's document 6344. And I think you can assist us. This is, the author of this document is a person in the Department of Finance I think?

A. Yes, that's right.

156 Q. Can you identify the person?

A. Yes, that's Mr. Curran who was then and is still the second secretary in charge of the Public Expenditure Division.

157 Q. And in that memorandum, which I will read for the record, it is suggested that the same points be made again in a letter to the Minister for Communications as had previously been made to you in your memorandum to the Minister for Finance?

A. That's right.

158 Q. He sets out: "Re: No. 1 of the attached. Mr. Thompson raised two important points in his briefing note to the Minister on the impact of RTE finances and the fact that the franchise for a national broadcasting service will be valuable. We need to consider how far we can take these

points, since Communications will hardly take the initiative.

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A letter from our Minister to the Minister of Communications may be the way to proceed."

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And I think you then prepared a memorandum for the Secretary and your colleagues in the Department, and you attach to it a letter that subsequently was sent, of the 31st December of 1987. In the memorandum, at page 6346, you set out the Department's thinking in relation to these proposed changes?

A. That's right.

159 Q. You reiterate the concerns you previously expressed in your earlier memorandum of the 17th November, and you set out that competition will reduce the advertising revenue and reduce its profitability and its ability to make Exchequer repayments?

A. Yes.

160 Q. And you suggest at No. 3, that the opportunity should be taken to raise revenue for the Exchequer from commercial private operators by way of substantial payments for use of suitable frequencies, and you favour an opening tendering system for the licences as the best means of doing this?

A. That's right.

161 Q. Was it the view in the Department of Finance that the frequencies of the licences also were a valuable national asset?

A. Yes, I think we would definitely have seen them in that light, particularly the information frequencies and the

larger local frequencies. There was, if I recall it correctly, a whole hierarchy of frequencies down to frequencies that would only be suitable for very limited local areas, which would obviously go to local and community groups, but frequencies at this end of the available range seemed to us to have substantial commercial value.

162 Q. And you were in favour of a tendering process for the sale or disposal of these?

A. Yes, we were.

163 Q. You also made the suggestion at paragraph 4 that RTE, in order to compensate for its loss of earning potential, should separate transmission from programming and provide some sort of transmission service to persons or people?

A. Yes. We - sorry, the suggestion for separation is really in relation to the new commercial operators and, then of course RTE would be the counter party to that in being able to offer its transmission system on a commercial basis, yes.

164 Q. So what you were suggesting was that RTE, in order to make up whatever shortfall it might have, could separate its transmission facilities from its programming and then sell those transmission services to local or national operators for a commercial rate or a commercial fee?

A. That's right.

165 Q. And you suggest at paragraph 5 that: "It would be undesirable to create private monopolies." And what you propose "would create competition between private interest on two levels, one a competitive tender for the award of licences and reasonably short licence periods with a real

possibility that a programme company could be replaced when licences fall due for renewal."

A. That's right.

166 Q. Subsequent to that, I think a letter was sent on the 31st December, 1987, page 6348, to Mr. Ray Burke, then Minister for Communications from Mr. MacSharry, Minister for Finance, in which the points that you had previously made in the earlier memorandum of the 17th November and this memorandum of the 18th December were incorporated?

A. That's right.

167 Q. And is that the letter that's on screen?

A. I am sorry?

168 Q. Is that the letter that's on screen?

A. That's the letter here, yes.

169 Q. And in this, it is recommended that there should be a competitive tendering procedure built into the arrangements for awarding franchises?

A. That's right.

170 Q. And you refer to, that should be done especially for the national franchise?

A. Yes.

171 Q. You had in September of 1987 been suggesting that it should be done for local licences?

A. Our intention was always that only the more commercial ones, I am not quite sure of the phrasing we used in the original back in September, but our intention was certainly that this would be for the more commercial end. We were aware that there was an intention, and indeed the whole debate about private radio during the Eighties was largely conducted in terms of local and community broadcasting.



We didn't see that as commercial, we didn't see that as a revenue raising area. But we were concerned with, primarily with the national licence but also with some of the bigger commercial licences, the bigger local licences where these would be aimed at Dublin and Cork say, where there would be a substantial advertising market.

So I don't think it's true to say that we wanted to raise money from the local and community stations. I am not sure how clearly that's expressed. I don't have the document in front of me, but our concern was primarily with what we would see as the larger more commercial operators.

172 Q. But certainly insofar as the national franchise was concerned, you were of the view that that should be offered by way of a competitive tendering procedure?

A. Very definitely. Yes.

173 Q. And the greater of the local licences also but possibly excluding community licences?

A. Yes, that would be the idea.

174 Q. The letter also goes on to set out that "RTE's advertising revenue will be affected by local commercial stations and perhaps quite substantially by the proposed national commercial station." And it sets out that "RTE will probably seek a licence fee increase and the public will react unfavourably to that, particularly if they have obtained their licences. The commercial stations have obtained their licences for a very small fee."?

A. That's right.

175 Q. "That this would cause resentment in the public, as they would feel they were being asked to pay increased licence

fees in order to give profits to the private stations."

A. Yes.

176 Q. Was it your view that this argument couldn't be levied against the government if the commercial licences were being sold effectively to the highest bidder?

A. We felt that that would reduce the force of that argument at least. I don't think we ever formed a view on what sort of price the licences would fetch if they were put out to tender. We assumed it would be reasonably substantial.

177 Q. I think you then went on in the letter to set out that it might be possible for RTE to separate their transmission from programming and to offer those transmission services at a commercial rate to the private operators, be they national or local?

A. That's right.

178 Q. And that this could be used by RTE as a method of regaining the revenue they would lose as a result of being exposed to increased competition?

A. That was the idea, yes.

179 Q. And I think you set out in the final paragraph that, "As RTE already has the structure in place they might be able to sell transmission services to private companies on mutually advantageous terms."

A. Yes, we also saw economic advantages, in that the private operators would need to spend less, there would be less importation of equipment and so on, so that there would be an economic advantage as well as a financial advantage to RTE.

180 Q. At this particular time in the history of the Department of Finance, the finances of the country were in a very poor

state?

A. Yes indeed. To refer to some figures which I think I gave you in this statement earlier, just to refer for the record. The Exchequer borrowing requirement had peaked in 1981 at 15.7 percent of GNP, and it was still 12.1 percent in 1986, and the national debt at the end of 1986 stood at 122 of GNP.

We were in the middle of a major effort to bring the public finances back into balance. So we were very conscious that anywhere where we could raise a bit of extra revenue would be extremely beneficial, and anywhere where we would face an extra bill, which we would have if RTE hadn't of worked out, would be welcome.

181 Q. You were looking at this from two points of view. How to limit any possible loss to, say RTE because that would affect Exchequer repayments by RTE, and how to raise revenue for the country through the Department of Finance by selling these franchises to the highest bidder?

A. That's right.

182 Q. And you were looking at that in the overall context of the fairly disastrous state of the national finances at that time?

A. That's right.

183 Q. Was any response received by your department to the letter that was sent from the Minister for Finance on the 31st December, 1987?

A. To the best of my knowledge, there was no response and there is certainly no response on file.

184 Q. As the author of the letter, or as the person who had

drafted the letter that was sent on the 31st December, if a reply had been received, would it have come back to you to be dealt with?

A. That would be the normal practice. The reply would be received in the Minister's office and then sent back to the section that was dealing with the matter for whatever, further action was needed.

185 Q. Did you receive any acknowledgment that your letter had been received?

A. None that I can recall.

186 Q. And is that normal?

A. No, at least an acknowledgment would be usual. Sometimes a one line acknowledgment saying that further communications would be sent or something like that, at least an acknowledgment would be usual and it's a little surprising that there is none in this case.

187 Q. A reply was in fact drafted in the Department of Communications, and we know that the correspondence was received in the Department of Communications, and if we look at, I think I gave you the document - if we can put it up on screen? It's a draft reply that was prepared in the Department of Communications, but apparently was never sent to the Department of Finance.

A. I haven't seen this before.

188 Q. Can you assist us at all as to any reason why your correspondence would not have been replied to by the Department of Communications?

A. No, I can't. I think it's a little unusual. When the Department, when the Minister of Finance having had the paper drafted by his department makes a detailed policy

proposal like that in the area of another Minister's responsibility, it's a delicate matter but I would have expected a reply, yes, I am a bit surprised that there wasn't one. Then the matter was to some extent overtaken by the events, by the decision to set up the IRTC, to go with that directly rather than what was envisaged.

189 Q. I think that Memorandum to Government in relation to the establishment of the IRTC went to government in around March or April of the following year, March or April of 1988?

A. If I am not mistaken, there was some announcement before the formal memorandum you know, that it was known that the government were going to go in that direction I think before, even before that date which may account for the non-reply in this case.

190 Q. The document that's on screen as the Tribunal reference, Department 215 - 17 --

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MR. WALSH: Page 2043 in the main books.

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MS. DILLON: 2043 of the main books. Thank you very much, Mr. Thompson. If anybody has any questions, would you answer those please.

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CHAIRMAN: Any takers for that offer?

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MR. WALSH: Just two brief questions.

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THE WITNESS WAS CROSS-EXAMINED BY MR. WALSH AS FOLLOWS:

191 Q. MR. WALSH: In fact, Mr. Thompson, you know that at the time, this is '87, '88, '89, the state of the country's finances was in dire straits, the Exchequer had huge borrowings and high bank debts?

A. Yes.

192 Q. Unemployment figures were not very comforting to the government?

A. No, they were not.

193 Q. Despite your reservations in the Department of Finance, you have indicated that the local radio stations had gone from strength-to-strength from the financial perspective?

A. That's right, far more I think than we envisaged. We envisaged the national station as the major commercial entity.

194 Q. I see. Now, after Century ceased trading another national radio station came on air and it has gone from strength-to-strength financially as well, isn't that right?

A. I believe so. I don't deal with that area any more but I believe so.

195 Q. In relation to RTE and its Exchequer borrowings, I think between 1986 and 1991 it repaid some 18.5 million pounds in Exchequer borrowings?

A. That's right. Quite a large part of that would, if I am not mistaken, would have come from the sale of its interest in Cablelink.

196 Q. It made a large tranche. The last tranche of 18 million did come from that, but it was repaying between half a million and .9 of a million per annum up until then?

A. Yes. Its debt was on - there were different debts issued

at different stages, so there would have been different repayment terms but at some stage, I can't recall exactly when, their financial situation was such that they were actually able to repay some of the debt early, about 3 million in '88 or '89, I can't remember which year.

197 Q. But despite the competition from local and national radios, RTE's financial position went on to improve and went from strength-to-strength?

A. That's true. There was something of a boom in advertising and there was also at the time a major swing to colour television which had a very beneficial effect on the licence revenues, and I think there was an upgrade of the licence collection system. Licence evasion was a major problem for some years and there was a major effort on that. So yes, RTE's financial situation improved from several different directions around that time, yes.

198 Q. Thank you very much.

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CHAIRMAN: Thank you very much for coming down.

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THE WITNESS THEN WITHDREW.

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CHAIRMAN: I suppose since it has been an earlier start we might take a break at this point and go on without a break until lunch. Is that all right?

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MR. GALLAGHER: Yes, Sir. If you would say perhaps a quarter past eleven.

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CHAIRMAN: A quarter past eleven and we will carry on

without a break then until lunch time.

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

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MS. DILLON: I wonder, Sir, before you take up the next  
witness, would your Registrar mind calling Maeve McManus  
who is to answer on foot of a summons?

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REGISTRAR: Is there any appearance by or on behalf of Ms.  
Maeve McManus?

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MS. DILLON: She is represented by counsel who was here  
earlier on. I suggest you put the matter to 2.15 and have  
Ms. McManus called again.

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CHAIRMAN: I will do that, and perhaps counsel or her  
solicitor could be contacted in the interval, as a matter  
of courtesy, to ensure that proper notice is given to the  
lady who is concerned.

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MR. GALLAGHER: Would you call Mr. William Coonan please?

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REGISTRAR: Is there any appearance by or on behalf of  
Mr. William Coonan?

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WILLIAM COONAN, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS  
BY MR. GALLAGHER:

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MR. CONNOLLY: I am seeking limited representation on  
behalf of Mr. Coonan. I appear with Ms. Bridget Reilly,  
instructed by O'Donnell Sweeney Solicitors.

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CHAIRMAN: I have a protocol, as you know, in relation to  
particular witnesses - in relation to witnesses in  
general. Basically, witnesses of fact do not  
automatically get representation merely by application, for  
the simple reason I have an extremely large group of  
counsel in front of me and if I were to accede to that. A  
witness of fact, unless there is reason either through his  
own counsel or through anybody else, that he may be  
personally affected in reputation or otherwise, and would  
require to be re-examined by way of clarification,  
those - and I know of no circumstances of which Mr. Coonan  
could in anyway be affected.

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I know the broad outline, as you will appreciate, and as  
you know, the way I put it is this: I decline the  
application, but as you are here monitoring, if you find  
that you feel that you should intervene, you can apply  
again for limited representation and as I say, as I have  
said in the past, if it's reasonable that you should pay  
another visit to us at a later, a very much later date, you  
will be facilitated on that occasion.

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MR. CONNOLLY: Thank you Sir. I will reserve my position and perhaps apply again.

199 Q. MR. GALLAGHER: Mr. Coonan, would you state your address and occupation please?

Mr. Coonan, would you please confirm that you are here on foot of a summons requiring you to attend today and to give evidence in public?

A. That's correct.

200 Q. You indicated to the Tribunal through your solicitors that while you were willing to cooperate and assist the Tribunal in any way you can, you are unwilling for reasons of confidentiality to provide the name of your client or other names unless compelled to do so, is that your position?

A. That was my position, yes, that was.

201 Q. And it was in those circumstances that the summons was issued, isn't that correct?

A. Well, I presume so.

202 Q. Now, I understand that you are quite prepared at this stage, to disclose the name of your client and others in evidence, on the basis that you will write their names on paper to be handed in to the Tribunal in confidence and that they will not be named at this stage?

A. That is correct. I might just say, as you earlier mentioned, up to today, on the grounds of client confidentiality, which is very important to our business, I did not disclose the identity of my clients. However, this morning, through their legal advisers to my legal adviser, the clients have indicated their wish to fully

cooperate with this Tribunal and have allowed me to disclose their names, so I will be prepared to do it on that basis.

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CHAIRMAN: Let's clarify that, unless there is any misunderstanding. It's disclosure by means of writing it on paper, because I don't want to affect somebody who has no notice of anything you may say. You write the name on a piece of paper. It will become part of the record of the Tribunal and in due course of time, when we get everything else in order, that will be published in due course.

A. Thank you Sir.

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203 Q. MR. GALLAGHER: You understand that, Mr. Coonan, that you are not to name any person in public here today. You are to write their name down?

A. That is correct, yes, I understand that and I assume that neither do I name any property or anything which would lead to a client being identified?

204 Q. Absolutely. Now, were you retained in the late 1980s to advise your client in relation to the probable sale of lands in County Dublin and in relation to other matters?

A. That is correct, "clients" incidentally I think rather than "client".

205 Q. I wonder would you please write down at this stage the name of your client. I will hand you a page with today's date on it and I think it's Page No. 1.

(Paper handed to witness to write name on.)

A. I have the names of my clients written down and as I say,

it's given on the basis that my clients have allowed me and freed me to do so.

206 Q. I understand that.

A. I don't have the addresses, but I am sure I can get them for you.

207 Q. That's all right. (Page handed to Chairman.)

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Can you say in what capacity you were retained, what role you were expected to play?

A. Originally, at least firstly, I was employed with a view to disposing of the property, you know.

208 Q. And what steps did you take to carry that out?

A. Well, there had been an option in place prior to my being employed and that option, I think was just about running out at that time, and I'd say my duty, my initial duty at the time was to discuss or rediscuss the question of that option being renewed.

209 Q. I see. Would you please write down the name of the person or persons with whom you discussed the renewal of the option? You have been handed Page No. 2 now.

(Page handed to witness to write name on.)

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And if the individuals whose names you are writing were acting as agents, you might indicate who their principals were so far as you were aware?

A. I actually don't know. I don't know whether they were the principals or whether they were only acting for somebody, I don't know.

210 Q. If you continue writing --

A. I have finished.

211 Q. Thank you. (Page handed to Chairman.)

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Now, you had some discussions with the person you named on Page 2, and were they successful from your point of view?

A. There was a second option put into place.

212 Q. So they were successful from your point of view?

A. Yeah.

213 Q. What happened after that in relation to the lands?

A. Oh, by the way that didn't happen until, it dragged on, I am not exactly too sure when we started, but it dragged on until late '92, early '93.

214 Q. I see.

A. I think the option was finalised sometime early '93.

215 Q. I see. What happened in the meantime in relation to the lands?

A. Well, the lands - zoning became a possibility with these lands and I suppose, without any definite written instructions, my brief expanded into helping in whatever way or any way that I could to help having the lands rezoned. It was something that gradually happened. It wasn't a, you know --

216 Q. I think during this time the County Council was reviewing the 1983 County Development Plan?

A. Yeah.

217 Q. Now, what steps did you take then to assist your client in helping to have the lands rezoned?

A. In what way, what steps? I mean what --

218 Q. I understood that you helped in some way to seek to have the lands rezoned. What steps did you take? Did you write letters? Did you speak to people? Did you

approach planners? Did you approach politicians? Did you approach councillors?

A. Yes, I think there were letters written to councillors.

We certainly approached any of the local councillors, or any councillor we might have known at the time, you know.

219 Q. Was that with a view to having your clients' land rezoned from their then use as agricultural lands to residential use?

A. Yeah, in the normal kind of things, you know --

220 Q. During the course of those discussions, did you offer or were you asked for any monies by any councillor?

A. Yes.

221 Q. Would you tell us about that please?

A. I would say in late '92, early '93, I don't have an exact date, but in that period a County Councillor approached, I think it was me, but I am not again quite certain. There was - and at this stage, there was no question of money or anything involved, but there was a meeting arranged in the home of one of the clients and the County Councillor stated that he was very much in favour of residential development and more houses for the people, and made a big play of how much he could help, number one, in getting the lands rezoned, and again he made a play of how much he was in favour of rezoning.

222 Q. Would you at this stage write down the name, please, of the councillor you are referring to and please write down the name of the person whose home the meeting took place?

A. The name of the councillor?

223 Q. The name of the councillor and --

A. On the same page?

224 Q. Yes, on the same page, Page No. 3?

A. I have no problem with writing down the name of the councillor, but just for one second. The councillor being named was not, I repeat, not a member of Fine Gael then or ever, nor is he one now. Any suggestion --

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CHAIRMAN: Very good. That is noted.

A. -- and any suggestion that Fine Gael were involved is totally incorrect.

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225 Q. MR. GALLAGHER: Mr. Coonan, please now.

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CHAIRMAN: You will take it that I note that statement as a statement by you who has full knowledge of what the situation is.

A. It is in reply --

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226 Q. MR. GALLAGHER: Mr. Coonan, would you please --

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CHAIRMAN: I appreciate that there is a public reference, but that's clearly a declaration in public by you. End of story.

A. OK. Thank you very much.

(Paper handed to witness to write names on.)

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The name of the councillor you wish and --

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227 Q. MR. GALLAGHER: The councillor, and the name of the house or the --

A. Whatever --

228 Q. -- the occupier of the house? You have written the name of a councillor and the location where the meeting took place on Page 3, which is being handed in now to the Tribunal.

A. That's as requested.

229 Q. As requested. (Page handed to Chairman.)

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Will you continue please and tell the Tribunal what else happened at that meeting or subsequently?

A. Well as I say, that meeting was very much about how he could help and how much he was in favour of rezoning and what the possibilities and etc., etc. of the property would be. Shortly afterwards he contacted me and I use the word "demanded" --

230 Q. Did you say "demanded"?

A. I did.

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CHAIRMAN: That's what he said.

A. -- ú50,000 for consultancy, out-of-pocket expenses, travel for himself and that he would be also giving contributions out of this to other councillors favourable, but he will arrange all of that.

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231 Q. MR. GALLAGHER: When you say to "other councillors favourable", what did you mean?

A. Well, I presume, I didn't ask him what he meant, I presumed he meant other councillors who favoured residential zoning as against councillors who didn't. I didn't - I mean, I presumed --

232 Q. Did you understand that he was going to endeavour to secure the rezoning of your clients' land, and would enlist the



assistance of other councillors to do that?

A. That is probably the interpretation, I didn't exactly ask him what he was going to do.

233 Q. Did you understand that he was looking for ú50,000 in exchange for this assistance?

A. Yes. On the claim that it was for consultancy, out-of-pocket expenses and travel etc., but that he would --

234 Q. Had this person been known to you prior to this demand being made?

A. No, I don't know. He hadn't actually, no. Well prior to the demand, obviously he had been at the meeting in the house.

235 Q. I understand --

A. But going back, at an earlier stage, no, I don't think so, no.

236 Q. Had this individual any particular expertise or qualifications of a planning nature or engineering or architectural nature that you were aware of?

A. Not that I was aware of.

237 Q. Did the individual concerned indicate what type of consultancy work he was proposing to do for your client in exchange for ú50,000?

A. No. I think the, if you like, what came across was that it was made clear really that it wasn't any guarantee of rezoning, because there was no guarantee being made, but it was purely a type of entry fee in a way, that the lands would receive consideration and if it wasn't paid, the lands would certainly have no chance of being rezoned. There was probably --

238 Q. Was that made clear to you by the individual concerned?

A. Yes.

239 Q. And did that mean that if the money was to be paid, that a motion or whatever other steps had to be taken would be moved in order to attempt to secure the rezoning of your clients' land?

A. I think that, you know we didn't demand a list of steps or whatever, and particularly it was, you know I never had been involved in anything like this before or since, thank God, so it was just kind of that we were kind of green horns and "look, pay out this money, we'll look after it, we'll do the best we can to get it zoned" and thank you very much kind of, you know.

240 Q. But there was more to it, was there not? Didn't you just tell us that you were also told that if the money wasn't paid, there was no chance of you getting the lands rezoned?

A. Yeah, that's correct, yeah.

241 Q. I see.

A. You know, and I would have to say that, you know, for the following ten days, a couple of weeks, I just can't remember exactly, he continually hassled looking for my clients' agreement and finally, came to and said he would accept \$30,000.

242 Q. When you say "looking for your clients' agreement", do you mean your clients' agreement to pay \$50,000?

A. To be honest with you, in the first place as to whether or not anything would be paid, you know. As I say there was continual hassle and eventually the figure kept dropping down to \$30,000, you know.

243 Q. And can you remember where the demand for \$30,000 was paid?

A. I can't exactly remember whether it was paid, to be honest with you.

244 Q. No, where the demand was made?

A. How do you mean "where"?

245 Q. You indicated that there was, you were requested to pay or demanded a - a sum of ú50,000 was demanded initially and that kept dropping until eventually it came down to ú30,000. Do you remember where that figure of ú30,000 was first mentioned and in what circumstances?

A. Where it was actually first mentioned?

246 Q. Yes.

A. I don't know, it was probably in a telephone conversation, but I don't know.

247 Q. I see. Did you have any further conversations or meetings with this individual at that time?

A. I think at that time he was on the phone pretty often, Okay, you know? As I say, he was hassling looking for agreement, and the contact was mainly with me and I would inform my clients then what the position was, you know, but it was - you know, hassling as I say would be a fair comment I think, you know. Until my client agreed.

248 Q. And what did your client agree?

A. My clients I should say, my clients agreed to pay the sum of ú30,000.

249 Q. Did you get instructions to pay that?

A. Did I get instructions to pay that?

250 Q. Yeah.

A. I was the go-between, that was my role I suppose. And as the go-between, I would be informing my clients whatever the position was and going back and talking to him and - so

after the agreement, my clients, it was arranged, it would be paid and my clients, I was used as a go-between for paying it.

251 Q. When you say "your clients", are you referring to the individuals named on the first document you handed in?

A. My clients are the land owners.

252 Q. When you say that your clients agreed to pay monies, are you referring to clients that are named on the first document you handed in?

A. Yes, in the main, I dealt with one of them in the main. I don't know what part the others played in the consultative end of it, but obviously I didn't meet four people and make four phone calls all the time, you know, or five phone calls or ten phone calls, whatever number of clients, you know.

253 Q. Do I take it you made one phone call?

A. I was dealing with one individual, who was I suppose, what you might call the "Secretary", for want of a better word, was the person --

254 Q. Was that the individual whose name appears on the third document that you signed or you wrote the name - you wrote the name of a house?

A. Yes, that's correct, yes.

255 Q. Is that the individual?

A. That's correct, yes.

256 Q. All right. So having spoken with that individual, were you instructed to make a payment to the County Councillor concerned?

A. Correct.

257 Q. And what arrangements, if any, were made to put that in

hand?

A. The arrangements: I received the funds from my client and had, I am pretty certain now, I had prearranged with the County Councillor to meet him after collecting the funds and - sorry, I should say, half the funds, only half the funds - it was paid in two lots, and I met the councillor and handed over the funds in an envelope, which I didn't count.

258 Q. Had you arranged with the councillor that you would pay the sum of €30,000 in two tranches of €15,000 each?

A. Yes, yes, I think so, yeah.

259 Q. And who had suggested they be paid in that fashion?

A. I can't truthfully remember who suggested it.

260 Q. I see. Can you remember whether it was paid in cash or by cheque or --

A. It was, as far as I am aware, well not as far as I am aware, I am pretty certain, I didn't actually open the envelope when I gave it to him, but it was cash, yes.

261 Q. It was cash?

A. Yeah.

262 Q. And where did you hand this over to the councillor?

A. I handed it over to the councillor in the car park in the Spa Hotel, which is a hotel just outside Lucan.

263 Q. Can you remember the date or the month?

A. I certainly can't remember the date. And it was probably late January, but I actually can't remember the date.

264 Q. Was it during the day or at night?

A. Even though it wasn't a very pleasant thing to be doing, I have to say. No, it was actually, as far as I remember, it was the morning time. It certainly wasn't the night

time anyway, you know.

265 Q. What did the councillor say to you when he received the envelope with €15,000 in it?

A. I don't recall actually. He certainly didn't count it out or check it or anything like that. He just took it. That was all.

266 Q. I take it there was some pleasantries exchanged?

A. I wouldn't have called it a very pleasant thing to be doing.

267 Q. Right. Did you inquire as to how the hoped for rezoning was progressing?

A. I can't truthfully remember but I mean, two things I mean I most certainly didn't do; that was I never asked him who or what other County Councillors he would be going to make a contribution to. I didn't want to get involved actually. And I didn't even open the envelope. So I really didn't - as regards for how the zoning was going, I can't exactly remember but you know, we were sort amateurs, you know, and we didn't really - we just did what we were told.

268 Q. Well now, would you describe when and the circumstances in which the balance of €15,000 was paid?

A. Much the same thing as I remember it. I collected, as the go-between, the money from my clients, and again I gave it to him without asking where, what the distribution was or - anything of that nature.

269 Q. When did you collect the money from your client approximately, the second tranche of the €15,000?

A. Exactly the same day as I gave it over.

270 Q. I see.

A. I do remember that I wasn't going to be having money like that hanging around.

271 Q. And can you recall whether that was done during the month of January or February or March or when?

A. I think it was March.

272 Q. I see.

A. I think it was March.

273 Q. And did you meet the councillor concerned by arrangement?

A. Oh yes, because I mean, I dovetailed the two appointments to, I wouldn't have a lot of cash around me and I didn't count it the second time either.

274 Q. Was the second payment made in cash or by cheque or how was it made?

A. I mean, as far as I remember, in cash, as far as I remember.

275 Q. And was it contained in an envelope or a bag or box or --

A. In an envelope, as far as I remember.

276 Q. I suppose you don't remember the colour of the envelope?

A. I don't.

277 Q. Do you remember where you met the councillor concerned?

A. Oh that second, I met him in The Square in Maynooth.

278 Q. That was a meeting by arrangement, obviously?

A. Oh yes, that's what I mean, I arranged, synchronised the two appointments. I was acting as a go-between.

279 Q. Was that simply a meeting on the street or in a car or in a premises?

A. No, it was in a car I presume. It was in a car. It wasn't in the street anyway. Sure it would have to be in a car. It wasn't in any premises. It was in a car.

280 Q. I see. Do you remember the day, the day of the week on

which this happened?

A. I am not trying to be - I honestly don't know. I just know - I mean, I honestly don't know.

281 Q. Well on that occasion, did you discuss what progress, if any, was being made to have your clients' land rezoned?

A. As I remember it, I think that was after the first rezoning which had taken place in February, so I think it was after, I think it was after that.

282 Q. I see. So do I understand you to say that it is your recollection at this stage, but you are not certain about it, that at that stage --

A. I mean, I certainly would not - I would prefer to say it's my recollection. I mean I didn't keep notes.

283 Q. I accept that.

A. I think it's fair - I mean if somebody was able to prove that I was wrong, I will accept that.

284 Q. I just want to be clear on what your recollection is. Your recollection is, as I understand it, that at the time the second \$15,000 was paid, the lands had been rezoned or a motion, perhaps more correctly, had been passed that they should be rezoned or included for rezoning in the development plan review, is that correct?

A. At a later stage. It was the first review, and a motion had been arranged that they would be up on the map, if you like, for rezoning.

285 Q. So is the position then insofar as you were concerned and your client was concerned, progress was being made at that stage in relation to the rezoning?

A. Oh yes, yeah.

286 Q. And had this councillor played any role in that, to your



knowledge?

A. Yes.

287 Q. You think he had?

A. I think he had. I mean - because these were all - this was a very different area up in those zoning places, but I'd say yeah.

288 Q. Were you asked at any other time for monies or other benefits by that councillor or any other councillor?

A. There was no other councillor whatsoever who asked us for a contribution. He did, yes, a second time. Sometime in the spring/summer of '93 and my clients absolutely refused.

289 Q. What did he ask for sometime in the spring or summer of 1993?

A. Well, I can't remember the exact words but I think it was something like, you know, they would be coming for rezoning again or for confirmation or whatever and that you know, he hoped that he'd receive a further contribution from my clients, and naturally I mentioned this to my clients and they just said absolutely, categorically "no".

290 Q. Was a sum mentioned by the councillor at that time?

A. No, it was an opening sort of - you know.

291 Q. Did you discuss with the holder of the option the fact that the councillor had sought money and had in fact been paid money?

A. I can't truthfully remember that.

292 Q. As a matter of probability, do you think you would have mentioned it as somebody who was clearly interested in enhancing the value or would be interested in seeing the value of the lands enhanced?

A. I think if I don't know something I think it's more honest

to say I don't know rather than possibilities or probabilities, you know. I just don't know. You did ask me a thing there a few minutes ago about the thing, you know had he done any or had he been very helpful with the rezoning? And I mean, actually, he had mentioned to me --

293 Q. I think - I don't want you to say anything that might identify the individual, do you understand?

A. I don't intend to. I hope not anyway. But, he had mentioned to me that I should attend the rezoning meetings or some of them as representative of my client, that it would be helpful, you know, for people to show an interest but not to get involved in any way, that things were done in certain ways and that leave everything to him, that we weren't to get involved in any way, just appear as a kind of a spectator, we were outsiders and that was it.

294 Q. Did you appear as a spectator?

A. Oh I did, yeah.

295 Q. Where did you go to?

A. I went to O'Connell Street, just opposite the Gresham.

296 Q. Were you there for some of the meetings at which the development plan review was being discussed?

A. I was, yeah.

297 Q. Were you there when a motion in relation to your clients' lands were being discussed?

A. I have a strange feeling I missed that one. But - being discussed or when the discussion was being taken? Probably I was there when they were discussed, but I have a strange feeling I missed the final decision --

298 Q. What was the atmosphere like at that? Was that the first time you had been at a rezoning meeting?

A. Yes, absolutely.

299 Q. And would you like to describe to the Tribunal what the meeting was like so far as you were concerned as a first timer at such meetings?

A. It was a wonderful play on human life.

300 Q. What do you mean by that?

A. I mean, there was great interaction of councillors for and against, talking about whether zoning was good and bad and all that kind of thing.

301 Q. Was there interaction with land owners?

A. No, no, no. It was a Council meeting, but there was great you know, some of it was very drab obviously, but there were times when big decisions were being taken and there were - you know, there was a lot of very heated discussion with the councillors for and against.

302 Q. Did you have any further contact with the councillor after the conversation you mentioned in or about the spring or summer of that year when a further unspecified sum was requested?

A. I think I had, yes, yes, I think so, yeah.

303 Q. Can you tell the Tribunal about those?

A. Well, money was never mentioned again --

304 Q. I see.

A. -- when we absolutely refused or my client absolutely refused.

305 Q. And what else was discussed at those subsequent meetings?

A. Well, he, as far as I am aware, still showed an interest in having our lands, I mean our lands, not my lands, my clients' lands, you know, help to rezone it and that. He still showed an interest.

306 Q. I see. Was any further demand or request for money made?

A. As I say, the only demand, second demand was by him when he was absolutely refused. That was all. There was, no other councillor ever made any demand whatsoever.

307 Q. Did you receive any explanation from the councillor as to how he had disbursed the money, if he had in fact or if he had in fact disbursed it to other councillors?

A. I think I mentioned to you earlier, I didn't want to know the first thing about it. And nor did I ask about it.

308 Q. I see. So does it follow that you don't know whether any other councillor was paid anything out of the ú30,000?

A. Exactly. I do not know any way it was disbursed.

309 Q. Can you tell me please how many people were at the meeting in the house that you have referred to on the third page?

A. There were four.

310 Q. I see. Would you write down the four names who were present at that meeting.

(Page handed to witness to write names on. Page then handed to Chairman.)

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CHAIRMAN: Thank you very much, Mr. Coonan, for coming down to us and giving us this assistance.

A. My pleasure. I would like to help, cooperate in whatever way possible with the Tribunal.

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CHAIRMAN: Thank you. I am sure you do.

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MR. GALLAGHER: The last page, for the record, is Page 4 on which Mr. Coonan has written four names.

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CHAIRMAN: And I am handing them to my Registrar and he has endorsed them as being received by the Tribunal as of today's hearing in public. Thank you very much, Mr. Coonan.

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THE WITNESS THEN WITHDREW.

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MR. O'NEILL: The next witness to be called, Sir, will be Mr. Brian Gaffney. Mr. Gaffney please.

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BRIAN GAFFNEY, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS

BY MR. O' NEILL:

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311 Q. MR. O'NEILL: Good afternoon Mr. Gaffney.

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In 1990 I believe you were a partner in Touche Ross, is that so?

A. That's correct.

312 Q. And in that capacity, were you the partner with responsibility for the audit of Century Communications Limited?

A. I was.

313 Q. And I think that you carried out audits for two periods in respect of the accounts of Century Communications, the first from the date of its inception until the 31st December, 1989, and the second from that date until the 30th September, 1990?

A. That's correct.

314 Q. In the course of your audit for the first period, I think you became aware of the existence of what was called a "suspense account" dealing with a sum of ú26,250, is that so?

A. Yes.

315 Q. And if we can put on screen page 87? Page 87 you will see is the notes to the accounts, that is the draft management accounts for the month ended 31st July, 1989. This is, I think, an internally generated document by the in-house accountants of Century.

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Now, if we look to the end of that document, the very bottom of it, we'll see referenced Cheque No. 5, ú26,250.

"Oliver to explain to N Hynes." And I think you can confirm that, Ms. Hynes has already given evidence, was the accountant in-house in Century with whom you had dealings in your capacity as auditor, is that so?

A. I did have dealings, yes.

316 Q. And if we turn then to the document at page 465, we will see the cheque in question. We seem to have lost it, Mr. Gaffney, but we will return to it in due course.

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You may take it that there was a cheque made payable to QAM, QAM Limited, dated 20th June, 1989, in the sum of ú26,250. That was a cheque which was drawn on the Bank of Ireland account of Century Communications Limited and it was signed by Mr. Oliver Barry.

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Now, do you know that QAM, that is Quality Artists Management Limited was Mr. Barry's own company?

A. I understand that.

317 Q. You understand. That cheque was the cheque which gave rise to the suspense account being created, and I think a suspense account is created where one cannot allocate particular expenditure to a known or identified heading in the accounts, isn't that so?

A. That's correct, it's like a limbo account.

318 Q. It's in limbo. It has to be accounted for at some point in time but it's held in suspense until such time as sufficient information is available to do so, isn't that correct?

A. That's correct.

319 Q. And I think in your capacity as auditor, you saw the books of account which would include the internal accountant's working papers and conclusions and month end documentation, and as a matter course you probably would have seen the last mentioned document?

A. I would have seen certain records, but that particular item might have been brought to my attention by somebody else involved in the audit. But it came to my attention.

320 Q. Yes. We'll see from a memorandum which you prepared on the 28th April, 1990, that you circularised to Noreen Hynes, a list of issues that you wished to discuss with her at a meeting you intended to hold with her. If we look at the document at page 6351?

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At 6351 you will see a compliment slip, "Touche Ross", addressed to Noreen. "Noreen, this listing is of the points noted for discussion with you. It's not complete but it covers many of the major points. Please call me Tuesday a.m.. Brian G." That's yourself?

A. Correct.

321 Q. If we move to the document itself, we will see at page 6353, as Item 13 in the margin, there is a query:

"NB: Nature of the advance of ú26,250 to Oliver Barry in June 1989. Refunded January 1990." Do you see that reference there?

A. Yes.

322 Q. And to the right-hand margin then, there was notes to be made with regard to those queries, and it seems to be in a different hand than your own, isn't that so?



A. Yes.

323 Q. And the reference in relation to that is "OS"?

A. Meaning outstanding.

324 Q. Outstanding. So as of that date in April 1990 it was still outstanding, and it remained outstanding for a period thereafter, as we will see, in May - sorry, in August of 1990, at page 103, this is a memorandum from Noreen Hynes to James Stafford in which she is referring to a meeting having taken place with yourself on that date, that is the 15th August, where she says: "I met with Brian Gaffney of Touche Ross this morning. Subject to his discussions with Oliver and you, he is happy with the figures. He wishes to discuss the following points with yourself and Oliver." We are concerned here at the moment with No. 3: "Nature of advance to Oliver Barry in June of 1989 of 26,250."?

A. Yes.

325 Q. So it was still a current matter at that point in time, though it had been raised and recorded accurately in the previous year and had been an outstanding matter till this date. Do you have a recollection of meeting with the two gentlemen in question, that is Mr. Barry and Mr. Stafford, in relation to this ú26,250 advance sometime in and around the 15th August of 1990?

A. I have no recollection of meeting them at that time in that connection. I think I should explain that the gap between April and August was that the audit began, was suspended at the company's request, and then recommenced, presumably in August.

326 Q. We know that from a period early in May, there were some tentative negotiations with Capital Radio, these were to

come to fruition in September of the same year, and I think that the audit had been deferred, isn't that so?

A. Yes.

327 Q. You communicated then with the Chairman of Century Communications on the 23rd August, 1990, and in that letter to Mr. Laurence Crowley, which we see at page 105, at Item 5, you deal with the question of this account. You said: "I am awaiting receipt from Oliver Barry for backup documentation relating to an account of ú26,250 drawn by him from the company prior to 31st December, 1989, carried as a debtor of that date and refunded subsequently." Isn't that right?

A. Yes.

328 Q. So again no explanation apparently was forthcoming to that point in time, isn't that so?

.  
Your next reference to this, to this outstanding matter appears in a letter of the 3rd September, 1990, which we will see at page 523, and here at Item 1 you make reference to a calculation of Noreen Hynes. You say: "Noreen Hynes calculated that the costs to that date were ú66,609. I have increased that figure to ú92,859 on your instructions by writing off the Oliver Barry suspense item of ú26,250 which was previously included under the heading "Other Debtors in Note 10." In this regard I was unable to get through to Oliver's office last Friday with a view to obtaining a copy of the related backup documentation. I shall be following up today on this point."

.  
So that this indicates firstly that it was Mr. Stafford who

gave you direction that this sum should be written off,  
isn't that so?

A. Yes.

329 Q. And secondly, you yourself intended to pursue, obviously,  
an outstanding matter by seeking the documentation to  
backup this particular deletion from Mr. Oliver Barry,  
isn't that so?

A. That's correct.

330 Q. Four days after this, you signed off on the audited  
accounts for the year ending the 31st December, 1989, in  
respect of which this particular figure was dealt with,  
isn't that so?

A. Correct.

331 Q. And if we look to those accounts, we'll see at page 534,  
under the heading "Exceptional Charge" the figure of  
ú92,859 which reflects the decision which had been taken  
following your discussion with Mr. Stafford four days  
beforehand, isn't that right?

A. It's the same figure as is in the letter.

332 Q. It's the same figure, so on his instructions you enter this  
as an exceptional charge, and in your account then,  
"Definitions of Exceptional Charge" at Item 5 on page 537,  
you indicate what the exceptional charge is. The  
exceptional charge states: "This relates to costs of  
establishing the company prior to the date of commencement  
of business on the 18th of January, 1989." Isn't that so?

A. Yes.

333 Q. Can we take it that it follows from that that Mr. Stafford  
had indicated to you that the ú26,250 figure was in respect  
of a sum which had been incurred in that amount by Mr.

Barry on a date prior to the 18th January of 1989?

A. I don't recall the specifics of his instructions, but implicitly - if it went into that heading, then it had to be an item relating to the period prior to the 18th of January, 1989.

334 Q. There are two things I think one can draw from the fact that you have entered it firstly in the book of account under the heading of "exceptional charge", and secondly, that you have defined it as being "charges incurred in the cost of establishment of the company's activity and prior to the 18th January", is that it was an expense incurred for Century, isn't that so?

A. Absolutely.

335 Q. And secondly, that it is an expense which was incurred prior to commencement of business and prior to the 18th --

A. Yes.

336 Q. -- of January. Now, apparently the basis of this particular calculation is a totalisation by Mr. Barry of two individual payments. The first of them being a payment which he made on the 27th December of 1988 in respect of a radio station called Dublin 1 in a sum of ú21,250. Now, obviously that is something you were not aware of, isn't that so?

A. That's correct.

337 Q. Had you been aware of that, it could not have featured as an appropriate deduction or entry to be entered into the accounts of Century Communications which had no apparent connection with this company, isn't that so?

A. If it were not an expense of Century Communications, then it did not belong in its accounts.

338 Q. And equally, the sum of €5,000, which is said to represent the balance, bringing up the total of €26,250, that was not something which you were made aware of, isn't that so?

A. No.

339 Q. Was there any indication given to you by Mr. Stafford or Mr. Barry at that time, that the company had in fact made a political contribution of €5,000?

A. No.

340 Q. If it had, it would have been accounted for, I take it, in some heading as an expense?

A. Expenses, yes.

341 Q. You have no recollection of there being any review carried out by you which disclosed this figure, is that so?

A. Nothing came to my attention which mentioned or suggested that figure.

342 Q. Now, in the writing off of this particular figure then, did you ever get any backup documentation from Mr. Barry as you had envisaged in your letter of the 3rd of September?

A. I don't recall.

343 Q. Obviously if there had been such documentation, it could not have been documentation which recorded the payment as €21,250 to Dublin 1 or Fianna Fail €5,000?

A. That's correct.

344 Q. Isn't that right?

A. Yes.

345 Q. Now, in addition to that particular item in the accounts, there were other matters which required to be explained to you, and amongst those items were the deficit in the called up share capital of the company, isn't that right?

A. Yes.

346 Q. And if we look to your accounts at page 539, at Item 10 under "Debtors amounts falling due within one year." At Item 10 we see: "Called up share capital not paid - ú120,225." Do you see that?

A. Yes.

347 Q. Now, that is a sum, again which you had referred to in your letter to the Chairman of Century, on the 23rd August of 1990, at page 105 where at Item 4 (B) you record that: "At the 31st of December, 1989, ú120,225 of called up share capital had not been paid. James Stafford has indicated to me that the composition of this amount is as follows:

Terry Wogan - ú50,000.

Chris de Burgh - ú50,000.

James Stafford, Oliver Barry - ú45,225.

Total - ú120,225."

.

That then was the figure you translated into the accounts which you signed off?

A. Yes, that's a specific statutory disclosure.

348 Q. Yes. And what is involved now in - what obligations are imposed on the directors in relation to a specific statutory disclosure of unpaid shared up capital?

A. Well, that it be disclosed.

349 Q. Properly identified?

A. Yes.

350 Q. At that particular time, is it correct to say that you had received the information and the calculation of the amount of 50,000, 25,000, and ú45,225 from Mr. Stafford, but that you also had the benefit of seeing calculations which had

been carried out by Noreen Hynes prior to that date?

A. Yes, as I recall, all the surrounding evidence would have told me that neither Mr. Wogan nor Mr. De Burgh had contributed, so it was simply a question of what Mr. Barry and Mr. Stafford were to contribute as the balancing figure.

351 Q. The figure changed somewhat in amount,, firstly, we see reference to it at page 6353, which was your note of the queries you intended to raise with Noreen Hynes at the time in April, and there at Item 12 you record: "Uncertainty surrounds precise status of ú122,695 of outstanding share capital per E2. This must be completely sorted out." Isn't that right?

A. Yes.

352 Q. We can see from a document which was prepared by Noreen Hynes on the 3rd of April, 1990, at page 96, that this is an account carried out by her in relation to the payments which had been made, the last of them being the 18th of August, 1989, isn't that so?

A. Yes.

353 Q. And we see that her figure then of ú122,695 is calculated on the basis of there being a shortfall of ú135 - well ú134,999 in lodgments and a credit being given then for expenses charged by Mr. Stafford which resulted in the amount being reduced to ú122,695, isn't that right?

A. Yes.

354 Q. By May, the position had altered somewhat to the figure which we see adopted by yourself and entered in the accounts as ú120,225. We see that at document 98, page 98, where the lodgments are the same sum, ú765,001, so the

shortfall is the same but the expenses have altered somewhat, in that Mr. Stafford is claiming somewhat greater expenses and that reduces the shortfall then to ú120,225?

A. I can see that, yes.

355 Q. That's the figure that's adopted.

A. Yes.

356 Q. We see a later document then, which will deal with the position up to the end of 1990. That's at page 99. Where we see that the shortfall has been reduced to ú75,278, and that was by reference of two entries in January and May, respectively, of 1990, isn't that so?

A. Yes.

357 Q. So when we are considering the figures for the 1989 accounts, it's the document at page 98 that's relevant, isn't that right?

A. The 120,000 --

358 Q. That's the ú120,225, isn't that right?

A. Yes.

359 Q. Now, of that figure, we can see that ú135,000 is the actual shortfall between that and the value of the shares, the paid up value of the shares of 900,000, isn't that right?

A. Taking the 120,225 and the 14,774 together, is that it?

360 Q. Exactly. Yeah. So that the lodgments which had been made there are all recorded and total ú765,000?

A. Yes.

361 Q. They are figures which were cash lodgments to the account, isn't that right, as far as you were aware?

A. Well, that's what the document suggests. I mean, I wouldn't recall these detailed figures.

362 Q. No. But if it's in as a lodgement here, it is referring to



money or monies worth in the bank as a lodgement rather than credits set off against any indebtedness to reach this figure?

A. Yes.

363 Q. Isn't that right?

A. Yes.

364 Q. There is nothing, in other words, in this document which was given to you for consideration to indicate that any of the promoters, that is Mr. Barry or Mr. Stafford, were giving themselves credit for expenses which they had expended as against share capital payments by them, isn't that so?

A. I am sorry, your question is unclear.

365 Q. Very good. What is recorded in this document firstly are the lodgements to the bank, in other words, payments to the bank?

A. Yes.

366 Q. They total ú765,000, the amount which is required to be paid is ú900,000?

A. Yes.

367 Q. There is therefore, a shortfall of ú135,000. And there is a record of an expense of ú14,774 being set off against the shortfall on the basis that, to that extent, Mr. Stafford was saying that "Instead of paying the money into the capital account, I am going to give you details of monies which I expended for the company under another heading" --

A. As an equivalent contribution.

368 Q. An equivalent contribution, indeed. So the only equivalent contributions that you were made aware of in relation to these figures was the ú14,774 as expenses?

A. Again I'd have to say, I don't recall the specific documents. I have to take the document as I see it, but it seems to tie in, yes.

369 Q. Could I suggest to you that this document and the instruction which you were given by Mr. James Stafford both confirm to you that the appropriate figure to be entered into the audited accounts to be signed off by you under the heading "Unpaid share capital", was  $\text{£}120,225$ ?

A. I would accept that.

370 Q. Right. And that there were no other equivalent amounts to be set off or had been set off against that liability, isn't that so?

A. Yes.

371 Q. Now, if we revert back to the letter then of the 23rd to the Chairman, at page 105, you went on to deal with the position as of the date of that letter, the 23rd August of 1990. You say that: "As of today's date the amount outstanding is  $\text{£}75,278$ , which I understand to be made up of  $\text{£}50,000$  due by Terry Wogan and  $\text{£}25,278$  due by James and Oliver."?

A. Yes.

372 Q. Do you see that? That would appear to accord with the detail which was contained in Ms. Hynes' memorandum at page 99. Here at page 99 we see that the difference between that and the earlier document was that it now records two payments which were made within the financial year 1990, namely a payment recorded of  $\text{£}19,787$  on the 8th of January, 1990, and  $\text{£}25,000$  on the 1st May of 1990. Do you see that?

A. Yes.

373 Q. There also is a minor alteration in the expenses being paid to Mr. Stafford. He is seeking another  $\text{ú}160$  over the figure that he had previously dealt with. So that that shows a figure at the end of the day here of  $\text{ú}75,278$  as being outstanding on the share capital account, isn't that right?

A. It is.

374 Q. Again in the calculation of the lodgments, these are all cash lodgments into the account of the company, isn't that right?

A. They would have to be.

375 Q. And there are no credits set against that by way of expenses, save what is directly referred to here as "expenses paid by Mr. Stafford",  $\text{ú}14,900$  odd, isn't that right?

A. Yes.

376 Q. In addition to your firm carrying out the audit, I think around the time of your preparation of the audit, there was also an examination of the accounts taking place by Peate Marrock McClintoch, isn't that right, on behalf of Capital?

A. Around September of 1990.

377 Q. From August onwards in fact. And were you ever made aware of their accounts or their summary of the accounting procedure?

A. I may have seen the report, but I don't recall.

378 Q. I see. A draft copy of their report was sent to Mr. Stafford, and we see the relevant entries at page 509, where under Item 6.1.2 there is reference to the share capital of the company, and it states: "At 30th of June, 1990,  $\text{ú}75,000$  Irish was outstanding in the share capital

account. We were unable to determine the split of this amount. The amount outstanding at the 31st December, 1989, was ú120,000, this remains an unresolved audit issue relating to the statutory accounts."

.  
Now, they have evened it up to the nearest pound rather than working out the figures exactly, but I think they are referring in essence, to the same figures here, isn't that right?

A. So it appears, yes.

379 Q. And certainly from the documentation available to them at that time, they weren't able to split up how exactly the amount was due to be repaid by the shareholders who were at that point in default, isn't that right?

A. So it appears.

380 Q. Was that your own view at that time? It hadn't been possible for you to work out whether it had been Mr. Barry or Mr. Stafford who owed the particular share?

A. I didn't have the split between the two of them.

381 Q. On that point, is it the position that as far as you were concerned, the two directors, Mr. Stafford and Mr. Barry, were the only shareholders and that they were equal shareholders?

A. Yes.

382 Q. The existence therefore, of the contribution made by Mr. Mulhearn was not one ever made known to you, is that right?

A. Never.

383 Q. Or any contribution which he may have had in the form of lodgments recorded in the acquisition of shares, it was not known to you, isn't that right?

A. That is correct.

384 Q. In fact you had sought information from the directors to establish to what extent they individually contributed to the acquisition of shares, and you had them sign a letter indicating how it was that they contributed, isn't that so?

A. I don't recall. If I could see the letter perhaps?

385 Q. Yes, I can put it up on the screen for you. Firstly, your letter at page 148. This is a letter of the 12th of July of 1991, and if we look to subparagraph A, it says:

"I regret that I am at present unable to issue this letter for the reasons noted below. The amount to be confirmed is a total of ú943,000. Whilst I have seen evidence that Century Communications Limited has indeed received various amounts which add to this total, there is in some instances no direct evidence that the funds were lodged or remitted by yourself or Oliver, for example, because in some cases the funds arrived in the company's bank accounts by anonymous credit transfer.

.

Secondly, at V, I am not in a position to confirm that yourself and Oliver have subscribed for loan notes in exactly equal proportions. As you will know, your contributions were made on a joint basis and in a manner which did not indicate the relative proportions in which you had subscribed.

.

In order to deal with these two points and to enable me to issue a letter which was required by Arthur Cox & Co. I have drafted the attached suggested joint letter from yourself and Oliver to us. If you are satisfied with its

contents, I would ask that you each sign it and you return it to me. I will then immediately issue a letter to Arthur Cox & Co. along the lines of the draft provided by them."

.  
If we look then to the document at page 147, you will see a letter to your firm of the 12th July. It says:

"Dear Sirs, we refer to the investment agreement dated 11th of September, 1990, between ourselves of the one part; Laurence Crowley, Michael Terence Wogan and Chris de Burgh of the second part; Century Communications Limited of the third part and Capital Radio plc of the fourth part.

.  
We confirm that pursuant to Clause 5.4 of the above-mentioned agreement, we have jointly subscribed a total amount of ú943,000 by way of loan to Century Communications Limited. We further confirm that we each have an interest of ú471,500 in the above-mentioned loan contribution."

A. That is referring to a loan, not to shares.

386 Q. I see. So that's not the same document as was referred to on the same date?

A. It appears to be on the same point but a separate issue.

387 Q. It's on a separate issue?

A. (Witness nods.)

388 Q. In any event, can you recall whether or not your understanding was that these two individuals had joint interests and they were joint and equal interests?

A. Absolutely. 50/50 was my understanding as between them.

389 Q. We know from the documentation provided to the Tribunal

that Mr. Barry produced an account for his own purposes towards the end of 1990, we can see this at 231. This is a document which you may or probably have not seen before, Mr. Gaffney, unless it was furnished to you by the Tribunal?

A. I think Mr. Hanratty showed this, or a document like it to me in recent months.

390 Q. This document appears to be an endeavour by Mr. Barry to set out his financial expenditure in relation to Century Communications Limited over the period running from December 1988 through to the end of October of 1990. And he details a number of matters here which I'd like to draw your attention to and see whether or not you, in your capacity as auditor, were aware of such figures being accounted for in the accounts of Century Communications under any specific heading.

.  
If we look to the top of the page under "Date: 1989", you will see "March 15th - investment ú33,333." Similarly, the same amount for March 31st and July 11th, ú148,334. The total of those sums showing the balance column there at ú215,000. Do you see that?

A. Yes.

391 Q. Those three sums, if we refer them to the contributions or lodgments which were made in relation to the share acquisitions, page 96, there is a relationship between the first of those references there. March 15th, an investment of ú33,333 translates to the 15th March, the first item at page 96, the document that's on screen?

A. Yes. I don't recall the detail on the other form. I

would not be familiar with the detail of these figures, unfortunately.

392 Q. Right. But I just want to put to you perhaps that what this document indicates is that in relation to the first three items that are at page 231, these were - these first three items were payments which Mr. Barry made towards the share acquisition in Century Communications.

A. I see.

393 Q. And if we move down then to 1988, immediately underneath 1989, December 27th, there is the €21,250 figure which is down as Dublin 1.

A. Yes.

394 Q. And beneath that an air ticket for €213, beneath that a figure of €35,000 shown as deposit.

A. Yes.

395 Q. And beneath that "Fianna Fail - €5,000". Beneath that "Dublin 1 FF - €26,500" --

A. Sorry, €26,250.

396 Q. Sorry, €26,250. That then has a credit, do you see that? All the others being debits, and you will note the date of that is the 20th June?

A. Yes.

397 Q. Which is the date of the suspense account creation.

A. Yes.

398 Q. So that the suspense account appears to have been created in respect of a payment to Mr. Barry where he is recouping the Dublin 1 figure of €21,250, which is December 27th, as a debit immediately above, and the Fianna Fail figure of June 15th of €5,000, the two of those total €26,250?

A. So I now understand.



399 Q. The other two figures that are the payments recorded as debits in 1989, namely the deposit on the 26th May for ú35,000, the evidence has been that this is the figure which was paid to Mr. Ray Burke?

A. Yes.

400 Q. Though it's recorded here as a deposit. The figure beneath that then which is again unaccounted for, is August 25th, "RB - ú5,000".

.  
Now, did you ever learn, in the course of your audit, that ú40,000 or rather, ú40,213, the 213 being in respect of the air ticket, was a figure which Mr. Barry was getting credit for against his liability to pay on the share account?

A. I have no recollection of that.

401 Q. If there had been such a credit given or sought, is it something that would have been required to have been disclosed by the directors as such?

A. Well, certainly the detail of it would have had to be produced. It would have to be substantiated.

402 Q. And it would have to be identified accordingly by being backed up by documentation?

A. Yes.

403 Q. And that would be provided to you as the auditor, perhaps to your staff, but certainly considered by you and appropriate entries made?

A. Yes.

404 Q. Did you ever make any entry in the accounts of Century which recorded the fact that Mr. Barry was seeking credit for ú40,213 against his obligation to meet his share qualification?

A. The only recollection I have, and it's based on documents the Tribunal has shown to me, is raising a query about a figure of £40,000 when I was doing the 1990 audit. But neither then nor now would I make any connection with share capital as such.

405 Q. We'll deal with the other £40,000 shortly, but this particular £40,213 apparently is a figure which Mr. Barry used in his calculations to establish what his liability was to meet the outstanding share requirement of £275,000?

A. It's not something I know anything about.

406 Q. But again, it is something that ought to have been disclosed to you if he was indicating that he was not going to pay the money on this particular basis, isn't that right?

A. Yes.

407 Q. The other £40,000 that you mentioned was a figure coming to light in the course of your audit for the year 1990, and if we look to page 6206, this is a document headed "Client Error Schedule", which was one of the standard documents you would be preparing in the course of the audit, isn't that right?

A. Yes. Chairman, it might assist the Tribunal if I clarify the status of this form?

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CHAIRMAN: Yes please.

A. On each audit at that time, this form would be brought out, and as the audit progressed, any member of the audit team could enter items which were either known errors or possible errors for later assessment. So anybody from the most junior through to the partner. That explains why on

the left-hand side there is different handwriting. My handwriting appears towards the end of this form. The copies which the Tribunal has located in company files would initially have been audit documents up to a certain point, copied and handed over to the client, but this is not the version that would have been on the audit file, because there is information, particularly on the right-hand side, which is in an unknown hand. I hope that's clear?

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408 Q. MR. O'NEILL: So, this is a document which ultimately found itself in the files of Century and Century were entitled to use this as a reference point for their own further investigation and comment?

A. Yes.

409 Q. And where we see a heading "Comment on audit conclusion", are they necessarily the comments of the Touche Ross staff at the time or could they be the comments of others?

A. The particular version on my screen is almost illegible, but I am fairly familiar with it having seen it recently, that's not an audit comment. Anything on the right-hand side is not an audit comment.

410 Q. Well, if we can deal with the entries on this particular document which was completed by yourself, I think that it is unfortunately a very poor copy, but I think I'll be able to interpret it for you. If we look to the handwriting or manuscript, the last manuscript entry in the column on the left-hand side, do you see that?

A. Yes.

411 Q. That will read "Oliver Barry/Artistes Management: Fees,

expenses, refunds claimed." And then in the column under "Profits Understated", there is €40,000 with a question-mark after it, and we can then follow that across to "Liabilities Understated - €40,000", again with a question-mark beside it?

A. Yes.

412 Q. This €40,000 which appears in this is presumably a reference to you having found some claim or document in which somebody was referring to €40,000 as being possibility due for fees, expenses, refunds, is that correct?

A. I have a very minimal recollection. I could even have been told by somebody, there might be a need to accrue something of the order of €40,000. I would have tended to put a question-mark against a figure which was extremely tentative. It could be a much more precise figure in reality.

413 Q. But can you relate this to any particular activity of the company which was being carried on in that financial year?

A. I wouldn't know about timing, but again my limited recollection is that it related to services provided by Mr. Barry.

414 Q. Or a claim certainly for services?

A. That was the essence of it, yes.

415 Q. Now, you have already indicated that you were aware of Ms. Noreen Hynes' position with the company. She had been the internal Financial Controller of the company, isn't that right?

A. Yes.

416 Q. And an accountant. And you may be aware of the fact that

there was a payment made of ú40,000 to Century Communications on the 9th February, 1991, I think it's certainly, it's two weeks after this audit document was being prepared. We can see it at page 121. There was a cheque payable to Quality Artistes Management for ú40,000 on the 19th February. In the course of your audit, have you any recollection of ever considering a debt due to Quality Artistes Management in the sum of ú40,000 which would have been included in the disclosure accounts made available to Capital Radio?

A. No, I mean, I have no specific recollection. My query was raised in February 1991. I think the disclosure happened, the disclosure letter was completed several months previously.

417 Q. Yes. It was completed in September of 1990?

A. Yes.

418 Q. And we know from the evidence given to date that there was no specific reference in that document to there being any liability to Quality Artistes Management outstanding as of the date on which those parties entered into their contract, which is the 27th September.

A. I understand.

419 Q. Does it follow then that as a matter of probability, that you could not have found documentation which predated the 27th September, 1991, recording a liability of ú40,000 to Quality Artistes Management for services provided at the rate of ú1,600 per week for 25 weeks?

A. As a matter of probability, I suppose, yes.

420 Q. We have already dealt with one suspense account in which the sum of ú26,250 featured. It is the case, however,

that ú26,250 was to feature again in other accounts in your consideration of the accounts for the year 1990, isn't that so?

A. Yes.

421 Q. And did you ever establish what the nature of that account had been?

A. The payment of ú26,250?

422 Q. Yes.

A. I cannot recall the specifics but at the time I was satisfied with whatever information was forthcoming.

423 Q. Right. What appeared to you to take place was that there had been a payment by Mr. Barry to the company on the 8th January of ú26,250. Isn't that right?

A. Yes.

424 Q. If we revert to the document at page 231, which was Mr. Barry's analysis, we will see that in the year 1990 transactions, for the 8th January, he records as a debit ú26,250, do you see that? For the 8th January.

A. Yes, yes, I see it.

425 Q. For his reference, he again refers to this as "Dublin 1/Fianna Fail", do you see that?

A. Yes.

426 Q. Which was why he attributed the earlier payment to him of the 20th June in 1989, isn't that so?

A. Yes.

427 Q. So it would appear that firstly he expended ú26,250. He then was reimbursed with that sum in June of 1989?

A. Yes.

428 Q. He then paid that money back on January 8th?

A. Yes.

429 Q. If we move down through his account here, we'll see that on the 12th December, 1989, again under the heading "Dublin 1/FF" the company paid him ú26,250 again?

A. Correct.

430 Q. Have you ever given any detail of what the purpose of this payment in, withdrawal, payment in and withdrawal was relating to these accounts?

A. I don't recall, but my focus would have been on what the purpose of the first payment was rather than the ins and outs subsequently. That was why I raised the query in my letter in August 1990 to Mr. Crowley.

431 Q. And that was one which was satisfied by Mr. Stafford giving you some account which resulted in it being written off at his insistence and included in the ú92,529 --

A. He instructed me to take it out of the suspense account and put it into that exceptional costs heading.

432 Q. Which had the effect of writing it off?

A. It wrote it off, yes.

433 Q. But at this point in time, you are not in a position to assist the Tribunal as to what precisely Mr. Stafford attributed this payment to?

A. No.

434 Q. But I think you can say that you were not made aware of subsequent movements of similar amounts to and from Mr. Barry by the company, is that right?

A. Well, I might have been aware of the movement - I think at the time I knew and said so in my letter, that I was aware it had come back in.

435 Q. Yes, you were aware of the payment back in, in January of 1990?

A. Yes.

436 Q. But were you aware that it was again paid out on the 12th December, 1990?

A. I couldn't have been at that stage. At some later stage, perhaps I became aware.

437 Q. Were you ever told at any point in time, Mr. Gaffney, that a sum of ú35,000 had been paid to Mr. Raphael Burke out of the funds of the company?

A. Never.

438 Q. Had it been so alerted to you, you would have had to account for it under some heading or other?

A. Yes.

439 Q. It would have gone into a particular account?

A. Yes.

440 Q. Thank you.

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CHAIRMAN: It's just one o'clock. Does anybody want to ask this witness any questions because if they don't, I will release him?

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MR. GAVIGAN: I have a few brief questions.

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CHAIRMAN: I want to let the witness back to his other tasks.

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THE WITNESS WAS CROSS-EXAMINED BY MR. GAVIGAN AS FOLLOWS:

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441 Q. MR. GAVIGAN: Very briefly. Mr. Gaffney, you say in your statement that you received instructions from Mr. Stafford to transfer the money - to account for the money in a



different way and to effectively include it in the accounts as a written off element, isn't that right?

A. As an expense.

442 Q. He didn't give you any reason at that particular time?

A. I didn't record any reason.

443 Q. He may have --

A. I have no recollection as to whether he gave me one.

444 Q. And subsequently then in your statement at paragraph 11, you say that you were never informed by anyone that the payment in question related to Dublin 1 and/or Fianna Fail, isn't that right?

A. That's correct.

445 Q. So in your view, nobody is questioning ultimately the veracity and the correctness of transferring from the account to writing it off at that particular time. There was no issue to raise at that particular time?

A. There was no issue to raise in relation to Dublin 1 or Fianna Fail because they hadn't come up.

446 Q. Absolutely. And is there any reason to believe now that you would have treated the suspense account in a different way had you known it was a payment to Dublin 1 and Fianna Fail?

A. Yes. Fianna Fail, as counsel has said earlier, Counsel for the Tribunal, "Fianna Fail - ú5,000", in my view, would just have been an expense, an ordinary expense. I wouldn't like to speculate as to how the 21,250 might have been treated if it had been a company expense relating to an investment in an another radio station. But my suggestion would be that it probably would have fallen also as an exceptional cost but not as a preliminary expense.

It would have been a separate item within an exceptional category.

447 Q. One way or the other, Mr. Gaffney, it certainly wouldn't have been left in a suspense account or treated as an item in a suspense account?

A. No.

448 Q. Do you have any reason to believe that Mr. Stafford, when he gave you the instructions at that particular time, knew how the money was broken down, how the \$26,250 was broken down into the two?

A. Anything I would say to you would be speculation.

449 Q. You were satisfied at that particular time that this was the correct way to treat the accounts, isn't that right?

A. I was.

450 Q. And you didn't include any qualification or make any remarks in the account other than what we have seen on the --

A. I qualified the accounts but not --

451 Q. Not in respect of this item?

A. No.

452 Q. Thanks very much Mr. Gaffney.

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CHAIRMAN: Very good. Thank you very much for coming down and have a pleasant lunch.

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THE WITNESS THEN WITHDREW.

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MS. DILLON: I think there are three witnesses left this afternoon.

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CHAIRMAN: Isn't there a person to attend here?

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MS. DILLON: Ms. McManus is due at 2.15.

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CHAIRMAN: I think we will sit then at 2.15.

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THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

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THE TRIBUNAL RESUMED AS FOLLOWS AT 2.30PM:

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MS. DILLON: Good afternoon, Sir. The next witness was Miss Maeve McManus on foot of a summons. Miss McManus is represented by Mr. Patrick O'Reilly instructed by Miss Denise McNulty.

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MR. O'REILLY: I appear for Mr. Maeve McManus. Miss McManus is unavailable today. She is indisposed. She transmits her apologies to the Tribunal and to the Sole Member in respect thereof.

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She is available, subject to the Tribunal, to give such evidence as the Tribunal requires when the Tribunal requires it.

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CHAIRMAN: Well, at the moment, I regard the disposition as something temporary. I am subject - I suggest that we might review her state of health, preferably her attendance here on Monday morning at 10:30am. In the interval we will see the progress of her state of health and see what the situation is. I am very sorry to hear that she is indisposed. I hope that we will recover as soon as possible.

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MR. O'REILLY: I will transmit those remarks. I omitted to ask for limited representation. I will ask you now, Sir, for limited representation.

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CHAIRMAN: There is a protocol here that witnesses of fact

in the whole are not granted but I think this is probably the exception of the case and I will grant you limited representation in this instance.

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MR. O'REILLY: I am very much obliged.

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MS. DILLON: You if would adjourn the summons then for Ms. McManus to appear here at 10:30 on Monday morning.

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CHAIRMAN: Yes, 10:30 on morning. You were going to say Ms. O'Raw?

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MS. O'RAW: The next witness, Sir, Mr. Paddy Corbett from Bank of Ireland.

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CHAIRMAN: Okay.

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PADDY CORBETT, HAVING BEEN SWORN, WAS EXAMINED BY MS. O'RAW AS FOLLOWS:

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453 Q. MS. O'RAW: Mr. Corbett, good afternoon. Mr. Corbett, you were the District Manager at O'Connell Street for Bank of Ireland, is that correct, in the period from September 1990?

A. Yes, that is true.

454 Q. Prior to that period, I think you were an employee still of Bank of Ireland in O'Connell Bridge House - or in O'Connell Street?

A. No, in O'Connell Bridge branch just for maybe nine months before that.

455 Q. I see.

A. And prior to that I was in College Green.

456 Q. I see. O'Connell Bridge, is that different to 28 Lower O'Connell Street?

A. Yes, at the time it was a totally separate branch, yes.

457 Q. I see. It was. In relation to Century Communications, Mr. Oliver Barry and Mr. Stafford, I don't think you were involved at the very early stages in relation to their account, is that correct?

A. That's correct, yes.

458 Q. When did you become involved in their account?

A. Well, I became aware of it in about September 1990 because I was about to take over that branch.

459 Q. Yes.

A. And I was aware that there was an issue with the business at that time.

460 Q. What was the issue with the business at that time?

A. That it wasn't going very well, that there was problems with the business.

461 Q. Yes?

A. That it was looking - it was a pretty difficult, pretty difficult account at the time with Bank of Ireland.

462 Q. At this stage, had you ever met Mr. Barry or Mr. Stafford previously?

A. I worked in 28 Lower O'Connell Street from 1983 to 1995. At that time Oliver Barry was a customer there. I knew as a personal customer. I hadn't met Mr. Stafford.

463 Q. In your dealings with Mr. Barry, how frequently had you met him during that earlier period?

A. Just the standard customer/banker relationship. I wouldn't

say very often, maybe three or four times a year, something like that.

464 Q. I see. So it wasn't a friendly --

A. No, it was a business relationship.

465 Q. Purely a business relationship?

A. Yes.

466 Q. I see. So then September 1990 is when you took over this particular account, you were in - took over as District Manager in that branch?

A. Yes.

467 Q. One of the accounts that you were dealing with, was this particular account, is that correct?

A. Yes, that is - Century Radio was an account in the branch, and it wasn't in my portfolio, but I suppose to say that I took it over would be - it was being managed really by other people.

468 Q. Yes?

A. At that time.

469 Q. Mr. Eamonn Gallagher has given evidence previously I think, I think he was very much involved with the account at that stage,?

A. Yes.

470 Q. That was in the Credit Department?

A. Yes.

471 Q. The Area Credit Department?

A. Correct.

472 Q. I think at that stage they had a very hands-on role because they were concerned?

A. That is true. Very much so. Eamonn Gallagher and Paul McHale had a very hands-on management of that account.

473 Q. So the extent of your involvement was somewhat limited, was it?

A. Very limited. I would certainly have had no decision-making capacity at all with that account.

474 Q. Yes. If I can refer you please to page 4667. There was a booklet of documents in front of you. A black folder. It may be easier to read from that. They will also appear on screen.

A. Yes.

475 Q. This document is a credit application dated the 19th of September, I believe it is actually the 19th of September, 1990, as there is a second credit application with the full date on it.

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In relation to this, under the heading of 'Facilities Proposed', it states, "Guarantee in favour of Capital Radio ú638,000." Do you see that?

A. Yes, I do, yes.

476 Q. This credit application is made out in the name of "Barry and Stafford, C/O Century Communications Limited. Joint account Oliver Barry and James Stafford, directors of Century Radio."

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Do you recall, at that particular time, both Mr. Barry and Mr. Stafford were directors of Century Communications? I think there was further funding required by the parties at that point in time, Capital Radio were investing in Century Radio and the existing shareholders were asked to put in funds themselves, is that the correct position?

A. Yes, I think that is the position, yes.



477 Q. And the guarantee to the sum of ú638,000 was being sought, is that correct?

A. Yes.

478 Q. And we see the narrative under the 'Facilities Proposed' says, "Guarantee re their portion of funds to comply with agreement to be signed with Capital Radio London." That is what that entry says there.

A. Yes.

479 Q. Did you prepare this credit application?

A. I most - I certainly signed it.

480 Q. Yes?

A. Most likely.

481 Q. And therefore the details that are on this credit application, they would have been provided to you by the parties, is that correct?

A. That is possible, yes. Just looking at, I am looking at, it is quite possible that could have been discussed between both the people within the Credit Department and myself.

482 Q. Yes?

A. This may have been - the request for the guarantees, I might have been just the person that was delegated to just put it together, just to do it on this form. When you talk, just when I see Capital Radio, Capital Radio I know were involved at that time, but they were, the discussion with Capital Radio was never with me, it was always with Eamonn Gallagher and Paul McHale.

483 Q. Yes?

A. So whilst I certainly put this together and signed it, the detail of that I - I don't know how much I would have known about it, because it is very hard for me to transpose

myself to the ten years or eleven years when this was concerned. This, as I say, was a very general discussion, I just put this together. I doubt if I was talking to - I may not have even been talking to any of the people involved here. I certainly never - Mulhearn, I never spoke to Mulhearn.

484 Q. We can get on to that matter in a moment.

A. Yes.

485 Q. Just in relation to credit applications that you usually draft up.

A. Mmm.

486 Q. Do you usually speak to the people involved yourself?

A. Yes.

487 Q. Or are you getting this information from elsewhere?

A. Yes, normally speaking, but I wouldn't call this a normal situation. Normally speaking, you would talk to somebody, you would talk to the person that you were preparing it for.

488 Q. Yes. And that would be, this would be prepared following a meeting with the individuals, is that correct?

A. Well, if you are talking about normal applications, that would be the case, you would talk to the customer and you would prepare your application.

489 Q. Why do you think that you were given this information secondhand rather than speaking directly to the individuals, or is that the case?

A. Well, I suppose I don't ever remember speaking to - like, looking back on this, I would say that this was composed, that there was a discussion which involved Paul McHale and Eamonn Gallagher. There was this, this was a requirement

that was requested. It was - it is a very straightforward and simple requirement, as you can see. They would have just asked me would I put it together, an application from the branch, and I just did it.

490 Q. Would you have been present at the time when this information was being given by the parties?

A. I may have been, it is possible. To answer your question very truthfully, I don't remember very much about this. I don't - the one thing I would just remember about, from Mr. Stafford, my recollection would have been that Mr. Stafford most likely didn't request this. It may have been just done for the third name there, Mr. Oliver Barry but the status quo had to be applied to everybody.

491 Q. There is, I think there is a second application in relation to Mr. Barry on his own?

A. Yes.

492 Q. But this is an application made on behalf of both parties, Mr. Barry and Mr. Stafford?

A. Okay.

493 Q. Now, in relation to the contents of paragraph 15 at page 4668 of this credit application --

A. Yes.

494 Q. -- it says under 'Borrowers Financial Performance and Projections': "A condition precedent on the Capital Radio deal going through is that Capital have bank guarantees that the other directors will have the cash to inject, hence request for this guarantee.

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Security offered is:

1. \$213,000 cash from Stafford with completed letter of

line.

2. ú213,000 bank guarantee from a Director called Mulhearn Irish bank" and handwritten there is "or cash".

"3. ú213,000 bank guarantee Oliver Barry - see separate application."

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First of all, can I ask you that handwritten note "or cash", is that your writing?

A. Yes, it is.

495 Q. And the information in that paragraph, where did you obtain that information?

A. I would say from Oliver Barry. That information, I would say Oliver Barry told me that.

496 Q. You believe Oliver Barry told you --

A. Yes. 'Mulhearn' because I didn't know who Mulhearn was.

497 Q. Yes. And the name 'Mulhearn', was this the first time that you had heard of Mulhearn in relation to this account?

A. Yes, the first time.

498 Q. And it says, "From a director called Mulhearn requesting..." Who described Mr. Mulhearn as a director?

A. Well, Oliver Barry, I presume it could only be Oliver Barry. The only person that spoke to me about Mulhearn was Oliver Barry. I suppose I didn't know who Mulhearn was. He could have used any word, I put in 'director', he may not have said that word, he could have said a shareholder or another word but I put in that word. I remember that - when I heard about Mulhearn when it was in the - when I was previously discussing this with, when my statement was taken, I think even when I heard the name Mulhearn, I picked it up incorrectly. When I mentioned it to Eamonn

Gallagher, he asked for clarification and I say that is when he suspected it might be - obviously the name meant something to him, it meant nothing to me, so I would have gone back and just got clarification on that name, but it is Oliver Barry would have given me this information.

499 Q. OK. Can we take it a step at a time. You are filling in this credit application form based on information that you are receiving from Mr. Oliver Barry?

A. Yes.

500 Q. When you hear the name 'Mulhearn', do you mention it to Mr. Gallagher?

A. After the meeting, because before I would do cash --

501 Q. By meeting this?

A. Well, if I was talking to Oliver Barry, I would - at that time - you have to put this really in context. It was a very very difficult account.

502 Q. Please do.

A. Yes. Any application, any time that I would put anything in writing on this account, I would have talked to Eamonn Gallagher first.

503 Q. Yes.

A. An a lot of, a lot of the information, he would just say to me, he wouldn't react one way or another very much, he would just ask me to put it down in writing. This is what I would have done.

504 Q. OK. Can I just take it a step at a time. First of all, Mr. Barry approaches you in Bank of Ireland, you personally in Bank of Ireland, seeking a guarantee, is that correct or is it Mr. Oliver Barry and Mr. Stafford who are coming to you for a meeting about this guarantee?

A. Well, if you are asking me to be very truthful on this.

505 Q. Yes.

A. I don't remember a meeting at all.

506 Q. You can't remember the meeting at all?

A. No. In fact, all this correspondence that - I would have remembered very very little of this when I was questioned first. I look at this. There is a lot of bits and pieces that are here, I don't remember really any of that at all. I just remember the whole episode of Century. I only remember in a very global, in a very global way that there was a major issue with the account. It was managed elsewhere and obviously bits and pieces. Oliver Barry had an office very close to O'Connell Street. There were occasional phone calls, he may have called down to the office once or twice, because the relationship with the Credit Department wasn't very good. That was really the type of involvement that I had. So for you to be asking me very specific questions, I can tell you globally that I met Mr. Stafford once.

507 Q. Yes?

A. I don't even, I don't even remember what we spoke about, because subsequent to that he dealt with me on a Power of Attorney. He was away, he was away out of Ireland, where he was, I don't know. I never met a man called Mr. Mulhearn. I heard about him. I never met him. The only person I would have had contact with was Mr. Oliver Barry who had an office about 6 or 700 yards from the branch.

508 Q. Yes. In relation to being informed that Mr. Mulhearn was a Director of Century Communications, where do you think that you got that information from?

A. Oliver Barry.

509 Q. From Oliver Barry?

A. Yes.

510 Q. Directly from Oliver Barry?

A. Directly from Oliver Barry because there was nobody else I could have got it from.

511 Q. And he described Mr. Mulhearn as a director, did he?

A. Yeah, probably, yes.

512 Q. Probably?

A. Mmm.

513 Q. Well is it likely that you would define --

A. I would say it is likely. It is likely I wouldn't have put down 'director' if he said he wasn't a director. He might have told me that he was involved, something like that, I might have --

514 Q. Well, in the normal course of events --

A. Certainly in the conversation he would have said to me that Mr. Mulhearn was involved some way with Century.

515 Q. Well, in the normal course of events, if you are told that somebody is involved, would you normally put in their credit application that they are a director?

A. No.

516 Q. No?

A. No.

517 Q. So do you think therefore that you were told that they were a director rather than involved?

A. Yes, OK, as a director then. Like, you are asking, I don't remember what, I don't even remember Oliver Barry saying anything to me, director, I don't know what, what point you are making. Like, whether he is a director, shareholder -

I just want to be precise with you, he may have said a shareholder, could have said a director. If he said director, OK, put down 'director'. I don't know how vital the point is, but if it is a director, director, like, I can't remember the conversation.

518 Q. Well your understanding was that he held a position?

A. He held?

519 Q. Of a Director.

A. Yeah, yes.

520 Q. But to any extent, he was involved with Century Communications?

A. I suppose the only reason why I just kind of doubted it, director, because I reckoned if he was a director, Eamonn Gallagher would have known long before I got this here. I suspect that I made a mistake putting down 'director' if director because if he was a director of the company, Eamonn Gallagher would have known that.

521 Q. Well, did Mr. Gallagher mention it to you afterwards or query it with you afterwards?

A. He wasn't aware - the one thing I can remember at that time, Eamonn Gallagher was not aware that Mr. Mulhearn was involved.

522 Q. So the credit application went in, Mr. Gallagher looked at the credit application and came back to you and asked you about Mr. Mulhearn, this director that he hadn't heard of before?

A. My recollection, if you are trying to be really precise on it, I think that as Oliver Barry left the office, because of the type of account it was, this was not treated like any ordinary account.



523 Q. Yes?

A. Right.

524 Q. Yes.

A. Any time that Oliver Barry might have even phoned or somebody from his office phoned or phoned about anything, I would contact Eamonn Gallagher just to say what had happened. What would have happened in this case, I would have said that they were in looking for this or whatever, I would have mentioned Mulhearn's name. I know that the first time that Eamonn heard about Mulhearn was I would have told him on the telephone.

525 Q. And what was his reaction, do you recall?

A. Surprise.

526 Q. He was surprised?

A. Yes.

527 Q. And as a result of that surprise that he expressed to you, what steps did you take? Did you clarify the matter?

A. I think that at the time I gave him a different name. I might have said Mulbrennan or something else. He just said to me, he was just - he obviously knew Mulhearn. Yes, he said there was a Mulhearn, I think I went back and clarified was it Mulhearn? That is all.

528 Q. And with whom did you clarify it?

A. With Oliver Barry.

529 Q. With Oliver Barry?

A. Yes.

530 Q. Would you have rung him or written to him?

A. I don't know. The only reason I can, the only thing I know about this, the only thing I remember about this is when he mentioned Mulhearn to me, I spoke to Eamonn Gallagher and I

gave - Eamonn Gallagher questioned me because I don't think I gave him the right name. He was obviously interested in this, it was the first time he heard it. He asked for clarification. I know he came and he was kind of asking me, "Are you sure it is not Mulhearn?" All I would have done in that case, I don't know what I did. If you want to be very precise, I would have more likely gone and asked Oliver Barry and asked him what was that name again? All I would have done was just got clarification for Eamonn.

531 Q. Yes.

A. You know?

532 Q. Yes. Just if I can refer you to page 4669. This is an application by Mr. Oliver Barry dated the 19th of September, 1990. Just for the matter of clarifying the date on the earlier credit application, am I correct in saying that these two applications went in roughly at the same time? This application by Mr. Oliver Barry is in relation to --

A. Well, I would say a good guess, the fact that two are the 19th of September, I suspect, yes, I suspect it is 1990, yes.

533 Q. If you look down to 'Facilities Proposed: Bank Guarantee ú213,000'. Under 'Purpose' it says, "To guarantee to Capital Radio Oliver Barry's shares of directors' contribution to comply with conditions precedent in agreement document between Century Communications Limited and Capital Radio London." So they seem to be made at the same time?

A. They seem to be, yes.

534 Q. And in relation to this application, did you prepare this application also?

A. Yes, I have initialled it anyhow, yes.

535 Q. And if we consider page 4670 please, and paragraph 16 under 'Manager's Comments and Recommendations', are these yours comments and recommendations here, can you recall?

A. They are, yes.

536 Q. Yes. It says, "A condition precedent before Capital Radio will complete the agreement with Century Communications is that the shareholders inject a further €950,000. This will have to be met in full by Stafford, Barry and John Mulhearn if the other shareholders do not take up their options."

.

In relation this definition here or this phrase that you use here "as a condition precedent before Capital Radio will complete the agreement with Century Communications, is that the shareholders inject a further €950,000. This will have to be met in full by Stafford, Barry and John Mulhearn".

.

Am I right in thinking that that indicates that John Mulhearn is a shareholder or that is the understanding that you had?

A. Well, in truth, I wouldn't, I couldn't have differentiated - if I put in 'shareholder' there, it was because it, I became aware that Mr. Mulhearn was involved. The other thing there, you talk about the phraseology of the thing "a condition precedent before Capital Radio" - that is hardly, it is not, it wouldn't have been my normal type of language. Just looking at that, and some of the, some of

the other things here, this application could have been - at that time, I would say there was lots of requests, like, this account was in difficulty. When you talk about this guarantee, I suspect that a lot of what is on this, some of the stuff that is on this, while there might be other bits and pieces, a lot of the stuff on this would have been taken off a previous application, because I would say that there were numerous requests made for these guarantees and things.

537 Q. The only requests that come in at this particular point in time, based on the information that has been provided to us by Bank of Ireland in relation to the 19th of September, 1990, are these two applications.

.

What I want to find out from you if I could please, Mr. Corbett, is in this particular paragraph Mr. Mulhearn seems to be referred to as a shareholder. In the earlier document he appears to be described as a director.

A. Mmm.

538 Q. So what was your understanding of his involvement with Century Radio?

A. Well, it is very difficult for me to answer that, insofar as Oliver Barry would have told me that Mr. Mulhearn was somehow involved. In one place I used 'director', in the other place I used 'shareholder'. I really knew nothing about - I knew nothing about any involvement of Mr. Mulhearn. I didn't know whether he was a shareholder. I didn't know what kind of an association he had with it to be quite honest.

539 Q. And you didn't look in that?

A. No. Because again, to put that into, this thing into context. When this application - at that time I would, while it is an application form, it would be mainly information going up to the Credit Department because they are managing the account. They would really be dealing with this. I would give them as much information as I got. If I was told that Mr. Mulhearn was involved, I would tell Eamonn Gallagher Mr. Mulhearn was involved. I certainly wouldn't be going searching and finding out. I wouldn't be ringing Mr. Mulhearn. No matter who he would tell me was involved, I would tell Eamonn Gallagher and Eamonn Gallagher would either, in a lot of the cases, the only time he never reacted to anything, he certainly reacted to the name Mulhearn. I wouldn't do any further investigation on it because this was an account that - any information I got on this was from Oliver Barry. I put it down on paper and sent it up. I didn't really investigate it. If Eamonn Gallagher was going to do it, then it would be a meeting with everybody.

540 Q. Was your understanding of Mr. Mulhearn's involvement with Century Communications similar to the involvement of Mr. Barry and Mr. Stafford?

A. No, it wouldn't because - no, it couldn't have been. I would - I heard -- when I heard that Mr. Mulhearn was involved, I knew that Mr. Stafford was very much involved in Century Radio. I knew that Oliver Barry was involved. I knew that there were other small people, other small bits and pieces like Terry Wogan, I knew because of his name. When I heard it, I would have known that, but I certainly would not have, I would not feel, I wouldn't have thought

at the time that Mr. Mulhearn had any, the same involvement as Mr. Barry or Mr. Stafford.

541 Q. Well, reading on in your memo it says: "10 percent interest will be paid to shareholders for these funds. Full guarantee is requested in joint names of Barry and Stafford." Mulhearn is referred to as "AN Other" and "his involvement is confidential."

A. Yes.

542 Q. So given that you understand his involvement is confidential, what you have said earlier was you knew of Mr. Stafford's involvement and you knew of Mr. Barry's involvement, but Mr. Mulhearn's involvement was to be kept confidential?

A. Mmm. Well, this is an information document to Mr. Gallagher.

543 Q. Yes?

A. The only reason I would - Oliver Barry would have said to me, the only reason why I put that in there was that 'Mulhearn' is referred to as 'AN Other', that is, I was making sure that Eamonn Gallagher had full information. That was Oliver Barry would have said that his involvement was confidential. Now, it is quite possible, like, when Eamonn Gallagher received this, Eamonn Gallagher might have investigated this. I don't know whether you talked to him on not on this. I would have only been making sure that any information I would have got was given to the people dealing with the account. So I was really a conduit of information.

544 Q. Were they reliant on the information that you were providing them?

A. Well, again if - if there was anything to be, any material change in this account, it was going to be done with Mr. Barry, Mr. Stafford and all the other people, Mr. Gallagher and it certainly would not be done on my recommendation. Eamonn Gallagher, at that time, was a hands-on manager on that account. All I was really doing was any information that I would have got, I would just have passed it on to him. That is all. He certainly wouldn't be relying on any information that I gave him to make any decision.

545 Q. He would follow it up, he would follow-up on it?

A. If he was going to approve any of this, if he was going to give any additional facilities here, he was certainly going to be sure of his facts and he would, every single bit of this would be teased out and he would be, it would be teased out in the proper way, it would be done properly.

546 Q. Mmm. I think Bank of Ireland ultimately did give the guarantees that were sought, is that correct?

A. I understand they did. They did give one to Mr. Barry, I don't think Mr. Stafford.

547 Q. Yes. Well, I think monies were lodged by Mr. Stafford?

A. Yes, monies were lodged by Mr. Stafford.

548 Q. In relation to the joint account. If we can have a look at page 4661 please. Can you tell me if that is your own writing?

A. 4?

549 Q. 4661.

A. 4671?

550 Q. 4661.

A. No, that is not my writing.

551 Q. That is not your writing there?

A. No.

552 Q. Do you know whose writing that is?

A. I don't know whose writing it is, but I would suspect it is our credit rating team, our auditors, the people who would audit the branch.

553 Q. Yes. Do you remember seeing this document?

A. I would have seen it the first day.

554 Q. Yes. Well it is an undated document.

A. Yeah.

555 Q. But one of the matters down at the third last sentence says, "Obtain up-to-date Statement of Affairs in order to establish repayment capacity."

A. Mmm.

556 Q. Would that have been an instruction to yourself or a request to yourself?

A. When the - it would be a request to the branch if there wasn't sufficient information on a file, to go and get it, and that would have been an instruction, yes, to the branch.

557 Q. I think ultimately on the 22/1/91 there is a fax from yourself. This is page 4657 please.

A. Mmm.

558 Q. And there is a fax from yourself to Mr. Paul McHale?

A. Yeah.

559 Q. And attached to it are certain schedules, if we can have a look at page 4658 please.

A. Mm-hmm.

560 Q. I think these were the ones that went with that particular fax, this information?

A. Yeah.



561 Q. Yes, is that correct?

A. Well, if there were, if there were, if they were together in the file, it would suggest --

562 Q. They were to go in the file?

A. Yes.

563 Q. And can you tell the Sole Member please, where did you obtain this particular information? This is information that you are sending to Mr. McHale.

A. Well, it probably came from Oliver Barry's office.

564 Q. You think it may have come from Oliver Barry's office?

A. Yes.

565 Q. Well, if we have a look at the first paragraph on page 4658, the first set of figures, we have a schedule, and I think this may have been monies due to Mr. Barry, am I correct in that interpretation? It is page 4658.

A. Yes, I am looking at it here, yes.

566 Q. Yes.

A. Yes.

567 Q. We have Aer Lingus ú3,250; Century Radio, ú85,000; Century Radio, ú40,000, and Century Radio ú1,750.

A. Yes.

568 Q. But beside the first two Century Radio entries there are question-marks. In relation to that ú85,000 and that ú40,000, given that instructions coming from the Credit Department are to find out about Mr. Barry's capacity to repay, were those question-marks relating to what is the basis of this money? When are we going to get this money, or what do they relate to please?

A. Well, your previous question, if you go back to 4661.

569 Q. Yes.

A. Are you interpreting from that that I was asked to go and get the Statement of Affairs and this is a result?

570 Q. I don't know if that is the position.

A. No, it is not. This paper here was the graders or the auditors to come into the branch to do a review of the accounts and do a select review of the accounts, they put the accounts on it. The accounts go there on the file. This would not have come from the Credit Department who were managing the account - these people - this would really be a statement.

571 Q. Right?

A. They would have that statement. Now, in the case of the Century account, the possibility is that these people knew there was trouble with the Century account so they did a fairly comprehensive - this would have been left on the file, we wouldn't have acted on this straightaway because this - it would be different if the account wasn't being managed hands-on every single day. The account was being managed hands-on every single day by the Credit Department so that document there would not have been of, it would be a record just really for the people who looked at the file to say they looked at it and put a few comments on it.

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The Statement of Affairs would not have, this would not have arisen because of this, of the document that is up, because of that document there. (Witness indicating).

572 Q. So your fax wasn't pursuant to this handwritten note?

A. The fax was sending the handwritten note all right, the fax was sending the handwritten note up to Paul McHale.

573 Q. My question was your fax wasn't pursuant to this particular

note?

A. No, that is true.

574 Q. Yes. Fine. So why were you providing this information to Mr. McHale?

A. Because I would say it was probably a request for more money.

575 Q. A request for more money?

A. I would say there was a request for more money or a request for a temporary facility or something like that. Maybe a bridging facility, some sort of a facility, or for some reason if Paul McHale or Eamonn Gallagher had had a meeting with Oliver Barry or there had been some contact, they may have asked for the provision of this.

576 Q. Yes. And on page 4658, do you interpret that to be some sort of a Statement of Affairs of monies?

A. I would say money owed and money coming in.

577 Q. Money owed and money coming in. In relation to the ú85,000 and the ú40,000 from Century Radio, were you given any explanation as to why those amounts were due to Mr. Barry?

A. Again the truthful answer is I don't know. But I suppose, because of the size of them, they might have been. Somebody was obviously querying them.

578 Q. Are they your question-marks that are put in there beside "Century Radio"?

A. I don't know really.

579 Q. You don't know?

A. No.

580 Q. Did you ask about that ú85,000 and ú40,000?

A. Well, it would all depend on what, why - it would all depended on who requested the Statement of Affairs.

581 Q. Yes?

A. It would all depend on who was examining the Statement of Affairs and it would depend on if money was required, if Oliver Barry or Century, if they were looking for money. If Oliver Barry was looking for money, obviously this was going to be queried. Like, whoever was going, this was going to be queried if, depending on why this was asked. If this was just from an information point of view, somebody would just look at it and say "fair enough," but if there was a request in, obviously I would say that those two figures would be queried and the size of them, and why money of that magnitude was owed to Oliver Barry from Century.

582 Q. Yes. And do you know if any such queries were made?

A. I don't. I am not sure whether they actually were or not. I couldn't be sure of that.

583 Q. Mm-hmm. Well there is no documentation provided to the Tribunal by Bank of Ireland that would give details of that ú85,000 and that ú40,000. Would there be such documents on the files if there were any answers given?

A. I would say there would be, yeah.

584 Q. There would be?

A. I would also, I would believe that with the hands-on management of that account --

585 Q. Yes?

A. -- that if that money was owed to Oliver Barry, Eamonn Gallagher would have known about it. He would have known if that money was owed by Century to Oliver Barry. It would be a confirmation of something he knew already, or if he wasn't sure about it. That is why those question-marks

might be there.

586 Q. Well, on the 23rd of January '91, page 4651 please, there is an application by Quality Artistes Management Limited, and this is for an increase in the overdraft to ú60,000, "temporary increase to pay various creditors", is that correct? Page 4651, a credit application dated the 23rd of January, 1991.

A. Yes, I see that, yes.

587 Q. It is an application by Quality Artistes Management Limited?

A. Yes.

588 Q. And am I correct in saying that what is sought in this application is that the overdraft would increase to ú60,000?

A. Yes.

589 Q. Yes. And if we have a look at page 4652 please. Under 'Payment Details Source and Capacity to Repay'; "Account to revert to original permission of ú25,000 on receipt of ú40,000 from Century Radio."

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Can you tell me, this seems to be another credit application that is filled in by yourself?

A. Yes.

590 Q. Did you ask Mr. Barry about this ú40,000 due from Century Radio?

A. I suspect that when Oliver Barry would have wanted that facility on that particular account, that he would have said that he was owed money or there was money coming in or money coming out and that he would have the account back to its original facility over a period of time.

591 Q. Yes?

A. And I would, the modus operandi at the time is that I would have phoned the Credit Department and just mentioned that this request was in, and that is when they would have said "Well get the statement," get this statement.

592 Q. Yes?

A. They would say, "Well give us the details of the money in and the money out." So on the Century Radio, certainly the bank would satisfy itself, I don't know, like - moving through this, like, I seem to be - some of the answers seem to be kind of emerging as I move through it.

593 Q. Yes?

A. Because this Statement of Affairs would appear to have been accompanying this thing, this application, so he obviously was looking for a facility and he was, if he was looking for the facility, the request would be asked, well, if it is a temporary facility, how this got back to, back to the original position?

594 Q. Yes.

A. This is where this debtors and creditors listing would have emerged. Certainly with two large ones from Century Radio, again if this facility was approved, I don't know whether you have a document here to say that he got the money, but if he got the money on a temporary basis, certainly the people in the Credit Department would be quite, they would have satisfied themselves that that money was genuinely owed from Century Radio and that it was coming in within a certain time frame.

595 Q. You say that the people in the Credit Department would have satisfied themselves that there was money coming in?

A. Yes, because they would be very much aware, they would have a fair idea of the Century Radio business as well.

596 Q. Well, were you the person who asked about the \$40,000 or would that have been the Credit Department?

A. Well, I don't know whether anyone would have asked.

597 Q. You don't know whether anyone asked?

A. The Statement of Affairs, that is the Statement of Affairs would go, the bank would look of it. It obviously came in, it was faxed. It would seem to me, the fact that it was faxed up to Paul McHale was that the application may have, might have gone up or might have been requested and Paul McHale would say, "Look, I need to have details of this." So it came in, it was faxed up to him. It would most likely probably have been Paul McHale, because again to take this in context, this account was being managed by the Credit Department. I went in there in November, or September --

598 Q. Sorry, I don't mean to interrupt you. I just want to find out did you ask about this \$40,000 being due from Century Communications and the basis for it, to the best of your recollection?

A. To the best of my recollection, I don't know. This is eleven years ago. I don't know. I would hardly remember any of this only for this has been put in front of me.

599 Q. Yes.

A. I wouldn't remember what went on in a conversation really at all at that time.

600 Q. And we have no papers indicating that the Area Credit Department looked into this \$40,000 or the basis of it or why it was due. Would there be such papers?

A. I doubt there would be any papers about it. I would say the way the account was being managed, Eamonn Gallagher would clearly know whether it was or whether it wasn't due, that would be my view.

601 Q. You think Mr. Gallagher would know whether the monies were due?

A. This account was managed very tightly by the Credit Department.

602 Q. Yes. I think - page 4648 please, I think this is a letter dated the 7th of February, 1991, it is to Oliver Barry and I think it was written by yourself?

A. 4648?

603 Q. 4648 please.

A. Yes.

604 Q. Yes. And it reads: "As monies have not been made available by you, the bank has had no alternative but to open a bridging term loan of ú230,000 in your name as per payments due by you to Century Communications plc," under "date 1st December, 1990, and 1st February, '91."

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Is this in relation to the guarantee that was earlier offered? It goes on to say: "That payments had to be made by us on foot of our guarantee to Capital Radio plc."

A. It would seem to me that Oliver was supposed to give money to Capital Radio.

605 Q. Yes?

A. He didn't do that, and the bank --

606 Q. Opened a bridging loan account as a result of that?

A. Yes.

607 Q. Yes.



A. There is writing on that letter.

608 Q. Yes?

A. Which is not my writing.

609 Q. Yes. Do you know whose writing it is?

A. No, I don't.

610 Q. No. Do you think you sent out that letter?

A. I would say I sent out that letter, on instruction.

611 Q. Yes. If I can refer you to page 4592 please. And this appears to be a note written by yourself, an internal memorandum to Mr. Michael Wolf, dated the 11th of July, 1991, and you say, "Oliver called today to update me on his present position as was unaware that I was going on holidays. Capital Radio have offered to buy his shares in Century for the original amount of his investment ú900,000. They wish to pay ú500,000 now and ú400,000 1st July, 1992 and retain Oliver as a consultant for 12 months."

Do you recall being told that by Mr. Oliver Barry, that Capital Radio wished, at this stage in July 1991, to buy shares?

A. Well, I don't remember it, but just looking at the memorandum, I would say that he did, he did call to the office and he did tell me that.

612 Q. Well, you wouldn't have written it down if he hadn't?

A. I wouldn't have written it down if he didn't, yes.

613 Q. It goes on, "Typically, Oliver wants 2.1 million for his shares. He expects matters to be finalised within two to three weeks". Why do you have the phrase "typically" at the beginning of that sentence there?

A. I suppose during that time Oliver Barry was under a lot of

pressure and he wanted to get the maximum for everything he had. He would obviously have wanted to get as much as he could for those shares.

614 Q. I think around about this time Mr. Barry had come to the bank in relation to the release of the bank's security over lands in Mulhuddart as he wished to develop a golf course there, is that correct?

A. Yes.

615 Q. And if we can have a look at page 4629 please, and this is a file memo --

A. Mmm.

616 Q. -- of Oliver Barry and related accounts, position of accounts at 9th of August, 1991. It refers to a meeting in Area Dublin Credit Department 9/8/91. Present were Mr. Flood, Mr. Barry, Mr. Eamonn Gallagher and yourself?

A. Yes.

617 Q. Do you recall being at that meeting?

A. I remember the meeting, only for the fact that I know, I certainly was at a meeting where Gerard Flood was there. I was at a meeting with him.

618 Q. If we look at page 4630 please.

A. Mmm.

619 Q. And this is your memo of that particular meeting, the typed name at the bottom of the memo is your name?

A. That's right, yes.

620 Q. And you have "PS, visited O. Barry's golf course on Friday evening 9/8/91. It is unbelievable the amount of work that has been done. All high quality inputs. A lot of machinery operating, and Oliver told me he has put in ú250,000 of his own money so far."

Were you surprised that Mr. Barry was putting in this money into the golf course at this stage?

A. I was.

621 Q. Why were you surprised at that?

A. Well, well I knew his own situation, the fact that we had, the bank had to put a guarantee when he didn't come up with his money, and that if he was developing a golf course at that time, like, it certainly was, it was, I suppose, you would have to wonder how he was doing it.

622 Q. Yes. And you have, "Oliver told me he has put in ú250,000 of his own money so far." Is that a correct recollection of what Mr. Barry told you, that he had ú250,000 of his own money to put in?

A. Well, I would say if I put it down there, he would have said it. I would say that is a precis of a conversation that I would have had out there, and I presume it is what he actually said.

623 Q. Yes. Then on the 3rd of October, '91, page 4622. There was a meeting with Mr. Oliver Barry on the 1/10/91. This is the memo dated the 3rd of October, '91, and present at that meeting were Oliver Barry, Ger Flood, E Gallagher and P Corbett. This again is in relation to the release of the deeds over the lands that we were talking about a moment ago. We have, "Oliver Barry wished to negotiate the price that the bank would accept for release of the deeds. Offered ú150,000 which would be borrowed from NIB. E Gallagher advised the bank position. ú200,000 reduction in personal debt plus Century shares which would be placed in nominee company and would be sold by a certain date if

personal borrowing was not substantially reduced. Eamonn advised that a loan offer letter would be drawn up. The conditions in which he would enforce on default."

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It goes on, if we skip the next paragraph it says, "Oliver Barry was not happy that bank would have control over Century shares."

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Do you recall being told by Mr. Barry why he was not happy with the bank having control over the Century shares?

A. No. That meeting, if Eamonn Gallagher was at that meeting, Eamonn Gallagher was the person who was asking all the questions. He would have been putting those conditions in.

624 Q. Yes?

A. If he was looking for the Century shares, I presume he was looking for them because he thought they were worth something.

625 Q. Do you recall why Mr. Barry wasn't happy that the bank would have control over the shares?

A. I don't, no.

626 Q. And Mr. Gallagher has identified in the note on the bottom of the page - this is your memo, this is his note at the bottom of the page, "OB met with E Gallagher on 24th of September. He advised that he was not beneficial owner of 33 percent of shares in his name." Do you recall discussing this matter with Mr. Gallagher?

A. No.

627 Q. Or can you recall any discussion as to who was the beneficial owner of the 33 percent of the shares?

A. No.

628 Q. No. And finally, if I could refer you to page 4664 please, this is another memo by yourself dated the 7/11/90, and it is pursuant to a meeting with Mr. Oliver Barry. It reads: "Oliver Barry continues to be very annoyed with Bank of Ireland. Reason as follows: Firstly, Jim Stafford wishes to put Century Radio into receivership Christmas Eve 1989 at major loss to the bank. Oliver Barry did not agree."

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Do you recall Mr. Barry saying that to you that Mr. Stafford wished to put Century Radio into liquidation, into receivership?

A. I don't --

629 Q. At Christmas Eve?

A. I don't recollect it now. I don't think I would have put it down there if he didn't say it.

630 Q. "Oliver Barry neglected his own business from January 1990 to July 1990 and managed Century Radio. Cutting costs, firing good people he had head-hunted, used his political clout to get what is now euphemistically called the 'level playing field'." Do you recall Mr. Barry saying that to you?

A. Well, not particular that. What I would have, what I would recollect is from time to time he used to speak about the advertising, that Century Radio were not getting their fair share, they didn't have a level playing field with RTE. On a global basis he might have said that to me once or twice, and when - again if he just raised it again, that is all, that is what - that is what I remember, that what he would have been saying was that he wanted to have the same for himself and he wanted Century and RTE to be operating off

the same level.

631 Q. Well, were you surprised at being told "used his political clout to get what is now euphemistically called the 'level playing field'" --

MR. WALSH: Sorry, asking his witness for his opinion. I think he is a witness as to fact, not as to opinion, Sir.

MS. O'RAW: I don't think this is asking his opinion. I just asked was he surprised?

MR. WALSH: It is asking. That is a question asking his reaction. His reaction follows his opinion.

MR. WALSH: Anyway, Sir, he says he doesn't recall that being said. He recalls something else.

632 Q. MS. O'RAW: Mr. Corbett, were you ever on a previous occasion or a subsequent occasion, told by Mr. Barry of his political clout or anything of that nature?

A. No. The only thing I knew about - I knew Oliver Barry was associated with the Fianna Fail Party.

633 Q. How did you know that?

A. From just general conversation.

634 Q. With Mr. Barry?

A. Yes.

635 Q. What did he say to you?

A. In general conversation with Mr. Barry, a lot of conversation, certainly in the '83 to '85 period, I would have had conversations with Oliver Barry. Oliver Barry was

very interested in hurling and football. He was also interested in politics like myself. I would have known that he was a supporter of Fianna Fail, and the truth of the matter that I would have thought that he would have, being from Cork from his, where he came from, that that - that is where his political affiliation came from.

636 Q. Yes?

A. Certainly anything to do with, with what is going on I would not have been aware of anything like that, it would have been, I would have known that he was interested in politics and that he was Fianna Fail.

637 Q. Yes?

A. We, it was just in general conversation.

638 Q. Yes. And do you understand that phrase "used his political clout", was that your phrase or was that the phrase --

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MR. WALSH: Sorry, Mr. Chairman --

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CHAIRMAN: Yes?

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MR. WALSH: The witness, in giving evidence, he says he does not recall Mr. Barry using the phrase. That should be the end of it.

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CHAIRMAN: Well...

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MS. O'RAW: Sorry, I don't think actually Mr. Corbett has said he doesn't recall Mr. Barry using that phrase.

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MR. WALSH: That is the note I took of his evidence, when

that was read out to him he said, "I don't recall Mr. Barry saying 'political clout from time to time'. He said he wanted to get a fair share of the field, that he wanted Century and RTE to be operating off the same --

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MS. O'RAW: Perhaps I could clarify the matter in the same way.

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CHAIRMAN: Yes, to clear it up. Just let's find out whether he actually did say it.

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MR. WALSH: If we scroll back we will see what he actually did say. I haven't got the facilities to scroll back.

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MS. O'RAW: Perhaps Mr. Walsh might not object to me asking "is that your phrase 'political clout', Mr. Corbett?"

A. Well, I wrote it.

639 Q. You wrote it?

A. I wrote it down there. I would think that that word 'political', I might have used that in a wider sense, that it may not, like --

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CHAIRMAN: No, I can't find the phrase 'political clout' except from Ms. O'Raw.

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MR. WALSH: I think it was very shortly after there is a reference to page 4664 on the 7th of November, 1990.

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MS. O'RAW: I think actually if we start at page, at line 18 on page 142.



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CHAIRMAN: Yes. Line 18.

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MS. O'RAW: I think I started reading from page 46 --

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CHAIRMAN: "Level playing field..."

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MS. O'RAW: Oliver neglected his own business from January 1990 to July 1990 and managed Century Radio cutting costs, firing good people he had head-hunted, used his political clout do get what is now euphemistically called the 'level playing field'." Do you recall Mr. Barry saying that to you?"

Answer: "Well not particularly" - I am afraid the transcript doesn't read correctly. "What I would recollect is from time to time he used to speak about the advertising on, that Century Radio were not getting their fair share. They didn't have a level playing field with RTE on a global basis. He might have said that to me once or twice and when again if he just raised it, again that is all, that is what - that is what I remember, that he would have been saying, was that he wanted to have the same for himself and he wanted Century and RTE to be operating off the same level..."

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CHAIRMAN: Then you went on to say, "Well were you being surprised at being told "used his political clout to get what is now euphemistically called the 'level playing field'?" And Mr. Walsh interpreted, correctly, so I think because I don't see any reference back to the political

clout phrase --

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MR. WALSH: Yes.

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MS. O'RAW: Well, Sir, I don't think the witness has actually said whether the phrase was his own or whether it had been said to him by Mr. Barry. It was merely that I was trying to clarify.

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MR. WALSH: If he can't recall it, he can't recall it. It is as simple as that. He has the paperwork in front of him. He has read it and he still says he can't recall. I don't think he can be cross-examined further on the matter.

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CHAIRMAN: I think that Mr. Walsh is making a fair point there, that the witness has a very poor recollection of the actual day-to-day, he is essentially relying on from time to time that he wrote memoranda of which he says in fact he has little or no recollection.

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MS. O'RAW: Yes, thank you, Sir. I have no further questions for you Mr. Corbett but some of My Friends may do so.

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MR. WALSH: I have no questions, Mr. Chairman.

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CHAIRMAN: Well nobody else has any questions. Thank you very much for coming down.

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MS. O'RAW: Thank you, Mr. Corbett.

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THE WITNESS THEN WITHDREW.

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MS. O'RAW: The next witness this afternoon is Mr. Seamus O'Neill.

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CHAIRMAN: Is Mr. O'Neill going to be long because I mean we have been sitting since half past nine? Mr. O'Neill is what --

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MS. O'RAW: I would say Mr. O'Neill may take an hour, Sir, but I would try to have him finished possibly by half past four.

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CHAIRMAN: I tell you what, we will take a five-minute break and we will try to get him finished, not to have him coming back.

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MS. O'RAW: Thank you, Sir.

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

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CHAIRMAN: I understand that we will have to rise at half past four whether we are finished or not. There is no alternative.

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MS. O'RAW: Yes, Sir.

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CHAIRMAN: Because we won't have staff.

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MS. O'RAW: Yes.

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SEAMUS O'NEILL, HAVING BEEN SWORN, WAS EXAMINED BY MS.

O'RAW AS FOLLOWS:

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640 Q. MS. O'RAW: Good afternoon, Mr. O'Neill.

A. Good afternoon.

641 Q. I believe on the 1st of May, 1989, you commenced employment with Century Radio?

A. That's correct.

642 Q. And your title there I think was Head of Sales and Marketing?

A. That's correct.

643 Q. Prior to doing so, I think you were a director in the Irish Times?

A. That's correct.

644 Q. And your position there also involved marketing?

A. It involved advertising. I was General Advertisement Manager and Director.

645 Q. And Director of the Board. How long had you been in the Irish Times when you were approached by Century Radio?

A. I joined the Irish Times in 1980, January 1980, so nine years.

646 Q. You had been there nine years. And you were quite successful in your position in the Irish Times?

A. I think so.

647 Q. Isn't that right? Well do all managers become directors of the board?

A. No.

648 Q. No. So you were doing quite well?

A. Yeah, I had done very well actually.

649 Q. Yes. Can I ask you when were you first approached to join Century Communications?

A. In early January 19 - oh, in early January 1989.

650 Q. Yes. Well, the license to provide the National Radio Licence was awarded to Century on the 18th of January, 1989?

A. Yes.

651 Q. Was it prior to that that you were approached?

A. Yes.

652 Q. It was prior to that?

A. Yes.

653 Q. How much prior to that, do you recall?

A. Well, it can only have been a number of days.

654 Q. I see.

A. Two weeks, some time early, very early in January.

655 Q. Yes. It must have been the first few days then in January?

A. Yes, I think so.

656 Q. If that is the case, when you were approached, what was said to you?

A. I was approached by telephone, by a head-hunter, a man called Mr. Herriott who said that he had a fabulous proposition for me and that he wanted me to go and meet a number of well-known business people.

657 Q. Yes. And were you given any further details?

A. At that point, I don't think so, I mean, I had a number of these calls, not in relation to Century Radio but in relation to other things.

658 Q. Yes?

A. And, you know, I just said, "Very good, that is very nice, I will think about it." I think he then phoned me again, it was then that he elaborated onto the fact that these people were applying for a new National Radio License.

659 Q. Yes?

A. And would I be prepared to go along and meet with them.

660 Q. Yes. And you went along and met with these individuals?

A. Yes, I was stimulated by the concept, I was stimulated by the concept.

661 Q. They were applying for the new National Radio Franchise, and there was a possibility of a position there for you, is that correct?

A. Yes.

662 Q. And were you told what that position would be?

A. The position would be in sales and marketing, I think.

663 Q. Yes.

A. I was asked to meet them and I am not absolutely sure if, you know, initially what the position was, was resolved.

664 Q. And who did you meet?

A. I met a Mr. Crowley, a Mr. Barry and a Mr. Stafford.

665 Q. Mr. Crowley, Mr. Barry and Mr. Stafford?

A. Yes.

666 Q. Where did you meet them?

A. My first meeting with them was in a room in the Shelbourne Hotel.

667 Q. Yes. And again was this prior to the license being awarded?

A. No.

668 Q. No?

A. No.

669 Q. This was subsequent?

A. I believe it was subsequent, yes.

670 Q. And what was said to you at that stage?

A. They discussed the proposition that, you know, this was a fabulous opportunity for me, that they were very successful business people, that they had a very well funded project, and that, you know, anybody and everybody that was going to be associated with it would be very successful.

671 Q. Yes?

A. It stimulated me as a project.

672 Q. Yes. When you were first approached then, the license hadn't been awarded. When you met with anyone, it was post the license being awarded, is that correct?

A. That's correct. But I don't think the contract had been signed. The license might have been awarded but the contract for the license had not been signed.

673 Q. Yes. You were subsequently enticed away from the Irish Times over to Century Radio?

A. Yes.

674 Q. Why were you enticed away?

A. I think I was enticed by the, I suppose the opportunity that I was going to afford myself to get into a different communications business, in other words, after being in newspapers for such a long time, that here was an opportunity to go into something that was very exciting, i.e. a new national radio station, so I suppose that was the enticement.

675 Q. And what sort of security was being offered to you?

A. Well, I had two forms of security; one was a payment which was a sort of, sort of known in the trade as a 'golden

hello'.

676 Q. An inducement payment?

A. An inducement payment to break service with the Irish Times, so there was that, and I then further got another, I suppose, secured payment, that if the license was not signed, if the contract wasn't entered into by the promoters, that a sum of money would come my way, so I felt that to the, I had, to the best of my ability, protected myself.

677 Q. And without discussing figures, was the salary comparable with that in the Irish Times?

A. It was, yeah.

678 Q. Was it higher than that in the Irish Times?

A. It wasn't much higher, no.

679 Q. It wasn't much higher, but it was broadly similar?

A. Yes.

680 Q. Yes. And when you met with Mr. Crowley and Mr. Barry and Mr. Stafford, what was the level of optimism about the project?

A. Oh, this was a done deal. This was going to happen, there is no question about this, we are all successful business people, this is a fantastic and fabulous opportunity.

681 Q. So everybody saw it as being something that would go very well?

A. Yes.

682 Q. Yes?

A. Oh, everybody was very optimistic.

683 Q. Were there any hiccups or words of caution or anything that you were told may be hurdles that would have to be overcome or anything of that nature?



A. No. The only thing that, you know, when the negotiations got into an intensive stage, that it hadn't been concluded, that the license hadn't actually been signed by the promoters.

684 Q. Yes. So you were very happy to leave the Irish Times?

A. I was very sad to leave the Irish Times.

685 Q. But you were happy to join Century?

A. I was happy for the opportunity to take on a whole new marketing thrust in my career.

686 Q. Yes. And in relation to the future of Century Communications, did you believe, or given what you were coming from and what you were going to, did you think it would have a good future?

A. Oh absolutely. The sentiment that was held in the advertising agencies and the major advertisers for something that would offer an alternative to RTE Radio was substantial, and there was a great optimism in the whole advertising industry. People genuinely wanted it to succeed.

687 Q. So you felt that the advertisers were backing --

A. Oh, yes.

688 Q. And would back Century?

A. Yes, the soundings that I would have taken before I actually would have signed on the dotted line was that there was this great warmth and hope and optimism for the new national radio station.

689 Q. Yes. I think there is a document by Mr. Stafford which says that you didn't initially leave when you were offered the position, you didn't initially take up the position, you actually turned it down?

A. I think I turned it down more than once, yes.

690 Q. You were approached a number of times?

A. Yes.

691 Q. But what changed your mind?

A. I had done more research and I thought about it more often, and I reviewed my circumstances in the future with the Irish Times.

692 Q. Yes. Had you doubts at all about the possible successful Century?

A. Absolutely not.

693 Q. Yes. It seemed to have the support of advertisers?

A. Yes.

694 Q. Yes?

A. I felt it was going to be a great success.

695 Q. At the time of the application to the IRTC, and at the time the written submission was made to the IRTC, which was on the 16th of December, 1988, there were projections, financial projections incorporated into that submission, and part of those projections incorporated the turnover, the advertising revenue that would come in. Do you recall seeing those projections?

A. I didn't see those projections, no.

696 Q. You never saw those?

A. I never saw that document.

697 Q. Have you seen it subsequently?

A. If it is in here, yes.

698 Q. It was part of the documents that were circulated to you?

A. Yes, I would have seen it, yes.

699 Q. Can you recall in relation to the particular figures in that application document, if we have a look at page 5797

please. The turnover figures there, and this was advertising revenue I take it?

A. Yes.

700 Q. Yes. The figures there, when you joined Century subsequently on the 1st of May, 1989, did you rework or create your own set of projections?

A. Well, the first thing that had to be done or one of the first things that had to be done was a proper rate card had to be constructed. There was no - these figures were obviously based on - I wasn't sure, I am still not sure what these were based on, so a rate card had to be prepared so one of the first tasks was that we went and actually got a proper rate card for Century Radio.

701 Q. If we look at the rate card on its own in a second, just in relation to the projections here, you created your own projections later on, did you?

A. Subsequently, yes.

702 Q. In relation to the projections that are here, do you think these are overestimated or underestimated, or at that time did you think that they were underestimated or overestimated?

A. Well, as I said, I never actually, I think - I never saw them as a document.

703 Q. Yes?

A. I have seen them now.

704 Q. Yes. Well, were you a contributor to the Davys document, the Davys Placing Document?

A. Yes.

705 Q. And did you work on those projections?

A. Yes.

706 Q. Yes. Well if we can have a look at page 431 please. This is an extract from the Davys Placing Document, the date on which the document seems to be circulated is the 22/8/89, and page 418 tells us that - on page 431 we have turnover projections here. Were you a party to calculating what those projections would be?

A. Yes.

707 Q. And if we compare those figures with the figures in the initial application to the IRTC, these seem to be significantly higher?

A. Yes.

708 Q. So can you give a comment on why they are significantly higher?

A. Well, I can only give a comment on these figures.

709 Q. Yes?

A. And why we arrived at these figures.

710 Q. Yes?

A. And again it goes back to the comment that I made, that there was this enormous warmth towards Century Radio and to the commencement of an alternative to RTE, a new national station, and between the 1st of May and whenever that document was drawn up, and it was shown to Davys sometime around the end of August, a number of meetings had taken place, and a number of commitments had been given by major advertisers.

711 Q. Are these meetings with advertisers?

A. Because from the 1st of May not only would you be preparing for the launch but you would be trying to go and actually cement sales for the radio station.

712 Q. And the warmth that you were feeling, was this warmth from

the advertisers?

A. Yes.

713 Q. So goodwill?

A. Not only goodwill, but financial commitments which were based on obviously a percentage of the country that was going to be covered from Day 1.

714 Q. Mmm.

A. So in other words, people put a value on what we were offering, and from Day 1 we were offering 60 percent of the country covered, and people --

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CHAIRMAN: Sorry, could I just intervene here to inquire, you are talking about a period. What is the period? Where in 1989 --

A. From the 1st of May to when this document was shown to Davys, which I think was a date at the end of August '89. The station was going on air on September the 4th.

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CHAIRMAN: I know that. You say that is when? I just want to understand it in relation to the situation in relation to the contract.

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MS. O'RAW: Mr. O'Neill I think started employment on the 1st of May.

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CHAIRMAN: I know that. I am talking about the contract between RTE and Century Radio which, among other things, includes the date upon which they started to acquire the plant and the equipment, in other words, when plant and equipment was ordered and subsequent delivery dates.

Because as I understand the situation, the early days of Century was effectively run on temporary plant, using the word "plant" to cover everything, which did not and could not get the coverage that was once upon a time believed to be obtained if they had the new plant and equipment in place. That is as I understand the situation.

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MS. O'RAW: I think we are going to look into that matter in a moment, Sir.

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715 Q. Your understanding on the 22nd of August, 1989 was that Century, when it would go on air on the 4th of September, would have something in the region of a 60 percent coverage?

A. Yes.

716 Q. And your projections were based on that 60 percent coverage?

A. Yes.

717 Q. And this was the information that you gave to advertising agencies?

A. Yes.

718 Q. And you believed that to be the case?

A. Of course.

719 Q. That was your genuine belief?

A. Yes.

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CHAIRMAN: Again may I interrupt here, because I want to get this, I want to understand this clearly. Were you aware that the 60 percent coverage, again I understand,

subject to correction without having the details in front of me, was effectively a coverage of Dublin, Cork and Limerick having a less than satisfactory unit. Were you aware of that?

A. I was never aware of less than satisfactory units.

CHAIRMAN: Cork was a perfectly satisfactory unit. Dublin was a satisfactory unit. Limerick proved an unsatisfactory unit.

A. The knowledge that I was given, Sir, and the, what I went out and marketed and sold was the fact that from Day 1 that Century Radio would have 60 percent coverage of Ireland on FM, and that is what we, that is what we went out and sold. That was the basis of --

CHAIRMAN: All right, so long as we are about talking about the same situation. That is all right.

720 Q. MS. O'RAW: And obviously your reputation and future confidence with advertisers, would that be affected by what you tell them?

A. Of course. I had an eight or nine year relationship with most of the people that I was now going to start to do business with instead of being in the newspaper sense, in a radio sense.

721 Q. You had a future with Century?

A. Yes, but I had a reputation that, you know, I had come from a very successful newspaper and had helped to make it very successful, you know. If I said that the price of a page in the Irish Times was X, that was the price of a page in

the Irish Times. If I said that the Irish Times reached, I think what was it? 80 something thousand people as it then was, or sold 80,000 copies, people believed me, OK. Subsequently research would have been done to prove this, so no research because we hadn't got a station, and I was going out with my sales team and sales people saying that we would have 60 percent from September the 4th or from launch date.

722 Q. Yes. So yourself and your sales team were saying 60 percent from launch date. It was upon that that these projections in the Davys document were based?

A. Yes, and they were also based on the fact that we had got a commitment from a number of major advertisers through their advertising agencies to spend money in Century Radio.

723 Q. Yes. Can I ask you, Mr. O'Neill, who told you that you would have 60 percent from Day 1?

A. The promoters.

724 Q. The promoters?

A. Yes.

725 Q. Mr. Barry and Mr. Stafford?

A. Yes.

726 Q. Anybody else?

A. Mr. Laffan, this is - this is what was told. This was what we were all striving for when the radio station was being built up in Christ Church. This was the talk.

727 Q. Did anyone in RTE ever tell you that there would be 60 percent coverage?

A. No.

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CHAIRMAN: Did anybody from the technical side ever tell



you, I mean technician as distinct from businessman, the man who put the nuts and bolts and put the thing on the air?

A. Yes, because at the very start of this I think there was a man called Nolan I think his name was.

728 Q. That was a Century employee, Mr. Tony Nolan was the engineer?

A. He was the engineer. He would have been, at the start of all of this hype, all of this good feeling that, you know, this was what we were going to have from Day 1. This is what we were all striving for. I mean, I would have been much happier to have 100 percent coverage from Day 1. I thought it is a new national station. It is very short notice. 1st of May I joined. September it goes on air. It is not bad. It is good.

729 Q. MS. O'RAW: So you felt it was a thing to have 60 percent from Day 1?

A. And growing, yes.

730 Q. But nobody from RTE ever told you that you would have 60 percent?

A. No, not me. I never attended any meeting with RTE in relation to the transmission or coverage.

731 Q. So you were completely reliant on what you were being told in-house in Century that you would have 60 percent?

A. Yes.

732 Q. And did you doubt that at all?

A. Oh no.

733 Q. Did you ever see the contract that was ultimately signed on the 28th of July, 1989 with RTE?

A. No.

734 Q. Could I ask you to have a look at page 5879 please. This is page 64 of that contract agreement. If you have a look at that page, you will see that in relation to the various different sites to be set up and the various transmitters to be put in place, there are actually no contractual obligations to have the establishing of any transmitter sites until the third quarter of 1990. Had you ever heard of that, that there was no contractual obligation to have anything in place under the contract?

A. No, I didn't see the contract, I wasn't part of the contract. And the answer to your question is no, I didn't.

735 Q. Well, I think, given that the contractual position was that there wouldn't be anything in place until the third quarter of 1990, I think what was subsequently agreed between the parties was that temporary facilities would be put in place. Did you ever hear of that?

A. No, no.

736 Q. You never heard of that?

A. No.

737 Q. And Mr. Branigan who was an engineer in RTE and who has given evidence, has spoken about some of these temporary facilities as being a sticking plaster operation. Have you heard of that?

A. No.

738 Q. Yes. If I could ask you to have a look at a document at page 4943 please, and this is a letter from Mr. Colm Curley to Mr. Laffan. It relates to a -- dated the 11th of December, 1989. Mr. Curley was an engineer in RTE, and he is writing to inform Mr. Laffan about the transmission

facilities and so on. And incorporated in that letter is the document at page 4945 please.

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If we have a look there it says, "Three Rock temporary on air date 4th of September, 1989. Agreement date third quarter 1990."

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I think the agreement date or the contractual obligations were "RTE are going to have the Century equipment in place and in the meantime there is this sticking plaster operation. There were other temporary facilities put in place." Were you ever made aware of that?

A. No.

739 Q. Spur Hill was to be put in place on the 4th of September, 1989, the temporary facility and Mount Leinster not until November 1989. Maghera, November 1989. Mullaghanish to be agreed end of March 1990. Limerick City 4th of September 1989. It was not specified in the agreement. Woodcock Hill expected mid-January 1990. Not specified in the agreement.

A. No.

740 Q. You didn't see any of that?

A. No.

741 Q. You weren't aware that there were temporary facilities?

A. No.

742 Q. You didn't see the application document itself you said I think earlier in your evidence?

A. No, I didn't, no.

743 Q. In the application, if we could have look at page 5707 please. Paragraph 536 deals with the transmission of

signals, and the fourth paragraph down it says, "subject to that agreement coming in to place," this is the agreement with RTE to the RTE facilities. "We propose that the following first phase would be established which would achieve coverage of 63percent of the population."

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Was that your understanding that that would be achieved on the 4th of September?

A. Yes.

744 Q. "The four VHF/FM transmitters sites named below would form the basis of that first phase of the development of the network, Three Rock, Mullaghanish, Cork City and Maghara." So those four sites together would provide 63 percent of the population, but it reads on, "in addition, we would develop the low powered AM transmitters at Beaumont, Dublin; Ballynure, Cork to provide service to the audience not yet equipped for VHF/FM transmission. The build-up of the network to national coverage will, in our view, take four years to complete."

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If we have page 5708 please. If you can move up the page. Continue down please. I think maybe actually, it may be actually a couple of pages on. That build-up of those four sites was actually, according to the application document, not to be achieved until the 8th month, so the final of those sites was not to be in place until the 8th month.

Were you aware of that?

A. No.

745 Q. You were never aware of that?

A. No.

746 Q. Yes. So the position was then you had been informed internally but never by RTE?

A. Correct.

747 Q. That you would have 60 or thereabouts percent from Day 1?

A. Yes.

748 Q. You were never told about the temporary facilities?

A. No.

749 Q. No. If we can have a look at page 3065 please. And this is a document which is on Mr. Marren's files. Mr. Marren was a secretary of Century Communications and solicitor to Century Communications, and that is document that was on his files. We haven't been able to identify the remainder of the document, but it seems to be faxed from RTE on the 29/9/89, so in September 1989. And it deals with the temporary installations. And it has, "Target Date; Station; Number Covered and National Percentage Covered." We see at the 29th of September, 1989, that Three Rock, Spur Hill and Limerick City, the national coverage was to be 45.6 percent. This is using the temporary installations.

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By the 24th of November, 1989 the national percentage coverage should be 48.9 percent. On the 1st of December 1989 it is to be 56.6. On the 15/6/89 it is to be 68.3.

So this document appears to indicate that using the temporary installations certainly in September, by the end of September only 45.6 percent of the population would be covered, and by the 15th of December, or sometime in December, that 60 percent mark would be hit. Were you ever shown this document at all?

A. No.

750 Q. Were you aware of its contents at all?

A. No.

751 Q. Were you given any indication that because temporary installations were going to be used, that the coverage may not be as high as 60 percent?

A. No.

752 Q. Was it a surprise to you that coverage did not appear to be 60 percent on the 4th of September?

A. It was a hammer blow.

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CHAIRMAN: Tell me this, is that list that is on the screen at the moment a surprise to you? Assuming to be genuine, I have no reason to believe that it isn't.

A. Yes.

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CHAIRMAN: Is it a surprise to you? Are you surprised that you weren't told about it as the man who was marketing the shop?

A. Yes.

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753 Q. MS. O'RAW: Would your - if you had seen that particular document, would your approach to advertisers have been different?

A. I don't think the station should have been launched.

754 Q. You don't think the station should have been launched?

A. No, not with those figures.

755 Q. Not with those figures?

A. It was going to be difficult enough with 60 percent coverage, but if somebody tells me that it was, and it

obviously became apparent to me that it wasn't 60 percent after September the 4th, one would have been foolhardy to proceed and start the station.

756 Q. Yes. What was the reaction of advertisers when coverage did not reach the 60 percent on Day 1 and did not appear to be reaching the 60 percent during the first few weeks in September?

A. A huge disappointment, a huge disappointment.

757 Q. How did that manifest itself?

A. The cancellation of some of the pre-bookings that we had and the whole business of just going about getting advertising just became more and more difficult.

758 Q. Yes. Was there a reduction in sales or a reduction in bookings?

A. Yes.

759 Q. Dramatically?

A. Yes.

760 Q. And what was the reaction of the directors to this?

A. Well, I mean they, we were sitting at meetings discussing the fact that with, you know, with - initially with a coverage of 60 percent we were likely to achieve so much, but it became apparent that - at no meeting that I was at were these figures ever discussed with me. It was accepted by the promoters that, you know, things weren't what they should be from September the 4th, but nobody ever turned around and said to me "actually we only started with 45" or "it is only a temporary thing".

761 Q. You were never aware of the temporary facilities or how they may affect signal or coverage?

A. No. Not initially but I subsequently became familiar with

it when, you know, we were getting comments, especially in Limerick that one could hear the station in the bedroom but not in the kitchen.

762 Q. Yes?

A. Things just became so difficult.

763 Q. Did you report these comments back to the directors?

A. Oh yes. There were also a number of letters that had arrived in from advertisers and advertising agencies asking for some sort of explanation to, you know, when they were driving down the country the signal would disappear as they passed through Portlaoise or whatever.

764 Q. What did the directors say to you about coverage?

A. It was a very frantic situation. I mean, you know, everybody was disappointed. The directors were disappointed the way things were going and that, you know, there were people employed in Century to go and resolve these situations. I mean it was my job to market the station, to get advertising for the station, you know, it was not my job to get the technical side of the station correct. But if it is not correct, it impacts on me, but they were people head-hunted in that category, in the technical category as well. So I felt here I was surrounded by three or four key, very successful people in their own field, and, you know, we all just got on with our own jobs.

765 Q. Yes.

A. I think initially I did a very good job.

766 Q. Yes.

A. And, you know, I will deal with the advertisers, I will deal with the complaints, but I cannot deal with the



technical side. I have no --

767 Q. But you were reporting complaints about the technical side and the coverage?

A. Of course. There were general discussions at the management meetings and the board meetings about the fact that the coverage wasn't right, but we pressed on. We pressed on.

768 Q. And sales were following?

A. Sales were following. The confidence was dropping in Century Radio as a national station.

769 Q. Yes. And on the sales and marketing and the rate card side of things, what was the reaction? Did you reduce your rate card down?

A. No, we tried to gather in more money between the months of November and December, which are key months in advertising, because there is more money spend, there is more money around and we actually put our advertising rates up, which I resisted. I said this would be foolhardy, I said this would be completely - anyway, it was a team thing. I agreed with it at the end. I mean, I went and did it.

770 Q. Yes?

A. You know, I tried to make it work as best I could.

771 Q. Yes. If we have a look at the minutes of the meeting of the 12th of September, 1989, page 2397 please, and at paragraph 4, it says, "The Board discussed in general the advertising revenue and cost during the first week of broadcasting. Following extensive discussion, it was resolved that the company would endeavour to increase the real price of its advertising, particularly in relation to certain key programmes and that the company would endeavour to target

advertised particular programmes and particular broadcasting times."

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Was that message translated to you, that there would need to be an increase in the real price of advertising?

A. I don't remember as early on as that. That was early on in September, was it?

772 Q. That was the 12th of September, Century was on the air eight days at that stage.

A. That wouldn't have been translated to me, not at that point.

773 Q. If we move on then. At page 3008 please, on the 27th of September, 1989 there is a report which I think was prepared by yourself?

A. Yes, that's correct.

774 Q. A marketing report.

A. Yes.

775 Q. And the last paragraph there, 'The Budget', "At the outset the budget figure was 400. This was reduced back to ú375,000 following an overall financial review."

A. Yes.

776 Q. So the budget for the advertising for the marketing and sales department, that was being reduced?

A. Yes. Can you just remind me of what date that was please?

777 Q. Sure, this was the 27th of September, 1989. The end of September?

A. So, in other words, a certain amount of money would have been spent in launching the station. Money would have been there to continually promote the station.

778 Q. Yes. At this stage the budget is being reduced down?

A. Yes.

779 Q. Now, this is at a stage where you have gone out, you have told advertisers that there would be a 60 percent coverage, that hasn't materialised. Advertising revenues are starting to fall?

A. Yes.

780 Q. And the budget is being cut for the sales department. Did you agree with that policy?

A. No, but, you know, it was, it was what the promoters wanted. They wanted to save some money.

781 Q. Well, did you say that it would - did you think that it would be better to spend more money?

A. I felt that, you know, more funds should have been forthcoming from the promoters, yes.

782 Q. Yes. But that wasn't forthcoming?

A. No.

783 Q. What use could you have made of that extra money?

A. Well, in hindsight, with the figures that, you know, the coverage figures --

784 Q. Yes?

A. -- probably not a lot.

785 Q. Yes.

A. Had we started with 60 percent and had the 60 percent been growing and had the promoters, you know, put more money in and - I still believed that, you know, that there was an opportunity there to produce a very viable national alternative to RTE. Still believe it.

786 Q. If we have a look at page 6190, we have revised sales projections to 31st of December, 1989?

A. Yes.

787 Q. And we have the original budget figures and the actual sales?

A. Yes.

788 Q. These original budget figures, these would have been your original figures?

A. Yes.

789 Q. Would they?

A. Yes.

790 Q. And the actual sales, is that your recollection, they were almost, well just above half of what you had hoped they would be?

A. I will accept those figures. I cannot recall.

791 Q. Yes. Well, this appears to be a document that was provided by Ms. Hynes and was --

A. If that is the case, I would accept it.

792 Q. Yes. If we have a look at page 2407 please, this is the 3rd of October, 1989. It says - this is minutes of the board meeting. "It was resolved that the company should continue to reduce the sale of advertising package and increase the level of single spots. It was resolved that the company should increase the prices on its rate card when 60 percent coverage of the population had been achieved."

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Do you recall being told that the rate card should be increased?

A. No, not at that stage.

793 Q. This was in October?

A. And I also don't recall the 60 percent coverage being achieved.

794 Q. Yes. On the 18th of October, 1989, page 3085 please. There

is a report from yourself to Mr. Michael Laffan. And you indicate at that stage that there had been one resignation and one termination during the period September 20th to October 20th?

A. Yes.

795 Q. Yes. Could you tell me about the morale in the sales department at that stage?

A. It had become very low.

796 Q. Yes.

A. Yes.

797 Q. Why was that?

A. Because, you know, we had gone out to sell a product that was supposed to have a certain coverage, a certain reach and it was becoming evident to everybody that it didn't. Major advertisers were losing confidence in the product. Advertising agencies were consequentially withdrawing packages that they had bought. It became harder and harder to sell advertising on Century Radio. It is something that happens very quickly, quite dramatically and very quickly.

798 Q. So it had gone from a position of great goodwill towards Century by the advertising agencies down to a state where the sales staff were somewhat demoralised?

A. Yes, totally demoralised.

799 Q. Totally demoralised?

A. Yes.

800 Q. I see. At page 3087, this is the third page of that particular note, you have, "The new rate card issued effective October 25th implementing new rates as outlined over leaf."

And at page 3088 we see the new rate card and the figures there. And we see that for practically every slot there are increases in the rates?

A. Yes.

801 Q. The first one is an increase of some 48 percent; the second one of some 23 percent; the third is a reduction of 26 percent. That is the only reduction and there are some increases of - again 22 percent, 79 percent, the one from 19 to 20, that is 19 to 20 hours, yes?

A. Yes.

802 Q. 19 to 20 hours, has gone up by 3 54 percent, and so on. Am I correct in saying that this is a substantial increase in Century's rate card?

A. Yes.

803 Q. What was the reaction of advertisers to this?

A. More dismay, more dismay.

804 Q. Well did any of them write to you?

A. Yes. A number of them wrote to me, yes, contacted me.

805 Q. Yes, and what did they say?

A. That they couldn't understand, I think their body, their professional body is called IAPA and the Chief Executive of IAPA actually wrote to me and said that there was a query and a quandary as to why we had actually gone and done this.

806 Q. Did you see sense in increasing the rate card to this amount when sales were actually falling off?

A. No, but I did it because there was a consensus of the management team that this was one way of garnering in revenue on the basis that if, you know, somebody was prepared to stay and advertise with Century, then we might

be able to get more money out of them.

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CHAIRMAN: Well tell me, are you telling me that a management team of businessmen, I am using it - we are not taking advice from a person who has been nine years in a significant sales or advertising sales situation?

- A. Yeah. I think, Sir, what you find is, you know, everything started in Century with such goodwill, both from the point of view of the promoters and from the people that they employed and from the people who were going to make it successful - the advertisers, and when it started to go wrong, it became a sort of a helter-skelter situation, that the promoters --

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CHAIRMAN: Your advice was not being listened to?

- A. That's correct, yes.

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CHAIRMAN: Tell me, I am sorry for interrupting. I just want to find this out. You said that you had, I use the word 'technical engineers' available. Now these men would get a complaint of a lack of, a lack of audience or a lack of signal, and presumably as technicians, the first place they go to is the source of the signal and find out is it working, isn't that so?

- A. Logically that would be correct, yes

.

CHAIRMAN: Surely they must have found out the nature of the unit that was putting out the signal and the basis, the basis indicated by the letters that we have just seen, did they not come back in tearing their hair out?

A. At the management meetings there were technical people present. It was their responsibility to, you know, deal with the technical side of Century, and I didn't - I mean, I can't - I was pulling my hair out. I am not sure whether they were. There was no, there was no --

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CHAIRMAN: Well now, I am sorry, I would be willing to stay personally but the young lady has been working since half past nine. She is a sole operator.

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MS. O'RAW: Yes, Sir.

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CHAIRMAN: I am sorry that I am going to have to close down because we are obviously not going to finish him within even a half an hour. Would you finish within half an hour?

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MS. O'RAW: I know, Sir, that I would finish within fifteen minutes. But I don't know whether any --

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CHAIRMAN: You have got a volunteer here? Another fifteen, twenty minutes.

A. I very much appreciate that.

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CHAIRMAN: Is that happy to everybody? I really want to oblige Mr. O'Neill.

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MS. O'RAW: This is the second time that Miss Doyle has obliged me this week.

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CHAIRMAN: We will do our best.

807 Q. MS. O'RAW: So in relation to these increases, you weren't in agreement with them?

A. No, but I implemented them because that was the general consensus of, you know, what we felt was the best way forward.

808 Q. I think there was a meeting then on the 7th of November, 1989, if we can a look at page 41, sorry 6148, and present at that meeting were Mr. Crowley, Mr. Stafford, Mr. Barry, Mr. Laffan, Ms. Hynes, yourself, Mr. Story, Mr. Nolan, Mr. Davin-Power, Mr. Enda Marren and Mr. Eugene Fanning. During this meeting, I think certain budgetary reductions and cost reductions were being discussed?

A. Mm-hmm.

809 Q. In relation to that?

A. Yes.

810 Q. Can you tell me very briefly what these reductions and budgetary reductions were about?

A. I would have to read the document. Off the top of my head, I genuinely can't.

811 Q. I think there were to be reductions in salaries, is that correct, in management salaries? If we have a look --

A. Could I read it?

812 Q. Of course, paragraph A, the second paragraph down. "Michael Laffan indicated that in lieu of the reduction in executive salaries proposed on the 24th of October, that the company would forego the establishment of a pension scheme until 1991 thereby resulting in a cost saving."

Do you recall that?

A. I don't recall that, no.

813 Q. You don't recall that. Various other reductions were being put forward. At page 3 of that report, that is at 6150, this is where you give your presentation to the meeting and Seamus O'Neill, Head of Sales and Marketing next presented his revised budget. A saving was proposed by reducing the station promotion research budget from ú170,000 to ú70,000."

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What would be the impact of such a reduction or were you happy to have such a reduction in your budget?

A. We were, I think at that stage we were asked to all make some proposal and, you know, money had to be clawed back, and that was obviously, you know, my proposal.

814 Q. Yes?

A. It wasn't a situation where you could sit there and say "just leave it as it is" because the money would not have been forthcoming.

815 Q. The money would not have been forthcoming?

A. No, the 170,000, you wouldn't have had it, so --

816 Q. Yes. At page 4, the sixth paragraph down, "There was extensive discussion on the resistance met to introducing the increased rate card." This is what we were talking about a minute ago. "According to Seamus O'Neill, there was enormous resistance to the new rate card increase. A complaint had been made to IAPA on the basis that Century could not sustain such an increase in light of the coverage which had been promised and which was not achieved. Seamus O'Neill was of the view that the rate card could not be

implemented until the Maghara and the Mount Leinster transmission was in place. There was a strong view at the meeting that the increased rate cards had to go through as quickly as possible, particularly in light of the up and coming November and December months which were the busiest months for radio advertising. Seamus O'Neill stated that any attempt to force through the rate increases at this time would cause a backlash among advertisers."

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Do you remember making such comments?

A. Yes.

817 Q. And this strong view at the meeting that the rate cards should go through, do you know who expressed that strong view?

A. I think the promoters and the Chief Executive.

818 Q. The promoters and the Chief Executive?

A. And the finance person, Noreen.

819 Q. Yes?

A. Ms. Hynes.

820 Q. They all wanted the higher rate card to go through?

A. They wanted the money.

821 Q. Yes. At page 6293, I think on the 10th of November, 1989, this is the letter from the IAPA to yourself, where it says, "Century recently announced rate increases were discussed at the recent IAPA committee. The members were concerned that such substantial increases should be proposed so soon after your launch and in the absence of any information available to us which substantiated extra audience levels or extended geographical coverage. While the committee understands that the implementation of the

proposed increases has been deferred, it was felt that you might wish to offer your justification for the proposed increases."

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Did the rate card actually go through subsequently, the higher rate card?

A. I don't think so. I think it was postponed until I think January, I think the resistance was so great.

822 Q. What was the reaction of RTE to Century at this time?

A. Well, RTE were negative towards Century and --

823 Q. In what way?

A. They wouldn't let us promote ourselves on any of their mediums, their television station or their radio station.

824 Q. Yes?

A. If you are to launch something and it is a substantial thing like a new national station or a new national product, one of the first places that one would go to promote the launch of this would be a television station. RTE point blankly refused to accept TV commercials or any promotion of Century on their medium.

825 Q. RTE didn't want to carry ads for Century on its --

A. On RTE television or RTE radio. Indeed it got so bad that they wouldn't even carry radio commercials that carried the voices of Century disc jockeys or personnel so it was very unhelpful.

826 Q. But you thought it was important that they would carry such ads?

A. They should have been done. One of my regrets is that I didn't force that issue.

827 Q. Did the Irish Times carry ads for the Irish Independent at

that time?

A. Yes.

828 Q. For example?

A. Yes.

829 Q. They did?

A. Yes.

830 Q. If I can --

A. Tony O'Reilly's business. Now the Heinz thing was always carried in the Business and Finance page. There was also promotions --

831 Q. Was there a promotion for the Irish Independent in the Irish Times,? I am not talking about other --

A. We would have carried advertising for the Sunday Tribune or the Irish Times or the Irish Independent or other media that wanted to promote themselves.

832 Q. I see. I think ultimately there was a direction from the Department of Communications, according to a minute of the meeting of the Board on the 12th of September, 1989, page 2398, there was a - "It is reported to the board that the Department of Communications has directed RTE that it would have to carry advertisements for commercial radio."

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Do you remember that?

A. No.

833 Q. No. I see. But it is recorded there in the board meetings?

A. I wouldn't have attended that meeting, I don't think.

834 Q. Yes. As time progressed on then, how did sales develop in Century Radio?

A. It became a fire fighting operation. It got worse and

worse.

835 Q. It got worse and worse?

A. Yes.

836 Q. In relation to RTE's advertising policy at that stage, how was that vis-a-vis Century? Was it aggressive? Was it predatory?

A. I wouldn't have considered it predatory, no. If I was in RTE, I would have done exactly the same in relation to how I was promoting the RTE stations.

837 Q. It was taking steps?

A. Yes, but it is a market-place.

838 Q. Yes?

A. You know, I had no problem with it whatsoever.

839 Q. Yes. And did you see or did you hear of dramatic discounts being given by RTE or drops in its rate card?

A. Nothing. I would say the usual commercial business practice, I mean, there was a competitor here, they were going to take the competitor on. It was perfectly acceptable to me and absolutely normal in the market-place.

840 Q. Yes. So you, the Head of Sales and Marketing in Century, weren't aware of predatory pricing by RTE?

A. No, no. There was a change. They were more aggressive. They were out making sure had a, they got the ad rather than Century, but, you know, it is a market-place.

841 Q. And just in relation to the advertising cap that was subsequently put on RTE through legislation in 1990, had you ever heard discussions about putting a cap on RTE or acquiring some of the license fees from RTE?

A. They were topics that were discussed through the latter part of 1989.

842 Q. Through the latter part of 1989?

A. Yes, yes.

843 Q. When did you leave Century?

A. January the 12th or 14th, 1990.

844 Q. The 12th or 14th, so it was sometime before that?

A. Yes, we would have discussed those things because obviously things were not going well in Century. You know, they were falling far short of their targets in terms of the advertising that they wanted to get. They had obviously fallen far short of their targets in terms of the signal that they wanted to distribute. And some of the issues that were discussed were one, the license fee and two, the fact that, you know, some sort of a cap should be put on.

845 Q. And who discussed that cap?

A. Well, they would have been discussed at management meetings, the things would have been discussed at management meetings. I mean, they wouldn't be, you know, they wouldn't be -- the "agenda" would be to discuss the cap on advertising, it would have been something that would have come up in the course of an hour or two long, an hour or two-hour long management meeting.

846 Q. Well, at those management meetings, were the directors present?

A. No.

847 Q. This was just in-house?

A. Yes.

848 Q. A discussion about placing a cap on RTE?

A. But I am sure the information was probably passed.

849 Q. The information was probably passed?

A. Yes.

850 Q. In your statement, on page 3 of your statement, one of the things you say is, "Instead of the promoters digging deeper, they decided to prune costs."

A. Yes.

851 Q. When did you feel they were not digging deeper, if I can put it that way, into their pockets?

A. I suppose from sometime around about the end of October, early November 1989.

852 Q. End of October, early November 1989, so you were on air?

A. Six weeks probably at that stage.

853 Q. Six weeks at that stage. So you felt there was a need, did you, to dig deeper into the pockets?

A. Absolutely. I felt I had associated myself with people who had not endless pockets but had deep enough pockets to get over whatever crisis we were in, you know.

854 Q. Well, how did the situation at that stage compare to the situation that had been said to you back in early January 1989?

A. I felt it was the complete opposite. I felt when - I mean, this is my own, it was my own decision to leave and I thought about it, but I felt that the information that I was given then was that this was a fabulous opportunity, with very rich business people who had deep pockets and were going to make this work, and make everybody who was associated with it very successful and wealthy.

855 Q. Yes, yes.

A. So --

856 Q. There is just one other very quick point, and that is, I meant to mention it to you earlier. You said, "Once I commenced employment, a number of problems arose, problems



in relation to transmission and that Gay Byrne was not joining the station." Did you understand that Mr. Byrne was to be joining the station?

A. There was always talk that, you know, that we were still going to get Gay Byrne. It was always felt that, you know, we were going to have one big name to announce, to help with our launch on September 4th.

857 Q. Who had said that?

A. All the promoters.

858 Q. All the promoters? Mr. Barry, Mr. Stafford?

A. Yes.

859 Q. Even up until the time when you were now employed by Century Communications, 1st of May, 1989?

A. Yes, I think they were still pursuing, I think Marion Finucane. I recall that they were still trying to get her to join the station.

860 Q. Yes?

A. I think the only major star that they managed to get was Marty Whelan I suppose.

861 Q. Yes?

A. Then the big, the big thing that we had to offer was Terry Wogan broadcasting from London on a Saturday.

862 Q. Yes. But you were still being told at this stage in May 1989 that?

A. A major star of the calibre of somebody - .

863 Q. Including Mr. Byrne or possibly Mr. Byrne?

A. Possibly Mr. Byrne.

864 Q. And the promoters had said that?

A. Yes, these were the following that were running there, that, you know, go out, this is going to be really

successful, we will have fabulous people, we will have a great product. It will be successful.

865 Q. Yes.

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I don't have any further questions but some of My Friends may do so and the Sole Member also.

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MR. WALSH: I have no questions, Sir.

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CHAIRMAN: You are fortunate. There is one is there?

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MR. KEANE: No, I have no questions.

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MR. CONNOLLY: No questions.

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CHAIRMAN: I thought we were going to have a rebel in the camp. Thank you very much for coming down. I am glad that we have been able to get you home again without losing anymore time?

A. Thank you very much.

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CHAIRMAN: I would like to say a word of appreciation to our stenographer who has stayed on voluntarily all day. It has been a very long day for her and thank you very much, I do appreciate it.

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MS. O'RAW: Thank you.

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THE TRIBUNAL THAN ADJOURNED UNTIL MONDAY, 4TH DECEMBER 2000

AT 10:30AM.

