

THE HEARING RESUMED AS FOLLOWS ON THE 3RD FEBRUARY, 1999:

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MR. HANRATTY: Sir, before you resume the evidence this morning, may I raise a serious matter which arises in connection with the publication of an article in the front page of the Irish Independent this morning, and which may involve yet another unauthorised disclosure of confidential Tribunal information.

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The article, sir, is on the front page of the newspaper, and with your permission, sir, I would like to read it in full.

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The headline of the article is; "Gogarty Faces Quiz on £50,000 Bank Cash". It is written by Sam Smyth and reads as follows;

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"Builder, Michael Bailey, drew £50,000 in cash from his bank and told officials it was to pay James Gogarty.

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The Irish Independent has learned that the bank will give evidence to the Flood Tribunal that the builder told them that he needed £150,000 for the former Chairman of JMSE.

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Mr. Bailey is understood to have withdrawn £50,000 in cash on November the 23rd, 1989, and said it was the first of three payments to Mr. Gogarty required to secure a land deal.

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It is understood a bank official took contemporaneous notes of the meeting with Mr. Bailey and they will be available to the Tribunal.

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Bailey is alleged to have told the bank officials that he wanted £50,000 in cash and he needed it for Mr. Gogarty.

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Details of the conversation were taken down at the time and found in the file notes when the bank was approached by the Tribunal.

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Mr. Gogarty is expected to be questioned about the money next week when his cross-examination is expected to begin.

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In a discussion about cross-examination last week Colm Allen SC, counsel for Bailey said they planned a "Big, big ambush" for Mr. Gogarty.

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And then under the heading, sub-heading "Anglo Irish Bank".

"It is understood that Mr. Bailey and his company, Bovale, had a long and mutually beneficial relationship with Anglo Irish Bank, and the bank agreed to lend him the money.

However, the bank didn't keep large amounts of cash on the premises and it had to be obtained elsewhere.

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Last week it emerged in evidence from James Gogarty that he had a meeting with Michael Bailey at the Skylon Hotel in August of 1990 and the builder put an envelope in his vest pocket containing a postdated cheque for £50,000.

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However, Mr. Gogarty maintained that in their conversation at the Skylon, Bailey said they didn't want to get involved

in his legal case with the Murphy's or he didn't want anything dragged in about Ray Burke or himself or they would never get planning permission again.

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Then under the subheading "Cheque in Box":

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In his evidence last week Mr. Gogarty said he didn't open the envelope until he got home and he later challenged Bailey and he forgot about the incident, but the cheque emerged in a box in his bank some years later and it is now an exhibit in the Tribunal. In a submission to Mr. Justice Flood about the evidence of the £50,000 cheque, counsel for Bailey complained about talk in the most vague and general terms about matters which are now of enormous relevance and which will become of even greater relevance when the opposite to Mr. Gogarty's story unfolds.

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Mr. Gogarty told the Tribunal yesterday that he had become a "Recluse" since threatening late night phone calls were made to his home by Joseph Murphy Junior.

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He said he had been going through trauma for years since the incidents.

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He felt he could not go out because of the threat hanging over him from Mr. Murphy. Mr. Gogarty and his family were living "In fear and dread" as a result. "That blackguard is still out in the open and taunting me", he said".

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Now, as you can see, sir, there are a number of assertions of fact contained in that article, which obviously came from somewhere. If I can just refer you to the, what I

have identified at least as six ascertains of fact, whether they be true or otherwise. The first is in the first sentence of the article where it says; "Builder, Michael Bailey, drew £350,000 in cash from his bank and told officials it was to pay James Gogarty". There is an assertion that he drew £50,000 in cash.

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The second ascertain is that in the third paragraph; "Mr. Bailey is understood to have withdrawn £50,000 in cash on November 23rd, 1989, and said it was the first of three payments to Mr. Gogarty required to secure a land deal". That's the second assertion of fact.

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The third is; "It is understood a bank official took contemporaneous notes of the meeting with Mr. Bailey". It goes on to say they will be available to the Tribunal, I will come back to that particular point in a moment.

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The fourth is that; "Bailey is alleged to have told bank officials he wanted £50,000 in cash and he needed it for Mr. Gogarty".

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The fifth is, "Details of the conversation were taken down at the time and found in the file notes when the bank was approached by the Tribunal".

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And the sixth assertion of fact is; "It is understood that Mr. Bailey and his company, Bovale, had a long and mutually beneficial relationship with Anglo Irish Bank, and the bank agreed to lend him the money, however the bank didn't keep large amounts of cash on the premises and it had to be obtained elsewhere".

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Now sir, as you are aware the Tribunal has indeed in the course of its investigations been in contact with a number of banks, including this particular bank. But as you are also aware, that as a result of the decision in the Supreme Court certain documents were returned both to the bank and to the solicitor for the bank, Gerard Scallan and O'Brien.

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Most recently sir, you will be aware that a notice was sent out both to this bank and to the representatives of Mr. Bailey, being the effected parties, of the intention of the Tribunal to consider whether to make further orders against this bank for the production of documents, principally its file. It is quite clear, sir, from the article which is published in the Irish Independent this morning, that detailed and specific information has been given to this newspaper by somebody.

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Yesterday morning just before the resumption of Mr. Gogarty's evidence, counsel to this Tribunal, Mr. O'Neill, was approached by counsel for Bovale/Bailey, Mr. Allen, in which Mr. Allen expressed concern about an unauthorised disclosure of confidential Tribunal information, and he expressed this concern in the mistaken belief that a transcript of certain interviews which had taken place between counsel to the Tribunal and officials in this bank had been circulated to all relevant parties.

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In fact the position is that those transcripts have not, in fact, been circulated, they had been sent, returned by the bank to the Tribunal in December with corrections after the

Tribunal had sent them back to the bank on the basis of the Supreme Court decision, and the Tribunal returned them to the bank saying that it was a matter for the bank if they wished to give these transcripts to Mr. Bailey/Bovale, or at least to their solicitors and that the Tribunal had no objection to that.

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We now know that by letter dated the 29th of January, of 1999, which we understood, understand was sent by post, that was last Friday, Messrs. Gerard Scallan and O'Brien wrote to Mary Cummins, solicitor to the Tribunal in the following terms:

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"Dear Miss Cummins, I acknowledge receipt of your letter of the 28th inst..

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In relation to the transcripts, we confirm that we have forwarded these to Smith Foy and Partners, solicitors for Bovale Developments Limited, Michael Bailey and Thomas Bailey.

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In relation to the other letter, we note the position and await hearing from you further".

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As you will also be aware, sir, prior to the transcripts being sent to the solicitors for Bailey/Bovale by the bank the Tribunal itself sent a statement from the bank to the solicitors for Bailey/Bovale but did not circulate that statement yet to any other party.

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It seems to me, sir, that the publication of this article in these circumstances raises a number of questions which

need to be urgently addressed.

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The first question, sir, is since it appears from the terms of the article itself that what is stated in the article is a version of events which Mr. Bailey will give in relation to the evidence which Mr. Gogarty gave relating to the £50,000 cheque, I think the Tribunal should request counsel for Mr. Bailey and the Bovale interests to state whether it is in fact going to be their version of events. And I think that question could rightly be asked, sir, in the context that you will recall that for five days last week we had legal arguments as to why Mr., among other things Mr. Bailey should not put in a further statement giving his version of this £50,000 cheque evidence.

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You will recall, sir, that in the statement which he did submit to the Tribunal referring to paragraph 64 and 65 of Mr. Gogarty's affidavit dealing with this £50,000 issue, he simply denied that he gave it and said he would deal with it further in cross-examination, giving neither Mr. Gogarty nor the Tribunal any further information on the matter.

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You will also recall, sir, by letter of the 18th of December, of 1998, I think it was the 18th, Mr. Gogarty's solicitor wrote complaining about the manner in which Mr. Bailey was dealing with this matter and asserting they were entitled to know what Mr. Bailey's version was. You will recall, sir, that in the course of those submissions I requested that an additional statement in relation to these matters be submitted by Mr. Bailey and that might meet the situation, and you sir, unfortunately were not offered an additional statement. Mr. Bailey stood on what he said

were his rights and objection and did not submit an additional statement.

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We now read a version, and for all I know it may not be Mr. Bailey's version or it may be. I do think the Tribunal is now entitled to know whether it is or not.

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The second question I think arises from the publication of this article sir, regardless of whether or not this is Mr. Bailey's version as disclosed in this article is that Mr.-- I notice Mr. Allen isn't here, but Mr. Leahy, counsel for Mr. Bailey should be asked to take instructions from their instructing solicitor as to whether he is in a position to assist the Tribunal in anyway as to how this information contained in this article found its way into the hands of Independent Newspapers Limited, given that the only people in possession of the information and documents referred to in the article are the bank itself and the solicitors for Mr. Bailey, and presumably Mr. Bailey himself.

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Thirdly sir, if it is Mr. Bailey's version of events, and regardless of the answers to the first two questions, may I suggest that it is not now unreasonable for the Tribunal to request Mr. Bailey to state in writing in a supplemental statement to the Tribunal a detailed version of his account of this £50,000 transaction.

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Fourthly sir, given the publication of this material, and in particular the reference to documents, and given the fact that the Tribunal has last week sent out notice of its intention to consider making an order against Anglo directing it to hand over its file, and given that the

Tribunal has received a communication from the solicitors for Mr. Bailey indicating that he wishes to make written submissions objecting to that course, that they should be now asked, in view of the publication of this article, whether they have any objection to the bank handing over its file and making it available to the Tribunal.

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So sir, I would respectfully suggest that the matter is so serious, given the disclosure of the kind of information and the details contained in that article, it should be dealt with now and counsel for Mr. Bailey should be asked to take instructions on those questions now.

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CHAIRMAN: Mr. Leahy?

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MR. LEAHY: I am happy, sir, to render the assistance that I can in relation to the matter.

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CHAIRMAN: The assistance will have to be very full in terms of the very, I think the questions asked are very reasonable and very pertinent at this moment in time.

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MR. LEAHY: May I say this, sir --

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CHAIRMAN: Before you go on, is there a representative of Gerard Scallan and O'Brien in the building at the moment?

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MR. HANRATTY: I understand, sir, that Mr. Glackin is not here yet but is on his way down.

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CHAIRMAN: Thank you. I don't want anything said in the absence of everybody being present. If it is it will have

to be repeated when he comes.

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MR. LEAHY: The position is as follows; yesterday morning myself and other counsel appearing for Bailey and Bovale were given by our solicitors, documents which the solicitors had received the previous day. Those documents were given to us effectively at 10 o'clock. They contained details of the previous working of the Tribunal, I don't wish to be coy in relation to it but I have no desire to trespass on the area of the Tribunal.

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That is the first that counsel had seen of them. We inquired where they had come from, it was misunderstood -- mistakenly received that they have come from the Tribunal. Mr. Allen spoke to Mr. O'Neill, I may be incorrect. Shortly after that we clarified the matter, and in fact they had been received by our solicitor's office the previous day, Monday, in an envelope without a covering letter that was posted from Gerard Scallan and O'Brien, on instructions.

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This was the first we knew of those documents or the contents of those documents. Now, I think it is proper to say that Mr. Hanratty is slightly incorrect, we have no bank documents from Anglo Irish, we have never had bank documents from Anglo Irish. In relation to the -- once we became aware of the contents of that we drew it to the attention of a member of the Tribunal legal team because we were concerned in relation to it.

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In relation to the proposed order for discovery, there has been correspondence between your solicitor and ourselves,

sir, and I think it is incorrect to say that we object to the making of the order. We wished conditions to be attached to the making of the order, those conditions were not acceptable and we indicated we would wish to address you in relation to that. It was not in anyway an attempt to prevent you getting the documents sir, but you will be aware that we have made submissions that we should be entitled to cross-examine in the ordinary way without prior notice.

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The circulation of those documents would effectively be the giving of prior notice. If I may answer Mr. Hanratty's question specifically. We have no objection to the Tribunal getting any document from that bank. We do have matters that we would wish to address you on in relation to the circulation prior to cross-examination, and that has been the tenure of the correspondence. That is a matter, if the Tribunal wants to get its hand on whatever document that the bank has, in relation to this issue, we have no objection to the Tribunal having it. We do wish to address you in relation to what the Tribunal should do with it once it gets it, to whom it should give the matters.

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The publication this morning of this is entirely regrettable. We have made detailed submissions to you, sir, as to why we should be entitled to cross-examine in the normal way. The information contained in that, Mr. Hanratty has said there are a number of assertions of fact in the article and there are, it also states that the matters related to contemporaneous notes, and I want to be quite clear, we do not have, we have never had, any contemporaneous notes or documents from the bank in this

regard.

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It alleges that a bank witness will give evidence to the Tribunal, we have no knowledge of that, sir. In relation to the other matters, you have ruled on the course of action that should be followed. We are anxious to follow that course of action.

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You have ruled the manner in which it should take place, we are anxious to follow that completely.

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CHAIRMAN: In that context I don't actually have the decision here before me, but it is my recollection that I said that I would make exception, if required, where Mr. Gogarty was cross-examined in relation to a new aspect suggesting wrongful act, wrongful participation, no notice be given that I would grant him an opportunity to take counsel -- I think it is in that context that that statement of yours must be accepted.

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MR. LEAHY: Yes, I accept that was --

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CHAIRMAN: You will recall, as I say I have now got the actual decision in front of me and I can cite it to you, if you wish. What is still concerning me is that this has a detail in it which, while I do accept that members of the press can have some degree of poetic license, this is more than poetic license, this goes back to very factual detail, by a very, very good correspondent of the press, and he didn't, it didn't come on the ether to him. Do you know, or do your clients know, and I think you should take instructions, specific instructions as to whether you can

assist the Tribunal in relation to the detail in which Mr. Sam Smyth is obviously fortified before he went to press.

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Now, I want to make it clear that I am not in anyway criticising Mr. Sam Smyth, he is a journalist doing a job, but I certainly am entitled if you and your clients have that knowledge, to be advised of it. I want to say I take a very serious view of this whole matter.

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MR. LEAHY: I fully accept that a very serious view should be taken of it, Chairman. Can I say this? I have no knowledge, my counsel colleagues have no knowledge, and my solicitors have no knowledge of any internal bank matters.

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CHAIRMAN: That is not what I asked.

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MR. LEAHY: Sir, let me deal with it frankly. If you are asking me to state here and now what my instructions are in relation to the matter --

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CHAIRMAN: From your, what instructions your solicitors obtained from their clients, that's what I want to know because I have --

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MR. LEAHY: In relation to the evidence of Mr. Gogarty?

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CHAIRMAN: In relation to this: The subject matter as to what your client told your solicitors they knew about it.

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MR. LEAHY: The article?

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CHAIRMAN: The facts stated in the article.

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MR. LEAHY: If you are asking me what specific instructions my solicitor got from my client in relation to this article I can tell you, none. If you are asking me what instructions my solicitor has taken in relation to the circumstances Mr., Mr. Bailey's circumstances in relation to matters, I clearly have instructions in relation to that. But I am entitled, sir, and entitled on foot of your ruling not to reveal my instructions to the Tribunal at this stage.

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MR. HANRATTY: Sir, might I clarify my position on this?

What I was seeking, sir, is first of all that Mr. Leahy takes instructions and informs the Tribunal what is stated in this article, the substance of what is stated in this article, is it, in fact, his client's version of this issue, that was the first matter on which I think it would be not unreasonable for the Tribunal to ask Mr. Leahy to take instructions and to inform the Tribunal of the position after he has taken instructions, that's the first point. The second point is that he should take instructions from his solicitor. Presumably Mr. Smyth, in consultation with his respective client, as to whether they can provide any assistance to the Tribunal as to how this information found its way into the hands of Irish Independent in circumstances where the only people that have the document from which the information appears to have come were the solicitors for Bailey/Bovale and the bank itself.

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MR. LEAHY: Mr. Hanratty refers to the document from which

the information has come. In the article that seems to be what is referred to as contemporaneous notes from the bank. Let me state clearly this is the second time it has been said. We do not have those, we have never had those.

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So the people who have the document, if there be a document, if the article be correct, are the bank.

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CHAIRMAN: Well, that is not entirely correct. It is massaging aging the truth, if I may put it that way. You received the transcript of the interview. That transcript, as you are aware, by virtue of the decision of the Supreme Court was certainly not available for use by the -- it was certainly, your solicitors certainly had that document, whatever other document they may not have had, they definitely had that document.

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MR. LEAHY: That document sir, on Monday it was delivered to my solicitor's office in the post. It was opened in the order way and the solicitor dealing with the Tribunal received it on Monday afternoon on returning to the office.

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CHAIRMAN: Can we get back to the proposition, is this your case?

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MR. LEAHY: What you are now asking me, sir, to provide you with is a narrative statement. We have made lengthy legal submissions to you to avoid doing it before the proper time. May I also, sir, address the suggestion that I am massaging the truth, I am seeking to deal with this in

an entirely open manner.

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This is most unhelpful. We made submissions to you for a lengthy period of time, you ruled on the matter and suddenly we find that there are matters in the paper that are most unhelpful.

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CHAIRMAN: In the light of the matter in the paper is this Tribunal to work in the dark as to what you are going to do? Do we have to wait to see whether we can believe the Irish Independent?

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MR. LEAHY: Sir, I say this Tribunal shouldn't work in the light of anything that's in the paper. I don't know whether the contents of this are correct.

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The Irish Independent has learned that the bank will give evidence to the Flood Tribunal that the builder told them he needed 150,000 for the former Chairman of JMSE.

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I do not know what or who, who in the bank may give evidence, I don't know what documents they will have, we have never had them.

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The history of this matter is, sir, that the Tribunal prior to last July conducted certain investigations, some paper was brought into being as a result of that and as a result of the Supreme Court case that paper, we understand, was returned to the bank, or its solicitors, but back to the bank.

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We never had those documents. For the first time on

Monday they arrived in my solicitor's office, they arrived without a covering letter from Gerard Scallan and O'Brien, were opened by a solicitor in that office, were left, were obtained in the late afternoon on the return from here by the solicitor dealing with the matter and given to counsel in this room at approximately 10 o'clock yesterday morning. We did not have internal documents, we do not have them now from the bank.

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CHAIRMAN: Well, this is a matter, as I said -- thank you very much, Mr. Leahy.

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This is a matter --

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MR. CALLANAN: Mr. Chairman, before you make a ruling on the matter. This is something in which Mr. Gogarty's interests are vitally concerned. Mr. Hanratty raised a series of questions, I am utterly at a loss to know what the answer to the most salient of those questions is, and it seems to me that Mr. Leahy was invited to give a straight answer to a very straight question and that is: Can he assure the Tribunal that the Bailey's, their legal representatives or any other person acting on behalf of them, the Bailey's or of Bovale, had no responsibility or involvement in the story which appeared on the front page of this morning's Irish Independent? Now, I don't know what Mr. Leahy was saying but whatever he said fell well short of offering that assurance to the Tribunal.

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MR. LEAHY: Let me deal with it, sir. It is my belief that what Mr. Callanan says is quite correct, that nobody on our side had hand, act or part in that, and the only

reason I stopped short of going further is I haven't had an opportunity of taking full instructions. I will happily do that as soon as I can and come back with a definite answer. I am not seeking to be coy, I share the outrage of the publication of this.

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CHAIRMAN: I would deeply appreciate it if you do me the courtesy of taking those instructions and coming back, I will give you five or ten minutes because you obviously need it. It is not going to be done -- I am going to rise for ten minutes. I might also say, I am sure Mr. Glackin who I know by now, that there is no intention of discourtesy, I understood he was coming down, I do not propose to deal with this matter in the absence of Mr. Glackin, because a person professionally involved, obviously because he is the head of the firm involved, he was, in fact, I think the solicitor dealing with the matter, I don't know if he was the senior partner or not, I think he is entitled to be given an audience and not to have any cloud over his operation.

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MR. HANRATTY: Sir, in fairness to him he was told very late, and he said he would leave immediately. We do understand he is coming. Sir, before you raise and before Mr. Leahy takes instructions, just so he be clear, there are two factual matters arising from his submissions that I think should be drawn to his attention.

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The first is when he said for the first time he was sent the transcript with the letter of the 29th, he had been sent on the 26th of January a letter from the Tribunal enclosing a narrative statement from Anglo Irish Bank, a

detailed statement from the bank setting out information and material relating to this £50,000 transaction. That was enclosed in a letter of the 26th of January.

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And that also was not sent to anybody else.

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The second thing, sir, is my friend said that they were not objecting to the Tribunal getting the Anglo Irish documents but that they were consenting to it subject to the condition, the condition which was imposed, sir, was a condition which in effect meant that the Tribunal could never use the documents, couldn't circulate them and couldn't use them in anyway, that's the reason, sir, that particular condition was unacceptable to the Tribunal.

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CHAIRMAN: I will rise for ten minutes, but I will not deal with this matter until I have had an opportunity of seeing Mr. Glackin in court, in the Tribunal.

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

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MR. LEAHY: Chairman, I am grateful to you for the opportunity you have given me to take specific instructions in relation to the matter. May I say clearly and unequivocally, that neither I nor any of the other two counsel involved, my solicitors, either client; that is Michael Bailey or Thomas Bailey or anyone acting on their part or any of our parts; had any hand, act or part in delivering any of the factual matter contained in the article to the journalist in question or anybody else.

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May I also say, Mr. Chairman, that the article refers to contemporaneous notes and file notes in the bank. I think important that I say at this stage that we have never had those notes or copies of those notes. Mr. Hanratty has drawn my attention to a draft statement, or memorandum, from a person in the bank which I have had the opportunity of rereading. I think it is important that it be said that the detail in that statement differs radically from the detail in the article.

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CHAIRMAN: Sorry, the statement is the statement we furnished to you?

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MR. LEAHY: Yes. The detail in that statement differs radically from the detail in the article. It arrived to us sir, enclosed in a letter of the 26th of January of this year, from the Tribunal to my solicitors.

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We, sir, did not have documents referred to in the article, it is clear, but at one stage the Tribunal had and returned them, and it is clear that the bank has or presumably has. I am happy to make clear that we had no hand, act or part; speaking on behalf of the entire legal team and our clients; in relation to the matter.

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I am concerned sir, that in relation to my earlier submission, it was suggested that I was massaging the truth, I am seeking to deal with this in an entirely truthful manner.

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CHAIRMAN: May I just interrupt you there and say that that remark in no way was in anyway impugning the personal

integrity of the counsel, which is of the highest possible standard.

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MR. LEAHY: I will - it was a matter that I was concerned, lest you felt in some way I was seeking not to put the matter fully before the Tribunal, as it is my instructions.

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Can I say this sir, as a final comment. We made extensive legal submissions with a view of cross-examining in the ordinary way and you have ruled. The appearance of this article is of absolutely no, of no assistance to us.

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CHAIRMAN: Well, are you willing to go any further? I think I made a specific request to you, stating what your present position is in relation to it? Whether in fact the substance of the article, is that the substance of your client's approach to the matter?

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MR. LEAHY: I am not sir, and I hope you will appreciate the manner in which I say this; I am not prepared at this stage in the light of what has developed this morning, to take an important decision by way of giving you an answer as to what my instructions are. I would happily consider that in the light of the publication of the article and return to you at a very early stage, but I am not, as I have been dealing with other matters, prepared to make a substantial policy decision effectively on my feet, and I say that to you with great respect, in regard to matters.

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CHAIRMAN: May I ask you another question, again with every courtesy to you personally? Do you accept as a matter of fact that the transcript in fact refers to the

contemporaneous notes?

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MR. LEAHY: I don't have it in front of me. I have left my -- if a transcript refers to it I have no difficulty with that.

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CHAIRMAN: It does.

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MR. LEAHY: May I simply state again the sequence in relation to the transcript; they arrived at my solicitor's office on Monday, they were opened by solicitors there. The solicitor dealing with the matter in the Tribunal returned sometime in the late afternoon when the Tribunal had sat on Monday afternoon. It came to her attention then. They were furnished to counsel, not furnished to anybody else, were furnished to counsel at 10 o'clock yesterday morning and we took steps immediately after that. That was the first involvement we had with those transcripts.

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CHAIRMAN: May I ask you to clarify one other thing?

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MR. LEAHY: Certainly sir.

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CHAIRMAN: I just took you down as saying, having recited various counsel and solicitors, and any other people acting on their, what I have here is "their part", it may be on their behalf. Who are the other people?

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MR. LEAHY: What, the specific question I was asked was whether any of us, by way of the legal team, counsel, solicitors or clients or anybody acting on our behalf, on

our part, I am simply giving that. We have spoken to both clients, we have got their firm instructions. I have spoken to all the solicitors involved and my solicitor has, I have spoken to counsel. That is what I am saying. It was put in that way simply on the basis that it would be comprehensive.

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CHAIRMAN: The phrase that I have noted, which I noted at the time, "any other people acting on their part".

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MR. LEAHY: Yes sir.

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CHAIRMAN: Who are the other people?

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MR. LEAHY: No, sir, what I was asked --

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CHAIRMAN: No, that is what you said.

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MR. LEAHY: The reason I said it, I was asked whether my clients, ourselves, our solicitors or anybody acting on our behalf or part had done so.

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CHAIRMAN: Who else is acting on your behalf, that is what I want to know?

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MR. LEAHY: What I am --

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CHAIRMAN: Is there anybody other than the legal team?

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MR. LEAHY: No sir, what I am simply saying, I don't want it to be said that I am jesuitical in relation to my reply. I am saying that person A did not do this, I am

saying person A didn't do it or cause it to be done,  
perhaps if I used that phrase it would be better. Neither  
us, nor did we cause anybody to do it.

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CHAIRMAN: May I take it from your answer that there is no  
other person acting on behalf of your clients other than  
their legal representatives in relation to matters in the  
Tribunal?

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MR. LEAHY: I have no doubt my clients get advice  
elsewhere in relation to matters pertaining to their  
business and reputations, sir, but what I am saying quite  
clearly is nobody was asked by us or nobody did give this  
information. And the -- this article is based on  
information which it is quite clear, and no one alleges  
otherwise, that we did not have, do not have, never did  
have contemporaneous notes in the bank, bank files.

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CHAIRMAN: But Mr. Leahy, isn't it manifest that the  
information could have come from the transcript? If you  
read the transcript you will see that.

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MR. LEAHY: Sir, can I say that I don't disagree with  
that. Can I say this sir, we had the transcript, our  
solicitor had possession of it on Monday, we had it  
yesterday morning. The Tribunal have at some stage, I don't  
know when. The bank had it and I don't know who they  
disseminated it to, I don't know, perhaps nobody.

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CHAIRMAN: I will clarify that later in the day.

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MR. LEAHY: I hope, sir, the same nature of inquiry that

has been made of us will be made of all the parties who have it.

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CHAIRMAN: All the parties, absolutely all the parties.

Mr. Hanratty, do you want to say anything? I just want to make a certain ruling, unless you want to say something.

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MR. HANRATTY: Well, it is widely published in the media that Mr. Heneghan is acting for Bailey/Bovale. I don't know whether those reports are true or not. I would like to have reference to that in terms of My Friend excluding the possibilities.

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MR. LEAHY: Mr. Heneghan was present, the question was put to him by my solicitor, he is included in the category of people I described.

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MR. HANRATTY: The other thing I should tell you sir, we understand that Mr. Glackin did have a difficulty in getting here at the time that we required. He has said that he can make himself available at 2 o'clock and that he would also endeavour to bring the relevant official from the bank to assist us in the matter.

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CHAIRMAN: Well, in the circumstances I consider this a matter which must be absolutely gone through in absolute detail, because it is a very important aspect, it goes to the whole credibility of the Tribunal. And I intend to require, essentially by request I would hope, the attendance of Messrs. - the two, the two Bailey's, Michael and Tom Bailey; Mr. Glackin; Mr. Smith, the solicitor of Smith Foy, and Mr. -- the public official --

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MR. HANRATTY: We don't know the name of the person yet from the bank, but we understand that they will be here.

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CHAIRMAN: And Mr. Heneghan, and I intend to require them to give evidence on oath.

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MR. LEAHY: Could I simply say, sir, in relation to Mr. Smith, that he is down the country. He has been down the country all week and he has not subsequently been involved in any of this. He was not here --

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CHAIRMAN: Who was the senior, who was the senior member of the firm who was dealing with this case in his absence?

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MR. LEAHY: It has been in the Tribunal Mr. Michael Foy, and we can have him here, if you require.

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CHAIRMAN: I require the senior member who was dealing with the matter to be present and give evidence on oath.

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MR. LEAHY: At the moment that excludes Mr. Smith. I am anxious not to recall him unless it is utterly essential. He has not been dealing with the --

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CHAIRMAN: I am not excluding anybody for the moment. At 2 o'clock, it is a bit tight to get him back.

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MR. CALLANAN: Mr. Chairman, just there is one matter which I think might be usefully raised at this stage. The fifth paragraph of the article is as follows:

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"Mr. Gogarty is expected to be questioned about the money next week when his cross-examination is expected to begin.

In a discussion about cross-examination last week Colm Allen SC, counsel for Bailey, said that they planned "A big, big ambush" for Mr. Gogarty".

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The reason why I refer to that paragraph is that Mr. Leahy in the assurance he has given to the Tribunal stated that the parties to whom he referred had no hand, act or part in the delivery of any of the factual matters contained in the article. Now, I think it would be useful if either now or at 2 o'clock Mr. Leahy could make plain to the Tribunal whether in formulating his statement in that way he is seeking to draw any distinction between the factual matter contained in the article, and either the use to be made of the factual matter in the Tribunal or the interpretation to be placed on the factual matter. I think it would be useful if Mr. Leahy was to clarify that.

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MR. LEAHY: I will deal with it now, sir. I wasn't seeking to be jesuitical. We had no hand, act, part or involvement in the article in its entirety. We did not transmit information. I am sorry about the limitations of the undertaking I have given, they are not consciously imposed by me. I am trying to give a fulsome picture that this is not our work in anyway. There is no formula of words that I am seeking to avoid. If somebody suggests one I will endorse it, because clearly in seeking to be fulsome I am not meeting the requirements. People are reading into what I said since things, but I certainly am not seeking to put in what I am saying to you --.

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THE HEARING RESUMED AFTER LUNCH AS FOLLOWS:

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CHAIRMAN: Mr. Allen, Mr. Leahy this morning dealt with your client's situation in a most adequate and professional way, and I am now proceeding to hear evidence and nothing else. Thank you very much.

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MR. ALLEN: Chairman, if I might just --

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CHAIRMAN: No.

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MR. ALLEN: Well, with respect --

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CHAIRMAN: Mr. Allen, please resume your seat.

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MR. ALLEN: You are not willing to permit me, sir, as I understand it --

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CHAIRMAN: At this moment in time --

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MR. ALLEN: Reference was made to my absence.

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CHAIRMAN: Your absence was perfectly and satisfactorily explained and perfectly acceptable to me.

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MR. ALLEN: Not by your counsel --

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CHAIRMAN: I have no knowledge of what you are talking about. You have perfectly adequate and good reason for your absence. You may take that as absolutely complete.

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MR. ALLEN: As I accept everything you said, I heard Mr. McEnroy tell you to tell me to sit down, I find that quite objectionable.

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CHAIRMAN: I am now telling you to sit down, please.

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MR. ALLEN: And you and Mr. McEnroy are telling me to sit down.

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CHAIRMAN: I am telling you, and I do not require any rudeness from you in anyway. Thank you very much. Mr. Gallagher or Mr. Hanratty.

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MR. HANRATTY: Mr. John Glackin please.

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JOHN GLACKIN HAVING BEEN SWORN WAS EXAMINED BY MR. O'NEILL  
AS FOLLOWS:

1 Q. MR. O'NEILL: Mr. Glackin, I think you are a solicitor and a partner in the firm of Gerard Scallan and O'Brien; is that correct?

A. That's correct.

2 Q. And does that firm act on behalf of Anglo Irish Bank Corporation?

A. That is also correct.

3 Q. Do you know whether or not a statement was furnished by your firm on behalf of Anglo Irish Bank Corporation to the Planning Tribunal on the 21st of January, of this year?

A. It was.

4 Q. Was that a narrative account by a Mr. William J Barrett who had been a senior manager with the bank in November of 1989?

A. Mr. Barrett was a senior manager in 1989. The document was not solely related to Mr. Barrett. It was relating to, it is a brief summary of the relationship between Anglo Irish Bank and Bovale in relation to the matters the subject matter of this Tribunal.

5 Q. Very good. Now, do you know that that document was received by the Tribunal on the 22nd of January?

A. So I understand.

6 Q. Yes. In the course of that narrative account did it make reference to three appendices?

A. Yes.

7 Q. And where were those appendices enclosed with the narrative

account?

A. Inadvertently they were omitted.

8 Q. Did that lead to some communication between the Tribunal and yourself with regard to the production of these documents?

A. Yes. There was a call sometime over the next couple of days from the solicitor for the Tribunal.

9 Q. Yes.

A. Informing me of that. And I said that I would get them down to the Tribunal as quickly as possible.

10 Q. Ultimately did it reveal itself that some of these documents might be covered under an Order for Discovery which was being considered by the Sole Member at that time?

A. That subsequently transpired. I got a letter a couple of days later confirming that conversation, reminding me that I had said I would send them down. I think they were probably going down across by courier maybe, but it was a very short while after that those three appendices were sent down to the Tribunal, two days later, I think that was probably the 25th or 26th, if my memory serves me correctly, of January.

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On the 28th I got a letter from the Tribunal returning those to me and saying that they were likely to be the subject matter of an order to be made by the Tribunal and it wasn't necessary that they would hold them in the context of the narrative statement.

11 Q. Very good. Did you also receive two transcripts of evidence which had been taken from certain Anglo Irish Bank officials last year?

A. I did.

12 Q. And when did you receive those documents?

A. On the 28th, which I think was last Thursday.

13 Q. And were they received with a letter from the Tribunal outlining what you could do with those particular transcripts?

A. Yes.

14 Q. And what were you asked to do?

A. Essentially, I was asked to send them on to Smith Foy, solicitors for Bovale, if Anglo Irish had no objection to that process, and I knew they had no objection and I sent them on to Mr. Smith of Smith Foy on the 29th.

15 Q. I see.

A. I, also on the same day, I wrote an acknowledgment to the Tribunal saying that I had received the documents from them and that I had sent them on to Mr. Smith.

16 Q. Now, could you read into the record the letter which you wrote to Smith Foy enclosing these transcripts please?

A. Just bear with me a moment.

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It is stamped "File Copy". Okay. It is the 29th of January, of 1999, addressed to "Kevin Smith, Smith Foy & Partners, 59 Fitzwilliam Square, Dublin 2. Re: Anglo Irish Bank Corporation PLC. Tribunal of Inquiry into Certain Planning Matters and Payments".

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"Your clients, Bovale Developments Limited, Michael Bailey and Thomas Bailey.

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Dear sir, at the request of the solicitor to the Tribunal, we enclose transcripts of two interviews by officers of Anglo Irish Bank Corporation PLC on 28th of May and 9th of June, '98, respectively.

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Apparently your firm had written to the Tribunal many months ago seeking copies of the transcripts, and the Tribunal wrote to us on 16th October indicating that the Tribunal had no objection to complying with this request, if Anglo Irish Bank Corporation PLC had no such objection.

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As we had not at that stage seen the transcripts we asked for them, and they were sent to us by letter 22nd of October, 1998. We then read these and passed them to our clients and between us marked some minor amendments or comments in the margins of the transcripts and returned these to the Tribunal on 8th of December.

.

As our clients have no objection to these being released to you, we are now forwarding them directly to you to avoid any further delay. You might in due course acknowledge receipt. Yours faithfully, Gerard Scallan and O'Brien".

17 Q. Now, in the normal course that letter would have been enclosed with the two transcripts that were being sent; isn't that so?

A. Absolutely, yes.

18 Q. And is that your understanding, that that in fact took place?

A. I have no reason to believe otherwise.

19 Q. Yes. And how did you dispatch that letter and the contents?

A. Well, to be honest with you I would have signed the letter, attached it to the transcripts and left it to my secretary to deal with it after that.

20 Q. You hadn't given any direction that it go by courier or personal delivery?

A. No, no.

21 Q. Do you understand that it was posted?

A. As far as I know it was posted. When this matter arose this morning I checked our internal administration records and we would normally keep a record of anything that is sent by courier, and I am satisfied it is not in our records as having been sent by courier. It is not noted on my file copy of the letter as having been sent by courier. So, I can't be anymore conclusive than that.

22 Q. So in the normal course it was posted on Friday, as far as you are concerned, and would have arrived in, at a Dublin address on the following morning; sorry the following Monday post; isn't that so?

A. Well, I would like to think so.

23 Q. Yes.

A. The other letters, I did say I sent two other letters the same day, one was to the Tribunal acknowledging receipt of the letter, and you would know whether you got that one on the 1st; and at the same time I wrote to my clients telling them what I was doing and sending them a copy of it, of my covering letter to Mr. Smith and they got that on the 1st. I checked that, on Monday the 1st. So I am presuming that the other went in the same way, that they would have got it on the 1st, but I can't account for the post.

24 Q. Were they the only copies of that transcript that you, those transcripts rather, which you had in your possession?

A. No. From the time that I sent to my clients back in October last the original, what I consider the original transcripts that were sent to me, I would have kept on my file photocopies, so that if they had any queries or wanted to check anything with me I had copies on my file to be able to deal with them.

25 Q. Have you disclosed the contents of those transcripts to any

other person, other than your own client?

A. Other than one or two of the people in my office who, we do exchange information from time to time on matters that might be relevant, but they wouldn't have seen the transcripts, but people in the office would generally know what other people are doing.

26 Q. When you talk of "people"?

A. Partners.

27 Q. Your partners?

A. And obviously my secretary would have seen them, but I have checked in anticipation of this, I have checked with anybody in my office who might have possibly had any knowledge of the matter whether they would have disclosed it to anybody and they are absolutely adamant that they wouldn't have, and they haven't.

28 Q. Fine. Can you say of your own knowledge, whether or not the statement which you furnished on behalf of Anglo Irish Bank Corporation to the Tribunal made any reference to Mr. Gogarty, by name I should say?

A. Subject to my checking it, I am quite satisfied it didn't.

29 Q. Right.

A. But you have it in front of you, you may be able to check it.

30 Q. I do. Do you know whether the appendix referred to, or appendices referred to in that letter, including the note taken by the bank official who noted the initial request for money by Mr. Bailey, whether it named Mr. Gogarty?

A. I don't think so.

31 Q. Yes

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MR. ONEILL: Thank you. Would you answer any questions put to you, Mr. Glackin.

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

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32 Q. MR. ALLEN: Mr. Glackin, if I may very briefly, just so I  
am clear; as I understand it you have and retain copies of  
these transcripts; is that correct?

A. One copy of each of the two transcripts.

33 Q. Yes, of the transcripts of the interviews conducted by the  
Tribunal legal team with two employees of Anglo Irish Bank;  
isn't that correct?

A. That's correct, yes.

34 Q. And these were interviews which were conducted back in May  
of 1998; isn't that correct?

A. One was in May and the other was in June.

35 Q. I beg your pardon, yes. May, June?

A. Yes. Yes.

36 Q. These transcripts came into being in May, June of 1998;  
isn't that correct?

A. Correct.

37 Q. And you tell us that you have one copy of the transcripts?

A. Yes.

38 Q. I see. Now, just so I am clear about this point, it is my  
understanding that within the very recent past you were  
asked, either orally or in writing, by some member of the  
legal team to this Tribunal, to furnish copies of those  
transcripts to Mr. Kevin Smith, solicitor for my clients,  
Mr. Michael Bailey and Mr. Thomas Bailey and Bovale  
Developments Limited?

A. If I can give you a little bit of history?

39 Q. Yes, I would welcome it.

A. If you go back to mid October.

40 Q. Yes.

A. Your clients, as I understand it, asked the Tribunal for the transcripts, copies of the transcripts. The Tribunal passed on that request to me.

41 Q. Yes. I am sorry Mr. Glackin, "the Tribunal asked me"?

A. The Tribunal asked me did we object to that.

42 Q. Yes.

A. I responded that as I hadn't seen the transcripts I wasn't in a position to say yea or nay. I asked that the transcripts be sent to me.

43 Q. Yes.

A. They were sent to me sometime within a few days of that request.

44 Q. By the Tribunal?

A. By the Tribunal.

45 Q. Yes. And were they sent with a letter?

A. I would have to check my file, I can't remember.

46 Q. Do you have your file?

A. Yes, I have my file here, yes.

47 Q. If you would please.

A. Yes; on the 22nd of October.

48 Q. Yes.

A. I received a letter from the Tribunal, headed:

.

"Your client, Anglo Irish Bank PLC.

.

Dear Mr. Glackin, I refer to your letter of the 19th inst and now enclose herewith a copy of the transcripts as requested. I await hearing from you with regard to the Tribunal's request".

49 Q. I see. Now, as I understand it, at least what I wish to understand then, is at what stage were those transcripts

returned to the Tribunal?

A. If you bear with me a second, I can again check my file.

50 Q. Of course, yes.

A. By letter of the 8th of December.

51 Q. The 8th of December?

A. Yes.

52 Q. Yes. So, if we move then from the 8th of -- they are given to you, as I understand it, on the 22nd, by letter of the 19th of October; isn't that correct?

A. Yeah.

53 Q. You return them on the 8th of December; is that also correct?

A. Sorry, the 22nd of October I received them.

54 Q. My apologies. The 22nd of October you receive them?

A. Yes.

55 Q. And you sent them back on the 8th?

A. I sent them back to the Tribunal on the 8th. In the interim I had sent them to my clients.

56 Q. Indeed. But just for the avoidance of doubt, can I take it that the only people you sent them to were your own clients?

A. Absolutely.

57 Q. Yes. Now, taking the period then from the 8th of December, between the 8th of December and the furnishing of the narrative statement to which we have had reference, to which we have heard reference made; may I first of all deal with the question of the narrative statement, which was furnished through your firm, I think, to the Tribunal; isn't that correct?

A. Correct.

58 Q. Am I correct in thinking that that narrative statement is a very, very much truncated version of the contents of the

transcripts?

A. Well, it is two pages and the transcripts run, between the two of them, run to 50 or 60 pages, so yes.

59 Q. I take it the answer to that therefore is "yes"?

A. Yes.

60 Q. Yes. And that there is a great deal of information contained in the narrative statement -- there is a great deal of information contained in the transcripts which is not contained in the narrative statement?

A. There is a lot of detail, yes.

61 Q. Of detail, yes. I am sorry, I am happy with the word "detail". But what I then want to establish, Mr. Glackin, is in what circumstances and when and by whom were you directed to furnish copies of these transcripts to my clients? You see, you sent them back to the Tribunal on the 8th of December?

A. Yes.

62 Q. Did they then send them back to you and if they did when?

A. On the 26th of January.

63 Q. So they had them from the 8th of December until the 26th of January?

A. Yes, well --

64 Q. Well?

A. Well sorry, I got them back on the 26th, but whether they had them or passed them on to somebody else in the meantime, I don't know that. I can only tell you I sent them.

65 Q. No. No, I appreciate that you are obviously endeavoring to be absolutely precise in what you are saying, but insofar as we know these documents were within the possession of the Tribunal, having been sent there by you on the 8th of December, and you hear from them again, you get them back

again on the 26th of January; is that correct?

A. That's correct.

66 Q. Very good. And what were you told? What, if anything, were you told to do with them?

A. Will it help if I read the relevant part of that letter?

They were sent with a covering letter.

67 Q. Yes it would, Mr. Glackin.

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MR. O'NEILL: I think the, I think the whole letter should be read.

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CHAIRMAN: The whole letter should be read.

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68 Q. MR. ALLEN: Yes, of course.

A. It is dated, sorry I think I may have said the 26th of January, it was the 28th of January.

69 Q. It was the 28th of January that the Tribunal, having received these documents from you on the 8th of December, write back to you returning the documents, yes?

A. My letter of the 8th of December, okay. When I read you the letter, they received it on the 10th. They acknowledge receipt of the letter.

.

"Dear Mr. Glackin, I refer to your letter of the 8th of December, of 1998, received in this office on the 10th of December, 1998, and the enclosures contained therein.

.

Please accept my very sincere apologies for the delay in replying to the letter. Unfortunately due to an administrative oversight your letter of the 8th of December, 1998, and the enclosure contained therein were filed immediately on receipt. The letter and enclosures

were not, therefore, seen or considered by anybody,  
including the Sole Member or any member of the legal team.  
This was entirely inadvertent. This oversight only came to  
my attention today when I had occasion to refer to the  
file, and therefore the presence of the transcripts were  
not averted to until the file was considered by me this  
afternoon.

.  
Again, please accept my apologies for the delay in  
acknowledging your letter of the 8th of December, of 1998,  
and I wish to assure that no discourtesy was intended. I  
refer to my letter to you of 16th of October, 1998, and in  
particular to paragraph 4 of that letter which is  
"Interviews were held with Mr. William Barrett on 28th of  
May, 1998, and Mr. Patrick Whelan on 9th of June, 1998.

.  
The Tribunal has received a request from Smith Foy &  
Partners for a copy of the transcripts of these interviews.  
The Tribunal has no objection to complying with this  
request if Anglo Irish Bank Corporation PLC has no such  
objection. The transcripts are at present held in a secure  
location. I should be obliged if you would let me have  
your client's decision in that regard.

.  
Following your letter of the 19th of October, of 1998, and  
on request from you, I furnished you with a copy of the  
said transcripts by my letter dated the 22nd of October,  
1998. In your letter of the 8th of December, 1998, you  
returned the transcripts but did not indicate whether Anglo  
Irish Bank Corporation PLC had any objection to the release  
of these transcripts to Messrs. Smith Foy and Partners.

In these circumstances I return herewith the transcripts to you, and I would ask you to let me know whether as far as Anglo Irish Bank Corporation PLC are concerned these transcripts can be released to Smith Foy & Partners. May I suggest that if your client has no objection to Messrs. Smith Foy having the transcripts you might forward same directly to them to avoid any further delay (none of which is of your making) in the matter.

.

I would be very obliged if I could hear from you as soon as possible in respect of this matter which will receive my immediate attention.

.

Many thanks for your assistance in this matter and again please accept my sincere apologies for this oversight.

Yours sincerely, Mary Cummins, solicitor to the Tribunal".

70 Q. Can I just clarify one point in relation to that matter, Mr. Glackin? I want to be absolutely clear about it because of the gravity of this matter. Is -- were you being told that we had sought -- were you being told that we had sought sight, or copies of these transcripts related to a request sometime in January of this year, or related to an earlier request from the text of the letter?

A. The text of the letter refers to their earlier letter of the 16th of October.

71 Q. Yes.

A. And they were quoting from that, where they say "the Tribunal had no objection to complying with the request of your clients", but wanted to know if Anglo were happy with that.

72 Q. I see; and that came on the 28th?

A. This letter?

73 Q. Yes.

A. Came on the 28th with the transcripts.

74 Q. Yes; and as I understand it then your, would you have contacted your clients presumably, or indeed you may? That may not have been necessary because you may have already had their permission?

A. I already had their permission.

75 Q. Very good. Then you posted the documents to Kevin Smith?

A. Correct.

76 Q. Isn't that correct?

A. That's correct.

77 Q. Now, you have read to us the covering letter which you dictated to accompany that, the documentation; isn't that correct?

A. Correct.

78 Q. Now, I don't for a moment want to, let's be absolutely clear, I don't in anyway question your bona fides or your integrity, but the situation is that Mr. Michael Foy who opened the envelope in the absence of Mr. Smith, will say that there was no covering letter with the documents, and that the manner in which he was able to identify the fact that he came, that they came from your firm was because they had your postal, the envelope had your postal franking. Now --

A. Are you asking me a question?

79 Q. No, I am just telling you that as a matter of, I am just telling you as a matter of courtesy --

A. Okay.

80 Q. -- that that is the situation. I don't think it is, it may well be -- all Mr. Foy can do is say what came out of the envelope when he opened it. I don't suggest for a moment that you didn't write the letter and that it wasn't your

intention that the letter should accompany the transcripts. All I am saying, I am saying that from my solicitor's point of view, what he got was an envelope from Messrs. Gerard Scallan and O'Brien containing, without any covering letter, the two transcripts. And no more than he will question you, I presume, you wouldn't question Mr. Foy?

A. I have no reason to.

81 Q. In relation -- no, no again I don't want you to be hearing this when Mr. Foy --

A. No.

82 Q. -- is called upon to give his evidence, and as a matter of courtesy and out of respect to you I simply wanted you to know that.

A. Thank you.

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MR. ALLEN: Thank you very much indeed, Mr. Glackin.

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CHAIRMAN: Anybody else want to ask any questions?

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MR. HANRATTY: No, sir. I would like to call another witness now, if I may? Thank you Mr. Glackin.

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THE WITNESS THEN WITHDREW

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CHAIRMAN: Thank you very much, Mr. Glackin, for coming down. It is deeply helpful and I am very grateful to you.

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A. Correct, yes.

90 Q. And by him to the bank for checking for accuracy?

A. That's correct.

91 Q. Can I ask you to tell the Tribunal in whose custody in the bank were these transcripts kept while they were in the possession of the bank?

A. When they were returned to us by Mr. John Glackin they were in the sole custody of Mr. Bill Barrett and Mr. Pat Whelan, the two people who made the statements back in May and June of this year. When this issue arose this morning I checked with them and they confirmed to me that whilst those documents were in the possession of the bank they were kept under lock and key in their offices, respective offices.

92 Q. Yes. Was there any circulation of those transcripts to anybody in the bank?

A. No, there was no circulation, because we were obviously conscious of the sensitivity of the documents, and therefore as a result of that we were aware of the fact that we wanted to keep them fairly tight and not to circulate them in the building.

93 Q. And were they kept in a secure location?

A. As I said they were kept under lock and key in their respective offices.

94 Q. Were any copies of those documents given by the bank to anybody else?

A. No.

95 Q. Were the contents of those documents discussed by anybody in the bank, so far as you are concerned, with anybody else?

A. As far as I am aware they weren't discussed with anybody.

96 Q. You know that the bank was asked to, and did recently provide a narrative statement to the Tribunal in relation

to a certain matter?

A. That's correct.

97 Q. You know that there were three documents referred to in that narrative statement, described as appendices?

A. Yeah. We were aware of that because we would have -- when our solicitor, Mr. John Glackin would have drafted that he would have sent it over to ourselves and they would have been read by the respective people; Bill Barrett and Pat Whelan, to make sure that it was their understanding of the events.

98 Q. Am I right in thinking they consisted first of all a cheque for £50,000; secondly the contracts in relation to the sale of a certain property, and thirdly handwritten notes made by Mr. Barrett?

A. That is correct.

99 Q. Were the contents of any of those documents discussed by anybody in the bank, in the recent past, with anybody outside the bank?

A. No.

100 Q. Did you have any discussion in the recent past with anybody concerning any aspect of this particular transaction?

A. I had a discussion when they were furnished by Mr. John Glackin, I had a conversation with the - I can't give you the exact time and date, I had a conversation with Mr. Michael Bailey that he had seen the documents and that he was happy with the content of those documents.

101 Q. Are you referring to the narrative statement?

A. The narrative statement.

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MR. HANRATTY: If you would answer any questions which My Friend may ask you?

A. Thank you.

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MR. ALLEN: No questions.

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CHAIRMAN: Anybody else? Thank you very much, Mr. Brown.

A. Thank you.

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THE WITNESS THEN WITHDREW.

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CHAIRMAN: Mr. O'Neill?

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MR. O'NEILL: Michael Foy please.

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MICHAEL FOY, HAVING BEEN SWORN, WAS EXAMINED BY MR. O'NEILL  
AS FOLLOWS:

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102 Q. MR. O'NEILL: Mr. Foy, are you a partner in the firm of  
Smith Foy Solicitors?

A. That's correct.

103 Q. Were you working in that capacity this Monday?

A. I was.

104 Q. In that capacity, was one of your functions to open the  
post?

A. Well, I would open it most mornings, the post.

105 Q. Are you familiar with the documents which have been  
referred to so far as the transcripts of the bank  
officials?

A. I am indeed.

106 Q. Did you see those documents on Monday?

A. I did.

107 Q. Can you indicate in what circumstances you saw them?

A. I was opening the post and a large brown envelope came, and

I opened it and I took out the two transcripts, and I looked at it, there was no letter that came out with it; and I looked at the - there was a stamp on the outside of the letter, or the envelope, "Gerard Scallan and O'Brien".

108 Q. I see. About what time of day was that?

A. I am not sure, but I know they had gone sometime -- the post is very erratic, it would be certainly, say before 11 o'clock.

109 Q. You say "they had gone"?

A. Well, Rhona O'Sullivan and Sinead Smith had left for the Tribunal. I know it was after that.

110 Q. I see. You are not dealing directly with the matters that are concerning this Tribunal?

A. I am not at all, no.

111 Q. What arrangements did you make to have these documents brought to those members of the firm that are dealing with this matter?

A. I brought the two transcripts up to my own office. The post is opened up in the basement, I opened it up and brought them up to my office and left them on a side desk to give to Rhona O'Sullivan when she came back from the Tribunal.

112 Q. Did you meet her later that day?

A. I met her later that evening, late in the evening, I think it went on to the afternoon, the Tribunal that day. I think it was around half four or five o'clock.

113 Q. And what discussion did you have with her?

A. I told her these two documents had arrived from Gerard Scallan and O'Brien on that morning and that they were made by two members, employees of Anglo Irish Bank.

114 Q. Your conclusion that they came from Gerard Scallan and O'Brien was because of the frank, the stamp on the

envelope?

A. Correct.

115 Q. Did you consider ringing that firm once you had received what appeared to be unsolicited documents which could be traced to them by the stamp without a covering letter?

A. I didn't to be honest with you, it never struck me.

116 Q. Why was that?

A. I am not dealing with the matter. It never struck me whether there was any importance that there was a letter or there was no letter, or there may have been a letter. It didn't really strike me to be anything important, to be honest with you.

117 Q. And what exact discussion then took place between yourself and your colleague who was dealing with this matter later that afternoon?

A. I just gave her the documents and just gave it to her and told her to make copies for the barristers. I would presume that would be done for her counsel.

118 Q. Yes. Can you remember specifically indicating to her that they were documents which had, in fact, come from Gerard Scallan and O'Brien, or is it possible that she may have believed when she received the documents from you, that they were circulated by the Tribunal?

A. No. I think I did say that they came from Gerard Scallan and O'Brien, that is to my knowledge.

119 Q. Have you a direct memory of this?

A. As best as I can. It didn't sound to me anyway important to be very honest with you, there are very many letters. I said it came from Gerard Scallan and O'Brien. I had no idea how important or unimportant they were, to be very honest with you.

120 Q. Have you had any other discussion with any of the members

of your firm about this particular receipt of documents?

A. Not until today. I tried to get the envelope to see if it was still around, sometimes they leave the large envelopes, but it was either shredded or it was in one of the bags, it is the bin day today and there were a load of bags, so it may well be in that.

121 Q. Were you contacted by anybody else other than the colleague to whom you have given this documentation, concerning the receipt of this letter or enclosures?

A. No, only Sinead Smith contacted me from my office. She was with Rhona O'Sullivan today, down here.

122 Q. That is in the context of this present --

A. Yes, not in connection with anything else, no.

123 Q. Did you discuss the contents of these transcripts or did you read the transcripts yourself?

A. I barely glanced through them. I just had a quick glance through them when I opened them, I didn't read them fully or anything.

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MR. O'NEILL: Thank you, Mr. Foy.

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MR. ALLEN: No questions.

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CHAIRMAN: Thank you. Any other person wish to ask any other questions?

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MR. HANRATTY: No sir.

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CHAIRMAN: Thank you very much. I appreciate you coming down. Thank you.

A. Thank you, Mr. Chairman.

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THE WITNESS THEN WITHDREW.

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MR. O'NEILL: Michael Bailey please.

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MICHAEL BAILEY. HAVING BEEN SWORN. WAS EXAMINED BY MR.

O'NEILL AS FOLLOWS:

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124 Q. MR. O'NEILL: Sit down please Mr. Bailey. Are you aware.

Mr. Bailey, of the fact that Anglo Irish Bank Corporation

PLC provided a statement to the Tribunal?

A. I am, yes.

125 Q. Yes. Have you read that statement?

A. No.

126 Q. Have you ever seen the statement?

A. No.

127 Q. Have you been advised as to what the contents of the statement are?

A. No.

128 Q. Did you discuss the matter with Mr. Brown, the second last witness by telephone?

A. The narrative statement? I discussed with Mr. Brown in the middle of the year, last year, what was on the file regarding our meeting, my meeting with Mr. Barrett in 1989.

129 Q. I want to be quite clear about this, Mr. Bailey. What I am asking you about is the document which was circulated on the 22nd of, sorry on the 26th of January, which is a two page typewritten document circulated by the Tribunal, which is described as a statement to Anglo Irish Bank Corporation PLC. That is the document about which I have been asking you, and in respect of which you say you have not seen it, you have not read it, and you are unaware of its content; is that right?

A. On the --

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MR. ALLEN: I wonder if the witness could be shown the document? It is a failing practice of the Tribunal not to show it --

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CHAIRMAN: There is no need for comment, we are furnishing to them.

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MR. HERBERT: I would also like to point out that it wasn't circulated to our party at all.

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CHAIRMAN: No, I am aware of that.

130 Q. MR. O'NEILL: That is so, My Lord. Yes, it was circulated to one party only. Do you see the document that is before you, Mr. Bailey?

A. I do sir, yes.

131 Q. Is this the first time you have seen that document?

A. This is the first time I have seen this document.

132 Q. I see; and if you would like to read it now and I will ask you another question after you have read it. Will you please read it?

A. Yes.

133 Q. You needn't read it out loud. Just read it to yourself.

A. Okay.

134 Q. I am not asking you, Mr. Bailey, about the content of it, I just want to know whether, having read it, you are aware of its content. I am not going to analyse it in anyway.

A. Will I - can I read it in total?

135 Q. You can, of course, read it in full. You are familiar now with the document, are you?

A. I am indeed, yes.

136 Q. Did you have a conversation about that document with Mr. Brown, the second last witness, in the recent past?

A. In the recent past?

137 Q. Yes, since the 26th of January of this year?

A. I did, yes.

138 Q. I see. And did you tell him, as he has given evidence, that you had seen the documents and that you were happy with the contents of those documents?

A. Seen which documents?

139 Q. The document which is in your hand. Did you tell him that you had seen the documents and you were happy with the contents of those documents?

A. What I told him was that I seen the background of the conversation with Mr. Barrett in '89 and that I was happy with what was on that written statement.

140 Q. Well, what document are you now referring to, that you had seen, if it is not the document in front of you?

A. It was a handwritten note in the bank's possession.

141 Q. A handwritten note in the bank's possession?

A. Yes.

142 Q. Where did you see that document?

A. I seen it in the premises of the bank.

143 Q. Who showed it to you?

A. Tommy Brown.

144 Q. And how detailed was that document? Did it run to one page or less than one page?

A. A page and a half just of notes.

145 Q. A page and a half in handwriting; is that right?

A. Yes.

146 Q. And who was the author of that document; did it say?

A. I believe it was Bill Barrett.

147 Q. I see, and when was this shown to you?

A. It was shown to me, actually it was shown to me this morning.

148 Q. It was shown to you this morning?

A. Um hum.

149 Q. Where, in the bank?

A. In the bank.

150 Q. In Saint Stephen's Green?

A. Correct.

151 Q. Why had you gone to the bank this morning?

A. Because I had arranged to meet Tommy Brown this morning before any, anything got to do with publicity here concerning today. I had arranged to meet him at 8 o'clock

this morning and we met and we went back to the bank. He showed me the file. I looked at the file and we seen the handwritten note that was on the file in his office.

152 Q. Were you accompanied or were you on your own?

A. I was on my own.

153 Q. I see. And when did you arrange this meeting with him?

A. Yesterday morning. No, I think it was yesterday morning. Yes, yesterday morning. Yes, yesterday morning.

154 Q. You made this arrangement yesterday?

A. Correct.

155 Q. Was it made through your solicitors?

A. No, I was -- Tom was looking for me on Friday and I rang him back on Saturday on his mobile and I tried to contact him on Monday because I didn't know what he was looking for me for, and he rang me back yesterday morning and we arranged a meeting for this morning, for 8 o'clock this morning at the Shelbourne Hotel.

156 Q. And he was to bring the file to the Shelbourne Hotel, was he, or had you to go to the bank?

A. We didn't even - there was no conversation whatsoever about any file, no point about it. It was just a general meeting, a general conversation that we had, there was no agenda, there was no previous talk about absolutely anything.

157 Q. So, you had no agenda at all for this meeting which was to take place at 8 o'clock in the morning?

A. We often, we had been doing business with Anglo Irish Bank for 22 years and Tom being a senior executive, and we have had lots of ongoing business - we just, it just happened to -- when I met Tom he says, I said to him "did you see the paper?", which I had seen the paper and he said he hadn't.

158 Q. Is this today's paper?

A. This morning's paper.

159 Q. But the meeting had been arranged yesterday?

A. Oh, yes.

160 Q. What was the purpose for the meeting yesterday, so far as you were concerned?

A. It was this morning.

161 Q. Why did you arrange the meeting to take place today, yesterday?

A. There was no actual particular issue to be quite honest, that I had in mind. Tom was looking for me on Friday and on Saturday. And I rang him at his phone and then we said we would meet tomorrow morning for breakfast, and that is this morning, at 8 o'clock this morning.

162 Q. I see. You were meeting for breakfast with no agenda?

A. None, I had no agenda.

163 Q. Right. You turned up at that meeting having read the Independent Newspaper; is that right?

A. That's correct.

164 Q. And was what was published in the Independent Newspaper a surprise to you or did you know of the fact that there was going to be such a publication today?

A. I was aware that there was rumblings of such a publication but I had no knowledge that it was going to be printed today.

165 Q. Right. Well, what were the rumblings that you had heard?

A. Well, I heard from people talking in the Tribunal room that there was something about a publication, that Mr. Smyth was going to write.

166 Q. Yes; and what was Mr. Smyth going to write about, that you heard in the rumblings of this room?

A. I had no knowledge of what he was going to write. I just heard people saying that Mr. Smyth had some article and

that is all I was aware of.

167 Q. And were you aware that his writing would include reference to Anglo Irish Bank and yourself?

A. I wasn't aware, no. I heard rumours but I wasn't aware.

168 Q. Right. Well, what rumours did you hear and from whom, that Anglo Irish Bank was going to be the subject matter of this article to be written by Mr. Smyth, and what was the source of that rumour?

A. I heard a rumour from Pat Heneghan our PR person, that he had been speaking to Sam Smyth on Monday, and that there was some article, but the contents weren't discussed.

169 Q. Was Anglo Irish Bank referred to by name?

A. Not to my knowledge, no.

170 Q. So are you saying that it was a surprise to you to see references to Anglo Irish Bank in this article?

A. It was, yes.

171 Q. And you learned that for the first time when you read the newspaper today, is that your evidence?

A. That's correct.

172 Q. I see. Having done that, having learned that did you contact your solicitors?

A. This morning?

173 Q. I presume after you had read the newspaper, yes?

A. I spoke with my senior counsel.

174 Q. What time was that?

A. That would be at 9:30 approximately.

175 Q. And which of your senior counsel?

A. Mr. Colm Allen.

176 Q. Yes; and what did you tell him?

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MR. ALLEN: With respect, Chairman, the witness is under no obligation to answer that question, and it is a

confidential communication between myself and Mr. Bailey  
protected by legal professional privilege.

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MR. O'NEILL: That is yet to be established, with respect,  
sir. In the normal course one would expect that a client's  
contact would be with his solicitors, who in turn would  
contact counsel as required, in the event that there has  
been, what seems to be a direct contact between the  
parties. It does not follow that it necessarily is a  
confidential matter.

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CHAIRMAN: I would agree that --

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MR. ALLEN: In the circumstances that, in which this  
arose, was that --

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MR. O'NEILL: I think the witness should be allowed to  
answer the question.

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CHAIRMAN: The witness is under oath and it is for him to  
answer the question.

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MR. ALLEN: So-be-it.

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177 Q. MR. ALLEN: Now, what was the purpose of you ringing your  
senior counsel at 9:30 this morning?

A. The purpose was to meet him because I was, I couldn't  
believe firstly that there was an article like that on the  
front of the paper; and I was highly upset about it, so I  
contacted him and I asked him quite clearly; I says, which  
-- he was indisposed at the time when I rang his home, and  
I just said to him I couldn't believe that an article like

that was on the paper, on the front of the Irish

Independent.

178 Q. So you knew that Mr. Smyth was going to publish an article, as far as you are concerned, having been so informed by Mr. Heneghan?

A. Yes.

179 Q. Where is the surprise, Mr. Bailey?

A. Well, I was surprised at the level of allegation that was in it.

180 Q. I see. Did you contact Mr. Heneghan?

A. No, I never contacted Mr. Heneghan.

181 Q. No?

A. I met him here today in a room at a quarter past one or whatever.

182 Q. And did you discuss the matter with him?

A. Not in any detail. We met in a room at 20 past one. All our team were there and there was a general discussion, but I didn't discuss with Mr. Heneghan in any detail, other than he mentioned it and I didn't ask, he mentioned quite clearly, he said that Mr. Sam Smyth informed him that he had, he had sources, sources of -- that article in the paper from very good sources last Friday. That is what Pat Heneghan said to me.

183 Q. Last Friday being the 29th?

A. Well yes, it was the 29th. He said that he had very good, from a reliable source or impeccable source was the word I think that Pat used, that he had that last Friday.

184 Q. Just to revert to the statement from the Anglo Irish Bank Corporation, you say that you were unaware of the content of that statement; is that right?

A. Unaware?

185 Q. Of this document that is before you?

A. Yes.

186 Q. Yes. Are you saying that having read it now in the witness-box that that is the first time that you have read this document?

A. Yes.

187 Q. Yes. Though you were in the bank this morning and you saw the bank's file which deals with this case; isn't that right?

A. I just seen the page that, it looked to me to be the page of attendance on the date that I met Mr. Barrett, and that he put his notes -- it was a page and a half. There was actually other people's writing on it, and I asked Tom Brown, he said the other person's writing was the writing of Mr. Pat Whelan, Mr. Pat Whelan's notes at the bottom of the page, an ordinary foolscap page.

188 Q. Are you saying that this document was not on the file that you looked at?

A. I didn't see it, definitely not.

189 Q. And so you were unaware, both of this document and of its content, until you seen it in the witness-box; is that right?

A. That is correct.

190 Q. So you could not have indicated to Mr. Tom Brown that you were happy with the document which had been given to the Tribunal by the bank; isn't that so?

A. The page that Bill Barrett had his notes on, just to me, was reasonable to me, looking back, going back to 1989, and it is 1989 and it is very hard to remember what happens back in 1989, but to me it was, it looked a true recollection of his notes on that particular day at that particular meeting.

191 Q. I am not asking you about his notes, I am asking you about

his comment to him, that is to Mr. Brown, that you were happy with the documents that were furnished by the bank to the Tribunal, and for the record, that is the document which is before you, that is the document which you said you were happy with, and you are now saying that you seen it for the first time now?

A. The document I was happy with is the document, that is the notes on the file, the handwritten notes on the file of Anglo Irish Bank; they were the documents I was referring to.

192 Q. Did you ever inquire into whether those documents were furnished to the Tribunal, that particular document I mean?

A. No.

193 Q. Is it a surprise to you to know that the Tribunal has not been furnished with that document?

A. I don't know.

194 Q. Do you know that your solicitors are unwilling to allow for that document to be discovered to the Tribunal?

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MR. LEAHY: Sir, that isn't, with respect, entirely correct. What was stated was we are happy to have it discovered, we want limitations as to circulation.

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CHAIRMAN: Please let the witness give his evidence. You may cross-examine him later.

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195 Q. MR. O'NEILL: Did you ever indicate to your solicitors in the past 24 hours that you were going to the bank with a view to reviewing the documentation which the bank had on file, concerning matters relevant to this Tribunal?

A. No.

196 Q. And why is that, Mr. Bailey?

A. Well, I didn't intend to. When I met Tom Brown this morning I just met him as a regular business meeting. My view was that he wanted to ask me some questions about our ongoing business, normal practice. That's the reason I met him, and that was it in a nutshell, and then it came up when we had our conversation and we had our - Tom says "we can have a look at the file", exactly what was on the file, and we went back to the bank and he showed me exactly what was written on the file.

197 Q. How did it "just come up"?

A. How did?

198 Q. You said it "just came up", presumably meaning your dealings that were being investigated by the Tribunal. Did you raise it or did he raise it?

A. We were having a general conversation, I don't recall who raised it one way or the other.

199 Q. Well, who suggested that you would go to the bank and have you looking at the bank files?

A. I believe Tom did, Tom Brown.

200 Q. I see. Did you think that it might be a matter which your solicitor or legal team would have an interest in?

A. I didn't at the time.

201 Q. When, what time did you go to the bank?

A. Approximately say a quarter to nine, ten to nine.

202 Q. Ten to nine. I see.

A. I met him at 8 o'clock. We had a cup of tea and toast there in one of the restaurants there in, on Merrion Row, and we just walked down to the bank then afterwards. We had a chat for 15 minutes and that came up in conversation. We were taking about our general ongoing business situation and that came up in conversation, and we looked at the file and that's all -- it was until I was at a funeral out in

Lusk and I just had to leave -- Colm Allen -- and we were summoned to come back in here straight away.

203 Q. So you contacted your counsel after you had read the file; is that the position?

A. Well, I -- yes, that's correct, yes.

204 Q. I see. And presumably you told him what you had been doing?

A. I did, yes.

205 Q. Did you take any copies from the file?

A. No.

206 Q. I see.

A. The file never left Tom Brown's possession. He had it in his possession at all times.

207 Q. Mr. Bailey, just to clarify one point. Have you been in contact directly with any member of the press regarding this Tribunal?

A. No.

208 Q. By a direct contact, including telephone calls, letters, faxes?

A. I have never spoken to anybody.

209 Q. Do you mean you have never spoken to any journalist since this Tribunal has commenced regarding the circumstances of the Tribunal?

A. No. I had several, because since this Tribunal started I would say every journalist in the country has been calling my house.

210 Q. Yes.

A. And I haven't answered the phone whatsoever. The phone is answered by a member of the family and they inquire who is calling and if it is anybody, or any journalist I don't speak to the journalist.

211 Q. I see.

A. And that is very clear in the house.

212 Q. Have you, yourself, phoned any journalists and indicated to them any information which you have received --

A. None.

213 Q. -- from this Tribunal?

A. Never.

214 Q. At any time?

A. Never.

215 Q. And you have never faxed them any details of any documentation which may have been provided to you?

A. Absolutely not.

216 Q. I see.

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MR. O'NEILL: Thank you.

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MR. ALLEN: No questions.

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CHAIRMAN: Now, before --

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MR. O'MOORE: Sir, before you re-examine, effectively Mr.

Bailey, we have some questions for Mr. Bailey.

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CHAIRMAN: Certainly. Fire away.

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THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS BY MR. O'MOORE:

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217 Q. MR. O'MOORE: Mr. Bailey, my name is Brian O'Moore and I am one of the counsel for Mr. Gogarty. You made a statement, Mr. Bailey, on the 11th of January, of 1989; isn't that correct?

A. That's correct.

218 Q. And you signed it?

A. That's correct.

219 Q. And at the start of that statement, on the second paragraph you said that you had deliberately, and on legal advice, refrained from furnishing the Tribunal with a statement until this 11th hour because; "I believed if I did so I would read about it in one or other of a variety of publications in advance of the sitting of the Tribunal, and that my position would thereby be even more greatly prejudiced by a variety..... Including the publication of virtually the entire of the affidavit of the said James Gogarty in the Sunday Independent". They were your views at the time, the day before this Tribunal first sat; isn't that right, Mr. Bailey?

A. That was my advice, yes.

220 Q. I beg your pardon? I asked were they your views at the time?

A. They were my views as well.

221 Q. Do they remain your views?

A. They do indeed.

222 Q. Are you against deliberate leakages to the media of any sort?

A. Of course.

223 Q. That may damage anyone?

A. Yes, indeed.

224 Q. Whether it is you or Mr. Gogarty?

A. Correct.

225 Q. I see. Now, at the end, or towards the end of that statement at paragraph 23 you dealt with the suggestion contained in Mr. Gogarty's affidavit that you had given him £50,000. Do you remember what paragraph 23 of your statement says?

A. I would like to see it, if that is --

226 Q. I am sure a copy will be available from your solicitors.

Would you look at the last page of that statement and at paragraph 23?

A. 23, yes.

227 Q. And could you read it out please Mr. Bailey?

A. "Contrary to what is suggested at paragraph 64 and 65 of Mr. Gogarty's affidavit, I never offered to pay or paid Mr. Gogarty money in return for his agreeing to forget about pursuing proceedings against JMSE, and "simply to enjoy life". It is my intention to supplement my evidence in relation to this particular aspect of Mr. Gogarty's allegation when giving oral evidence to the Tribunal".

228 Q. Now, Mr. Bailey, that, I think, is the only portion of that statement which indicates that it will be supplemented during the course of your oral evidence; isn't that right?

A. That's correct.

229 Q. Yes. So it is an important portion of the statement; isn't that so?

A. Yes, indeed.

230 Q. Mr. Bailey, it is a portion of the statement in which you say that Mr. Gogarty's allegations are incorrect and that you will supplement this portion when you give your oral evidence to this Tribunal?

A. That's correct.

231 Q. And clearly it was so significant that you felt it inappropriate to describe what that oral evidence would be?

A. That's correct.

232 Q. Yes. Now, were you made aware by your solicitors that Mr. Gogarty's solicitors wrote on Sunday the 17th of January, 1999, complaining about that portion of your statement?

A. I was not.

233 Q. You were not? Well, Mr. Bailey, I don't have a copy of that

letter but I am sure again your solicitors will give you a copy. I will read the letter out to you Mr. Bailey to save time. It is sent by facsimile and it reads as:

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"Dear Miss Cummins" - who is the solicitor to the Tribunal - "We refer to the statement of Michael Bailey, dated the 11th of January, 1989, and in particular to his purported response in paragraph 23 thereof of the contents of paragraphs 64 and 65 of Mr. Gogarty's affidavit sworn on the 10th of October, 1998.

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Mr. Gogarty's response is..... Accordingly we will be making an objection to any cross-examination of Mr. Gogarty proceeding until such a supplemental written statement is received. Obviously if such a supplemental written statement is to be furnished by Mr. Bailey, it should be done in sufficient time before Mr. Gogarty's cross-examination, to afford us an opportunity to take Mr. Gogarty's instructions thereon, as a matter of urgency. We also copied this letter to solicitors, Smith Foy & Partners". (Quoted)

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Now, that letter was sent by fax that day to Mr. Kevin Smith of Smith Foy. Are you saying you were never told about that challenge to the adequacy of your statement?

A. That's correct.

234 Q. You were never told by your solicitor, solicitors, that my solicitors had said that Mr. Allen or whoever, would not be able to cross-examine Mr. Gogarty on that because of the way you framed your statement?

A. I never had any recollection of a letter, seeing a letter or hearing of a letter, or hearing anything about that

particular --

235 Q. Yes. Have you sat day in day out at this Tribunal, Mr. Bailey?

A. No.

236 Q. You haven't been here everyday?

A. No.

237 Q. Are you aware that there was a legal discussion involving your counsel in connection with the ability to cross-examine Mr. Gogarty?

A. Yes, I am.

238 Q. Are you well aware of it?

A. Well, I wouldn't be that well aware of legal matters because the day the legal arguments were going on I wasn't in attendance.

239 Q. Mr. Gogarty, or Mr. Bailey, you read the papers obviously, don't you?

A. I must admit I don't. I have read them this morning but since this Tribunal has started I just don't bother reading them.

240 Q. Is your evidence on oath that you were only -- is your evidence on oath that you were only mildly aware of the fact that there was a debate about the ability of your counsel to cross-examine Mr. Gogarty?

A. I was aware that there was a legal argument referring to the cross-examination, but I was not in attendance for the legal argument.

241 Q. And during the course of this legal argument are you aware that your counsel expressly and explicitly refused to elaborate on that portion of your statement?

A. I am not, because I wasn't here.

242 Q. I see. Did you get any reports from your legal team about how things were going in the Tribunal?

A. I would, yes.

243 Q. Do they talk to you on a daily basis perhaps?

A. Yes, indeed.

244 Q. Do they let you know what points they made and how things were progressing?

A. Not on the legal sense.

245 Q. Now, Mr. Bailey, you say that you never received the statement sent to your solicitors on the 26th of January, of 1999?

A. Which statement are you referring to?

246 Q. The two page statement that Mr. O'Neill has given you to read?

A. Yes, indeed.

247 Q. And you also say that you never received from your solicitors, either a hint, nor indeed further details about the letter my solicitors sent on the 17th of January, of 1999; is that right?

A. I have no knowledge of it whatsoever.

248 Q. I see. And you employ your solicitors; isn't that right, Mr. Bailey?

A. Correct.

249 Q. And you pay them to let you know things about how the litigation is going?

A. Indeed.

250 Q. And what I am saying to you is, that one of the most important aspects of your statement, as far as you were concerned, was the circumstances of the payment of £50,000 to Mr. Gogarty; isn't that right?

A. Could you rephrase that?

251 Q. What I am saying to you is, that if you look at your statement, one of the most important portions of it, and on which you said you would elaborate in your oral evidence,

was the payment of £50,000 to Mr. Gogarty?

A. Indeed.

252 Q. And the statement that you have just read while you sat in the witness-box, the statement from Anglo Irish Bank, is clearly from what we read in today's newspaper, of central importance as far as that allegation is concerned; isn't that so?

A. That may be.

253 Q. Does the statement not deal directly with the circumstances of a payment to Mr. Gogarty?

A. It does not, in my view.

254 Q. It doesn't?

A. No.

255 Q. So if one looks at the newspaper report today, is that incorrect in the way it describes the statement?

A. The statements of the bank?

256 Q. The two paged typewritten statement that you have in your hand.

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MR. LEAHY: I wonder, sir, could I ask you for a legal ruling at this stage?

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CHAIRMAN: What, Mr. Leahy?

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MR. LEAHY: In response to a question you specifically addressed to me this morning, as to whether I was prepared to indicate my client's instructions, I said that I was not. The questions now being asked are close to, if they have not crossed the border, of a client's instructions.

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CHAIRMAN: Not that -- from what I can gather from your client he doesn't appear to know what instructions he was

going to give them. If I understand, from what I understand of him, he knew nothing about what was happening, he didn't know anything about the statements, he didn't know anything about the correspondence. And he appears not to think that the document that - sorry, that the paragraph in the paper had any real impact on the question of the £50,000. Sorry, the evidence by Mr. Gogarty in relation to the circumstances on which Mr. Gogarty says he got the cheque.

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MR. LEAHY: That's correct, sir. What he is now being asked are factual matters. If you are ruling that he is obliged or forced to answer questions relating to instructions, I would welcome some guidance from you, sir, as to the power that it gives the Tribunal.

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CHAIRMAN: I understand the question to be addressed to this paragraph. Mr. Bailey, I am quoting from the press; "Bailey is alleged to have told the bank officials that he wanted £50,000 in cash and he needed it for Mr. Gogarty". That is, as I understand, the central point that has been made. It is quite -- he is asked did he consider that statement would have been material in his, in the "expansion" which is threatened, if I may use the word in inverted commas, in due course of his statement --

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MR. LEAHY: Yes; and any answer of that would, of necessity, involve a discussion or revealing details of instructions.

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CHAIRMAN: No, it would -- a question was put to him, did he consider it was germane to the purpose intended, and he

said no he didn't think it was.

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MR. LEAHY: If that is the end of the matter, so-be-it.

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CHAIRMAN: That is, as I understand it.

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MR. O'MOORE: There was absolutely no effort made to get details of Mr. Bailey's instructions or to ask him to expand now.

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MR. LEAHY: Very good.

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CHAIRMAN: Thank you.

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257 Q. MR. O'MOORE: Or ask him to expand now on paragraph 23 of the statement. What I am trying, what I am trying to get Mr. Bailey to comment on, and perhaps I can cut to the chase on this, is whether he is now, having seen the statement and read it for the first time, surprised that his solicitors did not pass it on to him when they got it on Tuesday of last week. Are you surprised, Mr. Bailey?

A. I am, yes.

258 Q. And are you satisfied that your solicitors, either Miss Smith or her associates, will confirm that they never either passed that document on to you or discussed it with you in anyway?

A. That's correct.

259 Q. Are you satisfied your solicitors will give that evidence?

A. They didn't pass anything on to me.

260 Q. I see.

A. I didn't get that statement from my solicitors.

261 Q. Now, did your brother get the statement from your

solicitors?

A. I don't know.

262 Q. Well, he will give evidence, I understand, in due course.

Could I ask you about the more recent events of the last couple of days. You say that you met Mr. Brown at 8 o'clock this morning; is that so?

A. That's correct.

263 Q. You say that you talked to Mr. Allen at half past nine this morning; is that so?

A. That's correct.

264 Q. You said at ten to nine you left the Shelbourne Hotel to go to the bank premises; is that right?

A. No, I met Tom Brown in the foyer of the Shelbourne and we went up to a little cafe on Merrion Row. We had a cup of coffee and toast and went back down to the bank, the Anglo Irish Bank.

265 Q. Yes; and where did you go in the bank?

A. Up to Tom Brown's room.

266 Q. Yes; and you say that during the course of the meeting in Mr. Brown's room the bank files were produced?

A. That is correct.

267 Q. You can't quite remember who brought up the question of the file or its relevance?

A. We were having a general conversation regarding what the position was regarding the Tribunal, and Tom says "we will have a look at the file", and that is exactly what was done.

268 Q. And did he look for the file?

A. Well, he opened his desk and he opened it with a key and he took out the file and looked at it from there.

269 Q. So you had a general chat about how things stood in the Tribunal. Mr. Brown offered you a glance at his file and

he opened a door with a key and there the file was neatly ready to be presented to you?

A. No. I am not saying neatly presented because I don't know how it was in the filing cabinet, but I know he opened the filing cabinet with a key.

270 Q. Now, Mr. Bailey, you were there?

A. Yes.

271 Q. You saw what happened. Can you tell me if I am right or wrong. As I understood your evidence, and please correct me if I am wrong, you had this chat with Mr. Brown, he offered a look at the file, he then went to a cabinet and opened it; was there a search for a file or was the file promptly presented by him?

A. He was going through files. There were other files in the cabinet and he took out the file.

272 Q. How long did it take him to get the file?

A. I didn't, it didn't take minutes.

273 Q. No. It didn't take minutes, it was done very promptly indeed wasn't it, Mr. Bailey?

A. I am not saying it was done very promptly, but it was done quick, I wasn't, like I wasn't - it was just a file that, he took a file out within a minute I would think.

274 Q. Yes. So he was able to open his filing cabinet and within 60 seconds the file was in his hands and soon it was in yours?

A. It was never in my hands.

275 Q. He opened it and showed you its contents?

A. Correct.

276 Q. At whose instigation was the file sought?

A. It was offered.

277 Q. It was Mr. Brown's idea to show his file to you?

A. He just said "we will have a look at the file".

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MR. ALLEN: Chairman, I wonder might I interrupt for a point of clarification from you, sir? I appreciate that it, that I wasn't here this morning. And I want to make that clear obviously. But my understanding, sir, was that you, having regard quite properly to the disclosures or the allegations contained in today's Irish Independent, which were of a very serious and grave nature, decided to conduct an inquiry into how those allegations came to be published under the by-line of Mr. Smyth in today's Irish Independent. And I understand that that is why we are here.

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This witness is now being questioned at some length about a meeting which took place this morning it would appear between 8:50 and 9 o'clock, some very considerable time after this, after this newspaper containing this particular article was published.

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Now, with the greatest of respect sir, I fully accept as do, as do my clients and the remainder of my team and all those who represent Mr. Bailey, Messrs. Bailey and Bovale in whatever context, I fully accept that it is critical that you conduct this inquiry. We are anxious that the matter should be clarified, we would certainly feel, although perhaps it is not the time to be mentioning it now; if anybody has been disadvantaged by this it is ourselves. But I do genuinely urge upon you sir, that to be, for Mr. O'Moore to be questioning Mr. Michael Bailey as he now is, has no relevance whatever to the subject matter as I understand it, which you are inquiring into. It cannot have because the information was in the public

domain at the point in time when this meeting took place.

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CHAIRMAN: Mr. Allen, while I don't wish in anyway to shorten your submission. The whole purpose of this inquiry is to ascertain how and from what source it got into the public domain. And accordingly, for reasons which I think will probably become quite clear in the not too distant future, it is necessary to inquire into all the circumstances. And to, in particular, pinpoint where the specific attitudes and the information came from. They are not generally available.

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MR. ALLEN: They are certainly not available to us, sir.

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CHAIRMAN: I would be surprised if they aren't, but however that is -- I will allow this cross-examination or this examination to proceed on that basis and I am ruling that it is germane to the inquiry that I am making.

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MR. ALLEN: And I accept your ruling, sir. Could I just seek a further point of clarification. You say that you will be surprised if the documentation, if documentation which I said was not in our possession, wouldn't be in our possession; could I ask you to clarify that, sir?

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CHAIRMAN: No, I do not intend to do so. In due course the evidence, I would presume, will clarify it. I only believe it, I want it proved.

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MR. ALLEN: You believe it but you want it proved. Well, that is called prejudgement where I come from.

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CHAIRMAN: I have an understanding, Mr. Allen, that it may exist.

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278 Q. MR. O'MOORE: Thanks Mr. Allen. Mr. Bailey, could you tell me who was actually in the bank with you, was it just yourself and Mr. Brown?

A. That's correct, yes.

279 Q. Was anybody else aware of the meeting you were having at 8 a.m. this morning?

A. Not that I am aware of, no.

280 Q. Nobody?

A. I advised Mr. Allen last night that I was meeting Tom Brown this morning.

281 Q. Well now, Mr. Bailey, could we just examine what you have just said in the last two answers. You say, I asked you who was aware of the meeting in the bank, the meeting with Mr. Brown this morning and you said nobody as far as you were aware, and then I expressed some surprise by that and you tell me immediately without giving it further thought, that you told Mr. Allen -- could you just let me finish the question - that you told Mr. Allen last night about the meeting with Mr. Brown?

A. I was speaking to Mr. Allen last night and I said that I was going to town this morning to meet Tom Brown with, that it was a prearranged meeting. I told him I would call him after the meeting was over.

282 Q. I don't at all want to pry into your discussions with Mr. Allen, but could you tell me was that the only topic of conversation during that discussion with Mr. Allen?

A. He informed me that he wasn't well and I knew that he wouldn't be attending the Tribunal today.

283 Q. Mr. Bailey, I don't really want to know what other

discussions that you had; am I right in thinking that the prime topic of conversation with Mr. Allen last night was your meeting with Mr. Brown this morning?

A. No, the prime topic was that he was unwell and that he wouldn't be able to attend today, that he was apologising for not being able to attend.

284 Q. And you mentioned, as it happened, that you were meeting with Mr. Brown?

A. In general conversation, yes.

285 Q. Yes. Did you telephone Mr. Allen or did he phone you?

A. Yesterday evening?

286 Q. Yes.

A. He telephoned me.

287 Q. Yes; and am I right in thinking, because of course I haven't seen it, that the statement you have in your hand is made by Mr. Brown?

A. I don't know.

288 Q. It is made by Mr. Barrett, I think, from the bank?

A. Well, it is not signed.

289 Q. Well, at the front page is it headed?

A. "Anglo Irish Bank, Tribunal of Inquiry into Certain" --  
Yes, "I, William I Barrett". Mr. Barrett, yes.

290 Q. Yes. It is made by Mr. Barrett but Mr. Brown, as you say, knows about the bank dealings with regard to the alleged £50,000 cash withdrawal; isn't that so?

A. I am not aware if he is or not.

291 Q. Mr. Brown showed you the file today; isn't that right?

A. He showed me the file regarding the conversation I had with Bill Barrett on whatever date it was in 1989.

292 Q. Yes. So just to recap, I don't want to take up excessive time on this. You had a conversation with one of your senior counsel yesterday and in the course of the

conversation you said you were going to meet Mr. Brown today from Anglo Irish Bank?

A. It was last night.

293 Q. Sorry, you had a conversation last night with one of your counsel and told him this, that you were going to meet Mr. Brown this morning?

A. Yes, that is correct.

294 Q. Yes. You met Mr. Brown over something quite different you say, and Mr. Brown then, to your amazement I would have thought, shows you the bank's file in respect of this whole episode; is that right?

A. Well, the file -- the file is only three pages.

295 Q. He showed you the file?

A. Yes, indeed.

296 Q. Were you surprised that he showed it to you?

A. Not really, no.

297 Q. And then after that, after this meeting, you again telephoned Mr. Allen at half past nine this morning?

A. Yes, I did.

298 Q. What was the purpose of that phone call?

A. To see what his state of health was number one, but I was concerned that he wasn't able to turn up today.

299 Q. Let's have number two, Mr. Bailey?

A. Number two, just to have a general conversation with him regarding the Tribunal.

300 Q. Mr. Bailey, could I put this to you as perhaps an ignorant or commonsensical view of things; whatever you discussed with Mr. Allen tonight, you went to meet Mr. Brown today over unspecified business. He showed you a file, it would seem of some importance in relation to this Tribunal. It related to the very issue which you, in your statement, had heightened of being of importance, because you said you

would supplement with your oral evidence, and then you went and rang your senior counsel; and isn't it true that you told him what you had seen on the file?

A. That would be true.

301 Q. Mr. Bailey, can I ask you now about a different topic. You say that during the course of your attendances in these rooms you heard Mr. Heneghan going on about a story that was going to break at some stage; is that right?

A. That would be correct.

302 Q. Did you inquire what it might be, what it might be?

A. He intimated to me that Mr. Sam Smyth had a story regarding payments to Mr. Gogarty.

303 Q. Yes, go on?

A. And that's, that was, that was the conversation that he intimated to me; and I said "is that so", and that is the way it was left.

304 Q. And he intimated to you, did he not just tell you that Sam Smyth is going to run a story about payments to Mr. Gogarty?

A. Exactly, that was his words.

305 Q. In clear terms?

A. Um hum.

306 Q. Did you make any further inquiry about it?

A. I didn't to be quite honest with you.

307 Q. Well, hold on. Can I be, can I be quite sure that I understand this. Mr. Heneghan said to you that there was a story going to break about payments to Mr. Gogarty?

A. That's correct.

308 Q. Is that correct?

A. Yes.

309 Q. Did he ever tell you who the payment was supposed to be from?

A. He did.

310 Q. And wasn't that you?

A. He suggested me.

311 Q. He suggested you?

A. Um hum.

312 Q. Mr. Bailey, I am not quite sure if I have understood this properly. Mr. Heneghan is employed by you as a public relation consultant for this Tribunal; isn't that correct?

A. Yes.

313 Q. How long has he been employed by you?

A. Since the conception. Well not -- since, our solicitors would have a note there now.

314 Q. Well, he has been employed with you for more than a year?

A. I wouldn't think so.

315 Q. Has it been six months?

A. I would say more than six months.

316 Q. Now, this is a man who you pay in order to provide a PR spin doctor service, I believe it is called; is that right?

A. Well, we were advised by our team that we should have a PR --

317 Q. Mr. Bailey, I am not saying it is right or wrong. I just want to make sure I understand what the situation is. You, or Bovale, or your brother, or all of you employ a gentlemen known as a "spin doctor" to give good PR in terms of your appearances and matters connected with the Tribunal; is that right.

A. That would be it, yes.

318 Q. He is paid by you in order to provide this service?

A. Yes, indeed.

319 Q. Are you seriously stating on oath, that during a chat you heard a muttering, I think you put it, from Mr. Heneghan to the effect that there was a payment made to Mr. Gogarty by

somebody and in fact; gosh, it happens to be you and you didn't inquire further about it?

A. What I said to him, the conversation we had was that he had been speaking to Sam Smyth. Sam Smyth said that he had this story, and he didn't elaborate on it.

320 Q. And you never made any further inquiry about whether Mr. Heneghan had hand, act or part in planting the story?

A. No. No.

321 Q. Why not?

A. Because Sam Smyth was talking to him, that was the impression I got.

322 Q. Mr. Bailey, if I have understood the Irish Independent correctly this morning, it suggests that you paid Mr. Gogarty a significant amount of cash for a purpose that was hardly a very proper purpose; isn't that right?

A. Could you repeat that?

323 Q. The Irish Independent story seems to suggest that you paid a significant amount of cash to Mr. Gogarty for some shady purpose?

A. That is untrue.

324 Q. Well, whether it is true or not, is that what the story suggests?

A. That would be the allegations.

325 Q. Well, reading the story would you think the better of yourself or Mr. Gogarty?

A. Well, that would be the allegations when I read the paper.

326 Q. Yes, that's right. And Mr. Heneghan let you know in advance of the publication of this story that it was going to come out?

A. No, he didn't let me know what was going to come out. He said that, he said exactly what I have said earlier on, that he intimated that there was rumblings of certain

payments to Mr. Gogarty.

327 Q. Yes; and that he had talked to Mr. Smyth?

A. Mr. Smyth had talked to him.

328 Q. Yes; and that presumably the story was going to come out at some stage or another?

A. Well, that wasn't, he didn't say if it was or it wasn't.

329 Q. Yes; and are you seriously saying that you didn't direct Mr. Heneghan, who is here paid by you on a daily basis, to make further inquiries to find out the detail of the story to see what the source was, to see how it was going to be presented by Mr. Smyth in the newspaper?

A. I did not.

330 Q. Am I right in understanding this, Mr. Bailey; aren't you essentially the source of the allegation that Mr. Gogarty was paid £50,000 in cash?

A. Well, according to the Irish Independent.

331 Q. Well now, Mr. Bailey, suppose I was to read this paragraph from the paper to you: "Mr. Gogarty is expected to be questioned about the money next week when his cross-examination is expected to begin. In a discussion about cross-examination last week Colm Allen SC, counsel for Mr. Bailey. Said they planned "A big, big ambush" for Mr. Gogarty".

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Now, doesn't that suggest to the casual reader that you are, in fact, the source of this story and Mr. Allen is going to put it in a forceful way to Mr. Gogarty?

A. I wouldn't see it that way.

332 Q. Are you saying then that you don't believe that the story which you will present is that Mr. Gogarty was paid £50,000 in cash by you?

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MR. ALLEN: With respect sir, that does come to the precise point which we did have considerable, which did take up considerable time in the form of submissions, as to the right to cross-examination, et cetera.

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The only other point that I would like to make, sir, is that, in the context of, because it does, the word does appear "ambush". In the context of "ambush", the word "ambush" came from you sir, and I know that you didn't mean it in the sense which Mr. O'Moore --

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CHAIRMAN: Mr. Allen, you adopted the phrase and you used the phrase in "A big, big ambush". If you want to see the transcript it is there.

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MR. ALLEN: Mr. Chairman, I, of course, have the transcript. What I said was, and I do think it is important in the context of this particular hearing and Mr. O'Moore's cross-examining of the witness, it is important to say that it is important that it should be publicly recorded that what I said was in effect that if the placing of reliance on the constitutional safeguards provided by the decision of the Supreme Court in the decision of "in Re: Haughey" was an ambush, then yes, Mr. Gogarty could expect a big, big ambush.

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That and no more, sir, I really do think - I know that you at all times do your best to achieve fairness between all of the parties. The word "ambush" has been misused insofar as I am concerned and it is, and now unfortunately Mr. O'Moore is trying to whip Mr. Bailey with it. It is something which has been spun to considerable effect by

somebody, presumably other than Mr. Heneghan. It is a gross misrepresentation of what happened.

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CHAIRMAN: Well, I take --

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MR. O'MOORE: I take it that Mr. Allen is objecting to me asking that question of his client and he doesn't want his client to answer the question.

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CHAIRMAN: That sounds like it.

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333 Q. MR. O'MOORE: Could I ask you a couple of small final comments, Mr. Bailey. When was the meeting set up? I may have missed that.

A. Yesterday morning.

334 Q. At what time?

A. Mid morning.

335 Q. And by whom?

A. By me. No, not by me. Well, Tom Brown rang me back after having several, missing him on several occasions, and it was just suggested that we would meet this morning and that was it.

336 Q. You say that you saw the notes of the bank official at the time, or the bank file this morning; had you ever seen those notes before?

A. I had, yes.

337 Q. When?

A. Back early in, in -- I would say early last year.

338 Q. Who showed them to you?

A. Tom Brown as well.

339 Q. When? Sorry, where?

A. In the bank as well.

340 Q. And in what context did that arise?

A. It just happened. A conversation came up recording the funding of the Murphy's lands, and I said to him "what was the position?" . I said "what was the position with the bank at the time?". And he just said "we will have a look at the file and see what the position is".

341 Q. Well, Mr. Bailey, as I have understood your evidence, you actually saw these notes some months ago?

A. That's correct.

342 Q. And they were shown to you again by Mr. Brown during the course of a casual chat?

A. This morning, yes.

343 Q. No. No, the notes that you saw some months ago --

A. Yes.

344 Q. -- were also shown to you at that time during the course of a casual discussion about funding of the Murphy's land?

A. That is correct.

345 Q. So when your counsel, Mr. Leahy, today said that you had, your side had never had the notes or seen copies of those notes, Mr. Leahy, utterly inadvertently wasn't correct in that statement; isn't that right?

A. Well, he may not have known that I seen the notes.

346 Q. I accept that entirely, but that statement is wrong?

A. Well, I don't know what Mr. Leahy said because I wasn't here.

347 Q. We can check the transcript, but if Mr. Leahy said, as my note is that he did say it; that the Bailey team, including yourself and your brother, had never had the notes or copies of those notes, that, in fact, is an incorrect statement?

A. We never had copies of the notes.

348 Q. Had you seen the notes before Mr. Leahy got on his feet

this morning at 10 o'clock?

A. The notes on the bank file?

349 Q. Yes.

A. Yes, I would.

350 Q. And you had seen them not once but twice?

A. I had seen them this morning.

351 Q. Yes.

A. And I had seen them when I asked what was the, what was the background towards the meeting that we had with Mr. Barrett.

352 Q. And had you communicated to any of your legal team, or indeed to Mr. Heneghan, the fact that you had seen those notes?

A. No.

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MR. O'MOORE: Thanks very much, Mr. Bailey.

A. Thank you.

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CHAIRMAN: Before you leave the witness-box could you tell me this, which I am not clear about at the moment. As I understand it you were in the bank office with Mr. Brown and however the file came out it was there, and do I understand from you that you read the notes on the file, or was it Mr. Brown read the notes that were on the file? Which was it? Did you read the notes, these are, you say it is a file of three, you say three documents approximately?

A. Yes.

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CHAIRMAN: And what I want to know is did you actually read those notes or were they read to you?

A. The file was open with the notes on the piece of foolscap paper and I read down through them, and at the bottom of

the foolscap paper there was somebody else's writing. I inquired of Tom Brown whose was that other writing and he said it was Pat Whelan's, who obviously at that time was dealing with the account back in 1989.

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CHAIRMAN: That is the old notes of the first occasion when you arranged certain financial transactions, I don't want to go into them?

A. That's correct sir.

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CHAIRMAN: That is the notes we are talking about?

A. That's right.

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CHAIRMAN: And in the reading of the notes, apart from recording who was talking or who made the notes, I don't know whether it does or not, I don't actually know. Was there any record of any names of any persons in the notes?

A. None to my recollection, sir.

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CHAIRMAN: I see. And you have - you had never, apart from that moment, you never had the notes in your hand?

A. I never had them in my hand.

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CHAIRMAN: They were on the desk in front of you, you turned around and read them, thank you very much. That is what I want to know?

A. Thank you.

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MR. HANRATTY: Sir, in view of the testimony of the last witness I do feel it is necessary now that I should recall Mr. Brown from the bank.

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CHAIRMAN: Yes.

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MR. HANRATTY: Thank you Mr. Bailey. Mr. Brown please.

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THE WITNESS THEN WITHDREW.

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TOM BROWN RETURNS TO THE WITNESS-BOX AND CONTINUED TO BE  
EXAMINED BY MR. HANRATTY AS FOLLOWS:

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353 Q. MR. HANRATTY: Mr. Brown, you are already under oath. You  
heard the testimony given by the last witness?

A. Correct, yes.

354 Q. Do you have any comment to make on it in view of the  
evidence that you have given here today?

A. Yes. One point in relation to the two paged statement. I  
would just like to confirm that I did get a telephone  
conversation, I can't tell you exactly when, but it was in  
recent times; and my interpretation of the conversation was  
that the content of the two paged statement had been seen  
by Michael Bailey and that he was happy with the content of  
it. He asked me to pass on those comments to Mr. Bill  
Barrett, which I duly did. And my interpretation of that  
conversation was that the content had been seen and that he  
expressed satisfaction with the contents that he had seen.

355 Q. Can you assist us as to when this conversation took place?

A. I would have said it was probably in the last two weeks,  
but I can't give you a definite time and place and date.

356 Q. Well, it was in January?

A. It was, yeah. It was, all I can say with certainty it was  
definitely within the last two weeks.

357 Q. Within the last two weeks?

A. Within the last two weeks.

358 Q. Was it more than a week ago?

A. I would say, I would say it would be the week before last, because I was, I would say the week before last; but I can't, I cannot tell you for definite a time and place and a definite date.

359 Q. But it was a telephone call?

A. It was a telephone conversation.

360 Q. Just to be clear, the document we are talking about is the two paged document that was submitted, unless there is any ambiguity about it, I just want you to look at the document and identify the document and confirm to us if it is the case that that is the document you are speaking about.

Would you read the headnote of the documents?

A. "Statement: Anglo Irish Corporation PLC, Tribunal of Inquiry into Certain Planning Matters and Payments"; and there is a number of paragraphs thereafter. That was a document that I mentioned to you previously this afternoon.

361 Q. That's right.

A. And that it was drafted by our solicitor, John Glackin. He sent it to us for verification. It was read by Mr. Bill Barrett that we were happy with the content of it and then John sent it to the Tribunal. That was the conversation, and the understanding of the conversation that I had in regard to that two page --

362 Q. Just again if we can stay with the identification. It does, as Mr. Bailey has drawn our attention, it does refer to Mr. I Barrett in the first line of the text?

A. Correct.

363 Q. Are you satisfied that that is the document which you discussed with Mr. Bailey over the telephone in respect of which he said he was happy and asked you to convey that he was satisfied with it to Mr. Barrett?

A. I am very happy that was my understanding of the conversation I had with him as regard to this two paged document.

364 Q. You have heard Mr. Bailey here today give testimony to this Tribunal under oath that the first time he ever saw this document was when he read it in the witness-box. You heard him say that?

A. This afternoon?

365 Q. Yes. Are you clear in your own mind that that is the document you discussed with Mr. Bailey on the telephone?

A. The conversation I had, which was a telephone conversation, and my assessment of what he was speaking about, I would say, it is my assessment, was the two paged document.

366 Q. Yes. So that is the document?

A. And this two paged document, that in my mind is what we were talking about.

367 Q. There is another matter I want to ask you now about, Mr. Brown. When you originally gave your testimony I asked you a question and I want to put the question to you again, and your answer to it. We were talking about the three documents, the £50,000 cheque, the contracts and the handwritten note which Mr. Bailey has told us about; isn't that right? My question to you was: "Were the contents of any of those documents discussed by anybody in the bank in the recent past, with anybody outside the bank.

Answer: No". Do you wish to make any comment on that answer?

A. No. What Michael Bailey has said in regard to the one page, that event did happen this morning. Right. In relation to the one page handwritten note.

368 Q. Can you describe to us, there were three items, the question before that was: "Am I right in thinking they

consisted of - this is in reference to the documents - first of all a cheque for £50,000, secondly the contracts in relation to the sale of a certain property, and thirdly a handwritten note made by Mr. Barrett. Those are the three documents". Isn't that right? It was in reference to those three specific documents that I asked you had anybody in the bank, in the recent past, discussed these documents with Mr. Bailey. To which you replied "no"?

A. Well, sorry I misinterpreted the question. What that document in terms of the one page document, the handwritten note by Mr. Barrett is on my file, which I have here and which was seen this morning following our discussion this morning.

369 Q. Mr. Bailey said the file that you showed him when you brought him back to your office contained three documents?

A. The file, I have it here, contains an awful lot more than three documents.

370 Q. Mr. Bailey thought that it only contained three documents?

A. Well, it doesn't contain three documents.

371 Q. How did these meetings with Mr. Bailey arise and in what circumstances?

A. I would have rang him last week in the context that we had a deadline date in, as regards the 1st of February as regards a business situation I was keeping track of, that I rang him last week; we missed each other on a number of occasions. He rang me back and we arranged to meet this morning, yesterday morning. I was out of town Friday, Monday, Tuesday and I came back on Monday evening. I wasn't in work for the last three days. We eventually made contact with each other yesterday and we arranged to meet this morning at 8 o'clock.

372 Q. What did he say to you when you spoke to him on the phone?

A. That could we arrange to meet in the context of, I was looking for him. I was the one that was looking for him last week, so he was coming back to me in response to my call.

373 Q. And the meeting was arranged for what purpose?

A. To discuss in regard to ongoing business matters, that was the principle reason for the -- we meet on a regular basis on the context of our ongoing banking relationship. So it was set up, I was looking for him from last week and we eventually tracked each other down yesterday and arranged to meet this morning at 8 o'clock.

374 Q. How did the question come up of the documents on the bank file?

A. Obviously I had heard about the news story, that I had heard on the radio coming in to work this morning at half seven. I hadn't seen the newspapers. We began to discuss the article during the course of our conversation.

375 Q. There was another question which I put to you before and I would like you to clarify your answer again if you wouldn't mind. It is a question "did you have any discussion in the recent past with anybody concerning any aspect of this particular transaction?" And your answer was "I had a discussion when they were furnished by Mr. John Glackin, a conversation with the - I can't give you the - then this is incomprehensible - time, the exact time I think it is and date"?

A. I had a conversation with Michael Bailey that he had seen the documents and that he said that he was happy with the content of the documents, I think that is the matter that you have just dealt with.

376 Q. The two page one?

A. Yes.

377 Q. Now, Mr. Bailey has told us that not only did he see this handwritten note when you showed it to him this morning, but that he had seen it in the bank on a previous occasion, that you had shown it to him?

A. That was a number of months ago.

378 Q. Yes.

A. I can't again -- probably four or five months ago.

379 Q. Well, is that correct; you did show it to him?

A. Yes. It would have been seen because he would have seen it on the file.

380 Q. And in what context did he see it on the file a number of months ago?

A. In the context of the handwritten note that would have been on our file, we would have been discussing the whole issue.

381 Q. Was this when the interviews were taking place?

A. Which interviews?

382 Q. The interviews with Mr. Barrett.

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MR. GLACKIN: Mr. Chairman, I may be able to help on this particular issue, if it is of any assistance?

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CHAIRMAN: Perhaps, Mr. Glackin, we could have your evidence in a moment. Thank you very much.

A. I think it was subsequent to the interviews. It would have been well after they had been completed.

383 Q. MR. HANRATTY: Yes.

A. I think they were done in May, June, so it was after that as far as I can recollect.

384 Q. Approximately when?

A. At the top of my head I would have said probably December, October.

385 Q. I see. In what circumstances did you show this document to

Mr. Bailey in December, October?

A. It would have been just in general conversation of the whole issue of the Tribunal and it would have just been a general discussion as regards kind of, the Tribunal matters.

386 Q. Was it in the bank?

A. It would have been, yeah, there wouldn't have been any reason for it to have been outside the bank.

387 Q. Did Mr. Bailey ask you to see this document?

A. No. We would have, we would have preferred, we would have said "look, this is the handwritten note, it is a one page handwritten note" so he wouldn't have asked to see it.

388 Q. Well, who particularly singled out this? You told us that your file is greater than three documents, I understand that it is, in fact. Who would have singled out this particular document to show to Mr. Bailey and why?

A. Well, it would have been in the context of the actual file, why in the context of the general discussion regarding the whole Planning Tribunal matters.

389 Q. And was there any particular reason that the bank thought it appropriate to draw this to Mr. Bailey's attention?

A. Again it was in the context of just general discussion as regards the whole Tribunal and matters pertaining to the Tribunal, but --

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MR. HANRATTY: Thank you, Mr. Brown.

A. Thank you.

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MR. OMOORE: I wonder might I ask Mr. Brown one or two questions?

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CHAIRMAN: Certainly.

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THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS BY MR. OMOORE:  
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390 Q. MR. OMOORE: Mr. Brown, whose idea was it to leave the coffee shop near the Shelbourne and go to the bank this morning?

A. When we were discussing the content of the article we actually purchased a copy of the Irish Independent, and during the, in the context of discussing the article it would have been my suggestion that we go back and look at the file, look at the file note. So that was my suggestion.

391 Q. Why would you make that suggestion, Mr. Brown?

A. Because we were discussing kind of, because we were discussing kind of the whole content of the actual newspaper article, and on a point of clarification we would have gone back and just had a look at the detail on the actual, the detail on the one page file, the handwritten file of it.

392 Q. Now, Mr. Brown, what was the point of clarification exactly? What did Mr. Bailey want to check against your file?

A. What we were really looking at was their names on the file note.

393 Q. Yes. So you read the article in the newspaper?

A. Correct.

394 Q. It names a number of people?

A. Correct.

395 Q. And whose name did you want to check to see whether or not it appeared on the file note?

A. I suppose the reference really was was there any reference to Mr. Gogarty.

396 Q. Yes, Mr. Brown. Now, Mr. Brown, could I ask you first of all arising from that, you say that you showed the file note to Mr. Bailey, perhaps in December or October of last year, and you say that arose and I quote you, "when you would have been discussing the whole issue". I take it that is the Tribunal; is that right?

A. Correct.

397 Q. Whose idea was it that yourself and Mr. Bailey would discuss the Tribunal and its dealings?

A. Well, in the context of our ongoing business relations with the company, the issue of the Tribunal and the implications of that would have been a constant issue we would have discussed. Because it is obviously material in the context of ongoing relationships.

398 Q. Mr. Bailey and his company, I take it, are valued clients of Anglo Irish?

A. Correct and right.

399 Q. You are anxious to keep them as clients?

A. Well, we have a long standing banking relationship with them.

400 Q. You are anxious to keep them as clients; is that right?

A. They are clients and have been for quite sometime.

401 Q. Now Mr. Brown, maybe I am not making myself clear, what bit of the question don't you understand?

A. Could you put the question again?

402 Q. You are anxious to keep them as clients; isn't that right?

A. Yes, we are always anxious to keep clients.

403 Q. I take it "yes" is the answer to that?

A. Yes, we are always anxious to keep clients.

404 Q. And you are anxious to facilitate them in anyway you could?

A. Yes.

405 Q. And you therefore had a discussion with Mr. Bailey in

December or October of last year about the Tribunal and  
it's workings?

A. It would have been an issue which we would have been  
discussing on an ongoing basis.

406 Q. Well, one of the discussions you had was in December or  
October of last year?

A. As I say, yes it was and we obviously were discussing it on  
an ongoing basis.

407 Q. Yes; and in this particular discussion it was somebody's  
idea to have a look at the file or the handwritten notes  
that appeared on the file from 1989; is that correct?

A. Correct.

408 Q. Was it your idea?

A. This morning?

409 Q. No, no. In December/October of last year was it your idea  
to look at the file and show it to Mr. Bailey?

A. It probably was.

410 Q. Are you sure about that?

A. I wouldn't like -- you know, I don't know in the context of  
who suggested it.

411 Q. Mr. Brown, it is unusual, is it not, for a bank to go  
around showing files to people?

A. Not in the context of their clients.

412 Q. I see. And because Mr. Bailey was a client you thought it  
not at all unusual to show him his files; is that so?

A. Correct.

413 Q. And you thought it would help him if you showed him the  
file which contained this contemporaneous note; is that so?

A. No, we were discussing it in the context -- we were  
discussing the whole Tribunal matters, and we discussed  
kind of, the issue of, you know, the one page file note  
which we have provided to the Tribunal.

414 Q. Yes. Now, did Mr. Bailey know that there was a one page file note?

A. Before that.

415 Q. Before that?

A. I wouldn't have thought so.

416 Q. So you told him that there was a one page note on the file; isn't that right, Mr. Brown?

A. Sorry, we discussed with regard to what was on the file and we looked at the file, which is a one page handwritten note.

417 Q. Yes. So somebody was anxious to look at the file, either you or Mr. Bailey or both of you?

A. Or both of us.

418 Q. Yes; and you looked at it. Had you looked at the file before you showed it to Mr. Bailey?

A. Obviously we would have looked at that time.

419 Q. You personally had looked at the file before you showed it to Mr. Bailey?

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MR. GLACKIN: Mr. Chairman, if I can intervene in this examination. I can be of assistance in this. I gave legal advice on a particular issue.

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CHAIRMAN: Well, I would prefer if the cross-examination - and if it can be clarified, or an error in the witness' evidence clarified by your goodself, I would be delighted to see it, but I think I prefer to hear the witness give his account.

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420 Q. MR. O'MOORE: So you looked at the file before Mr. Bailey looked at the file in Autumn of last year?

A. Yes, obviously the file was our property and we looked at

it.

421 Q. Yes; and you knew that there was a handwritten note on it?

A. Yes.

422 Q. Did you feel it could be helpful to Mr. Bailey?

A. I don't know. In our discussions in regard to the whole planning and the file and our involvement, yeah, obviously from the point of view of, that was for him to decide whether it was useful for him or not.

423 Q. You felt that something could be made of it perhaps; isn't that right, Mr. Brown?

A. By who?

424 Q. By Mr. Bailey?

A. I suppose that was for him to decide.

425 Q. You felt the potential was there?

A. No, I didn't. We discussed it just to clarify. We discussed the file, the issue of the file, what was on our file.

426 Q. And you hadn't dealt with the matter yourself at that stage; is that right?

A. I didn't give any, I wasn't directly involved back in 1989.

427 Q. Yes. Now, could I ask you about the next episode along this chain. You, I think, told Mr., or Mr. Bailey told you that he was satisfied with Mr. Barrett's statement; isn't that right?

A. That was my understanding of the telephone conversation.

428 Q. How did that telephone conversation arise?

A. Again we would, you know, there would be regular telephone conversations in the context of business matters.

429 Q. Yes; and the issue arose about Mr. Barrett's statement and its adequacy?

A. That was my interpretation of that call.

430 Q. Did you ask Mr. Bailey, or did he volunteer that he was

happy with the statement?

A. He volunteered it.

431 Q. Yes; and what did you make of Mr. Bailey using you, effectively as a postbox, to go back to Mr. Glackin, or Mr. Barrett or whatever it was, to say "yes, that statement is fine"?

A. My interpretation of that was he didn't want to be directly in conversation with Mr. Barrett.

432 Q. Isn't that precisely it, Mr. Brown? He didn't want to talk to Mr. Barrett directly, but he used you as the envoy to do that?

A. That would be my interpretation of it.

433 Q. And you were happy yet again to facilitate the Bailey's?

A. Again, I had no difficulty with that.

MR. OMOORE: Thank you very much, Mr. Brown.

A. No problem.

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THE WITNESS WAS THEN REEXAMINED BY MR. HANRATTY AS FOLLOWS:

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MR. HANRATTY: Sir, arising out of that or relating to it, I should say there is one matter I would like to put to the witness.

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434 Q. MR. HANRATTY: You were invited, as you are aware, to come down here and to try to assist this Tribunal in the inquiry as to how this information ultimately found its way into the hands of Independent Newspapers. When you were, you arrived, you had a discussion with myself and other counsel to the Tribunal. You recall that?

A. Correct.

435 Q. And one of the subjects which we asked you about for our information was whether or not, in relation to the three

documents, you had been asked by anybody to show them those three documents. You know the three documents we are talking about?

A. Yes.

436 Q. Can you remind us what your answer to that question was?

A. Sorry, the three documents in relation to --

437 Q. The cheque, the contracts and the; the cheque, the contracts and the handwritten note?

A. I said we hadn't had any discussions with anybody.

438 Q. Why did you say that?

A. Again, probably misinterpretation of the question.

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MR. HANRATTY: I understand, Mr. Glackin -- thank you very much, Mr. Brown. I understand Mr. Glackin would like to come back.

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CHAIRMAN: Yes, certainly, Mr. Glackin. Would you be kind enough to return to the witness-box please? Thank you very much.

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THE WITNESS THEN WITHDREW.

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JOHN GLACKIN RETURNS TO THE WITNESS-BOX AND CONTINUES TO BE EXAMINED BY MR. O'NEILL AS FOLLOWS:

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439 Q. MR. O'NEILL: You are under oath, Mr. Glackin, and I understand you wish to clarify or elaborate on certain matters that have arisen?

A. There are a couple of issues which have come out in the cross-examining which I think require some clarification. Whether they are going to be of any assistance to the particular investigation, I am just not too sure. I think

it is in everybody's interests that, I think, that they be clarified.

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The particular question that was put to Mr. Brown was had the bank shown documents to Mr. Bailey before the recent, the term that is being used the "recent past", and he was examined at length about that and why they did it. They did it on my legal advice, and to explain that we have to go back a little bit further to the time when the interviews with Mr. Whelan and Mr. Barrett were being heard.

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CHAIRMAN: Mr. Glackin, I don't want to interrupt you, but would you just pause for a moment; are you happy that your clients permit you to disclose your legal advice? I am only inquiring, that is all, if you are happy I am. That's all right, carry on.

A. They, my clients and I were unhappy at having to give evidence in the way in which it was being sought. We had asked from the very beginning that we be entitled to notify Mr. Bailey that we were being called as witnesses, that we were producing documents and that we were going to give evidence. Having taken legal advice at the time and rather reluctantly we agreed to the embargo of confidentiality and gave the evidence, cooperated with the Tribunal and furnished the documents.

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We then immediately asked that that embargo be lifted and we were told that it would be considered and in due course there would be a response. In the interim there was a Supreme Court decision by, in relation to the Bank of Ireland, and arising from the decision in that case I told

the bank that they were entitled to disclose to Mr. Bailey, their client, documents which they had in relation, relating to him. And it is in that context that they disclosed the documents to the bank, or I beg your pardon, the bank disclosed the documents to Mr. Bailey. It is very hard to say exactly when it was, but I would imagine it was sometime in August or December of last year.

440 Q. MR. O'NEILL: Is there any other further clarification you wish to make?

A. The only other thing I did want to say is that there was a reference to this two paged statement as being a statement of Mr. Barrett.

441 Q. Yes.

A. It is not. It actually says "On the 23rd of November, 1998, William I Barrett", rather than "I, William Barrett".

442 Q. It is a narrative from the bank?

A. Yes.

443 Q. I think that was made clear. I think you were present with your client prior to his giving evidence and in meetings with Counsel for the Tribunal before he gave evidence; isn't that so?

A. Correct, yes.

444 Q. And you were present when he was asked specifically whether there had been any revelation in recent times of the three documents to Mr. Bailey, or that --

A. I was present, yes.

445 Q. Yes.

A. In the corridor, yes.

446 Q. Exactly; and you noted his response in the negative?

A. I did; but I understood the question to relate to the investigation of the report in this mornings paper.

447 Q. Yes.

A. The recent past up to this morning, up to last night, if it was published in the middle of the night, I understood the investigation related to that.

448 Q. Were you aware then that your client had met with Mr. Bailey this morning?

A. I wasn't aware.

449 Q. And had discussed these documents and had seen the bank's file?

A. No.

450 Q. I see.

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CHAIRMAN: Thank you very much. I would like to confirm what the --

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MR. HERBERT: Mr. Chairman, I would like to ask a question or two to Mr. Glackin.

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CHAIRMAN: Wait now just a moment, where does Messrs. JMSE; how is it germane to them?

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MR. HERBERT: Because Mr. Chairman, I am coming extremely perturbed with the disclosure of these 50 or 60 pages of documents which clearly affect the interests of my client. We are totally unaware of them. We haven't been circulated.

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CHAIRMAN: What documents are you talking about?

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MR. HERBERT: The appendices which I am told which are --

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CHAIRMAN: The appendices, as I understand the phrase, are

three documents.

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MR. HERBERT: I understand that they are transcripts and appendices, they were mentioned, 50 or 60 pages of documents.

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CHAIRMAN: First of all is, how does this refer to your client? Secondly, as far as I know and I may have misunderstood it, the appendices which I am referred to are in fact the three documents which we are talking about. I may add that they came to us inadvertently. They were not read in our office. They actually came in. They were sent by Mr. Glackin after correction. They were sent to us. They were sent, well actually they stayed in for a period I think of 10 days in our office on a file. They were not, when we discovered what they were they were they were sent back forthwith to Mr. Glackin as far as I recall.

A. I think they were with the Tribunal for five or six weeks.

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CHAIRMAN: They actually got lost on a file. They were not read and I quite solemnly say that because the Supreme Court decision applied to them. And that is why they weren't read. When we discovered they were there, I won't tell you what happened, but we just got them to hell out of the building, back to Mr. Glackin with all possible speed. And we wrote a very apologetic letter, from my recollection. Because I saw the letter going out.

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MR. HERBERT: Do I understand, maybe incorrectly Mr. Chairman, that since December at least they have been back with the Tribunal in one form or another?

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CHAIRMAN: They have been in a limbo with the Tribunal,  
there is no doubt about that.

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MR. HERBERT: Yes.

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CHAIRMAN: They were totally in limbo. I am prepared  
generally on my integrity to say that no member of the  
staff read those documents. Miss Cummins made a mistake in  
the filing, instead of sending them back she put them on  
the file.

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MR. HERBERT: But since, Mr. Chairman, the limbo has  
ceased to exist or the relevance to the Supreme Court  
rulings, I understand that they have since then been with  
the Tribunal in open format, without any --

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CHAIRMAN: But again, what has it got to do with you?

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MR. HERBERT: Because My Lord, or sorry, because, Mr.  
Chairman, they are relevant to our interests.

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CHAIRMAN: No, they are not. Can you show me what  
relevance they have?

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MR. HERBERT: Because they seem to deal with the payment  
of Mr., of £50,000 to Mr. Gogarty, some evidence of which  
we have heard in the last two weeks. They seem to deal with  
the contracts to Mr. Murphy.

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CHAIRMAN: That is a matter of evidence before the  
Tribunal. You will hear it, you will see the documents in  
question, and as I say so far as I understand they are

three in number. They are a contract, this memorandum and the cheque in question. In fact you have seen, I think, a copy of the cheque; sorry, it is not the same cheque. The cheque, sorry the cheque was the cheque which was made out to Messrs. Bailey by the bank. It is the bank cheque to Mr. Bailey that they have, which is cashed. Now, that is the only three documents which I know of in existence. The other documents which are referred to are presently documents relating to Messrs. Bailey/Bovale's other activities in the banking world and have no relevance whatsoever to us.

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MR. HERBERT: But Mr. Chairman, I mean they may be relevant to --

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CHAIRMAN: Look, I have made a ruling it is not relevant to you and that's an end of the matter. Please resume your seat.

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MR. HERBERT: Well, before I resume my seat Mr. Chairman, could I press this matter any further?

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CHAIRMAN: There is no choice before you resume your seat, you do it now.

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MR. HERBERT: I have a note Mr. Chairman, there are 50 or 60 pages of documents. Perhaps you could clarify what that related to?

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CHAIRMAN: If you want to find out, you can bring an Order for Discovery of those documents against the bank and no doubt -- but at this moment in time I am telling you that

they are not relevant to your client so far as I know, and I state that bona fide, I am always open to be wrong, but they have nothing to do with you and I am certainly not going to hear you continue this application. If you want to make it, do it in the proper way.

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MR. HANRATTY: It might assist My Friend if I indicated that there is presented, pending before you, as you are aware, a matter for consideration as to whether to make an order for production of certain documents, not including the transcripts, which of course are not in the possession of the Tribunal anymore and have not been since they were sent back; but it may well be, subject to the application to be made opposing the production of those documents or consented to, subject to a condition that you may decide in the normal way, in due course to circulate certain documents in which Mr. Herbert will receive them as well as anybody else would.

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CHAIRMAN: I know nothing about them. Now, you are going to call another witness?

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MR. HANRATTY: Yes sir, would you like me to proceed now?

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CHAIRMAN: Yes, carry on.

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MR. HANRATTY: Mr. Heneghan please.

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PAT HENEGHAN HAVING BEEN SWORN WAS EXAMINED BY MR. HANRATTY  
AS FOLLOWS:

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451 Q. MR. HANRATTY: Mr. Heneghan, we have been told that you  
have been engaged as a public relations consultant by Mr.  
Bailey in connection with this Tribunal?

A. That's correct.

452 Q. Can you explain to the Tribunal what your function is in  
that capacity?

A. Well, it is varied. But essentially Mr. Bailey and his  
brother and his company is the subject of some very, very  
serious allegations, that from the time of the announcement  
of the introduction of the Tribunal and the appointment of  
the Chairman, has received an inordinate amount of  
publicity in advance of the commencement of the hearings.  
Mr. Bailey and his brother asked me to help them monitor,  
sift and where possible, correct inaccuracies that have  
been uttered or published about them.

453 Q. May I take it from that, after they have been published?

A. After they have been published, and sometimes in  
conversation we hear things because as well as absolute  
reportage of the events now that the Tribunal is sitting,  
it happens there is considerable amount of opinion, some  
valid and some not so valid, that happens. You hear those  
discussions. I am in a position, in my position I am privy  
to lots of those discussions and I certainly try to protect  
the name and good character of my witness, of my clients.

454 Q. When you say you are privy to discussions, can you identify  
what discussions you are referring to?

A. Media discussions, all sorts, all types of media

discussions. I mean it, you will all, when the curtain comes down here at 3 o'clock or whatever time it all doesn't finish. There is coffee shop talk, there is other talk and I hear discussions. Nothing to do directly with the reportage of what has happened and the evidence that has been adduced in front of the Chairman of the Tribunal, but other supposition and maybe this and maybe that. I am listening to the most appalling coverage of my clients' affairs on programmes such as "The Last Word" on the Today FM programme. I get all those transcripts and monitor them. We object, we try to get them corrected, we try, and that is a valid function, I would suggest, Mr. Hanratty, for my clients' company and for my clients.

455 Q. Try and get them corrected after misstatements have been made or errors have been uttered?

A. Absolutely; and to try and get it right for the next occasion.

456 Q. And how did you, do you go about getting it right for the next occasion?

A. Because it is essentially the same commentators are doing the circle, or the circuit on this particular issue, and if I hear something and I meet a specific journalist who has said something I will say "come on now, you have got the angle totally wrong on that and it is totally unfair. It misrepresents my clients' point of view". And I have, I am obliged to try and get the correction when and wherever possible; and I think we have been fairly effective, if I say so myself.

457 Q. We will come back to that in a moment. I didn't ask you, perhaps you might assist us; what was the approximate date of your appointment?

A. The approximate date was about February of last year.

About maybe the end of February and that is very approximate. About 10 or 11 months ago.

458 Q. Does your work for Mr. Bailey in connection with this Tribunal involve you in speaking to journalists about articles before they write them?

A. On some occasions yes, journalists have contacted me over the months about "could you give us an opinion on this?" or "are we right about that?", that certainly happens.

459 Q. And do you have discussions, for example, with Mr. Sam Smyth about articles he is proposing to write before he writes them?

A. I have had discussions with Sam Smyth. I am not sure about particular articles. I certainly had discussions with him about the article in question. I have had discussions with Sam Smyth about this Tribunal on several occasions, and since the Tribunal started I have had several discussions with Sam Smyth about other of my clients.

460 Q. And do you have similar discussions with other journalists?

A. I do, yes.

461 Q. About articles that they are proposing to write?

A. On occasions, if I can help them. Journalists can phone me at home. They can phone me in my office and they say "look, what is this about?", and where possible I will listen fairly attentively. I haven't missed one second of the Tribunal since it commenced. I know I am no expert on the legal affairs, I never pretended to be, but I do have the gist and I am here all the time. Some of the journalists are here part-time. You will have the journalist that goes on duty, for arguments sake on a Sunday, that is asked to do a piece on a Monday, just for arguments sake, who may have missed the last two days of the Tribunal. They will say "what will I do?", they say

"ring up muggins here and he might help".

462 Q. Do you give Mr. Bailey's version of the events to those journalists?

A. I would certainly give the version of the events that would be in my clients' interests, certainly.

463 Q. Well, to use the jargon of your profession, do you put a spin on it?

A. I wouldn't think so; and I took grave exception when listening to the evidence, when Mr. Callanan's colleague referred twice using the term using the term "spin doctor" in a very pejorative way. I object to the term "spin doctor" and I object to the use of "spin".

464 Q. You know that in the course of the work of this Tribunal information has circulated to various parties and that has been including to your own client, Mr. Bailey?

A. I am fully aware of that. I have heard it in evidence adduced here today.

465 Q. I take it as one of Mr. Bailey's advisors would you discuss this information?

A. No, I have no access of any type, and I think it is worth saying this straight up, Mr. Hanratty; I have never seen a single legal document of any, of any type, that is in my clients' legal advisors possession since this Tribunal commenced. I have heard, certainly heard discussions.

466 Q. About what is in the documents that are being circulated?

A. I have heard discussions about what is in documents that are in circulation, yes.

467 Q. Let's take as an example; Mr. Gogarty's affidavit that was circulated on the 20th of October. Mr. Bailey would have received it and would have, for the first time, seen in fairly graphic detail the kind of evidence that was going to be given by Mr. Gogarty?

A. So I believe, yes.

468 Q. I take it you would have discussed that with your client?

A. No.

469 Q. You didn't discuss with your client the evidence Mr.

Gogarty was going to be giving?

A. No. The first I saw, as it happens, of Mr. Gogarty's evidence was when it was published in great detail in the Sunday Independent, I believe it was, in December, October, whenever that was.

470 Q. The first intimation of it was on the 8th of October, sorry the 8th of November, and the second when the entire contents of the affidavit, was the 15th. Do you not remember the time?

A. What do you mean "the time"?

471 Q. You know your client had the affidavit since the 20th of October?

A. If you tell me so, I will say yes.

472 Q. Is it your evidence to this Tribunal that none of the contents of Mr. Gogarty's affidavit was ever disclosed to you or discussed with you between the 20th of October and the 8th of November and subsequently the 15th of November?

A. That's correct. I had no interest in that volume of work.

473 Q. How were you supposed to help Mr. Bailey if you didn't know what the evidence against him was going to be?

A. The development of the story, since I came on board this team as an advisor to Bovale and the Bailey brothers last February, March, whenever that was, has been sufficient to keep me fully informed as to what happened. There were broad discussions, I will admit there were broad discussions. I remember a debate about the Gogarty affidavit, the effect that a small amount of that affidavit had to do with us. But a large amount had to do with other

people and other matters, and that this affidavit was circulated in full to everybody and that caused certain distress certainly to my clients, the fact that a small amount about him that he didn't believe was pertinent to other people was circulated broadly to other people, the whole import of that, when it back. I certainly wasn't aware of the contents of this affidavit.

474 Q. How would you know about the distress of your clients if you didn't discuss it with your client?

A. As I said to you, we had broad discussion about that matter.

475 Q. If he was discussing the fact that he was distressed at this affidavit being circulated, presumably he was discussing it with you, what the affidavit was saying?

A. No. I wasn't aware of the contents of that affidavit, of Mr. Gogarty's affidavit. The arguments in it, I have heard them in latter weeks since the middle of January, in very great detail, but I was not aware, and I was not privy to the discussions, nor am I privy to the legal discussions on those matters.

476 Q. You are not privy to the legal discussions?

A. No.

477 Q. Just so I can understand your evidence, your client did have discussions with you about the fact that he was distressed that certain matters in Mr. Gogarty's affidavit relating to him were being circulated, but he didn't discuss the nature of the matters?

A. As I said, Mr. Hanratty, with my client and other people and the legal team, there were general discussions about that matter, of that I was very aware of. And I think it is indeed a point I may well have made, if you go through the transcript, through the media cuttings that I may have

made to journalists, they are the type of points I would certainly make.

478 Q. You have, as I understand it, been in attendance at this Tribunal virtually everyday it has been sitting?

A. Everyday, yes.

479 Q. And I understand in close consultations with Mr. Bailey's counsel?

A. Consultation insofar as we would have discussions after the days work is over. I would come to the tribunal, I don't meet them before the days work starts. After the days work it is the most natural thing in the world, as part of a team, to try and review and say "God, that was a reasonable day" or "it was a bad day" or whatever, from that point of view, yes.

480 Q. You were interviewed on this very point recently by Emer Woodfull on Radio One, a programme called "Sound Bite"?

A. Last Saturday.

481 Q. Can I just remind you of the question that was put and the answer which you give. Emer Woodfull asked you: "You are now working with the Bailey Brothers at the Flood Tribunal and Bovale Developments. I am just wondering how closely you work with a legal team, for example at the Flood Tribunal?" Your answer was as follows: "At the Flood Tribunal I would be very close to the legal team. I would listen to them, I would be involved in certain conferences between them and their clients but I would have no input. I am not a legal person. I never pretended to be a legal person. As you say I represent a company and two of its Directors against whom some such very serious allegations have been made and those people run a very serious businesses and they have relationships with all sorts of people. People who they depend on for a living, their

families, their banks, their suppliers, et cetera. And I suppose I am tasked on their behalf to try and get a certain balance in the commentary end of the media on what happens at the Tribunal while those allegations are being made against them, but on the legal side of it no, this is a matter entirely, I don't input into that, but I do hear what is happening".

A. Yes.

482 Q. You see?

A. Rephrase the question?

483 Q. You seem to be saying if I summarise you, please correct me if you feel I am summarising you incorrectly, that you have close liaison with the legal team, but you have no input into the legal end of it?

A. Absolutely. I have no input after, I mean could I give an example to bring it right up-to-date?

484 Q. Please do.

A. The very case that the Chairman is asked to investigate today with Sam Smyth's article. Subsequent to the questions put to me by Sam Smyth on Monday, I certainly had intense legal debate in private after, it happened after the judgement was given by Mr. Justice Flood in our counsels' rooms, where we discussed the seriousness of the questions we were asked and were indeed horrified; and that was an intense, if you like, a legal debate, that I was part of. That is an example. There are issues that arise that have a public debate that I am involved like that, but in the main I have no input, no legal knowledge, no access to legal documents of any type, shape or form to do with my clients' affairs.

485 Q. Let's just leave the legal stuff aside, the legal stuff are questions of law, legal issues, matters of admissibility of

evidence and so forth?

A. Okay.

486 Q. But, that is not everything that is discussed. You have discussed about the allegations that are being made, the evidence that a witness has given, your clients' response to that evidence; those are factual matters?

A. Yes.

487 Q. You are privy to all of that?

A. I am not privy to any advice that my client gets from our legal team and I haven't been. I have heard broad discussion, as I said, and as I said in that interview, but I have no input in that, Mr. Hanratty.

488 Q. Do you know what a "sound bite" is?

A. I do.

489 Q. Do you produce sound bites?

A. No, that is not my type of business and never has been.

490 Q. Do you provide information or material to be given to counsel to Mr. Bailey?

A. No never, I have not once since this Tribunal started, and if that was suggested on a, there was an interjection made even in that radio programme, there was a suggestion made that an interjection by Mr. Allen for some reason was done in collusion to me, nothing could be further from the truth.

491 Q. Well, I will just put the question to you because I happen to have it in from front of me. The question was: "I know you do sit here all day yourself, you do talk very frequently before and after hearings with the legal team. For example last Thursday there was a headline, when I heard it I knew it was going to be a headline and probably the lawyer and you did as well, what it was going to say, for example that this was all a waste of public money.

Now, that ends up a headline but not the judge's reply which was: "It is taking a long time because he felt that your clients hadn't given sufficient statements". How much of an input would you have had to that coming out before the one o'clock news? Would you have discussed this with the legal team beforehand?"

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That was her question and your answer was no, that particular one, no. "That particular interjection by Colm Allen on behalf of Bovale and his clients and the Bailey brothers was a total self start because he was sitting there and he was listening, and he simply made the point that we are here for ten days. We spent about 45 minutes on the substance of the allegations, as was discussed in the Dail, and the rest of the ten days have been discussing a row that has developed between Mr. Gogarty". And there was then an interjection.

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Now, what did you mean by "No, that particular one no, that particular interjection by Colm Allen on behalf of Bovale and his clients and the Bailey brothers was a total self start"?

- A. I was referring to the particular question Miss Woodfull put, and I had addressed it as best I could, because the questioning, I wasn't expecting this, I didn't know I was going indeed to discuss this Tribunal at all on that programme. I went in to discuss another matter. That is merely a part of this transcript. This developed, and when she put that in, how that particular instance that she referred to was handled, I answered it like I did for that reason. I have had no input. I have no idea what the legal team are going to do or when they are going to do it,

and we are certainly not, I certainly am not and I don't think they are in the business of sound bites.

492 Q. Well, the phraseology which you use strongly suggests that you were distinguishing this particular sound bite from some other ones?

A. I was referring to her particular question. Well, if that is the understanding that is incorrect I wasn't, I am not in the sound bite business.

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CHAIRMAN: Mr. Heneghan, may I take it that your departure immediately after the sound bite and no further interest in the Tribunal between that and its conclusion at one o'clock on that day, indicated that you had achieved your purpose?

A. No, if I could say, Chairman, when after Mr. Allen made his submission on that day, I retired with Mr. Allen to that side of the house and we had a discussion about that matter and other matters. Then I returned to my seat. I stayed in my seat.

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CHAIRMAN: You walked out the door and you were seen going in to powder your nose as he left the building?

A. I went in to powder my nose and I came back to my seat. I was back in my seat before Mr. Allen returned, Chairman, and I heard your response, that in fact he didn't hear, and I sat here until about ten past one on that day.

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493 Q. MR. HANRATTY: Can we move to Monday of this week?

A. Yes, yes.

494 Q. You had a discussion with Sam Smyth in this room?

A. I had, yes. I had two or three discussions with him that day.

495 Q. Well, do you recall having a discussion with Mr. Sam Smyth

in the company of Mr. Colm Allen SC at approximately 12:30 on Monday?

A. No, I recall a discussion, I recall a discussion with Mr.

Sam Smyth later in the day in the presence of Mr. Allen and it wasn't at 12:30. My recall, Mr. Hanratty, was that that day when the Tribunal rose the Chairman announced that he was coming back to give his ruling on another matter. He assembled for the ruling at about a quarter or twenty past two, and it was after that ruling which was about a quarter or ten to three, I don't know how long that was, that was the time Sam Smyth approached me, that was the time Sam Smyth put certain matters to me.

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The legal team were finishing up. I was deeply concerned about what Mr. Smyth had to say and invited Colm Allen to hear what he had to say, to talk to Mr. Smyth at that end of the room.

496 Q. Perhaps I am incorrect on the time. I had understood it was after the sitting, but it could well have been after, you say after the afternoon sitting?

A. That is my recall, sir.

497 Q. But you had a discussion with Sam Smyth in the company of Mr. Allen SC on the afternoon of last Monday?

A. Correct, yes.

498 Q. And you were discussing an article which Mr. Sam Smyth was proposing to publish?

A. Well, at the time I wasn't discussing the article, I was discussing a question that Sam Smyth put, and if I may I would like to rehearse what Mr. Smyth said to me?

499 Q. Please do.

A. Sam Smyth approached and he said "I got on the, on Friday", he says "I got a story from the most reliable authority",

he says "it is an impeccable source. To the effect that Michael Bailey had approached Allied Irish Banks to arrange an amount of money, part of which was in cash for Mr. Gogarty". I said "hold up, Sam", I said "I can't discuss that because I know absolutely nothing about it". And as soon as I could I introduced, because I thought it was very serious, I introduced Colm Allen to Mr. Smyth and I said "Sam, would you say again what you said to me just now". He did that, and he repeated the thing, and to the best of my knowledge I said, I think what Colm Allen said was, he said "I can make absolutely no comment on that matter" and subsequent to that we retired to counsels' rooms and Mr. Allen and the other two barristers were there and we discussed this matter in fairly deep detail for about 20 minutes, 25 minutes and with deep concern.

500 Q. This conversation, of course, was taking place in the context that there had been a transcript; isn't that right?

A. What transcripts?

501 Q. Two transcripts of the interviews with bank officials last year?

A. There was no reference to me about transcripts, what Sam Smyth did say was that there was a contemporaneous note that he was told not to tell us about, that contained the information he said, and I had absolutely no knowledge of any transcripts to do with that matter, absolutely none. And indeed I didn't hear about those transcripts until, in detail until today, but -- until yesterday I heard about those transcripts for the first time.

502 Q. Are you saying to the Tribunal that you are not even informed either by your client or anybody from the solicitor's office, or indeed by counsel, you were not informed of the existence of these transcripts?

A. Absolutely. I had no knowledge of these, of the existence of these transcripts. I will tell you when I heard about the transcripts was standing over there in conversation yesterday morning with a group of people when one of the solicitors approached, and there was an eclectic group of barristers standing over having a general chitchat before the Tribunal commenced, and a solicitor approached and said such-and-such, "these documents have come into the possession, into our possession or were delivered last night", that was the first I heard about it, and I didn't even know what they were about because subsequent to that, as I observed, Mr. Allen and his colleague went and had a discussion with some of your team and then they left the room and I didn't see Mr. Allen again from that until this afternoon.

503 Q. I take it you were aware yesterday morning that there was a very serious concern among your entire team, by that I mean Mr. Bailey's legal team, including his solicitors and counsel, of the fact that there had been or that there was about to be a leak, a serious leak concerning the £50,000 and that this concern emanated from --

A. No, we had deep concern about that on Monday and deep concern yesterday. Our deep concern yesterday was about, as I understand it, the origination of the transcripts you described.

504 Q. What I am putting to you, sir, is that yesterday morning, and I presume you are aware, and tell us if you were not, Mr. Bailey's counsel and solicitors were deeply concerned and expressed these concerns to Counsel to the Tribunal about this transcript which they believed, incorrectly as it turns out, had been circulated, that it had been leaked to the media?

A. That's right, yes.

505 Q. And that Sam Smyth was going to make a publication as a result of it?

A. No, my understanding is they were deeply concerned about those particular documents. Our concern about Sam Smyth's store of knowledge went back to Monday when whatever source of information he had certainly didn't come from me, and to the best of my knowledge didn't come from anybody associated with the team I work with.

506 Q. Leaving aside what may or may not have come from you; what I am asking you is -- you are aware, I take it, that the concern in your legal team in, sorry in Mr. Bailey/Bovale's legal team yesterday morning before the sitting of this Tribunal centred around the leaking of the contents of this or some of the contents of these two transcripts?

A. No. To be honest my understanding as, if I may repeat, we were very deeply concerned on Monday. I understood yesterday, and it shows you the distance that there is really between the legal team and myself, that the legal team were deeply concerned about certain documentation that had come their way. I was not aware of the depth of their content.

507 Q. You believe the document had been delivered on Monday evening; is that what you said?

A. No, no, no, I didn't say anything about a document being delivered anywhere. I am aware of a document that was delivered here at 10 o'clock or thereabouts, well at the start or commencement of yesterday morning. I know nothing about a document on Monday.

508 Q. Mr. Foy has told us that it was received on Monday morning, that it was sent down to the Tribunal?

A. Be that as it may, I am not aware of what happens in Mr.

Foy's, in Smith Foy's offices. I am not aware of the document, and I understand that it was sent down to the Tribunal, Mr. Hanratty, yesterday morning with one of the solicitors in Smith Foy.

509 Q. But that the document had arrived the previous day?

A. I wasn't aware of that until -- well, I perhaps heard that yesterday, yes I did, I heard that a document had arrived the night before. But that document went into the possession from Mr. Foy, whom I have never met, into one of the solicitor's when that solicitor returned from the Tribunal, and that that solicitor in turn produced that document to counsel when they returned, when they returned to the Tribunal yesterday morning. That is the first I ever heard of that document.

510 Q. I just want to be absolutely clear about this now, Mr. Heneghan, so nobody will have any doubt in their mind about what it is precisely that you are saying. Mr. Bailey's counsel came to Counsel to the Tribunal yesterday morning and expressed grave concern about the fact that these transcripts and their contents had been leaked to the media?

A. Um hum.

511 Q. They expressed that concern in the mistaken belief that these transcripts had actually been circulated to everybody. They hadn't, in fact. The only people to whom they had been sent was Mr. Glackin, solicitor for the bank, and he had sent it to Smith Foy, solicitor for the Bailey's?

A. So I now understand, yes.

512 Q. I take it you were aware of the reservations and concerns that counsel had on yesterday morning?

A. Oh, I was, yes. I was very aware of that, yes.

513 Q. I take it you were aware that they were concerned of the leakage of these documents?

A. I was, yes, and if I could add that they, arising from the story and the inquiry that came from Mr. Smyth on the previous day before we heard anything about the documents, it would make logical sense that perhaps they concluded that those documents were available to Mr. Smyth.

514 Q. You are aware that the contents of the documents related to the matter that Mr. Smyth was writing about?

A. I am now but I wasn't and I didn't see those documents, I have never seen those documents. I only heard them discussed in some small detail today, and particularly when Mr. Gogarty's team was taking, making reference down through them but I -- I haven't seen them. I don't even know what they look like.

515 Q. So, is it your evidence then that while you were aware that concerns were being expressed, you weren't aware what the documents were about?

A. No, that is correct. That is correct.

516 Q. Nobody told you that?

A. Nobody told me that. Could I remind you that at that time yesterday, and somebody might have observed, I was observed going to powder my nose not so long ago, but soon after those documents came Mr. Allen and Mr. Leahy left the room and Mr. Allen didn't return to the room, Mr. Leahy returned a lot later, and I had no discussions of any type with Mr. Leahy yesterday.

517 Q. Finally I just have to ask you; in relation to what Mr. Smyth told you, I take it you understood from what he said that it was something to do with Anglo Irish Bank?

A. Oh, yes, he told me that it was Anglo Irish Bank. He told me some considerable detail. His question -- I said --

could I add one other thing that is new to all of this thing? Another very serious senior journalist came to me yesterday evening with exactly the same question put in a different format slightly and asked me for comment, and he got exactly the same answer from me that Mr. Smyth got on Monday.

518 Q. Just to go back to my question. You have confirmed in your answer that you knew that it was something to do with Anglo Irish Bank?

A. That's right, yes.

519 Q. May I take it from that that your client also knew?

A. I don't know about my client knowing but the legal team certainly knew because Mr. Bailey was not here yesterday and he was not here on Monday afternoon. And I just discussed it with the members of the legal team, as I described to you, in counsels' rooms sometime on Monday afternoon.

520 Q. And just to be absolutely clear about your understanding from Mr. Smyth, it was something to do with Anglo Irish Bank and something to do with £50,000?

A. It was. He said that the question was that he was given from an impeccable source, an impeccable source on Friday the information that Mr. Bailey had asked Anglo Irish Bank for an amount of money. He said the amount of money, and that he asked for part of that money in cash and that he said it was for Mr. Gogarty.

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MR. HANRATTY: Thank you, Mr. Heneghan. Would you answer any questions My Friend may wish to put.

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MR. ALLEN: I have no questions.

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MR. O'MOORE: I may have a number of questions for Mr. Heneghan.

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CHAIRMAN: I am going to sit right through. There is another witness. Mr. O'Neill, you will be calling another witness, Mr. Tom Bailey, isn't that so?

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MR. O'NEILL: Yes, sir.

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CHAIRMAN: And I will sit right through to the end of this. I want to complete this. The Tribunal's main purpose is to go on, I want this matter concluded this afternoon.

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MR. O'MOORE: Mr. Heneghan. My name is Brian O'Moore.

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CHAIRMAN: Just a moment. We have to change the stenographer.

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CHAIRMAN: Now, the witness is under cross-examination and may not be talked to by anybody.

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THE HEARING RESUMED AS FOLLOWS AFTER A SHORT BREAK:

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THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS BY MR. O'MOORE:

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CHAIRMAN: Mr. O'Moore, when you are ready.

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521 Q. MR. O'MOORE: Yes, Mr. Heneghan, I think you said in evidence to Mr. Hanratty, that you had not seen details of the Gogarty affidavit until it was published in the Sunday Independent; is that correct?

A. That's correct.

522 Q. How ignorant were you of the Gogarty affidavit before that publication? Did you even know, in general terms, what it contained?

A. I feel certain I had general knowledge of it because there was general knowledge being discussed with journalists and media and other people, I mean it was quite a cause celeb.

523 Q. This is before the publication in the Sunday Independent?

A. Before the publication.

524 Q. Had you discussed with the legal team of Bailey's and Bovale Limited what was in the affidavit?

A. No.

525 Q. You never discussed it until it was published?

A. Until it was published.

526 Q. Well now, Mr. Heneghan, can I take you back to that time, were you in Ireland at the time?

A. Well, I was certainly away in the summer, I was here nearly all of September after that I was.

527 Q. Yes, for the month of October and November you were?

A. Yes.

528 Q. And you were working, in preparation at least, to some extent, for the Bailey's evidence in the Tribunal?

A. Part-time, during that period I was reasonably incapacitated, I had suffered an accident on my vacation that caused me to circulate very little during that period.

529 Q. Well, did you work at all with the Bailey's at your end?

A. I did. I worked in establishing and setting up a system of media monitoring, media analysis, and transcript monitoring and how that would work, that was put in really, put into being at that stage, on the expectancy of the Tribunal. The Tribunal then sat I think here in, on one or two days during that period and that's when I really became active

with my, became more and more part and had to allocate,  
readjust my, the time available to become available to  
Bovale and the Bailey brothers.

530 Q. Yes. Your job as you described it is to monitor, sift and  
correct inaccuracies; is that right?

A. Yes, and to analyze.

531 Q. Yes; is that correct? The Bailey's were concerned that  
there could be no more inaccurate a document than Mr.  
Gogarty's affidavit; is that so?

A. I have no comment to make on that. As I said I have no  
access, I haven't seen that document, I haven't looked at  
that document other than what was in the, if that's your  
opinion that's fine but I can't comment on it to that  
extent. I am not a lawyer.

532 Q. Mr. Heneghan, we have all sat here for ten or eleven days  
as Mr. Allen pointed out, and we know quite well what the  
Bailey attitude is to the affidavit; don't we?

A. That's Mr. Allen's job and he expounds it whenever he has  
an opportunity so to do.

533 Q. How would you describe the Bailey attitude towards the  
Gogarty affidavit?

A. Hostile.

534 Q. And they believe it is inaccurate?

A. Well, listening to Mr. Allen, yes, one would have to assume  
that, and he works on instructions.

535 Q. To put it mildly. So that they think it inaccurate?

A. Yes.

536 Q. And that would be one of the inaccuracies you were going to  
monitor, sift and correct?

A. Which inaccuracy?

537 Q. The inaccuracy in the affidavit?

A. Reported about the affidavit?

538 Q. Yes. Could I ask you about that, because you say you have no discussion whatsoever with the legal team?

A. About the affidavit, yes.

539 Q. Prior to its publication?

A. Yes.

540 Q. Can I put some dates to you? The affidavit was sworn on the 11th of October of 1998, and delivered to the Bailey solicitors I believe on the 20th of that month, the 20th of October, of 1998?

A. If you say so.

541 Q. And it would have been, no doubt, read, whether or not studied by them immediately after its delivery?

A. Yes.

542 Q. You would not have had discussions with the Bailey legal team at that stage about the affidavit at all?

A. No. The Bailey legal team, when the Tribunal wasn't sitting, sat as far removed from me and I had very little or no contact with them.

543 Q. There was a sitting of the Tribunal on the 4th of November, of 1998; are you aware of that?

A. Yes.

544 Q. Did you attend it?

A. I sat, I attended every public sitting of the Tribunal.

545 Q. Yes. It was a public sitting of the Tribunal on the 4th of November in which there was an application by, among others, Mr. Allen for an adjournment of the public sitting during that --

A. I don't recall it.

546 Q. You don't recall it?

A. I don't recall it in detail, I don't recall it here now, I just don't.

547 Q. Do you remember Mr. Allen's description of the Gogarty

affidavit as scabrous, lurid, scandalous outrageous, the result of preoccupation, or alternatively a vendetta?

A. Yes, I do indeed, I recall it.

548 Q. You remember it now?

A. Yes, I do.

549 Q. Yes. And that was part of what can only be described as a sustained attack by Mr. Allen on Mr. Gogarty, his credibility and his affidavit, and you stayed in the hall during that attack, isn't that so? Is your evidence still at that time, at that time Mr. Allen delivered himself of this attack you had not discussed in any sense that affidavit with Mr. Bailey's legal team?

A. No, I hadn't and up to that, up to that time I had not discussed his affidavit in any sense with Mr. Bailey's legal team; and that is a fact.

550 Q. Well now, Mr. Heneghan, can I ask you perhaps an impolite question; what were you doing here if you hadn't discussed the affidavit?

A. I was listening like everyone else, for me it is an entire educational programme, all I can do is react. What I can do is I can hear what journalists hear. I can and I have had a certain amount of experience of that, Mr. O'Moore, and my information is essentially the same as their information. That is what I think gives me the strength to sift out sound bites over anything else.

551 Q. Journalists ask you to explain things to them you said?

A. Journalists, yes on occasions they will ask for explanation.

552 Q. So on the 4th of November of 1998, you sat here in this hall as part of a learning experience, at the expense of the Bailey's, knowing nothing more than the journalists and knowing nothing whatsoever about the Gogarty affidavit; is

that right?

A. Well, I don't know what knowledge the journalists have, but I would know that the Bailey's would have violently disagreed, as everybody else would, with what Mr. Gogarty was going to say insofar as this was published in great detail in advance of his affidavit by various journalists, particularly in places like the Sunday Business Post where this thing has been rehearsed at length. I had all that knowledge, but I didn't have any detailed knowledge of his affidavit, I didn't see the affidavit, and I didn't discuss the affidavit.

553 Q. And amazingly you didn't discuss the affidavit with any member of Mr. Bailey's legal team or the Bailey's themselves when this headline grabbing assault on Mr. Gogarty took place on the 4th of November; is that so?

A. That's right, yes, that's correct.

554 Q. Thank you very much, Mr. Heneghan.

A. Thank you.

555 Q. Sorry, one matter Mr. Callanan brings to my attention. Could I ask you to have a look at the Irish Independent of today's date. Could you look at the heading "Anglo Irish Bank", it is a sub-heading?

A. Yes.

556 Q. And the paragraph immediately above that;"Mr. Gogarty is expected to be questioned about the money next week when his cross-examination is expected to begin". Then the reference to Mr. Allen's description of a "Big big ambush". Now, to the ordinary reader of the newspaper that would suggest that somebody had told Mr. Smyth that there was an expectation that Mr. Gogarty would be questioned about these matters; is that what it suggests to you?

A. It would suggest that to me, yes.

557 Q. Did you tell him?

A. Not at all. I have no knowledge of when cross-examination of Mr. Gogarty is going to commence or when Mr. Allen would be cross -- I have no idea.

558 Q. No, no, no. Please Mr. Heneghan, look at what it says, it conveys not when the cross-examination is due to commence but the subject of the cross-examination; it will include questions about this £50,000 payment. Now, I think you have agreed with me that one would take the view that somebody had told Mr. Smyth that this would be one of the topics of conversation under cross-examination?

A. With respect, Mr. O'Moore, Sam Smyth is a very, very senior and highly regarded journalist, and it doesn't take a rocket scientist or he doesn't need, as you call it, a spin doctor to put the pen in his hand to write a paragraph like that. I certainly didn't discuss that with Mr. Smyth.

559 Q. Yes. Could I just ask you again, "Mr. Gogarty is expected to be questioned about the money next week"?

A. Yes.

560 Q. Not "I expect", but "Mr. Gogarty is expected to be questioned"?

A. Yes.

561 Q. Now, if somebody on behalf of the Bailey legal team suggested that to Mr. Smyth and it wasn't you, who would it be?

A. I have, I cannot for the life of me, Mr. O'Moore, get the point you are trying to make about this particular paragraph. It is a paragraph written in journalese in the center of the story, and it seems to be a sequential, logical paragraph in the totality of the story, and I have no idea who made it. Sam Smyth is quite capable of

thinking for himself.

562 Q. Can I put the question to you in an entirely different context. I think you have said in your evidence to Mr. Hanratty, that you don't anticipate what the Bailey lawyers are going to do; is that so?

A. Correct, yes.

563 Q. An article appeared on the Sunday Tribune on the 8th of November, of 1998, under the heading "Flood may have to go backwards to go forwards". It included the following statement in an article by Mr. Cooper and Mr. Wall:

.  
"JMSE lawyers and those for other parties, are likely to argue that people do not forfeit their rights when they become the subject of allegations". I want you to listen to the next section. "Lawyers for JMSE and Bailey will want to know the circumstances in which Gogarty finally made his allegations. They will want to know if the tribunal has promised to make representations to the Director of Public Prosecutions for any immunity from any future prosecution. They will also want to know what assistance, if any, was given to him in making his statement by either the tribunal, his own lawyers or anyone else or whether he was given any guarantees that his evidence would be taken first at a certain date. Any unhappiness with the answers to these issues could also prompt court challenges".

.  
It goes on; "Both JMSE and Bailey appear to see an opportunity in the procrastination on the part of Gogarty in actually signing his allegations. They are well aware that a full Garda investigation into the claims by Gogarty including allegations of intimidation and of shots being

fired at his house did not progress to the point where charges could be preferred against anyone because Gogarty refused to sign a statement substantiating his claims.

This is why both JMSE and Bailey believe that access to the garda records and notes of the interviews are so important".

.

Now, would you agree with me, Mr. Heneghan, that article by two eminent journalists purports to say what the Bailey lawyers believe and what they planning to do?

A. What the Bailey and JMSE lawyers purport and plan to do.

564 Q. Both are specifically mentioned?

A. That's right, that's exactly, I agree with you.

565 Q. How would Mr. Cooper and Wall get that information, did you give it to them?

A. No, no.

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MR. ALLEN: Chairman, if I might respectfully interrupt, might I remind through you, sir, Mr. O'Moore, that on the 4th of November all of the points which he has canvassed, with the exception of matters in relation to bullets, etc., were raised by me and by Mr. Cooney in public sessions in front of the media.

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CHAIRMAN: I have very, very clear recollection, and you will also recall that I dealt, I think on the following Tuesday if my recollection -- in detail with those who addressed me and the manner in which I was addressed on that subject.

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MR. ALLEN: Indeed you did, sir. I am simply making the point that it appears, there appears to be an attempt at

this point in time to suggest that the lawyers on this side of the house were responsible for matters that appeared in the newspapers, because how else could they appear in the newspapers?

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CHAIRMAN: On the contrary Mr. -- The suggestion on that particular day was that the Tribunal were responsible, and that was without any foundation whatsoever, and we have never seen one scintilla of evidence to justify that, though you and your other, the other complainants were invited on that occasion and on the subsequent occasion which I dealt with in submissions that were made to me, or complaints that were made to me, in detail, and I invited you to produce your -- it reminds me of the cat in the Guinness Brewery, you all know the story and I won't repeat it, it is too vulgar.

.

MR. ALLEN: Sir, may I say with great respect, that I recall with particularity that on the 4th of November, quite far from what you are now suggesting, I made it clear, in express terms, that I did not for a moment suggest that any leaks emanated from this Tribunal or from the legal team. And I would welcome you referring me to where I said it.

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CHAIRMAN: Well, at the moment that's the situation. The cross-examination is perfectly legitimate as it stands at the moment.

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566 Q. MR. O'MOORE: Mr. Heneghan, as I said to you before Mr. Allen's comments, it suggests that lawyers for JMSE and Bailey have a certain agenda and certain things they want

clarified during the course of Mr. Gogarty's evidence.

Would that be journalese as you put it, for yourself?

A. I don't -- would you mind rephrasing that question?

567 Q. Of course. Is the journalistic reference to lawyers in fact a reference to yourself and what you have told the media, the lawyers would expect to obtain?

A. It is a possibility yes, but I cannot recall that specifically.

568 Q. Yes. Now, could I just remind you what you said to Mr. Hanratty, which is that you wouldn't be privy to what the lawyers intended to do. I have read that section to you at some length, it clearly is a statement of intent on the part of lawyers both for JMSE, who have nothing to do with this dispute, and Bailey, and you have accepted, indeed this may be a journalistic mask for yourself. I want to put to you, Mr. Heneghan --

A. I don't understand the term, Mr. O'Moore, "journalistic mask for myself". I genuinely don't comprehend what you are saying.

569 Q. Perhaps I might make it very simple. I put to you the phrase "lawyers for Bailey" could indeed mean a reference to yourself, you said yes it could, but you don't remember the particular instance; is that right?

A. That I might have briefed to that extent; yes, there is a possibility that I may have done that. If I did, and I just cannot recall that incident, if I did I did it from the knowledge I picked up sitting in the room like everybody in the room. I think the paper you are referring to is a Sunday paper, it was subsequent to the event, I may well have spoken to Mr. Wall, I think you said it was Martin Wall.

570 Q. Mr. Wall and Mr. Cooper?

A. I may well have spoken to them about the matter and given my opinion on the thing.

571 Q. I want to be clear, and this is my final question, again your sworn evidence is that you may have briefed, as you put it, Mr. Wall and Mr. Cooper about it?

A. I may have.

572 Q. About what the lawyers for Bailey's intended to do at that stage; but you did so simply as, on the basis of what you heard sitting in the hall. You had no conversations at all with those lawyers about what their intentions were?

A. No.

573 Q. Thank you very much Mr. Heneghan.

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CHAIRMAN: Thank you very much Mr. Heneghan.

Mr. O'Neill, call your next witness.

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THE WITNESS THEN WITHDREW.

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MR. HANRATTY: Sir, I think Mr. O'Neill would like to call Mr. Tom Bailey today, if that's in order?

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CHAIRMAN: Well, everybody is going to be called today. There is going to be no tomorrow.

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MR. HANRATTY: Well sir, arising out of some evidence today it may be necessary to consider one aspect of it, but perhaps that's a matter that can be dealt with in the morning, if and when it arises.

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MR. LEAHY: If I just interject briefly; if this issue was to go on in the morning; you asked that certain people be present this afternoon; if more information is required

from me my attendance tomorrow is problematic, on a long-term basis. I have given commitments to be elsewhere, I would alter it if it were humanly possible, but another body of people are convening -- that problem is only with me.

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CHAIRMAN: I have every desire to facilitate the parties and their representatives to be present, and I suppose we have worked hard today and it will take some time to read this transcript, apart from anything else. I would be quite prepared to adjourn until Friday if that's, if that's suitable to you?

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MR. LEAHY: I don't want to inconvenience people, it would greatly inconvenience me tomorrow.

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CHAIRMAN: Very good. Friday then, if there is any slippage or anything left over, it will be Friday morning.

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MR. LEAHY: I am very much obliged for that.

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CHAIRMAN: Very good. Can we go on with Mr. Tom Bailey?

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MR. O'NEILL: Mr. Bailey, can you come forward please?

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CHAIRMAN: Would you ever be kind enough to talk into the microphone because I am having some difficulty hearing you?

A. Sorry.

579 Q. I take it you are familiar with your banking arrangement with Anglo Irish Bank Corporation?

A. That's correct.

580 Q. Those matters are discussed between the two of you; is that right?

A. That's correct.

581 Q. When did you first learn that the Tribunal had an interest in inquiring into your company's affairs with Anglo Irish Bank Corporation?

A. I don't actually recall, but I think it was earlier of this year.

582 Q. Early of this year?

A. Sorry of 98.

583 Q. Early in 1998?

A. Yes.

584 Q. And how did you come to learn that the Tribunal was making inquires about then?

A. I think it was in discussions with senior counsel. There was talk about, that they were, the Tribunal wanted to investigate our accounts in Anglo Irish and others.

585 Q. As best you can tell us, was that in the early part of the year, that is before June or was it after June?

A. I can't be actually certain about it.

586 Q. Try and recall, if you can.

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MR. LEAHY: I am sorry to interrupt --  
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CHAIRMAN: I think I know what you are going to ask.

Legal professional privilege?

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MR. LEAHY: I am not seeking to be obstructive.

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CHAIRMAN: I was beginning to wonder are we about to walk into it.

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MR. LEAHY: That was what I was about to raise.

587 Q. MR. O'NEILL: I am not seeking to inquire into dealings with the solicitor, but rather dealings with the bank. At some stage you learned, last year, that the Tribunal was interested in your dealings with the bank; is that so?

A. That's correct, yes.

588 Q. Did you learn that the Tribunal had interviewed two members of the bank staff?

A. Later on in the year I did, yeah.

589 Q. How much later than your original knowledge that there had been inquires made?

A. From memory, it was a discussion that Michael, my brother, and Tom Brown had, that there were two people interviewed from the bank.

590 Q. I see. Before that time, had the bank indicated to you that their members had been interviewed in relation to your affairs by the Tribunal?

A. No.

591 Q. I see. When you learned that there had been such interviews, what did you do about it?

A. Just had discussions in general about it.

592 Q. Who did you have your discussions with in relation to the bank, did you discuss it with the bank?

A. No, at no time.

593 Q. At no time did you discuss with the bank the fact that their employees had been interviewed about your affairs; is that your evidence?

A. That's correct.

594 Q. Do you know if your brother did so?

A. I think he had discussions with Tom Brown about it.

595 Q. You think he had?

A. Yeah, but I am not a hundred percent sure.

596 Q. He didn't tell you what he had learned from the bank?

A. He did. He told me all right that there was an interview, but we hadn't a major discussion about it.

597 Q. When did you learn this?

A. Late in summertime I think, I am not exactly sure.

598 Q. And what did you understand the position to be?

A. That there was discussions with two officials of the bank in connection with our accounts.

599 Q. Yes. Did you ask your solicitors to obtain details of what these meetings had been about?

A. No.

600 Q. Do you know that your solicitors contacted the Tribunal seeking the transcripts of the interviews on your instructions?

A. I heard some discussion about it, yeah.

601 Q. I see. You could have got this information, in fact your brother had seen the documents involved; is that right?

A. I am not sure of that, if he seen it or not.

602 Q. What did you want to find out?

A. In connection --

603 Q. From the bank?

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MR. LEAHY: Again sir, can I raise the issue of legal professional privilege?

604 Q. MR. O'NEILL: With respect, this is to deal with the bank  
and nothing to do with the solicitors.

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CHAIRMAN: I would have thought that is true.

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MR. LEAHY: If a question of --

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CHAIRMAN: No, I am very very conscious of the legal  
professional privilege and I will try to avoid walking  
across the fence.

605 Q. MR. O'NEILL: What inquiries did you make of the bank, Mr.  
Bailey, to find out what they had said about you to the  
Tribunal?

A. Directly, myself?

606 Q. Yeah?

A. Very very little.

607 Q. But you knew it was an important matter?

A. We would have discussions with our senior counsel and  
solicitors, myself and my brother.

608 Q. I am asking you whether you considered it to be an  
important matter?

A. I suppose it was. Yeah, yeah.

609 Q. One which your solicitors felt they should raise with the  
Tribunal?

A. Yes.

610 Q. And independently of that, your brother was also making his  
own inquiries as far as we know, from Mr. Brown; isn't that  
so?

A. That's right, yeah.

611 Q. Was he keeping you informed of what Mr. Brown had told him?

A. I couldn't be sure that he was telling me everything, I  
don't know.

612 Q. You knew that two particular bank officials had been interviewed and you knew that sometime last year?

A. Yeah.

613 Q. Did you know that a statement was being sought from the bank by the Tribunal?

A. No.

614 Q. You didn't know that?

A. No.

615 Q. Did you know that a statement had been obtained by the Tribunal from the bank?

A. No.

616 Q. Do you know that on the 26th of January a document was received -- sorry, on the 22nd of January a document was received by the Tribunal, from the bank which was provided to your solicitor on the 26th of January?

A. No.

617 Q. I want you to look at a document which is headed "Statement Anglo Irish Bank Corporation PLC" which I am handing to you now. Have you ever seen that document?

A. Never.

618 Q. Were you attending the Tribunal on the 26th and 27th?

A. Yes.

619 Q. Are you saying that your solicitor did not show you a copy of that document on that date?

A. No, not that document, no.

620 Q. Did your solicitor ever provide you with a copy of this document, or open the contents of it to you at any meeting?

A. No.

621 Q. If you just read the document now, if you would please, you needn't read it aloud, just read it to familiarise yourself with the detail of it and tell me then if you knew of this information before you read this document.

Have you completed the document?

A. Yes.

622 Q. Is there anything in that document which is new to you, or did you know everything in it before you read that document?

A. I would know a good bit about it, yeah.

623 Q. I am sorry, I didn't hear you?

A. I would know a good bit about it.

624 Q. The question is; is there anything in that document which is new to you and in respect of which you didn't know before you read this document?

A. No, not that I can see, no.

625 Q. I see?

A. I haven't read it in full detail.

626 Q. It is quite a detailed statement; isn't that correct?

Though it is concise there is a considerable amount of detail in it?

A. That's right.

627 Q. Where did you learn of this information if not through this particular document?

A. From my brother.

628 Q. I see. So obviously then he gave you a very full account of his meetings with Mr. Brown, and what was going to be said by the bank?

A. They wouldn't be very detailed accounts, no.

629 Q. How would he be able to give you everything in this document unless it was a very detailed account. You have agreed that this is a detailed account?

A. He wouldn't, he wouldn't have time to be discussing things in that detail, he would have given me a good outline of it all right.

630 Q. So you had an outline of it, you didn't have the detail of

it until you read this document; is that fair comment?

A. That's right; and I wouldn't have it in full detail now.

631 Q. You are only learning now, today in the witness box, having seen this document for the first time, the details of what the bank is going to say about this important transaction; is that your evidence?

A. That's right.

632 Q. I see. It follows from that, that your solicitors obviously didn't give you either a copy of this document or outline the details of it to you, though it has been in their possession since the 26th of January last; is that right?

A. There would be a lot of documents that the solicitors would have that I wouldn't have.

633 Q. I see. So they wouldn't tell you what the witness statements against you are relevant to your interest are, that are going to be adduced at this hearing, is that your evidence?

A. Yeah, correct, not all evidence.

634 Q. Just so that I understand that completely Mr. Bailey. Are you saying that your solicitors have witness statements of evidence that is going to be led in this inquiry and you are unaware of their content; is that your evidence?

A. That's correct.

635 Q. I see. And who is running your case then Mr. Bailey?

A. My legal team.

636 Q. I see. They have a carte blanche as to what they do with the information they receive; is that right?

A. No, we would have some discussions.

637 Q. Some discussions?

A. I wouldn't read all the statements like that.

638 Q. You wouldn't?

A. No.

639 Q. I see. I inquired of your brother earlier, whether or not he had made any contact since the inception of this Tribunal with any members of the press, either by telephoning them, by writing to them, by meeting with them or by fax communications with them, his answer was in the negative, do I take it your answer is the same?

A. That's correct.

640 Q. Yeah. You, yourself have never spoken to or contacted members of the press or revealed details of information which was given to you to them; is that so?

A. That's correct.

641 Q. Do you say that documents were not given to you by your solicitor and that they retained the documents or do you accept that certain documents were given to you and retained by you, the originals of which perhaps were retained on their files?

A. Could you repeat that?

642 Q. Specifically I will ask you whether or not you were given, for your own use, a copy of any affidavit sworn by Mr. Gogarty?

A. I was, yes.

643 Q. You were?

A. Yeah.

644 Q. And why were you given that document and not the statements of other witnesses; do you know?

A. I don't know.

645 Q. You don't know, and do you know what purpose, what did you consider the purpose of having that document?

A. I suppose I was given it because my name was mentioned in it. I presume that was the reason.

646 Q. I see. What did you do with the document?

A. I read it.

647 Q. Did you bring it home with you?

A. I brought it home, yeah.

648 Q. I see. How long was it in your possession?

A. I would say maybe two to three weeks.

649 Q. I see?

A. I'm not exactly sure. I know that Kevin Smith asked me to read it and take it back to him.

650 Q. I take it that it didn't take two or three weeks to read or consider its contents?

A. That's right.

651 Q. Yeah. Did you return it to Mr. Smith after that time?

A. No, I locked it in a briefcase.

652 Q. You still have it then?

A. No, I had to return it since that.

653 Q. You returned it since that?

A. After I read it I locked it in a briefcase and Kevin Smith asked me to return it to him, which I did.

654 Q. Two or three weeks later; is that right?

A. Right, yeah.

655 Q. Were you furnished with any other documents which had been provided in confidence by the Tribunal and in particular there are a volume of documents known as the "Garda documents" were those documents given to you?

A. Not given to me. I seen them all right, I went through them.

656 Q. You went through them?

A. Yeah.

657 Q. Where was that?

A. Mr. Allen's office.

658 Q. In Mr. Allen's office. You read them but didn't take copies; is that so?

A. Correct.

659 Q. I see. You have never had them physically in your possession other than in the possession, in the rooms of your counsel; is that the position?

A. I had them overnight.

660 Q. I see. Why did you have them overnight?

A. Kevin Smith advised me to have a look through them.

661 Q. I see. Where did you go with them when you left your counsel's rooms, where did you go with the Garda documents after they had been given to you in counsel rooms?

A. To my office.

662 Q. I see. Did you prepare any copies of them whilst in your office?

A. No.

663 Q. As best as you can, can you indicate when it was that you were given those documents by your solicitor?

A. I couldn't put a date on it, no.

664 Q. You couldn't put a date on it. How many days did you have the documents?

A. Just overnight.

665 Q. I see. And you returned them to him then the following day?

A. That's right.

666 Q. And you made no copies?

A. No.

667 Q. No. Was your brother present at the time that you were considering the document?

A. No, he may have been in -- yes, he was in Colm Allen's office yeah, but he didn't read the documents with me or anything afterwards.

668 Q. He didn't require to take a copy of them?

A. No.

669 Q. Or the original, I should say?

A. No.

670 Q. And why was it that you required to read them and bring them with you?

A. Just Kevin Smith advised me to have a look through and see would there be anything.

671 Q. Presumably your brother had exactly the same opportunity to read and consider the documents and he seemingly didn't think it necessary to take them with him?

A. I think he may have looked at them the day before with Kevin Smith.

672 Q. I see. Again in Mr. Smith's office; is that right?

A. That's right.

673 Q. And you did not disclose the content of those to any other person; is that right?

A. That's correct.

674 Q. You have had no contact as you say with any journalist either by way of writing to them, telephoning them or providing documents to them?

A. That's correct.

675 Q. I see. And you didn't know of this particular document until it was shown to you today?

A. That's correct.

676 Q. Were you aware of the fact that there had been some document provided by the bank to the Tribunal in the past short period of time?

A. Yesterday at the first break I heard that, yes.

677 Q. Yesterday?

A. Yeah.

678 Q. At the first break?

A. Yeah.

679 Q. I see. And in what context did that arise, was it

discussing this document?

A. No, it was discussing Mr. Barrett's statement.

680 Q. I see. And was that the first time and did you see it on that occasion yourself?

A. Just briefly yeah, at the first break yesterday.

681 Q. Right. That was the first time you had seen it; is that right?

A. Correct.

682 Q. Tell me, had there been any discussion with you and Mr. Heneghan regarding the fact that there was to be or might be, a publication by Mr. Sam Smyth, journalist, concerning your affairs?

A. It was mentioned, yeah.

683 Q. When was that mentioned to you?

A. Yesterday before lunch.

684 Q. I see. What did Mr. Heneghan tell you that he believed was going to be published concerning you or your affairs?

A. He didn't say a lot. He just said there would be something about ourselves giving money to Gogarty.

685 Q. Yes, was there a mention of the fact that it would be from, that the alleged source of that fund would be from the Anglo Irish Bank Corporation?

A. No.

686 Q. That name was never mentioned by Mr. Heneghan to you?

A. No, no.

687 Q. Did you ask him to ask Mr. Smyth where the supposed source of this fund was, that was alleged to be paid to Mr. Gogarty?

A. I did not, no.

688 Q. Why not?

A. Well, we were just talking briefly and he said it to me and we just left it at that.

689 Q. Did you not ask him to find out from Mr. Smyth a little more detail about the story that he intended to publish?

A. No.

690 Q. Are you saying that he, Mr. Heneghan, did not tell you that Mr. Smyth was going to write about Anglo Irish Bank and that they would like your comment on it perhaps?

A. No.

691 Q. Were you ever asked for your comment on the story or the sources of it by Mr. Smyth or anybody else?

A. No.

692 Q. Were you contacted by any journalist about this story before now?

A. No.

693 Q. I see. Thank you.

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THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS BY MR. CALLANAN:  
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694 Q. Mr. Bailey, you have heard reference earlier to certain supposed original notes of Mr. Barrett, did you ever see those notes?

A. No.

695 Q. Did you ever attend a meeting with your brother, with Mr. Brown at which those notes were discussed or the position in relation to the allegations before this Tribunal were discussed?

A. No.

696 Q. But, as I understand your evidence, you were made familiar by your brother with the contents of the statement which Mr. Barrett furnished in January?

A. No, I was made familiar of the notes, I wasn't made familiar of the, of this statement you are talking about.

697 Q. Yes?

A. No, I wasn't made familiar of this.

698 Q. I think you accepted in response to Mr. O'Neill, that there was nothing in that statement that came as a surprise to you?

A. That's correct.

699 Q. And that you had been given that information by your brother; isn't that so?

A. No, it was, the information that my brother gave me was that the notes that he seen with Tom Brown early in, mid last year, but I have never discussed this document with my brother.

700 Q. But how did you come to be familiar with the information contained in the statement of Mr. Barrett?

A. Because it is similar to the handwritten notes that Tom Brown talked about earlier on.

701 Q. I don't think that's correct. I don't have them Mr. Bailey, you have an advantage over me, but in fact I would imagine there is a considerable amount of material in the statement that isn't contained in the note?

A. It is basically what, what was written in the notes I think is in the statement.

702 Q. Thank you.

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CHAIRMAN: Well, -- Sorry Mr. Allen, I overlooked you.

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MR. ALLEN: Yes Chairman, I have no questions for the witness.

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CHAIRMAN: First of all the witness -- Does anybody want to ask the witness any other questions? Thank you very much.

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on Friday morning?

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MR. HANRATTY: I think it is probably going to be necessary sir. We won't know for definite until tomorrow morning, but we will know for definite tomorrow morning.

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CHAIRMAN: The first thing is that all parties must be given notice as early tomorrow morning as a practical.

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MR. HANRATTY: You will be informed at the commencement of the sitting tomorrow morning.

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MR. ALLEN: I wonder if I can have clarification. Sorry, I didn't mean to interrupt you, Chairman.

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CHAIRMAN: No. As I understood the situation you wanted to continue this matter tomorrow morning?

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MR. HANRATTY: It doesn't have to be tomorrow morning.

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CHAIRMAN: Sorry, not tomorrow, Friday morning.

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MR. HANRATTY: I think Friday in ease of Mr. Leahy, and I have no problem with that, and it could even be done on Friday afternoon, if that suited the parties.

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CHAIRMAN: Do you want to continue the over --

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MR. HANRATTY: Perhaps when we know for definite tomorrow morning sir, then we can decide on the appropriate time.

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MR. ALLEN: Sorry Chairman, subject to what you say

yourself, Friday morning is perfectly suitable. I just wanted to raise a point of clarification, I certainly would wish to make it clear that there are some matters that I would wish to correct for the record. I am not suggesting that it should be done now, but they are matters which, matters for example dealing with the suggestion that my solicitors in some way concealed or did not disclose documentation to their clients.

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I want to deal with matters such as that. I am not suggesting doing it now, but in fairness, it is suggested

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CHAIRMAN: I have no objection to that being done, none in the world.

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MR. ALLEN: The other point, so you know the totality of what I want to ask you, is this; could I ask this question sir, of your, of the team, of your legal team who have presented this matter: When can we expect to hear from Mr. Smyth?

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CHAIRMAN: I will make inquiries. I personally have no knowledge at this moment in time.

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MR. ALLEN: I see. You will appreciate I would have an interest in knowing, sir.

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MR. HANRATTY: I think it is highly unlikely, sir, that Mr. Smyth is going to tell us what his source was.

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CHAIRMAN: You have no idea of the persuasiveness of Mr.

Colm Allen. He overrides all sorts of conventions. That  
apart --

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MR. ALLEN: Thank you sir.

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CHAIRMAN: Tomorrow morning Mr. Gogarty will be back in  
the witness box; is that correct?

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MR. GALLAGHER: Yes sir.

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CHAIRMAN: There seems to be -- first of all gentlemen,  
what period of time do you assume that the resumed hearing  
will take; does it take half a day or a day?

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MR. GALLAGHER: I would have thought not more than half a  
day.

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CHAIRMAN: What I was going to say is we might be better  
starting at 2 o'clock on Friday. I don't want to, in  
anyway truncate the day; in those circumstances would you  
say half past ten on Friday morning, is that early enough?  
10 o'clock? 11 o'clock?

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MR. GALLAGHER: Yes, I would have thought --

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CHAIRMAN: Half past ten?

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MR. CALLANAN: I am not certain, Mr. Chairman, if it is  
being suggested that Mr. Gogarty's evidence should resume  
on Friday?

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CHAIRMAN: No it is not, not suggested. I'm aware of his

difficulty there.

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MR. CALLANAN: Very good.

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MR. GALLAGHER: If we said 10.30 on Friday morning?

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CHAIRMAN: Is that to everybody's convenience? 10.30 on Friday morning to resume this matter. 10 o'clock tomorrow morning to resume Mr. Gogarty. Thank you very much.

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THE HEARING THEN ADJOURNED TO THE 4TH FEBRUARY, 1999 AT 10

AM..

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