

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY, 27TH JUNE 2000,

AT 10:30AM:

MR. COUGHLAN: May it please you, Sir.

In the Tribunal's last outline statement, it was indicated that after dealing with a number of matters concerning the operation of the Leader's Allowance Fund and one or two other topics, the Tribunal will be taking up with Mr. Haughey the evidence of the money trail to date. The inquiries to be taken up with Mr. Haughey concern not just the sum of approximately of €8.5 million mentioned at the outset of the last sittings, but also a number of other matters, once again in connection with the money trail, involving sums of money which were not included in the total sum of €8.5 million.

Prior to taking up this matter with Mr. Haughey, the Tribunal will need to revisit once again the operation of the Party Leader's Allowance account and the subject matter of the funds set up for the discharge of the medical expenses of the late Mr. Brian Lenihan. As a result of continuing inquiries instituted by the Tribunal in relation to these two related matters, certain new material has come to hand. The Tribunal will also wish to complement some of the evidence already given in relation to the operation of Feltrim Mining/Minmet, the company with which Mr. Conor Haughey, a connected person to Mr. Haughey, was

associated.

The Tribunal's inquiry have also thrown up a further payment to Mr. Haughey from Mr. Bernard Dunne. This came to light in the course of inquiries instituted by the Tribunal with National Irish Bank.

Firstly, I want to deal with further evidence arising out of inquiries instituted in connection with the operation of the Party Leader's Allowance account and the funds set up for the discharge of the late Mr. Brian Lenihan's medical expenses. In dealing with the Brian Lenihan fund at the commencement of its sittings on the 24th May last, the Tribunal examined new material which came mainly from two sources, namely Mr. Paul Kavanagh and Dr. Eamonn de Valera. Firstly, a document containing two lists of names of what appeared to have been potential contributors to the Brian Lenihan fund, together with what may have been an indication of some of the funds actually subscribed by individual contributors to the fund, was produced by Mr. Paul Kavanagh. The document did not contain the list of all those known to have been approached to make and who did, in fact, make contributions to the fund.

The list did not include, for instance, the name of Dr. de Valera, through whom a payment of €10,000 was solicited from Irish Press plc. The Tribunal can find no record of the Irish Press plc €10,000 contribution in the Leader's Allowance Fund to which contribution to the Brian

Lenihan fund were supposed to have been lodged. Evidence was given that this €10,000 payment was routed through Coopers & Lybrand, now PriceWaterhouseCoopers, the then accountants and auditors to Irish Press plc. It is a matter of some concern to the Tribunal that, notwithstanding numerous inquiries to date, PriceWaterhouseCoopers have not been able to locate the cheque payment which came from that accountant's client account, nor have PriceWaterhouse been able to locate any record of the payment having been made.

The information provided by Mr. Paul Kavanagh led to a number of further inquiries by the Tribunal directed to individuals mentioned on both the typed and handwritten list compiled by Mr. Kavanagh. The Tribunal understands that inquiries have been put in train by Mr. John Magnier, Mr. Oliver Murphy and Mr. Gus Kearney in response to queries raised by the Tribunal concerning payments or potential payments that may have been made by or through them.

As a result of queries raised by the Tribunal with Mr. Mark Kavanagh on the 29th May 2000, the Tribunal was informed that an approach was made to Mr. Mark Kavanagh by Mr. Paul Kavanagh in connection with the accumulation of a fund to discharge Mr. Brian Lenihan's medical expenses in relation to his surgery in the United States in 1989. A contribution of €25,000 was made to the fund. The

contribution was made by a cheque drawn on the account of Custom House Docks Development Company Limited at Allied Irish Banks, 5 College Street, Dublin 2. Mr. Mark Kavanagh believed that the cheque was made out to the Fianna Fail Party Leader's Allowance account. The cheque was dated 6th May 1989 and was numbered 000334. The cheque was delivered by Mr. Mark Kavanagh to Mr. Haughey. Mr. Mark Kavanagh does not believe that he received any acknowledgment of this contribution. He was not informed of the identities of other persons who were approached to make a contribution to that fund.

Following receipt of Mr. Mark Kavanagh's response, the Tribunal was, on the 14th June 2000, provided with further information by Mr. Mark Kavanagh concerning all of the circumstances surrounding his dealings with Fianna Fail at the time of the 1989 election. Mr. Mark Kavanagh has informed the Tribunal that sometime in or around May 1989, he was contacted by Mr. Paul Kavanagh, a fundraiser for Fianna Fail, who indicated to him that the party had a substantial debt and that it was seeking to raise funds from a number of individuals and companies. Mr. Paul Kavanagh was looking for significant contributions and indicated something in the order of €100,000. He also requested a contribution for Mr. Brian Lenihan's liver transplant and indicated a contribution in the order of €20,000 to €25,000. Mr. Mark Kavanagh felt that what was

being sought was a substantial amount of money and that he would think over the matter, but that he would do what he could.

Mr. Mark Kavanagh was involved with a number of partners in Custom House Docks Development Company Limited. The partners were British Lands and McInerneys. Having discussed the matter with his partners, they decided that Custom House Docks Development Company Limited would make a total contribution of €100,000 of which €75,000 was for the Fianna Fail party and €25,000 for the Brian Lenihan fund.

Mr. Mark Kavanagh has informed the Tribunal that he and his partners agreed to make the payment in the following form:

Firstly, €25,000 payable to Fianna Fail by way of cheque.

This cheque was intended for the Brian Lenihan liver transplant fund.

Secondly, three drafts payable to cash, in the sum of €25,000 each, for the Fianna Fail party.

The partners in the Custom House Docks Development Company Limited agreed to authorise the drawing of a cheque for €25,000 and a cheque for €75,000 payable to Allied Irish Banks. The cheque payable to Allied Irish Banks was to be used to purchase the three drafts in the sum of €25,000 each for cash. Mr. Mark Kavanagh has informed the Tribunal that he met Mr. Haughey on the morning of the election on the 15th June 1989 at 9:30am at Mr. Haughey's

Kinsealy home. His meeting with Mr. Haughey lasted about fifteen minutes and at the meeting, he handed Mr. Haughey an envelope containing the three drafts and the cheque which Mr. Haughey then opened. Mr. Haughey thanked Mr. Kavanagh for the contributions, indicating that they would be of great assistance to the party and that they were much appreciated and he then asked Mr. Kavanagh whether he wished to know how Mr. Haughey intended to use the different amounts, to which Mr. Kavanagh responded that he would. Mr. Haughey informed Mr. Kavanagh that the cheque for €25,000 would be lodged to the Brian Lenihan fund which he indicated was a Fianna Fail party responsibility and that two of the three drafts for €25,000, that is a total of €50,000, would go directly into the party's central funds. He then asked whether Mr. Kavanagh would be happy if the final draft was used by him, Mr. Haughey, at his discretion to help with the election expenses of individual Fianna Fail candidates and Mr. Kavanagh agreed to this.

Having obtained information from Mr. Kavanagh concerning the circumstances of the Custom House Docks Development Company payments to Fianna Fail, the Tribunal examined the Party Leader's account in order to ascertain whether the sum of €25,000, by way of a cheque made out to Fianna Fail, was lodged to that account as part of the Brian Lenihan fund. As I propose to indicate in a moment, other inquiries instituted at a later point have shown that the

cheque for €25,000 did not go to the Party Leader's account. The Tribunal's initial inquiries in any case showed that no lodgment of €25,000 was made to the account between the date of the delivery of the cheque to Mr. Haughey and the date of the debiting of the amount of the cheque from the Custom House Docks Development Company's account at Allied Irish Banks.

The Tribunal then instituted inquiries with the Fianna Fail party with a view to ascertaining whether the sum of either €75,000 or €50,000 was transmitted, as Mr. Haughey had indicated, to the Fianna Fail central funds. The Tribunal has obtained the assistance of Mr. Sean Fleming, who was then responsible for recording and receipting contributions to the party. Through Mr. Fleming and the Fianna Fail party solicitors, the Tribunal had, on an earlier occasion, been provided with a list of all contributions to Fianna Fail funds made at or around the time of the 1989 election. An examination of that list, Mr. Fleming's master list, shows that no contribution from the Custom House Docks Development Company or from Mr. Mark Kavanagh in the sum of €50,000 or €75,000 or any amount was recorded. However, on the occasion of the Tribunal's most recent inquiry to the Fianna Fail party, Mr. Fleming made available to the Tribunal a further document this, we describe as Mr. Fleming's second list containing a list of individual contributors to the Fianna Fail party where

receipts for the contribution made were not sent directly to the donors but were transmitted to Mr. Haughey or to his office. Some of the individuals listed in this way had made contributions on what appeared to have been an anonymous basis. Some of the contributions were identified. Mr. Mark Kavanagh's name appeared on this separate or second list of contributors whose receipts were to be sent not to the contributors directly, but rather to Mr. Haughey. Mr. Fleming's second list contained reference numbers which corresponded to reference numbers on his master list of contributors. The reference number opposite Mr. Kavanagh's name was 4632. This corresponded to an entry in respect of an anonymous contribution on the master list in the sum of €25,000 for the 15th June 1989.

Mr. Fleming has provided the Tribunal with other records kept by him of these particular contributions. His records contain a copy of the cheque representing the contribution recorded as having been made by Mr. Mark Kavanagh. This cheque was in the sum of €25,000 and was payable to Fianna Fail. It is, in fact, the cheque intended by the Customs House Docks Development Company Limited Partners for the Brian Lenihan fund. This is a photocopy of the cheque which was taken by Mr. Sean Fleming and has his writing on the bottom indicating the contributor as Mr. Mark Kavanagh and the number which indicates the number on his master list which records this contribution as being anonymous in the sum of €25,000.

This information would have been conveyed to Mr. Sean Fleming by Mr. Haughey or Mr. Haughey's office. The cheque is dated 13th June 1989 and it is two days before the meeting Mr. Mark Kavanagh had with Mr. Haughey at his home at Kinsealy on the 15th June 1989, the day of the election.

As a result of further inquiries made by the Tribunal, the three drafts made out to cash which were taken by Mr. Mark Kavanagh to Mr. Haughey on the 15th June 1989, were traced to Guinness & Mahon bankers. Inquiries with Guinness & Mahon disclosed that the three drafts appear to have been presented at Guinness & Mahon in or around the 20th June 1989. Two of those drafts were used to purchase from Guinness & Mahon a further draft made payable to cash in the sum of €50,000. The remaining draft of €25,000 was lodged to an Amiens Securities account number 1218001. From that account, it was transferred to another Amiens account number 10407006, an Amiens account which featured in the evidence given at the Tribunal on numerous occasions previously. This sum of €25,000 was then withdrawn from the Amiens account in cash in two tranches as follows:

€5,000 withdrawn in cash on the 29th June 1989.

€20,000 withdrawn in cash on the 5th July 1989.

The Tribunal continued its inquiries with a view to ascertaining whether any contribution of €50,000 was received by the Fianna Fail party which might account for

the €50,000 which Mr. Haughey indicated to Mr. Kavanagh he intended to transmit to party central funds. The Tribunal ascertained that amongst the contributions recorded as having been made anonymously in June of 1989 was one for €50,000 at reference 4752 on Mr. Sean Fleming's master list. This corresponds with the contributor named on Mr. Fleming's second list, that is of those contributors where receipts were sent not to the contributors directly but rather to Mr. Haughey. This anonymous contribution of €50,000 at reference number 4752 corresponds with an entry on this list in respect of a contribution from Mr. Michael Smurfit. The entry in respect of Mr. Smurfit's contribution was as follows: "Anon per an T, M. Smurfit."

This information again is information which would have been conveyed to Mr. Fleming from the Taoiseach or the Taoiseach's office.

The backing documentation supporting Mr. Fleming's list included the instrument recorded as having been received in respect of this contribution. This was a draft issued by Guinness & Mahon bankers for €50,000 dated 19th June 1989 and made payable to cash. This draft was signed by two officials of Guinness & Mahon. Again, this is a photocopy of the draft which was taken by Mr. Fleming and retained by him at that time.

The signature of one of the officials is indistinct. The

other appears to be the signature of Mr. Padraig Collery.

In response to inquiries from the Tribunal, Guinness & Mahon have confirmed from the identification number on this draft, that it was purchased using two of the €25,000 drafts given to Mr. Haughey on the 15th June 1989 by Mr. Mark Kavanagh at his home at Kinsealy.

The Tribunal raised the matter with Mr. Smurfit and Mr. Smurfit informed the Tribunal that he believes that in 1989 a donation for Fianna Fail was solicited by the then Taoiseach, Mr. Charles J. Haughey. He also informed the Tribunal that the donation was made, that is the Smurfit donation was made, by way of a transfer of the sterling equivalent of IR €60,000 on the 14th June 1989 from the John Jefferson Smurfit Monegasque Foundation to an account at Henry Ansbacher & Company, 1 Mitre Square, London, EC3A 5AN. The account number to which the transfer was to be made was 190017/202.

Mr. Smurfit informed the Tribunal that following the transfer, the John Jefferson Monegasque Foundation contacted the late Desmond Traynor to confirm that the funds had been received. The account to which these funds were transferred is, in fact, the account of Guinness Mahon Cayman Trust at Henry Ansbacher & Company Limited in London. It is the account through which very substantial sums of money appear to have been paid by Mr. Bernard Dunne and Mr. Dermot Desmond to or for the benefit of Mr. Charles

Haughey.

The Tribunal has not been able to locate the ultimate destination of these funds. It does not appear, on the basis of the information at present available to the Tribunal, that they were credited to any account at Guinness & Mahon in Dublin. Therefore, while the other payments which appear to have been made to or for the benefit of Mr. Haughey through this Ansbacher account in London were ultimately credited to an account under the control of Mr. Traynor in Dublin, and which appears to have been held for the benefit of Mr. Haughey, there is no record of the receipt of these funds into any such account. The Fianna Fail party does not have an Ansbacher account. The Tribunal believes that it would be justified in pursuing this matter with Mr. Haughey to see where the money trail ends and, in particular, to see whether offshore accounts other than those already identified may have been used to hold funds for Mr. Haughey.

The Tribunal has instituted further inquiries with other individuals mentioned on Mr. Fleming's second list and those inquiries are continuing at this moment.

Additional information came to the attention of the Tribunal last Thursday concerning circumstances surrounding payments made by Mr. Mark Kavanagh. This information was in the form of a communication from solicitors acting for Fianna Fail who indicated that the party had been asked to

comment on media reports that a senior Fianna Fail figure had informed the Taoiseach of inquiries raised by Mr. Mark Kavanagh in 1996 or 1997 concerning his contribution to the party in 1989 and the fact that he had not received a receipt for the same.

Newspaper reports concerning the same matter identified Mr. Eoin Ryan as the senior Fianna Fail figure involved.

Mr. Ryan promptly confirmed to the Tribunal that he was the individual concerned and that he has also provided the Tribunal with information concerning the circumstances of his dealings with Mr. Kavanagh. Mr. Ryan has informed the Tribunal that he joined the Fianna Fail fundraising committee in 1992 at the time that Mr. Reynolds took over as Taoiseach and leader of the Fianna Fail party. He has indicated that he knew Mr. Mark Kavanagh and that he was requested to approach Mr. Kavanagh in 1996 regarding a contribution to the party. Mr. Kavanagh indicated to Mr. Ryan that he was disposed to make a contribution but that he was somewhat annoyed that he had received no acknowledgment for an earlier contribution to the party. Mr. Ryan is not sure whether Mr. Kavanagh mentioned any specific sum but he understood Mr. Kavanagh to refer to a substantial contribution.

Following his meeting with Mr. Kavanagh, Mr. Ryan brought the matter to the attention of the Taoiseach, Mr. Bertie Ahern. According to Mr. Ryan, Mr. Ahern said that he

would look into the matter. He (Mr. Ryan), in fact, rang Mr. Kavanagh's office and informed the office that the matter had been brought to Mr. Ahern's attention and that Mr. Ahern was looking into it. The Tribunal has been informed that Mr. Ryan had no further dealings with Mr. Ahern in relation to the matter. He (Mr. Ryan), did not check the records of Fianna Fail to see what contribution had been made by Mr. Kavanagh in 1989 and it is only in recent days that Mr. Ryan has become aware of a suggestion that some of the contribution made by Mr. Kavanagh had not been received by Fianna Fail.

While the Tribunal has only received this information within the last few days, it believes that it is so intimately connected with the dealings Mr. Kavanagh had with Mr. Haughey into 1989 that it should nevertheless be dealt with at these sittings. Further queries have therefore been raised with Mr. Sean Fleming and with the Taoiseach, Mr. Bertie Ahern, and it is hoped that they will be able to give evidence throwing light on this matter.

The Tribunal has received a further statement from Mr. Sean Fleming who has informed the Tribunal that at some time in or around 1996, Mr. Bertie Ahern, who was then party leader, made an inquiry of him, Mr. Fleming, regarding a donation made by Mr. Mark Kavanagh in the June 1989 general election campaign. The purpose of such inquiry was to ascertain if Mr. Kavanagh had made a donation and whether

the same had been receipted. Mr. Fleming has informed the Tribunal that from the records that were maintained at party head office, and which are still retained, and copies of which were submitted by Mr. Fleming to the Tribunal, he, Mr. Fleming, was very quickly in a position to confirm both of these facts. And he has informed the Tribunal that, as previously explained by him, the receipt, whilst marked "anonymous per an Taoiseach" at the specific direction of the then party leader, Mr. Charles Haughey, and which had been forwarded to his office at Government Buildings as per his specific directions, the source of such donations was still known to Mr. Fleming. Mr. Fleming does not recollect receiving any inquiry from Mr. Eoin Ryan, and that would seem to be in accordance with Mr. Ryan's recollection of events also. The Taoiseach will be assisting the Tribunal in relation to his recollection in respect of these matters in due course during the week.

The questions which arise concerning this matter are whether and if so, to what extent, other sums intended for Fianna Fail and transmitted through Mr. Charles Haughey may not have reached the party. Allied to this is the question of the extent to which queries concerning this matter may have been brought to the attention of other individuals in Fianna Fail. It now appears that of the various people mentioned in Mr. Fleming's second list, contributions from two of them do not appear to have been

received either at all or in the manner in which they were intended by the donors. Of Mr. Kavanagh's €75,000 intended for Fianna Fail, only €25,000 reached the party. None of Mr. Smurfit's money appears to have reached Fianna Fail. There is, of course, an overlap between the payments made by each of those donors in that €50,000 of Mr. Kavanagh's money was used to pay for drafts which were transmitted to Fianna Fail purporting to constitute payments by Mr. Smurfit. And of course, it would appear that the €25,000 intended by Mr. Kavanagh to be for the Brian Lenihan fund did not reach that fund.

There are still a number of inquiries outstanding in relation to individuals named on Mr. Paul Kavanagh's list as potential or actual contributors to the Brian Lenihan fund. Apart from Mr. Mark Kavanagh, Mr. Nicholas Fitzpatrick will also be giving evidence in relation to a contribution from his company, Atron, one of those named on Mr. Paul Kavanagh's list.

Turning now to National Irish Bank, as a result of inquiries directed to National Irish Bank, the Tribunal has obtained the results of extensive searches put in train by that bank with a view to identifying the sources of lodgments to various accounts operated by Mr. Haughey. The bulk of the documentation resulting from National Irish Bank's own inquiries did not become available to the Tribunal until last week. This was not as a result of any

delay, I should hasten to add, on behalf of National Irish Banks. Their response was prompt, extensive and helpful.

As Mr. Haughey, through his lawyers, has asked the Tribunal for more time to consider this material, the Tribunal does not propose, with one exception, to deal with it in this outline statement. The Tribunal has, however, brought one feature of the operation of the NIB account by Mr. Haughey to the special attention of his solicitors for comment by Mr. Haughey. No comment has as yet been received in relation to this matter. The matter is the lodgment of the sum of €20,000 being the proceeds of a cheque paid to cash drawn on a personal account of Mr. Bernard Dunne at Allied Irish Banks, O'Connell Street, Dublin. It's on the overhead projector. The cheque was dated the 29th May 1993. It appears to have been lodged to the account of Charles Haughey t/a Abbeville Farm by Mrs. Maureen Haughey. It appears to have been endorsed on the reverse side by Mr. Haughey and also by Mrs. Maureen Haughey.

Mr. Bernard Dunne has also been asked to comment on this document and he has informed the Tribunal that he does not have any recollection of the purpose for which the cheque was drawn but he says that it was at a time of high trauma for him, noting that some short time previously, he had been discharged from hospital with significant injuries resulting from an accident. Mr. Dunne has also informed

the Tribunal that he assumes that he either handed the cheque directly to Mr. Haughey or that he handed it to a third party for forwarding to Mr. Haughey. Otherwise, he has no information or any other recollection of the circumstances in which the cheque came into the possession of Mrs. Haughey.

This payment from Mr. Bernard Dunne, lodged to an account of Mr. Haughey, was never drawn to the attention of the Tribunal by Mr. Haughey, notwithstanding that the matter could have been drawn to the attention of the Tribunal in response to one of the Tribunal's very earliest letters to Mr. Haughey. One of the questions which arises in the context of this additional information is whether the Tribunal can rely on the recollection of Mr. Bernard Dunne concerning the true extent of the payments made by him to or for the benefit of Mr. Haughey or other persons connected with Mr. Haughey. In the circumstances, it has now become necessary to institute a much wider range of inquiries with Mr. Dunne concerning the potential sources of payments from him to Mr. Haughey and Mr. Dunne is fully cooperating with the Tribunal in examining further material which might lead to evidence or to information which might lead to evidence relevant to the Tribunal's Terms of Reference.

The final matter I wish to deal with in this outline statement relates to Feltrim plc/Minmet.

Evidence has already been given by Mr. Conor Haughey concerning the take up of shares in this company. Further inquiries have been instituted by the Tribunal concerning the circumstances in which Mr. Dermot Desmond subscribed œ26,333 for shares in the company in July 1992. It appears from Mr. Conor Haughey's evidence that these shares were not taken up in the course of the public placement by Feltrim in March 1992 but were only taken up at the request of Mr. Conor Haughey after a UK purchaser had defaulted in making payment for shares. It appears that Mr. Desmond, Mr. Emmet O'Connell of Eglinton Exploration and possibly Davys Stockbrokers, took up the excess shares and thereby averted the potential failure of the placement. The Tribunal will wish to inquire into the matters which prompted Mr. Desmond to take up the excess shares where he did not apparently invest in the company on the placement of shares four months earlier.

MR. COUGHLAN: We will now proceed to the first witness, Sir.

CHAIRMAN: Thanks, Mr. Coughlan.

MR. NESBITT: Mr. Chairman, before you proceed with evidence, perhaps I could seek limited representation on behalf of Mr. Mark Kavanagh and secondly, on behalf of Mr. Padraig Burke, who has given a statement to the Tribunal.

CHAIRMAN: Well unhesitatingly, in the context of what has emerged Mr. Nesbitt, I will, subject to the usual caveat in relation to any ultimate costs, accede immediately to that application in relation to Mr. Kavanagh. In relation to Mr. Burke, his role seems a great deal more peripheral, Mr. Nesbitt, and what I will do is effectively, for the time being, enable to you make any limited intervention you may think necessary before finalising whether a limited representation is, in fact, necessary for Mr. Burke.

MR. NESBITT: I am obliged to the Tribunal.

MR. HEALY: Mr. Nicholas Fitzpatrick.

MR. MEHIGAN: I appear for Mr. Fitzpatrick.

CHAIRMAN: Thanks, Mr. Mehigan.

NICHOLAS FITZPATRICK, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. HEALY:

MR. HEALY: Thank you, Mr. Fitzpatrick. You provided the Tribunal with information from which a Memorandum of Evidence has been prepared and I think you have a copy of that memorandum in front of you, is that right?

A. I do, yes.

Q. What I propose to do is take you through the Memorandum of Evidence and if anything arises out of it, we can deal with that later.

You are aware, I think, that the Tribunal's initial contact

with you arose from the fact that your company, Atron, is mentioned in a handwritten list provided to the Tribunal by Mr. Paul Kavanagh, isn't that right?

A. Yes, that's correct.

Q. And you are a director and one of the principal shareholders in Atron, is that right?

A. Correct.

Q. In your statement you say that in or around May of 1989 you were approached by Mr. Gerry Danaher for a contribution to the Fianna Fail party for whom he was raising funds for the then forthcoming general election, isn't that right?

A. That's correct.

Q. You say that you agreed to consider it and he followed up the matter the following week on the phone when eventually after some persuasion on his part, you agreed to contribute a sum of €5,000?

A. Correct.

Q. And you then agreed, you then arranged rather that you would meet with him in the Westbury Hotel for the purpose of handing the contribution over to the party treasurer, Mr. Paul Kavanagh?

A. Correct.

Q. You say that sometime shortly afterwards, you received a phone call from Mr. Peter Hanley, Mr. Danaher's father-in-law, and Mr. Hanley was also a fundraiser for Fianna Fail, isn't that right?

A. Yes, I think he was, yes.

Q. But his phone call to you involved his informing you that the late Mr. Brian Lenihan TD was critically ill and in urgent need of medical attention in the USA and Mr. Hanley went on to explain that he was hoping to raise an amount of €50,000 to enable Mr. Lenihan to undergo this lifesaving treatment and that as he had learned of your earlier commitment to the party for the general election, he wondered if you would consider making a similar donation to the Lenihan fund.

A. Mm-hmm.

Q. Once again you agreed to consider it and having done so with your fellow director, you agreed to give a further €5,000 to this cause. You then telephoned Mr. Hanley, confirmed you were willing to make a donation of €5,000 to the Brian Lenihan fund, and at that stage he asked to you consider giving the entire amount of your contribution to the Brian Lenihan fund but he left that up to you.

A. Correct.

Q. And you thought about the matter and you later met Mr. Paul Kavanagh in the Westbury Hotel and you handed over a cheque for €10,000 for the Brian Lenihan fund.

A. Correct.

Q. Can I just clarify just one aspect of your statement which seems to suggest some inconsistency. You originally arranged to meet Mr. Kavanagh in the Westbury Hotel to hand over a contribution of €5,000. That was for the party at the request of Mr. Gerry Danaher, is that right?

A. That's correct.

Q. Did that meeting ever go ahead?

A. No.

Q. I see. So the only meeting you had with Mr. Kavanagh was the second meeting after your discussion with Peter Hanley?

A. Mr. Kavanagh told me they had a room in the Westbury Hotel and whenever was suitable, I could go in and hand in my contribution.

Q. So you had only one meeting with Kavanagh and you handed over the entire €10,000 to him and it was for the Brian Lenihan fund?

A. Correct.

Q. And you made that clear to him when you met him?

A. Yeah I did, yeah.

Q. Apart from the company cheque and stub, a copy of which you have provided to the Tribunal, you have no other documents relating to this matter?

A. No.

Q. We will refer to the cheque and the stub in a moment. The notation on the stub is "NC" that's your abbreviation for "National Collection".

A. Correct.

Q. And that means the Fianna Fail national collection?

A. Yes.

Q. You say you have also located, from the company records and storage, relevant bank statements which you have also provided to the Tribunal and you have asked the company's

bankers to obtain the original cheque and if located, you have indicated that you will forward that to the Tribunal as well.

A. Correct.

Q. And you say that neither you nor anyone else in your company has any recollection of receiving an acknowledgment or receipt in respect of the contribution and you are not aware as to the identity of any other person who was approached to make a contribution.

A. Correct.

Q. If I could just quickly go through some of the documents you provided to the Tribunal. You provided a copy of the cheque stub there is a screen right in front of you, Mr. Fitzpatrick, if you can't follow it on that, I will give you a hard copy.

A. No, I have it.

Q. It's fairly clear. The stub is dated 8th June 1989, NC, and it's for €10,000, and the cheque number is 2281 and I think the next document that you have provided to the Tribunal is a copy of the, of your company's account with Allied Irish Bank at the UCD Clonskeagh Road branch and an entry for the 16th June, which would be the day after the election, shows that the sum of €10,000 was debited to your account at that stage by reference to cheque number 22281, the same cheque number as on the cheque stub.

A. Fine, yes.

Q. Now, do you recall any further dealings with Mr. Kavanagh

or anyone else in connection with this contribution to the Brian Lenihan fund?

A. No.

Q. Have you ever been invited to any lunch

A. No.

Q. to acknowledge contributions to the fund?

A. No.

Q. And did anyone ever raise any queries with you, either Mr. Lenihan or anyone else, since you made the contribution concerning the nature of the contribution?

A. No. Mr. Hanley and Mr. Danaher both thanked me.

Q. Both those thanked you and that was all?

A. That was all.

Q. And you had no contact with anyone concerning the matter until the Tribunal contacted you?

A. I had forgotten all about it.

Q. It was the Tribunal first brought it to your attention?

A. It was.

Q. Nobody had asked you in the meantime about it?

A. No.

Q. And you don't recall you didn't recall that you had made such a contribution during public controversy concerning this matter over the past eighteen months?

A. It never entered my head, no.

Q. I see. Thanks very much.

CHAIRMAN: Mr. Leahy, anything arising?

MR. LEAHY: No, Mr. Chairman.

CHAIRMAN: Thank you for your assistance.

A. Thank you, Chairman.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Mr. Sean Fleming.

MR. SEAN FLEMING, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS
BY MR. COUGHLAN:

MR. GUIDERA: My name is Liam Guidera, I am a solicitor
with the firm of Frank Ward & Company and I appear for
Mr. Fleming.

CHAIRMAN: You are already on record from a prior
appearance on the part of Mr. Fleming.

Q. MR. COUGHLAN: Now, Mr. Fleming, I think you have given
some assistance to the Tribunal of recent times again and I
think you have furnished a statement for the assistance of
the Tribunal, isn't that right?

A. I did indeed.

Q. And I think in the statement you indicate who you are, that
you are Sean Fleming, care of the Fianna Fail Headquarters
in Mount Street and you made this statement at the request
of this Tribunal?

A. That's absolutely correct.

Q. I think you have informed the Tribunal that between 1982
and 1997, you were employed full-time by Fianna Fail as

financial controller based at party headquarters?

A. That's correct.

Q. And part of your duties entailed the supervising of the recording and receipting of donations made to the Fianna Fail party head office, is that correct?

A. That's right.

Q. The accounting procedure involved the recording of donations in the party's cash receipts book, the issuing of receipts to the donors involved the lodgment of such funds to the Fianna Fail party's bank account and the subsequent preparation of annual financial accounts for Fianna Fail head office, which accounts were audited by the party's auditors, Messrs Coopers & Lybrand?

A. That's true.

Q. Such audit included Coopers & Lybrand examining the cash receipts book and carbonized copies of receipts which were retained on file together with other financial records?

A. That is correct.

Q. I think you have informed the Tribunal that such procedures were employed in relation to the 1989 election funds receipt, isn't that correct?

A. That's true.

Q. Initially, a receipt was issued in a standard form taken from pre-printed and pre-numbered receipt books?

A. That's correct.

Q. The top copy of the receipt was issued to the donor and a carbonized copy retained in such book as part of the

internal records?

A. Correct.

Q. Such receipts were transcribed by a member of staff into the cash receipts book?

A. That's correct.

Q. Which recorded in chronological order donations showing the date of such receipt, the name of the donor, the amount of the donation and bearing a receipt number which corresponded to the receipt book.

A. That's correct.

Q. The bank lodgments were prepared from such information and such lodgments were also recorded in the cash receipt book, is that right?

A. That's right.

Q. The total of such receipts for the calendar year was included in the annual account prepared by you for subsequent audit by Coopers & Lybrand?

A. That's correct.

Q. In 1989, there were approximately 900 of such receipts contained in the election cash receipts book?

A. That's correct.

Q. Now I think you have informed the Tribunal that full supporting documentation showing the identity of donors was and is maintained at Fianna Fail party headquarters in respect of each and every donation received, isn't that correct?

A. That's true.

Q. And that, furthermore, a copy of the payment accounts for each donation was retained in each individual case?

A. That's correct.

Q. You have informed the Tribunal that, however, a number of small donations were not accompanied with evidence of the full indication of the donor e.g., a small cash donation of a few pounds would be sent with a covering letter which had no address thereon?

A. That's correct.

Q. These were entered as anonymous donations?

A. Yes.

Q. Now, I think in relation to donations which we will deal with, you were directed by the then party leader, an Taoiseach, Mr. Charles Haughey before I proceed to that, I should ask you to confirm, Mr. Fleming, you kept a meticulous note of donations, isn't that correct?

A. Every single donation is absolutely recorded and still on file.

Q. You furnished it to the Tribunal. The Tribunal has seen it and it is so meticulous, it even records donations of €1?

A. It does, right down to every single donation.

Q. Now, I think you were asked in respect of a certain number of donations or you were directed by Mr. Haughey to record them as anonymous, isn't that correct?

A. That is correct.

Q. And accordingly, the receipts and the entries in the cash

receipts books detailed hereunder, that is what we are going to deal with in a moment, showed the amount received, the date of the receiving it, the receipt number, and showed the identity of the donor as anonymous per an Taoiseach, isn't that correct?

A. That's correct.

Q. However, for the purpose of maintaining full financial records for the Fianna Fail party, you maintained in respect of all donations, including those you were directed to receipt as being anonymous, full supporting documentation of the source of such donations, isn't that correct?

A. That is true.

Q. These records, although dating back many years, are still maintained at Fianna Fail headquarters and accordingly, you have been able to furnish such information to the Tribunal, isn't that correct?

A. I did, yes.

Q. And you attached an appendix of the records that were maintained in respect of each of the donations which you will refer to?

A. That is correct.

Q. The party's auditors examined and marked as part of their audit process some of the receipts referred to, that there may be notation that the auditors would have put on

A. That's correct.

Q. Now, I think the first donation we wish to refer to is

referred to on what we would describe as your master list, that is your notation of every single donation received, isn't that correct?

A. The master list is the cash the official cash receipts book, that is it's the same document.

Q. And each donation has a reference number which corresponds to a receipt number, isn't that correct?

A. Exactly.

Q. And you have a reference number 4632 and on your master list, that is œ25,000, isn't that correct?

A. That is correct.

Q. I think we will just put that up. And on the master list, it is recorded as being anonymous, isn't that correct?

A. That is correct.

Q. That would have been at the direction of

A. The then party leader.

Q. I think just so the public can follow, the 4621 is at the top and then you have 22, 23, that is 4623, isn't that right?

A. Right down to 4631 and 4632.

Q. Yes.

CHAIRMAN: And it's hardly necessary for me to point out but Mr. Fleming, obviously the Tribunal has taken upon itself to blank out all of the donors that would have been set out, the full list as it originally appeared would have had names opposite the various entries?

A. And they were supplied to the Tribunal

Q. MR. COUGHLAN: Yes. You furnished the Tribunal with a full list containing a list of all the donors?

A. Exactly.

Q. The Tribunal itself has blanked out the names of the donors.

So coming down to 4632 and again, in fact, it shows the meticulous recording of amounts, isn't that correct?

A. Exact amount.

Q. Down to even €1 donations.

A. Yes, I see that.

Q. Now, the date is the 15th June and that would indicate the date on which it would have been received by you, is that correct?

A. That's the date we would have recorded the receipt.

Q. Or recorded, yes. Now, I think you can tell the Tribunal from a second document which you kept, isn't that correct?

A. That is correct.

Q. In respect of the number 4632, again you furnished this document to the Tribunal with the names of all these particular donors, isn't that correct?

A. I think that's the list of receipts that was requested that was forwarded to the Taoiseach's office.

Q. Yes, I think if we push that up, do we see, receipt

A. Receipts to office of

Q. To office per sorry of an Taoiseach, isn't that correct?

A. Correct.

Q. And that is a note you made?

A. In 1989.

Q. In 1989?

A. Yes.

Q. And all the writing on this particular document is your own handwriting?

A. Correct.

Q. And I just want to be clear about this. That the list includes references to people who were recorded in the cash receipts book as being anonymous, isn't that correct?

A. Yes.

Q. But it also makes reference to people who are not recorded in the cash receipts book as being anonymous but to whom the receipt was sent to an Taoiseach also, isn't that correct?

A. Essentially that is a list of receipts that I was requested by the party leader to send to his office and that list contained receipts, some of which the word anonymous was written on and some of which had the full name of the actual donor.

Q. That is correct, yes. So it was he was to

A. Deal with the issuing

Q. Deal with the receipts after that that

A. Yes.

Q. Just to be very clear, in respect of the information that you had received whereby you recorded them in the cash

receipts book as anonymous and the backing documentation giving the true identity, that information had in turn been conveyed to you by the party leader, isn't that correct, or from his office?

A. Yeah, by the party leader.

Q. By the party leader. And it was that information and direction was given to you to keep some of these or to record them as anonymous in the cash receipts book and to issue a receipt in that form, isn't that correct?

A. Yeah, in a small number of cases.

Q. In a small number of cases?

A. But the full supporting documentation

Q. You kept the full supporting documentation?

A. Still in the Fianna Fail headquarters.

Q. To some extent you didn't just record it but you actually photocopied cheques and bank drafts and matters of that nature and you kept a copy of those?

A. And I made them available

Q. And you made them available to the Tribunal?

A. Correct.

Q. And I think the 4632, which is recorded in the cash receipts book of €25,000, you can confirm was cheque received and recorded the 15th June 1989 and it comes from the Customs House Docks Development Company Limited, isn't that correct?

A. That's correct.

Q. Now, I think this particular document was furnished by you

to the Tribunal and it is the photocopy of the cheque corresponding to 4632 which you have recorded, isn't that correct?

A. Exactly.

Q. And that is your writing at the bottom, isn't that correct?

A. Yes, which I wrote at the time.

Q. You wrote at the time in 1989 and somebody must have informed you well, first of all informed you to record it as anonymous and you said that was the party leader?

A. Correct.

Q. And he must have informed you that it was Mr. Mark Kavanagh

A. Well, it was obvious from the cheque.

Q. From the cheque and then there is reference what is at the bottom, reference "new entry"?

A. That's my internal notation.

Q. That's your internal notation.

A. Yeah.

Q. Now, I just want to clear this up with you. The reference is Mr. Mark Kavanagh. It was a reference a new entry.

It was Custom House Docks Development Company. I appreciate that it might have been known that Mr. Mark Kavanagh had an involvement but wasn't the only person involved in that particular company, are you sure that that was something that you just, of your own notion, wrote or would the information have been conveyed to you that it was per Mr. Mark Kavanagh?

A. Well, the Taoiseach would have handed I think he handed me the cheque and said that's from Mark Kavanagh but from my own general knowledge of the company at the time, I would have been aware of Mr. Kavanagh's involvement. Of course I would.

Q. He wasn't the only one involved because there were other partners?

A. Of course.

Q. Now the reference "new entry", what does that mean?

A. That is when we went to issue, to record the receipt, the reference to new entry means that I had no previous record of a cheque from Custom House Docks Development Company, so it was the first time we received a cheque from this company so it was a new subscriber, this company was a new subscriber, Custom House Docks Development Company Limited was a new subscriber and it was a new entry as a new subscriber.

Q. Now, you were able to inform the Tribunal because of all the records you kept and the backing documents, that this donation of €25,000 at reference 4632 was received from Mr. Mark Kavanagh and that you had been able to locate a copy of the original cheque in this regard, the receipt pertaining thereto and details of the bank lodgment whereby such sum was lodged to the party account at Allied Irish Bank, 10/11 Lower O'Connell Street, Dublin 1?

A. That's correct.

Q. You have furnished this documentation to the Tribunal?

A. I have indeed.

Q. The receipt and entry in the cash receipts book recorded the donor as anonymous per an Taoiseach, isn't that correct?

A. That's correct.

Q. It was done at the direction of Mr. Haughey and the receipt therefore was delivered to Mr. Haughey's office at Government Buildings as specifically requested by him, is that right?

A. True, true.

Q. And that records were maintained of such donation, including the donor, and made available for inspection by the party's auditors?

A. Yeah, for the annual audit they would have been inspected.

Q. Now, this is the receipt and again just to confirm the recording system, the receipt this is a top copy of a receipt from a book?

A. No, this is the

Q. Carbonized?

A. Yeah.

Q. There would have been a top copy which would have been written out by a member of staff?

A. A member of staff.

Q. And that shows it's receipt number 4632?

A. Correct.

Q. It's dated

A. 15th Meitheamh that's Irish, records for the month of

June, you will see there is, the document is predominantly in Irish.

Q. It's received again at the direction of Taoiseach or the party leader, it's recorded as anonymous?

A. It's per an Taoiseach.

Q. And the sum the €25,000. It's indicated that it's for the general election fund and it is signed, is that correct?

A. Well, they were pre-printed signatures. It was a pre-printed statement.

Q. It's the treasurer of the party?

A. The Uachtarán, which is the president. And Cisteoirí Oinigh, which were the two honorary treasurers. They were pre-printed signatures.

Q. That was sent by you or a member of your staff?

A. It would have been myself.

Q. To the office

A. The Taoiseach's office.

Q. In Government Buildings?

A. Exactly.

Q. Now the president, of course, was Mr. Haughey, isn't that correct?

A. Of course, yeah.

Q. And who were the two honorary treasurers?

A. Owen McGarrity is Gene Fitzgerald and Padraig Flynn is Padraig Flynn.

Q. Now I think you can show that particular sum as part of a lodgment to the party's account, bank account at Allied

Irish Bank in O'Connell Street?

A. That's correct.

Q. Now, I think you were then asked or sorry do you see, sorry, Mr. Healy just draws to my attention do you see in bold writing, it's LODG written across it.

A. That's an abbreviation for the word "lodgment".

Q. Does that mean that it was lodged? Is that indicating to the person

A. No, what that indicates, and you have already shown an extract from the cash receipts books which I have called the master list, my assistant would have totted up the list of receipts and marked off at the end of, you know, a particular number to make a bank lodgment out of it and that just happened to be the last receipt in that bank lodgment and she would write on a cash receipts book, this is the I made a lodgment up to this receipt and she would have commenced a new bank lodgment from the next receipt.

Q. So that would only appear on the

A. Intermittently.

Q. And on the carbonized copy?

A. Only on the carbonized copy, not on the top copy that went out and it would have been written by my assistant at the time.

Q. I see. Now, the next donation which I would ask you to deal with is reference number 4752, if we look at the master list of the cash receipts book, we see again the top

shows the 4745 and we come down to 4752 and we see again for July 3rd, €50,000 and it's recorded again as being anonymous in the cash receipts book.

A. Anonymous per an Taoiseach

Q. Well

A. And the receipt, yeah.

Q. Now, I think you have informed the Tribunal that you believe that you received this draft from Mr. Haughey and that he advised you that the source of this was Mr. Michael Smurfit and you recorded this information on the photocopy you made of such draft for the party records at the time.

A. That's correct.

Q. At the direction of Mr. Haughey, the donor was recorded as anonymous per an Taoiseach, is that correct?

A. That's correct.

Q. This draft was made payable to cash so would not have been obvious there from the identity of the donor, isn't that correct?

A. Correct.

Q. There was no accompanying documentation?

A. Correct.

Q. The receipt was delivered to Mr. Haughey's office as specifically requested by him. Records were maintained of such donations and made available for the inspection by the party's auditors and copies of the documentation have been made available to the Tribunal?

A. That's correct.

Q. Now, this is the again, you kept a photocopy of the draft which was given to you by Mr. Haughey and you were informed by Mr. Haughey that this was a donation from Mr. Smurfit?

A. That is correct.

Q. And you have again the number 4752 and then you have that is your handwriting, is that correct?

A. I wrote down Michael Smurfit in my handwriting at that time because I had no other supporting documentation to show who the donor was other than what I was advised by Mr. Haughey at the time.

Q. Yes. And then there is the reference, isn't there

A. Yeah, that's the subscriber reference number because we

Q. The previous donation?

A. Before, so we had a subscriber reference number in our records already for this donation.

Q. And I think it's correct to say, isn't it, that the previous contribution was not recorded as being anonymous, isn't that correct?

A. Correct, yes.

Q. Now this particular draft, again it's your photocopy, isn't that correct, which you furnished to the Tribunal?

A. Which I furnished with my own handwritten note at the time on it.

Q. And it's drawn on Guinness & Mahon and it's made payable to cash and it's in the sum of €50,000?

A. Correct.

Q. Now, I think you have informed the Tribunal that in each of these instances, the donations were received through Mr. Haughey, isn't that correct?

A. Through Mr. Haughey, correct.

Q. You have no recollection of meeting with any of the donors or with any other persons in relation to these donations.

A. No, I didn't deal directly with the donors in the normal course of events.

Q. I think you have informed the Tribunal that you did regularly speak with Mr. Paul Kavanagh, the then party fundraiser, with whom you would have been in daily routine contact on all such matters concerning election funding and the receipt of donations, the amount thereof and the identity of the persons making the donations?

A. That is correct.

Q. Now, I think in respect of this particular donations, again at the direction of Mr. Haughey, you furnished a receipt number 4752 and again it's made payable or received from anonymous, the sum is recorded and that would have been sent or brought by you to the Taoiseach's office, is that right?

A. Correct.

Q. So as far as you were concerned and your records were concerned, you were happy that Fianna Fail had received a donation of €25,000 from Mr. Kavanagh from the Customs House Docks Development Company

A. Correct.

Q. And €50,000 from?

A. Michael Smurfit and I had been advised of that and I would have advised Paul Kavanagh, the party fundraiser, of that at the time.

Q. So that is what you knew and what you recorded, isn't that right?

A. Exactly.

Q. Now, I think as a result of matters which arose last week, you furnished the Tribunal with a further statement, isn't that correct?

A. I did, yesterday.

Q. And I think you have informed the Tribunal, first of all the controversy I think is as dealt with by me in my outline statement. Certain queries arose last week

A. Media queries.

Q. Media queries relating to a senior figure in the Fianna Fail party, isn't that correct?

A. True.

Q. And I think you now know that that figure was Mr. Eoin Ryan?

A. I know from the media reports.

Q. And from what perhaps I outlined?

A. Outlined since.

Q. And I think you have informed the Tribunal that at sometime in or around 1996, you recollect Mr. Bertie Ahern TD, who was then the party leader, made an inquiry of you regarding a donation made by Mr. Mark Kavanagh in the June 1989

general election campaign?

A. That is correct.

Q. The purpose of such query was to ascertain if Mr. Kavanagh had made donation and if the same had been receipted?

A. That's true.

Q. I think from the records that were maintained at party head office, and which are still retained and copies of which have been submitted by you to the Tribunal, you were very quickly in a position to confirm both of those facts?

A. That we had received a donation.

Q. That you had received a donation and it was recorded?

A. Yes.

Q. And that you had issued a receipt.

A. Yes.

Q. And as previously explained by you, the receipts, whilst marked anonymous per an Taoiseach at the specific direction of the then party leader, Mr. Charles Haughey, and which had been forwarded to his office at Government Buildings as per his specific direction, the source of such donations was still known to you?

A. That's correct.

Q. And you do not recollect receiving any inquiry from Mr. Eoin Ryan?

A. No, I don't believe I ever raised the matter with him or I don't think he ever raised the matter with me.

Q. Mr. Ryan will be giving evidence and you can take it that that his recollection is that he didn't raise anything with

you?

A. The final point that you say there, that I would have been able to explain why Mr. Kavanagh may not have received a receipt because we didn't post it out directly to him. We passed it to the Taoiseach's office.

Q. I was going to ask you about that, Mr. Fleming. That the Tribunal's interest in this is not to be involved in any political controversy at all.

A. Of course.

Q. The Tribunal's interest in this is to attempt to ascertain if any other funds which may have been designated as being Fianna Fail funds were not received by Fianna Fail if they came through Mr. Haughey. That's the Tribunal's primary interest in this matter. So what I want to know so then, if you can assist us, is the extent to which you would have conveyed the system whereby the receipts had been issued in this particular case, at least in 1989 to Mr. Ahern.

A. Well, the first thing I have to say is I have only a general recollection of the query, I remember checking the records and it was immediately obvious from the records and I don't specifically recollect whether I spoke to him in person or he phoned me from his office, I am not specific on that because it was very quick routine inquiry, that I was able to complete and deal with within a few moments and something I have never thought about ever since. So I remember dealing with the inquiry and I would have been able to say that the receipt would have been issued to

Mr. Haughey's office at his request and this possibly could explain why the donor was saying he didn't receive a receipt.

Q. I see. Well if I could take that now just step by step,

Mr. Fleming. You do recollect receiving an inquiry?

A. Yeah, but not specifically, I can't say whether it was over the phone or in person.

Q. Yes, that's but

A. Yeah.

Q. In general terms, you remember

A. Following up the inquiry to check it out.

Q. And there can be little doubt from the records you furnished to the Tribunal and to which you had access that you had meticulous records in relation to this?

A. Exactly.

Q. You had it chapter and verse?

A. Exactly.

Q. You had photocopied all the backing documentation?

A. Everything was there.

Q. Everything was there. And you were in a position to say that in the Fianna Fail records, there was €25,000 recorded

A. Correct.

Q. That whilst it was recorded on the cash receipts book as anonymous or maybe you didn't get into that level of detail?

A. I wouldn't think I would have I would have just said

yes, we had a record of €25,000, but I also had a note to say that the receipt was forwarded to Mr. Haughey's office in Government Buildings as opposed to being posted out in the normal course of events to the donor which would have been the normal course of events.

Q. Let's take those two particular situations.

In the normal course of carrying out your work, you would have issued receipts to the donors?

A. Yeah, and that's why I indicated there were approximately 900, so people would see the normal procedure.

Q. Yes, so you would have, or you or a member of your staff?

A. On my instructions.

Q. On your instructions, would have just sent them out in the normal course of events to donors and donors would have received a receipt?

A. Exactly.

Q. In a small number of cases, on the directions of Mr. Haughey, the receipts were to be sent to him, isn't that correct?

A. Correct.

Q. In an even smaller number of those small cases, the receipts were to be made out as having been received from an anonymous donor, isn't that correct?

A. Under his instructions.

Q. Under his instructions.

A. Correct.

Q. This particular donation, the Mr. Kavanagh donation, fell

into that smaller category, that is that the receipt was to be first of all the cash receipts book was to record it as anonymous and the receipt was to be made payable or receipted as being received from anonymous and it was to be sent to Mr. Haughey?

A. Correct.

Q. Now, we know from looking at some of the other receipts which would have been sent to Mr. Haughey, they may have been in respect of, we might describe them as, substantial donors?

A. Some of them.

Q. Some of them

A. And some of them were minor enough.

Q. And some of them may not have been but they may have been personal associates of Mr. Haughey's or matters of that nature, isn't that correct?

A. Exactly.

Q. And there might have been nothing unusual in, if a donation was solicited by Mr. Haughey, that he may wish to want to give the receipt personally to somebody, there might have been nothing wrong with that?

A. Solicited by Mr. Haughey, the standard appeal for funds on behalf of the party would have been issued in the name of the party leader so all of the appeals for funds would have gone out under his name.

Q. Yes, we have seen the general letter that goes out under his name. But it may be it may have been that

Mr. Haughey himself may have, for whatever reason, received a donation personally and passed it on to you?

A. Well, some people may have chosen to send their donation directly to him, rather than to the party head office.

Q. Yes. And as a matter of politeness or good political sense perhaps, Mr. Haughey may wish to have had handed the receipt to those people themselves and thank them personally?

A. There would have been nothing wrong with that.

Q. There would have been nothing wrong with that. And in fact, in on your second list, there are a number of donors who fall into that type of category?

A. Yes.

Q. Their names are recorded on your cash receipts

A. Yeah.

Q. list. But there is a small category and they are, on Mr. Haughey's direction to you, recorded in the cash receipts book as anonymous.

A. Exactly.

Q. And on his instructions, the receipts were to be made out to anonymous, isn't that correct?

A. Well, he asked me to record them as anonymous, so I didn't get into the nitty gritty of what I wrote on them but that was just the instruction.

Q. Now, I take it you would agree, Mr. Fleming, that there is nothing illegal or nothing unethical about making a contribution to the Fianna Fail party?

A. Oh absolutely not.

Q. Did you consider it unusual that you were asked to record fairly substantial donations as having been received from an anonymous source although you knew the true source?

A. Yeah, I said it, it was the exception rather than the norm. I said we have had 900 receipts and there was only a small handful I was asked to do this way. Once the party had a full record verifiable for the auditors, I was satisfied the party had a full record.

Q. There can be no doubt about your side of things, you had a meticulous record, isn't that right?

A. True.

Q. But what I am asking you is from your experience as somebody, an accountant

A. I am an accountant, a chartered accountant.

Q. That you would have been at pains to ensure that when the auditors came along, you were able to account for every penny, isn't that right?

A. Absolutely.

Q. And that is why, of course, you would have held all backing documentation as well because the easiest thing in the world would have been to find oneself in difficulty for accounting for something which was anonymous if it did go missing, isn't that right?

A. I kept it because it was the right thing to keep, a full proper record and it also made it very easy for audit purposes. That was the second reason, but not my primary

reason. I wanted full records for my own professional

Q. From your own professional point of view because every professional would know, sort of, the right thing to do

A. To keep records.

Q. It's also an appropriate protection for the professional person.

A. I agree. In hindsight now, I am very pleased I kept complete and total and absolutely minute detail.

Q. And it is something the auditor would press you on perhaps?

A. The auditor would have inspected these records during the course of his audit.

Q. So now, I take it from the day you took up your position with Fianna Fail in 1982

A. Correct.

Q. You'd have been meticulous about keeping records?

A. All along.

Q. And were they kept in that manner when you came in or did you put a new regime into position?

A. The election fund receipts book, which is the issue we are dealing with it, he would have had the book, the cash receipts book that was currently in operation and made that from the previous year but I didn't have any records going back over previous decades. I never had sight of those.

Q. I see. Well did the number system always exist? You know, the receipt and the cash receipts book having a corresponding

A. It would because the staff who recorded these entries on my

behalf were there many years prior to my joining the office and they would have recorded them in a manner prior to my arriving in the office.

Q. Now, in 1989, the 1989 general election and I understand that you may have recorded some donations as anonymous which might have just arrived in the post?

A. Only a small handful or œ1, œ2, it might have been a postal order and the person's name wasn't on it.

Q. You wouldn't have known the source and you just record them as anonymous?

A. There was no other mechanism of recording it because I would have wanted to lodge the money to the bank accounts so I would have had to have my receipts corresponding with the bank lodgments so I would have insisted that a receipt be issued.

Q. And that sort of recording and those sums of money would have been well within any tolerance level that an auditor might apply when carrying out an audit, isn't that correct?

A. Exactly, yes.

Q. But when you get into the sums of money like œ25,000 or œ50,000, an auditor would start asking questions, wouldn't he, about that sort of money and want to know something about them?

A. Well, auditors would inspect a sample of records and it's up to them to pick their own sample.

Q. Yes, but to be fair to yourself now Mr. Fleming, like, the donations of œ50,000 and even œ25,000 are in the high

category?

A. Of course they are.

Q. And was this the only time that you were asked or sorry, directed to record donations of this size as being from an anonymous source?

A. I think so. I haven't addressed that issue in my mind in recent days because I was just dealing with the specific query in front of me.

Q. I accept that.

A. But it's clear from the cash receipts book, the master list that you called it earlier, that I did only have a note in relation to these 1989 receipts in that book, so it would appear to me that by and large, they were

Q. That's when you were directed

A. Yeah.

Q. And can I take it, and I accept that you haven't sort of directed your mind to a more general sort of question, but can we take it that from the best of your recollection, it is only at the time of the '89 general election that you have a second list and backing documentation?

A. Well, there would be supporting documentation for every entry made.

Q. I accept that.

A. There is nothing of the scale of this list. There might have been one in a previous election here or there, if somebody wanted you know, to maintain confidentiality.

Q. Yes, that's if the donor themselves

A. Yeah.

Q. if the donor themselves wished to maintain confidentiality?

A. Exactly. But this was the exception.

Q. This was the exception.

A. Yeah.

Q. And can I take it that in or had it happened on any previous occasion with Mr. Haughey, that you had sent receipts directly to his office per an Taoiseach?

A. Well, that was the '87 general election. The previous election was 198

Q. No, this is the '89 election.

A. Oh, the '89 election.

Q. In '87 had you done any?

A. I am not sure. I haven't addressed that issue, but I don't expect there would have been many, if any, but I just have not addressed that issue specifically.

Q. Now, I think it is your view, both as a person and as a professional man, that it was unusual to be asked, sorry, to be directed, I use the term directed to record donations of this size as being anonymous, isn't that correct?

A. It was unusual and it was the exception but there was nothing wrong, per say, because the donor may have wanted confidentiality, like, once the party had a record.

Q. We will deal with the donors in due course.

A. All right.

Q. But again, there was nothing illegal or unethical about

these contributions?

A. No, the proper records are there of the donations.

Q. Now, prior to a query being raised with you by Mr. Ahern, you think in 1996 or thereabouts, had anyone else ever discussed this with you between 1989 and 1996?

A. I don't believe so. You know, I have no recollection at all and again, I haven't thought about that so I am answering, you know, without having investigated the matter, but 1989 to I don't believe that anybody raised the issue with me, you know

Q. Or did you raise the issue like you had a new party leader in the intervening period, for example, you didn't raise that

A. No, we didn't present since '89 we had a new party leader, Albert Reynolds, and subsequently Bertie Ahern so we didn't present party leaders with a list of donors at any stage, so I would never have raised a list of donors to the party leader.

Q. A new system was brought into being after Mr. Reynolds became leader, isn't that correct, in that you took over responsibility not only for Fianna Fail funds but for the party

A. Well

Q. account as well.

A. I was dealing with the party head office accounts at all stages, including the election fund, the normal day to day funds. The only additional involvement I had when

Mr. Reynolds became leader was I took over the admission of the party leader's account from that stage onwards.

Q. When Mr. Ahern asked you if you had a record I presume you had a record of Mr. Kavanagh's donation as a result of what he had been told by Mr. Eoin Ryan.

A. Yes.

Q. Did you tell him that it was recorded unusually?

A. No. Again, I keep saying it was just a brief inquiry, very brief query for me to solve. I honestly don't know precisely what level of detail I would have gone into with Mr. Bertie Ahern but I would have told him yes, we received a substantial donation of €25,000, but I would have also said the reason the man may not have received his receipt is because I was requested or directed by Mr. Haughey in '89 to send the receipt to Mr. Haughey, so I wouldn't have I wouldn't have you know, that would have explained I think

Q. Did you give a receipt in 1996 or thereabouts?

A. No, I'd want to be absolutely sure, because people have made that suggestion. I could not I didn't receive money in the whole concept of a receipt was to say I hereby have received money, so I received no money in 1996. An official receipt was issued in 1989 in respect of the receipt of the donation at that time and as there was no further funds received, I couldn't issue a receipt in 1996 and I wasn't asked to or I didn't do or I would say as an accountant, it wouldn't be correct.

Q. But you could have issued you could have issued the carbonized copy?

A. Exactly. That's the only thing that would be proper from an accounting point of view would be to take a photocopy of the original carbonized receipt, but I wasn't asked to do that.

Q. I see. Now, you offered as an explanation to Mr. Ahern that the reason why the donor may not have received a receipt was because the receipt went to Mr. Haughey's office?

A. Exactly.

Q. Why would you have made a jump to think that because the receipt had gone to Mr. Haughey's office, that that would be the reason why the donor wouldn't have received the receipt?

A. I was just about to say I didn't make that jump.

Q. I see.

A. I would have explained that the receipt went to Mr. Haughey's office and that may explain why

Q. How may it explain, Mr. Fleming, in your own mind as well?

A. I'll tell you how. Because if I had issued it from head office in the normal course of events, I would say categorically it was issued. As now the final issuing or posting out or handing over of the receipt was not in my control, I couldn't make such a definitive statement as to whether the receipt was ever given to the original donor because I wasn't the person who had the receipt eventually.

Q. Might I ask you this, Mr. Fleming, it was obvious that Mr. Kavanagh had been approached for a donation around this time and had expressed some disquiet or annoyance or something like that and can I take it that being in the business of soliciting donations, a political party would be anxious to keep a potential donor in good form or happy?

A. Exactly.

Q. And that being so, to your knowledge, were any steps taken to keep the donor happy or the potential donor happy?

A. Well, I understand once the Taoiseach was in possession of the information that I had given that we had received the donation, explaining where the receipt went, I think Mr. Haughey, or Mr. Ahern I should say, may have communicated back with the donor. I wasn't privy to that conversation but, like, I informed the then party leader of the full situation.

Q. The full situation?

A. In relation to the receipt.

Q. The full situation?

A. The full situation in relation to the receipt going to Mr. Haughey as opposed to being issued directly by me.

Q. Did you tell Mr. Ahern how much the donation was?

A. I am not specifically sure at this stage because I keep saying it was only just a brief request

Q. Mr. Fleming, you are an accountant and you are a man that kept records to the extent that you recorded all donations.

A. I would be reasonably satisfied that I would have told him.

Q. You would have told him the amount?

A. That is the way I would have operated. I would be reasonably

Q. It's the way you furnished information to us. I would expect so you would have informed him of the amount.

You would have informed him that the receipt would have been sent to Mr. Haughey's office at the time?

A. Yes.

Q. I take it you would have informed him that the receipt was made out to an anonymous donor?

A. I am not sure about that, I can quite frankly say at this number of years remove from that original inquiry, I am not sure about, that I may have told him that, I am just not I can't confirm that just due to the passage of time at this stage.

Q. But there can be little doubt, I take it, that the amount of €25,000 would have been mentioned?

A. Would have been mentioned, yeah.

Q. Now, did any other query prior to the Tribunal raising the queries with you, and I am not asking you to deal with any other state agency who may have raised any queries, I am talking about this Tribunal, was there any other queries raised within Fianna Fail by Mr. Ahern or anybody else about any other donations received by you where the receipt had been sent to Mr. Haughey's office?

A. Do you mind me to ask you to run that by me again because

it was a bit long, I am a bit unclear.

Q. I will indeed. Did Mr. Ahern or anyone else in Fianna Fail ever inquire of you about any donations where the receipts were sent to Mr. Haughey's office rather than directly to the donor?

A. You mean inquiring about receipts being issued to Mr. Haughey's office?

Q. Yes.

A. I have no recollection of any such inquiry but, again, it's something I haven't addressed in my mind up to your asking me here.

Q. I want to be clear now that what you can say at this stage is that you do not have a recollection, is that right?

You are not saying that no inquiries

A. were made.

Q. Or you are not saying were not made?

A. I am saying it's an issue in my preparation of information I didn't consider or was asked to consider, so I can't

Q. You can't answer that.

A. I can't give a complete answer to that without having to think about it properly.

Q. But you can clearly remember this inquiry?

A. I can.

Q. And isn't it likely if there had been any other inquiries, you would be able to remember them?

A. Exactly. I am very sure that there was no other similar queries, but just because I am sitting in front of a

Tribunal, I am not going to make an absolutely statement,
just in case

Q. Did it cause any alarm bell to go off in your head when
this query was made?

A. No, I could understand the query coming from the party
leader, Mr. Ahern, when he said this and bearing in mind I
was getting the queries secondhand, I didn't speak with
Eoin Ryan once, you know, this man is saying he didn't get
an acknowledgment and when I saw that the receipt went to
the Taoiseach's office at that stage, well I felt that was
a possible explanation. It wasn't absolutely definitive
but there was a possible explanation that the receipt
wasn't issued in the normal course of events and that could
have explained the query.

Q. I see. Now, as to the timing of the inquiry from Mr.
Ahern, when do you think that was? I think you said
originally it could have been 1996 or 1997, is that
correct?

A. I think '96 or thereabouts you know, as I say

Q. Why would people be approached in 1996? I think there was
a general election in 1997, isn't that correct?

A. Well, for two reasons. The party was still working to
clear its existing debt and we obviously knew a general
election would be coming up shortly so we were working both
to improve our existing financial situation and to make
readiness for the forthcoming election campaign.

Q. Well, when do you think it might have been, this inquiry

made of you? When do you think it might have been?

A. I think it would have been in the first half of 1996.

Q. Well, do you have a record of receiving a donation from Mr. Kavanagh in 1996?

A. I haven't I understand I haven't the records in front of me, but I understand Mr. Kavanagh did make a donation and I think it was May 1996.

Q. You think it was in May 1996?

A. Yeah, but I don't have the records in front of me.

Q. Yes. You were, of course, still in your position in control of the receipt of party funds as of 1996, isn't that right?

A. I was working on them till 1997.

Q. Now, I think you were aware that the first time that the Tribunal became aware that a query had been raised in respect of Mr. Mark Kavanagh's donation was when the solicitors acting for Fianna Fail brought a matter to the attention of the Tribunal late last week, isn't that correct?

A. That's

Q. Perhaps on Thursday

A. Was it Wednesday?

Q. It was Thursday.

A. Thursday, okay, it was some day last week.

Q. This had never been brought to the attention of the Tribunal previously, isn't that correct, by you at least?

A. Certainly not no, my dealings with this Tribunal to date

is that with the party and one other donation which I gave public evidence on some time ago.

Q. Yes. In light of inquiries which the Tribunal has been carrying out over the last week or so, and of which you have been of great assistance to the Tribunal, I think it was becoming obvious that there was more to this donation of €25,000 than appeared at first sight, isn't that correct?

A. As well as soon as we received the media inquiry, the media inquiry stated that there was more, to my recollection.

Q. Did you have any discussion with anybody as to whether it would have been of assistance to the Tribunal initially to have informed the Tribunal that such a query had been raised and it's a matter which the Tribunal might have made inquiries about earlier?

A. Well, last week when this inquiry was raised by the media, I was actually in party head office working on the preparation of the statement which I furnished to you last week when the query came through and I was part of the discussion which said the solicitors for Fianna Fail should immediately inform you that this statement was going to be made

Q. No, I accept that and that's exactly what was done and there can be little doubt about that, but you at least you, and I am only asking you at this stage, you knew an inquiry had been made about a donation in respect of which a receipt seemed to have gone missing, if we could say

that, as the most benign thing at the moment

A. Yeah.

Q. And you knew this when this Tribunal commenced its work, isn't that correct?

A. Yes.

Q. And you were a member of the Oireachtas, isn't that correct?

A. Correct, yeah.

Q. And

A. Just can you go back again? I just want to check what you are saying. I just want to be able to follow the train of thought.

Q. You were a member of the Oireachtas since 1997?

A. Correct.

Q. When the Terms of Reference in respect of this Tribunal were passed by both Houses?

A. Exactly, yeah.

Q. And at the very least, an inquiry may have been prompted or necessitated by a suggestion that a donation to a political party which had gone through Mr. Charles Haughey may have gone astray or had not been acknowledged to the donor, isn't that correct?

A. No, not at all. The query that we received in 1996 indicated that, was that this man hadn't received his acknowledgment which, I checked we had verified we had received €25,000 and at that time I was satisfied, well I had no basis for thinking otherwise but that €25,000 was

the full amount of the entire donation. I had no basis for making any other assumption and I didn't even suggest so it's only last week that the suggestion came out that there was more to this donation than €25,000. So I was never aware that there was additional money involved in this donation other than last week.

Q. Well, let's take this slowly, Mr. Fleming, because we'll have to take it up with a number of witnesses this week.

A. Fine.

Q. In the first instance, Mr. Mark Kavanagh's Mr. Mark Kavanagh's identity became known to the Tribunal as a result of a list being furnished to the Tribunal by Mr. Paul Kavanagh, showing him to have been potentially a donor to Mr. Brian Lenihan's fund, isn't that correct?

A. Well, I am not privy to anybody else's evidence, you know, and the only

Q. Mr. Fleming, have you been following what's happening at this Tribunal?

A. I am following the media reports only. I don't know the contents of

Q. Let me explain to you. That's how Mr. Mark Kavanagh's identity came known to the Tribunal. As a result of inquiries being made of Mr. Mark Kavanagh, the Tribunal discovered not only of the €25,000 which was intended for the Brian Lenihan fund but that there was another €75,000 which is been solicited which was going to the Fianna Fail party.

A. That's total news to me when I heard it last week.

Q. Now, that information was in the process of being inquired into by the Tribunal. I think you are aware of that, over the last week or so

A. Since last week only.

Q. Because the Tribunal, when it began its inquiry, was able to uncover fairly rapidly where the various drafts had gone, isn't that correct?

A. Yeah.

Q. Until the media raised the issue last Thursday, isn't it correct to say that you, Mr. Fleming, had not informed this Tribunal of a query that had been raised in respect of Mr. Kavanagh's donation as far back as 1996, the only such query about his donation, isn't that correct?

A. No. I met with the Tribunal last Monday in private session.

Q. Yes.

A. And immediately after that, you wrote to the party solicitor and asked me to furnish a statement which I immediately spend a lot of time working on, which I got to you last week, so I was dealing with the query once it was raised with me in discussions with yourselves last week.

Q. Yes, and that is the statement which deals

A. We have gone through

Q. Which deals with the contribution, isn't that correct?

A. Yeah.

Q. But you did not deal with the query which had been raised

by Mr. Eoin Ryan in 1996, isn't that correct?

A. The first I knew that Eoin Ryan had a query in 1996 was when I saw it on the television towards the end of last week.

Q. You knew Mr. Ahern had raised a query with you in 1996 with regard to Mark Kavanagh?

A. Yeah.

Q. That was not drawn to the attention of the Tribunal, isn't that correct?

A. Sure this is like, as I said, only last week I was preparing my statement.

Q. Yes...

A. But like I had no previous discussion with the Tribunal in relation to Mr. Mark Kavanagh at any stage. The one point I will make, I am here as a former financial controller of the Fianna Fail party, not as a member of the Oireachtas, and like, the point I do want to make is I am not privy even to all the statements and information supplied to this Tribunal by the Fianna Fail party. I am only familiar with those aspects of the information from Fianna Fail that specifically relate to me. And what I do know is I think I recollect from the knowledge of Fianna Fail head office sometime last year, Fianna Fail party head office made available its full records to the the cash receipts book which they have called the master list for your representatives or somebody on your behalf to inspect. Bearing in mind I wasn't in Fianna Fail head office and I

was those records were made available and any queries you would have had in respect of those, that cash receipts book, the first query I heard about it was when we were in private session last Monday. You may have raised queries on this issue at any time in the past year but I have no knowledge whether you did or you didn't with the Fianna Fail party.

Q. We didn't raise them

A. Well, I didn't know that.

Q. Just bear with me, because we didn't know, because nobody told us, that a query had been raised. And if I may take that step by step with you, Mr. Fleming. What was made available to the Tribunal for inspection was the cash receipts book, the master list. Is that right or is it wrong, Mr. Fleming?

A. I think, you know, I can't answer that because I wasn't I didn't make the records, it would have been my successor, so I don't know precisely the level of checking you did.

Q. But what was not made available to the Tribunal until queries were raised with you and you very quickly and promptly made available what was the second list and the backing documentation, isn't this correct? Isn't that correct?

A. I made that information available to you last week.

Q. That's right.

A. Correct. But I am also

Q. And even when that information was made available to the Tribunal, the Tribunal had not been informed that a query, just a query, had been raised in 1996 in respect of Mr. Mark Kavanagh's donation, isn't that correct?

A. The query as we understood was fully resolved and there was no outstanding query.

Q. But could we establish the fact and then the reason why?

A. Okay.

Q. The fact was the fact of the query was not made known to the Tribunal, isn't that correct, at that stage, until Thursday when the media speculation broke in respect of it?

A. Yeah, not by me anyway.

Q. Yes. Now you say, I just want to establish those facts first and you say that, and I am not saying you were the decision-maker in respect of any of this, but that a possible reason why the fact that a query had been raised was not brought to the attention of the Tribunal may have been that you believed it was fully resolved, is that correct?

A. Just say that again.

Q. I think you said that the query was fully resolved?

A. Yes, fully answered.

Q. How do you know that?

A. Because I had nothing further back and I felt it was reasonable on the basis that Mr. Kavanagh made a subsequent donation. I took that to mean there was goodwill from the donor to the party and

Q. Very good, and that may be a correct reasoning process, it may be. And that's why you say you believe that it was fully resolved, not answered, resolved was the first term used by you.

A. Yeah.

Q. So can we take it that you checked that Mr. Kavanagh made a further contribution to the party. I know you don't have the documents in front of you now, but that you were satisfied at some stage that he had made a further contribution?

A. When I was in Fianna Fail head office last week when that query came through from the media, the matter was checked and it was in my presence I was told in Fianna Fail head office last week that he did make a donation in, I think it was May '96, subsequent to that query.

Q. You see, it is a matter of concern and interest to the Tribunal, Mr. Fleming, because until media inquiries were made, this Tribunal was not informed by anyone that a query had been raised in 1996.

A. Perhaps, but what I am also saying is you see, my knowledge on this is that sometime last year, you inspected the records of the Fianna Fail party

Q. Yes

A. And you will know that I had no hand, act or part involvement in that, I am not working there any more

Q. Very good, and would you agree with me that inspecting the records would have shown anonymous donations on the cash

receipts book?

A. And I would have assumed if there was a query last year, you would have looked for the supporting documentation that's there in Fianna Fail headquarters.

Q. How would you know if there was supporting documentation if it wasn't presented to you?

A. I kept good records.

Q. I know that, Mr. Fleming, I know that, absolutely, but you couldn't make sense of the cash receipts book without the backing documentation, could you?

A. No, they were part of the party records, they were only the financial they were only the summary of the receipts, the names and addresses they would have to go to the subsidiary records which were in Fianna Fail head office. And I am also saying that list that you highlighted earlier showing the receipts which were issued to the office of an Taoiseach, my handwritten memorandum, like, I don't know whether you had sight of that last year or if you had, you might have if you had, I don't know, I wasn't part of showing you the books and records. I would suggest if I was involved, if I had been asked to participate in that, I might have immediately noticed, but I wasn't involved in that and there is different people there now.

Q. But would you agree it would have been of great interest at least to allow a question to be asked if the Tribunal had known that a query had been raised by Mr. Eoin Ryan in respect of a donation by Mr. Mark Kavanagh?

A. Can you ask the question again?

Q. Yes. That it would have been of great interest to the Tribunal if the Tribunal had been informed that Mr. Eoin Ryan, in 1996, had raised a query about a donation made by Mr. Kavanagh in 1989?

A. My answer to that, I don't know what would be of interest to the Tribunal on an issue like that. That is the answer.

Q. Now, Mr. Fleming, let's put your accountant's hat on. As a result of the matter coming to the attention of the Tribunal, the Tribunal was within a week, able to, or thereabouts, able to locate the route of €75,000 which was supposed to go into Fianna Fail which at first sight didn't go in, isn't that correct?

A. Yeah.

Q. And come across another €50,000 sterling or €60,000 Irish which appears to have come from a Monegasque Foundation into Guinness Mahon Cayman Trust account in London allegedly routed to Fianna Fail

A. Well, that is all news to me here.

Q. Absolutely, but you see, Mr. Fleming, without information which can assist the Tribunal, or come to the attention of the Tribunal, the Tribunal has no way of asking or making the appropriate inquiries which may lead to evidence or information which may lead to evidence.

A. I agree.

Q. But could we deal with it on this basis so now, with the benefit of hindsight, you would have little difficulty in

accepting the significance of the query which was raised in 1996? Would you accept that with the benefit of hindsight?

A. Now we know about the other €75,000 and that's only been highlighted to me last week for the first time ever, like, we'd have been shocked to know that.

Q. You were informed by the Tribunal last week about the €75,000 as a result of your inquiries, I mean during the week?

A. I was, yes.

Q. Because you were assisting the Tribunal in inquiries?

A. Yes.

Q. And it still wasn't brought to the attention of the Tribunal that a inquiry had been raised in 1996, isn't that correct?

A. Correct. I gave you the information of the €25,000 that we had received from head office and you had additional information yourself in relation to the rest.

Q. Let's just be very clear about this. It was on Thursday as a result of media inquiries about Fianna Fail that the matter was brought to the attention of the Tribunal, isn't that correct?

A. I understand that to be the case.

Q. You were in a position to furnish a statement only yesterday in respect of that?

A. I was asked to submit a statement which I have done and I am saying it's not absolutely specific on details and

dates, but

Q. Yes, I accept that. Thank you, Mr. Fleming.

CHAIRMAN: Not to take up any more of the aspect that Mr. Coughlan has inquired of you in some detail, Mr. Fleming, and I also express my appreciation of your careful accounting, but in retrospect since you have accepted that the category of receipts referable to the Taoiseach and a sub category of anonymous receipts in that class was unusual, particularly in the context of a large donation, would it be fair in retrospect to say that perhaps the notification of a possible mishap in 1996 could well have been of interest to the Tribunal?

A. Well I can, like, I understood that all those records and the subsidiary information that we are talking about was available to the Tribunal for you to inspect sometime ago, so I don't know what level of information you have ascertained from Fianna Fail head office. I don't work there any more. I am only being brought in to assist in relation to specific items that are being specifically directed to me so the wider issues of those type of issues may be a matter, you know, for other people who were dealing with the wider queries, I don't know, but I am just saying my role in relation to this Tribunal, I am only brought in intermittently on specific issues, I am not aware of your wider inquiries or the wider information that is being provided to you by the Fianna Fail party or other

people on behalf of the Fianna Fail party.

CHAIRMAN: I realise that. Just lastly then, Mr. Fleming, in relation to the actual paper exercise that you undertook in relation to those limited numbers of receipts at the request of Mr. Haughey in 1987, we have heard that obviously in the Taoiseach's office there was the permanent staff dealing with the business of running the country for the country's elected leader, there was Mr. Haughey's personal office and we have heard of occasional business being conducted at Mr. Haughey's residence, may I take it that you would have sent these receipts off to his personal office in Government Buildings presumably where Ms. Butler and Ms. Foy would have been the likely recipients?

A. It would have been Ms. Eileen Foy I would have dealt with because she would have often sent memos to and from me, and it would have been for her attention in Mr. Haughey's private office, I expect I would have sent the receipts.

CHAIRMAN: Just as general fundraising for Fianna Fail and various inquiries in relation to the Lenihan fund may have been taken up between the two of you also?

A. I had never any discussion about the Lenihan fund at any station stage. Never any involvement or even knowledge that there was this level of funds being collected on Mr. Lenihan's behalf. It was never brought to the attention of Fianna Fail party head office.

CHAIRMAN: As regards these particular receipts that you

were directed by the Taoiseach to send to him, you would have entrusted them to Ms. Foy?

A. Yes.

CHAIRMAN: Thank you very much for your assistance. We are just past the normal time so we will resume at five to two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 1:55PM:

MS. O'BRIEN: Ms. Sandra Kells please.

SANDRA KELLS, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS BY

MS. O'BRIEN:

Q. Thank you, Ms. Kells. Ms. Kells, you are the financial director of Guinness & Mahon Limited and you have given evidence to the Tribunal on a number of previous occasions?

A. Yes.

Q. And on this occasion the Tribunal has requested you to give evidence in relation to the subsequent application of three bank drafts which were negotiated at Guinness & Mahon on the 20th June 1989?

A. That is correct, yes.

Q. And I think in fact a memorandum of the evidence that you are in a position to give has been prepared and there are also a number of documents which relate to your evidence?

A. Yes.

Q. Do you have a copy of that memorandum?

A. I do, yes.

Q. Now, I think the three bank drafts on which your evidence has been requested are documents 1, 2 and 3, maybe we can have a look at those on the overhead monitor.

And they are each dated the 13th June of 1989 and it's a little faint on the overhead monitor, I think you should have a hard copy there in front of you. Each of them is drawn on Allied Irish Banks, College Street; each is in the sum of œ25,000; each of them is payable to cash and each of them is crossed 'Not Negotiable & Co'.

A. That's correct.

Q. And each is dated the 13th June 1989?

A. Correct.

Q. And I think we can actually see on the face of the drafts the Guinness & Mahon stamp and each of them bears a Guinness & Mahon stamp of the 20th June 1989?

A. Yes.

Q. And if I can just draw your attention also to the numbers appearing on the face of the draft which is on the bottom right-hand side No. 1466, I think actually numbers are different on the left-hand side, it's 3513, 3514, and 3515. If we can just look at each of them, you see the three numbers on them, 3513, 3514 and the next one is 3515.

A. Yes.

Q. And I think the copy drafts were retrieved by you at the

request of the Tribunal from your microfiche records for the 20th June 1989?

A. That's correct, yes.

Q. Now I think you have undertaken a full search of Guinness & Mahon account statements and internal records to assist the Tribunal as to how these three drafts were applied, is that right?

A. That is correct, yes.

Q. And I think you have informed the Tribunal that each of the three drafts was first lodged to the bank's Cheques Received Account, is that correct?

A. Cheque Clearing Account, yes.

Q. And I think that's document number 4.

A. Yes, that is correct.

Q. And in fact you can see each of them being drawn from that account on the 20th June 1989 and I think beside that also, cheque number 933384, can you assist me as to what those numbers signify?

A. Those are the sort codes the Allied Irish Banks branch in which, or location in which the cheques were drawn so they're sort codes

Q. And is it correct those sort codes are also printed on the face of the instruments?

A. They are on the face of the cheques, the sort codes. And that is the lodgment to the Collection Clearing Account, the other side of the lodgment to the Cheques Clearing Account.

Q. Now I think you have informed the Tribunal that two of these drafts were then withdrawn from the account, they were debited to the Cheques Clearing Account and credited to your Drafts Issued Account?

A. Yes, that is correct.

Q. And I think that's shown on the bank daily input log for the 20th June 1989 and if you can just explain the entries on that document?

A. Okay. As you can see the cheques were being lodged to the Outstanding Drafts Account, normally we would expect cheques to be lodged to customer accounts if they were being lodged with the bank and on this occasion it's been lodged to the Outstanding Drafts Account 90062019.

Q. Is that the third entry?

A. Third entry for œ50,000 so normally you'd see a debit to cheque clearing account, credit to customer account. On this occasion the credit is to the Outstanding Drafts Account which is quite unusual.

Q. What does that signify?

A. Well, on this occasion on other occasions we have investigated, the funds were going to be withdrawn immediately and they were not for the benefit of the customer account which is why they were being lodged to internal account as opposed to customer account. They were essentially using this account for clearing purposes.

Q. For clearing purposes rather than lodging them to any account and then withdrawing them from that customer

account?

A. Absolutely.

Q. So the money simply came into the bank and it went out again by purchasing a draft?

A. Correct, yes and this was being lodged to purchase the draft.

Q. And I think the two first entries on that document, the debit entries, they signify the withdrawal from the cheques cleared account?

A. Well not as such the withdrawal, it's the process which we use for recording because the system is a double entry system, for every credit you must have a debit so it's the other side of the entry and is our normal clearing procedure for cheques lodged and debited to this account.

Q. And that's the corresponded to the Drafts Issued Account?

A. Precisely.

Q. So it would be correct to say therefore that two drafts were effectively being exchanged, two drafts for œ25,000 each were effectively being exchanged for one draft for œ50,000?

A. As we will see but for the moment it's simply being lodged in the Outstanding Drafts Account in one lump sum.

Q. I think you have informed the Tribunal that the credit of œ50,000 to the Draft Issued Account on the 20th June to fund draft number 026148 was also recorded on the account statement and can I just ask you in relation to that document, the numbers there, 026148 cheque number beside

the credit to the Drafts Issued Account, what does that number signify?

A. It's the purchase of the draft, it's the Guinness & Mahon draft which was issued.

Q. And is that the number of the draft that was issued?

A. That's the number of the draft, yes.

Q. Now I think document number 6 shows the crediting of the amount to the drafts issued account on the 20th June 1989 and that's I think in relation to draft number 26148, is that right?

A. Yes.

Q. So that's the corresponding entry on the accounts statement which shows the credit of €50,000?

A. Correct.

Q. I think you have informed the Tribunal that it appears from that same account statement, which is document number 7, the next page of the accounts statement, that that draft was paid out by the bank on the 4th July of 1989?

A. That is correct, it was cashed on that date.

Q. And I think the relevant entry on the account statement is the second entry from the top?

A. And you can see the draft number again, 26148.

Q. So that entry shows the date the 4th July 1989 on the left, the cheque number, which is the draft number 26148, and the amount which is the debit of €50,000?

A. Yes.

Q. And that signifies that Guinness & Mahon paid on foot of

that draft on the 4th July 1989?

A. Correct, yes.

Q. So that the draft effectively cleared that account on that date?

A. Yes.

Q. Now I think you informed or you have indicated that the Tribunal has provided Guinness & Mahon with a copy of draft 26148 from which it appears it was dated the 19th June 1989, it was payable to cash, it was in the sum of €50,000, and it appears to have been signed by Mr. Pdraig Collery, the signature which we can recognise but I am not quite clear what the signature is there as well?

A. It's Anne O'Dowd, assistant manager in the Department.

Q. Would it be usual for both of those personnel to sign drafts?

A. Were they issued from that department? Yes, they were authorised signatories within that department.

Q. How frequently would it be the drafts would be issued from that department?

A. Quite frequently because they dealt with customers quite a lot so it was quite frequently the customers' withdrawals from accounts would be signed by these people.

Q. I see. I think you can confirm that this is the copy, this is a copy of the draft that was issued and which was purchased with the two drafts for €25,000?

A. Yes.

Q. Drawn on Allied Irish Banks, two of them we have just seen

at the beginning of your evidence.

A. Correct, I can confirm that.

Q. So that, in effect, therefore, would it be fair to say that the consequence of this transaction was that two drafts for €25,000 each drawn on Allied Irish Banks, we will just put two of them on the screen again, each of them dated the 13th June, drawn on College Street branch, drawn on Allied Irish Banks, which could of course be traced to AIB but they were converted into a single draft of €50,000 drawn on Guinness & Mahon?

A. They were used to purchase a draft payable to cash for €50,000.

Q. That's the Guinness & Mahon draft payable to cash?

A. Yes.

Q. So, in effect, the two were swapped for the one draft for €50,000?

A. Correct.

Q. And that was done without ever crediting either of those two drafts to any client account in Guinness & Mahon?

A. Internal Guinness & Mahon accounts were used.

Q. Simply internal Guinness & Mahon accounts and if any person was ever to look at a client account statement, these drafts, these two drafts for €25,000 would never be shown as credited to any customer account in Guinness & Mahon?

A. Correct, it was very unusual but it was done, but quite correct.

Q. Simply done by using Guinness & Mahon's own internal

accounts?

A. Yes.

Q. And would it be reasonable or not to describe this as a process of washing the money through Guinness & Mahon at the time?

A. I suppose it's one inference you could take from what took place, yes.

Q. We will just move on then to the other draft. I think you said it appears from Guinness & Mahon's internal records that the proceeds of the third draft for œ25,000 was credited to an account of Amiens Securities Limited account 12108001 and that this transaction is recorded on the bank's daily input log for the 20th June of 1989?

A. Yes, that's correct.

Q. And I think there you can see the debiting of the Cheques Received Account which is the first transaction on that document, is that correct?

A. Yes, that is correct, and then

Q. And the crediting then of account 12108001?

A. Yes, the lodgment to the client account.

Q. And I think that this is one of the series of Amiens Accounts, is it not, on which you have previously given evidence and which was controlled by the late Mr. Traynor?

A. That's correct, yes.

Q. And I think in fact this particular account 12108001 featured in evidence, detailed evidence which you gave to the Tribunal last July?

A. Correct, yes.

Q. And I think in the course of that evidence, you indicated to the Tribunal that there were drawings of approximately €140,000 from that account in large random amounts?

A. Yes.

Q. I think you understand that they appear to match credits to the Haughey Boland No. 3 Account?

A. That's correct, yes.

Q. I think you have indicated that that lodgment to the Amiens 12108001 Account is also recorded on the accounts statement and I think we can see it there, it's a little blurred but it's the last credit, last transaction in the column of credit transactions, we can see €25,000 lodged on the 20th June of 1989.

A. Yes, that's correct.

Q. I think you have informed the Tribunal that it appears from Guinness & Mahon's records that subsequent to the lodgment of €25,000 to that account on the 20th June, there were two debits to the account of €13,000 and €12,000 on the 29th June and the 5th July respectively?

A. Yes.

Q. And I think they can be seen on the document number 10 and document number 11, I think document number 10 is the one we have just had on the monitor and you can see there €13,000 drawn from the account on the 29th June of 1989, and we can see I think that most of the drawings from this account, they were fairly small and modest amounts?

A. Yes.

Q. And this one is quite striking that it's a large round-sum figure?

A. Apart from the period that we spoke about earlier, yes, this is a large one.

Q. And I think over the page of the statements, the second drawing of €12,000 can be seen as the first debit entry on the accounts statement?

A. Yes.

Q. You can see €12,000 there being debited on the 5th July of 1989?

A. Yes.

Q. And of course both of those debits come to the figure of €25,000?

A. Correct, yes.

Q. You said it appears from the bank's log, so it's the internal bank documents, that each of the debits was made in respect of a transfer of those amounts to another Amiens Account which was 1040706?

A. Yes.

Q. And that's also recorded on the bank's logs in document number 12 and 13.

A. Yes, that's correct.

Q. And I think if we put document 12 up first, we can see there the drawing of the €13,000 on the 29th June 1989 from account 12108001, is that correct, that's the second entry on that document?

A. That's correct, yes.

Q. And then the opposite side of that entry, which is the credit to account 10407006, also on the 29th June of 1989?

A. Yes.

Q. And in the second of these documents, I think shows similar entries for the drawing of €12,000 on the 5th July, is that correct?

A. That is correct, yes.

Q. And I think the lower second entry is the debit side of the transaction, is it?

A. That's correct.

Q. That shows the debiting of 12108001 Account and above that the corresponding credit to the Amiens Account 1040706?

A. Yes.

Q. I think you have informed the Tribunal that immediately following the first transfer of €13,000 to Amiens Account 10407006 on the 29th June of 1989, a sum of €5,000 was withdrawn from the account in cash. Now, I think we can see that, maybe if the statement can be made a little clearer on the monitor, we can see firstly the 29th June 1989, the €13,000 being lodged and immediately below that, the following day, on the 30th June 1989, we can see €5,000 being withdrawn in cash?

A. Yes.

Q. And then just below that on the credit side column, we can see sorry on the debit side column, we can see €20,000 being withdrawn on the 5th July 1989 and the next

transaction then being the €12,000 lodgment.

A. That's correct, yes.

Q. I think you have informed the Tribunal that the two transfers of €13,000 and €12,000 amounting to €25,000 equate to the two cash withdrawals of €20,000 and €5,000 also amounting to €25,000?

A. Yes.

Q. So your analysis and your evidence in relation to the second of three €25,000 drafts is that it was initially lodged to Amiens Account 12108001?

A. Yes.

Q. It was then transferred in two tranches to another Amiens Account 10407006 and it was withdrawn again in two separate amounts from that account in cash?

A. That's correct, yes.

Q. And I think you have informed the Tribunal that in summary, it appears two of the €25,000 drafts were used to purchase the draft for €50,000 dated the 19th June 1989 and payable to cash and it appears that the third draft for €25,000 was lodged to an Amiens Account, was transferred to another Amiens Account and was withdrawn in cash?

A. That's correct, yes.

Q. I think then finally there is a matter that you wish to correct arising from your earlier evidence or your evidence to the Tribunal last July relating to that 102008001 account, that is correct?

A. Yes.

Q. I think you have informed the Tribunal that in the course of your evidence to the Tribunal in July of last year, you indicated that a cheque for €25,000 payable to cash and in fact dated the 16th June 1989 and drawn on Allied Irish Banks, 1 Lower Baggot, Dublin 2, Account: Haughey/Ahern/MacSharry was lodged to Amiens Account 12180001 on the 20th June 1989?

A. 12108.

Q. 12108001.

A. Yes.

Q. You said however in the course of reviewing the bank's internal documents regarding the application of the proceeds of the three Allied Irish Banks College Street drafts, it appears that it was the draft for €20,000 and noted Leader's Allowance Account cheque for €20,000 that was lodged to that Amiens Account on the 20th June 1989?

A. Yes.

Q. Now we have got a very poor copy of the Leader's Allowance cheque on the monitor but I think you can certainly confirm that the sort code on that cheque is 93-10-12?

A. That's correct, yes.

Q. I think you have informed the Tribunal that it appears that the Leader's Allowance cheque was in fact lodged to the other Amiens Account which we have just mentioned, the account 10407006 and that's confirmed to you by the contents of the daily input log for the 19th June of 1989.

A. That's correct, yes.

Q. And would you just explain the two entries on that extract document?

A. Again it's just as I say, normal practice for cheque lodgments debited to the cheque clearing account, crediting to the customer account, client's account, in this case it's the Amiens Account.

Q. I think in fact what you are saying is this was an important lodgment at the time, on which evidence was given, your evidence is, in effect, identical to the evidence that you gave on the last occasion, it was lodged to an Amiens Account and in the control of the late Mr. Traynor but it's simply a different Amiens Account.

A. Yes.

Q. I think the confusion arose because there were two cheques and drafts effectively going across the bank's books on the same date?

A. Correct, correct, in the same amount.

Q. And I think you can also confirm that that lodgment of the œ25,000 cheque Leader's Allowance cheque for the 10407006 account which again was another Amiens Account under Mr. Traynor's control is shown on the bank's statement of that account?

A. That is correct.

Q. Because the final of the documents that is appended to your memorandum and that shows an entry for the 19th June of 1989 and a lodgment of œ25,000 and you can confirm that in fact that the source of that lodgment is the Leader's

Allowance Account cheque?

A. Yes.

Q. Of the 16th June of 1989.

A. Correct.

Q. And that the only respect in which you are correcting your evidence is that it is a different account number of the series of Amiens Accounts to which that cheque was lodged?

A. Correct, yes.

Q. And just before your evidence finishes, can I just ask you to recap on one final matter that in fact would have featured in your evidence to the Dunnes Tribunal which was mentioned briefly, your evidence to the Tribunal last May and that's just to ask you to confirm that two of the payments made by Dunnes Stores for the benefit of Mr. Haughey, the payment in August 1988 of €470,000 and in May of 1989 in the sum of €150,000 which were lodged to the Guinness Mahon Cayman Trust 602 Account appear to have been routed into that account through the Ansbacher Cayman account to Henry Ansbacher & Company at Mitre Square in London?

A. That's correct.

Q. And I think you can confirm that the number of the account held by Ansbacher Cayman with Henry Ansbacher & Company at the time was 190017202?

A. Yes, that's correct.

Q. And I think in fact you recall in connection with the evidence you gave on the last occasion regarding a payment

in November of 1990 of £200,000 sterling from Wytrex, that that routed through an Ansbacher Cayman Account No. 190017101?

A. Yes.

Q. You can confirm that they were effectively the same accounts?

A. Yes.

Q. Thank you.

MR. CONNOLLY: I have no questions.

MR. SELIGMAN: No questions.

CHAIRMAN: Ms. O'Brien put to you, Ms. Kells, there seemed little point to the transaction carried out in relation to two of the £25,000 cheques using Guinness & Mahon other than to try to ensure a considerable degree of circumspection?

A. Yes.

CHAIRMAN: I suppose this would be all the more since the two, indeed the three £25,000 instruments were in fact drafts payable to cash and they could have been most easily cashed anywhere?

A. Anywhere, yes.

CHAIRMAN: One point arose two weeks ago I think in the evidence of Mr. Walter Maguire on behalf of the Bank of Ireland and there arose a moment of uncertainty as to whether Guinness & Mahon were actually a clearing bank.

Can you put us right on that?

A. Guinness & Mahon and along with smaller international banks have an unusual arrangement. There were seven banks which club together and call themselves the NABS - Non Associated Bank and as a group, they have membership of the clearing. Guinness & Mahon did not have full membership but all seven banks clubbed together with membership of the clearing and they were called the NABS Group, they still are called the NABS Group. Other people would be BNP, City Bank, Barclays and I think it was to do with the international status of those smaller banks in Ireland and arose out of the strike in the seventies. So whilst we did not have full clearing in the status of Allied Irish Banks or Bank of Ireland, we still had full access to the clearing of the World Clearing Bank.

CHAIRMAN: And it would have distinguished you from Irish International Bank which was totally merchant?

A. Yes.

CHAIRMAN: Thank you very much for your assistance.

Irish Intercontinental Bank, I beg your pardon.

THE WITNESS THEN WITHDREW.

MR. HEALY: Mr. Mark Kavanagh please.

MARK KAVANAGH, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS

BY MR. HEALY:

CHAIRMAN: Thank you Mr. Kavanagh, please be seated.

Q. MR. HEALY: Thank you, Mr. Kavanagh. Now, Mr. Kavanagh, you provided the Tribunal with a certain information in the form of a Memorandum of Intended Evidence firstly, in response to a number of queries provided by the Tribunal and secondly, as a result of further information brought to the Tribunal by you through your lawyers. Now the first Memorandum of Intended Evidence that I want to mention to you, what I propose to do is take you through it, is in a question and answer form. Do you have a copy of that with you?

A. I do.

Q. And what I intend to do is go through each of the questions and then to refer to your response and if you want to correct anything or revise or alter anything, you might tell me as I go along confirming where you don't wish to make any alteration or revision.

The first query which was addressed to you and I'll get the date of the address of that query to you in a minute, is whether any approach was made to you in connection with the making of a contribution to a fund to defray the expenses of the late Mr. Brian Lenihan in connection with surgery he was to undergo in the United States.

And I think you said, "Yes, an approach was made to Mr. Mark Kavanagh in this connection by Mr. Paul Kavanagh."

A. That's correct.

Q. And I am now informed that the letter sent to you containing that query and the other queries I am going to mention in a moment was dated the 29th May of this year and those queries arose out of evidence given by Mr. Paul Kavanagh in connection with a list of potential or actual contributors to a fund for Brian Lenihan and I think you have seen a copy of that list since you were first in touch with the Tribunal, is that right?

A. I have.

Q. You were asked to identify each and every person by whom an approach was made or by whom the matter was mentioned to you and your answer effectively confirms that the only person to approach you was Mr. Paul Kavanagh.

You were then asked for copies of any documents in connection with the approach and you say that you don't have any documents in connection with the approach. You have provided the Tribunal with documents but there was no document involved in the approach to you, it was a telephone approach.

A. That's correct.

Q. You were asked for the amount of any contribution to the fund and your answer was a contribution of €25,000 was made to the fund.

You were then asked whether the contribution was in cash, by cheque or otherwise, and if by cheque, you were asked for details of the account on which the cheque was drawn

and the name of the payee and your solicitor's answer was "The contribution was made by cheque drawn on the account of Custom House Docks Development Company Limited at Allied Irish Banks, 5 College Street, Dublin 2. Mr. Mark Kavanagh believes that the cheques was made out to the Fianna Fail Party Leader's Account. The cheque was dated the 6th May 1989 and was number 00334. Mr. Kavanagh would have no objection to the Tribunal seeking a copy of the cheque from AIB."

Now I know that at the time that you provided that response, you believe the cheque was made out to the Fianna Fail Party Leader's Account and I think subsequently more information became available and we know it was made out to Fianna Fail simpliciter.

A. That's correct.

Q. You were next asked how the payment was conveyed, either to Mr. Paul Kavanagh or to any other person to whom it was delivered for the purposes of the funds. And the response is "The cheque was delivered by Mr. Mark Kavanagh to Mr. Haughey."

You were asked whether you had any contact with any person after the making of any such payment, whether by way of acknowledgment or otherwise of the contribution made? And your response was, "Mr. Kavanagh does not believe that he received any acknowledgment of this contribution."

And you were asked lastly for details of your knowledge, direct or indirect, of any other person who was approached to make a contribution to the fund. And your response is, "Mr. Mark Kavanagh was not informed of the identities of other persons who were approached to make a contribution to the fund."

Now, subsequently, I think your solicitors contacted the solicitor for the Tribunal indicating that you wished to make further information available to the Tribunal and arising out of those subsequent contacts and subsequent communications, a further Memorandum of Intended Evidence was made available to the Tribunal and I now intend to take you through that Memorandum.

You say that "In or around May of 1989, I was contacted by Mr. Paul Kavanagh, fund raising for Fianna Fail. He told me that the party had a substantial debt and was trying to raise substantial contributions from a number of individuals and companies. They were facing an expensive General Election and needed help from us. He went on to tell me that he was also trying to raise money for a fund to help pay for Brian Lenihan's liver transplant. I asked him how much he had in mind and he said they were looking for a contribution of around €100,000 for the party and €20,000 to €25,000 for the Lenihan fund. I told him that this was a lot of money and I would think about it and do what I could."

That was the initial approach.

A. That's right.

Q. You say, "I talked to my partners in Custom House Docks Development Company Limited, British Lands, and McInerneys" - these were the partners in other words. "After discussion, we decided the company would make a contribution of €100,000. Following this, a payment voucher was drawn and two cheques were issued, one for €25,000 payable to Fianna Fail, and one for €75,000 payable to AIB bank. These two amounts were entered into the Cheque Payments Book of Custom House Docks Development Company as payments to Fianna Fail. The cheques were drawn on Custom House Docks Development Company's account with Allied Irish Banks, 5 College Street, Dublin 2, as firstly, a cheque number 334 to Fianna Fail for €25,000, and secondly, a cheque number 335 to Allied Irish Banks for €75,000. The latter cheque for €75,000 was then converted into three drafts of €25,000 each, payable to bearer." We'll come back that later. They are in fact payable to cash but that's not that makes any difference to the standing of the cheques but they were cash drafts.

"I then met Mr. Haughey and handed him the cheque and the three drafts. While I cannot recall how the meeting was arranged, I may have asked for the meeting with the Leader of Fianna Fail in view of the size of the contribution. I met Mr. Haughey at his Kinsealy home on Thursday, 15th June

1989, the day of the General Election. I think the meeting only lasted about 15 minutes. I handed him an envelope containing the three drafts and the cheque which he then opened. Mr. Haughey thanked me for the contributions which he said would be of great help to the party and were much appreciated. He asked me if I would like to know how he intended to use the different items and I said I would. He said the cheque for €25,000 would be lodged to the Brian Lenihan fund, which fund he said was a Fianna Fail Party responsibility. He said that two of the three drafts, that is €50,000, would go directly into the party's Central Funds. He then asked me if I would be happy if the final draft of €25,000 was used by him at his discretion to help with the election expenses of individual Fianna Fail candidates in the General Election. I said that that was fine by me. "

Now, that's the end of your two memoranda and what I want to do is to go through some of the documents you mentioned and one or two other documents that have become available since you first made contact with the Tribunal.

Now, the first document I want to refer to on the overhead projector is a document described as a Payment Voucher.

Now you may have your own copies, hard copies of these, Mr. Kavanagh, if you haven't, I'll make them available to you.

(Documents handed to witness.)

This is a document stamped 'Paying Company, Custom House

Docks Development Company, Charging Company', I presume in fact because there's no reference, that's intended to be Custom House Docks Development Company, underneath that, there's something obliterated. To the right of that is the word 'overhead' and then there's a number which presumably tallies with some ledger or other number?

A. That's correct.

Q. This is a payment voucher signed by the partners in the Customs House Docks Development Company authorising certain cheque payments to be drawn on the company's cheque account, is that right?

A. It is.

Q. And the two payments that were authorised are mentioned at the top of the authorisation, it's hard to see them on the overhead projector but the first one is 'CHQ' for cheque, 334, and then the word 'Fianna Fail' and to the right of that, '€25,000'. Under that 'Cheque 335, Allied Irish Banks plc, €75,000' and underneath that, 'drafts x by 3', indicating in other words that the company's cashier or whoever else had responsibility for the cheques was authorised to draw up two cheques, one payable to Fianna Fail for €25,000 and one payable to Allied Irish Banks for €75,000 with the intention being that it would be used to purchase three drafts, is that right?

A. That's right.

Q. Now, I take it that you wouldn't have actually signed or you wouldn't have prepared this payment voucher?

A. No, I wouldn't have done.

Q. Somebody with custody of the company's bank account would have prepared it?

A. Yes, that's correct.

Q. And the initials on it are presumably your initials. I can't make them out.

A. Yes, the top right initials, the right-hand one, MK.

Q. That's the first one?

A. The first on the column to the right.

Q. That's MK, is that right?

A. Underneath that is PB.

Q. That's Mr. Burke, is it?

A. Yes, on behalf of McInerneys.

Q. And underneath that?

A. SK, Stephen Kalmin, on behalf of British Lands.

Q. The next document then is what looks like a Custom House Docks general ledger I think, very hard to discern what it is on the overhead projector but from the copy I have, I think it says 'Custom House Docks Development Company Limited, general ledger, cheque payments' and it contains a list of cheque payments. I am not sure how good the copy you have is. I think the original copy made available by Custom House Docks, it's dated the 6th June 1989.

Underneath that on the left-hand column is a list of cheque numbers. In the centre column is a list of payees and the right-hand column is a list of amounts. And the last two cheque payments identified for the 6th June are in respect

of the €25,000 payment authorised a moment ago and the €75,000 payment and in the company's general ledger, what I assume to be the general ledger. The two amounts are described as 'Payments to Fianna Fail'. So presumably somebody must have informed the official responsible for making these entries that either one cheque used to purchase the three drafts was payable to AIB, it wasn't backed in respect of a Fianna Fail contribution?

A. That's correct.

Q. Which is what you had agreed with your partners?

A. Yes.

Q. We will come back to the details of any discussions you had later. The next document is an extract from the Cheque Payments Book and contains the entries for the 6th June and the 20th June and appears to suggest that in fact no cheques were written between the 6th and the 20th June and the two cheque payments that we have just mentioned in favour of, or the two payments in favour of Fianna Fail, one in the sum of €25,000 and one in the sum of €75,000 are the last two entries for the 6th June. And the cheque numbers on the document 334 and 335 correspond with the cheque numbers mentioned in the original authorisation or payment voucher and on the subsequent entry in the, what looks like some class of general ledger

A. Mm-hmm, that's correct.

Q. The next document made available by Custom House Docks Development Company Limited was an extract from page 74 of

the company's bank account at Allied Irish Banks, 5 College Street, Dublin 2, and this shows that there was a debit to the account on the 19th June 1989 in the sum of €25,000 and that appears to have been in respect of cheque number 334 indicating therefore that the cheque that you made out for €25,000 payable to Fianna Fail and which you handed to Mr. Haughey was presented for payment sometime between the date you gave it to Mr. Haughey and the 19th June.

A. Yes.

Q. And you gave it to Mr. Haughey on the 15th, therefore it was presented through the banking system for payment between the 15th June and the 19th June?

A. Yes.

Q. The next document is an earlier page from the same bank account statement, page 72, and for the 13th June 1989, there's an entry showing a debit of €75,000 referable to cheque number 335 indicating that the cheque that was used to purchase the three drafts must have been brought to the bank on or around that day, the 13th June?

A. Yes.

Q. And the last document made available by Custom House Docks is an extract from the Nominal Ledger of Hardwicke Limited, is that right? Your copy may not make it very clear.

A. It's too difficult to read.

Q. Well my copy says on the top left-hand side 'Hardwicke Limited' and it has 'costs centre', 'client costs' and the sub classification is 'account 1865',

'subscriptions/donations' and then there's a reference to the 30/6/1989 and the entry is described as 'Type P/L', I am not sure what that means, the narrative is Fianna Fail and the value of the amount is €100,000?

A. That's correct.

Q. Does that indicate that that amount was carried by Hardwicke or that it was

A. No, Hardwicke kept the books and records of all the Custom House Docks Development Company and that's why it's named on the top but it is in fact Custom House's account and it just shows the total amount of €100,000 was charged as having gone to Fianna Fail.

Q. Thank you. The last document I want to mention was one that was made available to the Tribunal by the Fianna Fail Party. And this is the cheque for €25,000 payable to Fianna Fail and signed, it would appear, by Mr. Burke and by you, is that right?

A. That's my signature, yes.

Q. That is in fact the cheque which went into Fianna Fail's Central Funds and the cheque that was made available to the Tribunal on foot of inquiries from the Tribunal to Fianna Fail regarding contributions made by you on behalf of Custom House Docks. There's no doubt it's your cheque, isn't that right?

A. None whatsoever.

Q. And the words 'Fianna Fail' written on the cheque are in the same hand, whatever about the other words, as the hand

in the entries made on some of the manuscript documents we referred to earlier were made, is that right?

A. That's correct.

CHAIRMAN: That was the particular cheque that you have understood was to go to the Lenihan fund?

A. Yes, Sir.

Q. MR. HEALY: Now, what you told the Tribunal, Mr. Kavanagh, is that the first approach to you in relation to this matter was made by Mr. Mark Kavanagh - Mr. Paul Kavanagh, I am sorry, by telephone.

A. That's correct.

Q. By telephone?

A. By telephone initially.

Q. And that following that approach, you discussed the question or the matter with your partners in the Custom House Docks Development Company and you decided to respond and to make a contribution of €100,000 broken down as we have mentioned.

A. Mr. Kavanagh came to see me to discuss the matter, first the telephone call was that he was fund raising for Fianna Fail and he'd like to meet me and he came to see me and he discussed it and the rest is as you say.

Q. You must have made contact with him at some time after you had discussed the matter with your partners?

A. I have no recollection of whether I did or I didn't. He may have called me, I may have called him but I probably

did tell him we were going to make a donation but I don't recall doing it.

Q. There's no doubt but that subsequently on the 15th June you made the contribution to Mr. Haughey at his home?

A. I did.

Q. So between the first contact that you had with Mr. Paul Kavanagh, the meeting that you had with him rather, and the 15th June, there must have been some further contact with somebody to explain your meeting with Mr. Haughey on the 15th June, is that right?

A. It seems very likely, yes.

Q. You weren't obviously in the habit of turning up at Mr. Haughey's home at 9:30 on the morning of a General Election?

A. I have never been there before and I have never been there since.

Q. You had a specific appointment?

A. I did, I must have done.

Q. And that appointment must have been as a result of some contact between you and Mr. Haughey in the interval between when Mr. Kavanagh spoke to you and the 15th June.

A. As I have said, I don't recollect how the meeting was arranged.

Q. When you went to the meeting, you brought with you an envelope containing a cheque and three drafts?

A. Yes.

Q. And at your meeting on the 6th June which must have

occurred sometime in or about the 6th June with your co-partners, you decided that that was the form in which the payment to Fianna Fail would be made, one cheque for the Brian Lenihan fund and three drafts?

A. That's right.

Q. So as of the 6th June you knew that whenever you were going to make the payment, it was going to have to be made in this way?

A. I believe so, yes.

Q. A draft payable to bearer or a draft payable to cash is the same as paying in cash, isn't that right?

A. It's effectively - yes, it is.

Q. To pay money to anybody in cash is to hand over money in a form which makes it difficult to trace, isn't that right?

A. That's correct.

Q. It's not the orthodox way in which any trader, in particular any large company which has a bureaucracy to run conducts business making payments, isn't that right?

A. It's unusual, yes.

Q. A company may make cash payments through its petty cash system or maybe even larger cash payments sometimes than would ordinarily go through a petty cash system but could I suggest to you that it would be unprecedented in ordinary business life for a company to make cash payments involving €75,000.

A. Well certainly unprecedented for our company, yes.

Q. Now, Mr. Kavanagh didn't ask you for the payments to be

paid in cash, Mr. Paul Kavanagh didn't ask you for the payments to be made in cash?

A. No, I don't believe he did.

Q. Nor did he ask you to make the payments out in the form of one cheque and three drafts?

A. No, I don't believe he did.

Q. And you certainly didn't decide to break down the payments in that quadro-part way?

A. I think it's very unlikely I'd have thought of that myself.

Q. And when you went to meet Mr. Haughey, he volunteered to explain to you what he intended to do with the individual parts of the payment?

A. He did, yes.

Q. Wouldn't that seem to suggest that it was Mr. Haughey who had indicated to you how the break down was to be organised?

A. I have no recollection of who gave me the instructions or asked me to do that in that way. I can't say that it was Mr. Haughey.

Q. Well if it wasn't Mr. Haughey who gave you those instructions, Mr. Haughey certainly wasn't surprised that the money came in this somewhat unprecedented way?

A. No, he wasn't surprised.

Q. And when you handed him the envelope with the money divided up in this way, he was able to volunteer to you how he intended to use it or to use the various parts of it, isn't that right?

A. He asked me if I'd like to know and I said yes, I would.

Q. Did he ask you if you'd like to know what he intended to do with it or would like to know why he suggested it would be in this, why it should be handed to him in this way?

A. In a sense, both. He asked me if I'd like to know how he intended to use it but the implication was that he was expecting it in this way and that he expected to explain to me why.

Q. And therefore doesn't it mean that if Mr. Haughey didn't make contact with you between Mr. Kavanagh's last contact with you and the 15th June, that somebody else must have contacted you on Mr. Haughey's behalf to convey those instructions?

A. That's correct.

Q. And the instructions you were given were not merely that the money should be in the form of a cheque and three drafts, but that the cheque was to be made out to Fianna Fail and more importantly, that the three drafts were made out to cash?

A. That must have been the case, yes.

Q. And when you were discussing the matter with your partners in or around the 6th June, was there any discussion of the somewhat unorthodox payment instructions that you had received?

A. No, I don't think so, not in terms of the instructions themselves. I don't remember any discussion like that, I remember a discussion either at that meeting or subsequent

meeting we had about the safety issue of three drafts made out to either cash or bearer and I think my partners were concerned in case they didn't go where they were supposed to go and I undertook to be responsible for them.

Q. Did that mean that you undertook to be responsible for them between when they were created, if you like, and when they were handed over to Mr. Haughey?

A. That's right.

Q. You weren't undertaking to be responsible for them after they went to Mr. Haughey, were you?

A. No.

Q. So your partners recognised that three drafts payable to cash were effectively the same as money and could be used by anybody virtually untraceable for any purpose from the time they were generated?

A. Yes, I am sure that's so.

Q. And are you saying that your partners at no time even raised an eyebrow at this unusual payment instruction?

A. Well I have no recollection of any particular discussion with that. I was chairman of the company and I would have recommended that we made the payment and we would have debated that and then I suspect my partners would have basically left it to me largely as to how the payment was made.

Q. And are you yourself not surprised that you accepted instructions to make a payment to a political party in this way?

A. I am surprised, looking back on it, but I don't remember being surprised at the time.

Q. Are you certain that in making the payment in this way, you and your partners intended to benefit the Fianna Fail Party?

A. Absolutely so.

Q. And that you had no intention of benefitting Mr. Haughey personally instead of the party?

A. None whatsoever.

Q. Did it occur to you at the time that this method of payment could facilitate a situation in which the money might not go where it was intended to go?

A. No, it didn't occur to me at all. I was giving it to the Leader of the Fianna Fail Party and to the Taoiseach. It never crossed my mind.

Q. You'd accept, however, that it was an unorthodox type of payment arrangement?

A. Yes, I would.

Q. Did you turn a blind eye to the possibility that the irregularity or the unusualness of the payment arrangement was one that should have caused you to be suspicious in some way?

A. Perhaps I was naive, I certainly wasn't suspicious and I didn't turn a blind eye to it at all.

Q. As things have turned out, it would now appear that your €25,000 cheque did not go to the Brian Lenihan fund.

A. So I have been advised.

Q. So the intentions of the Custom House Docks Development Authority seem to have been frustrated in that regard?

A. Yes, they were.

Q. Or Development Company rather, seem to have been frustrated and the intentions of the Custom House Docks Development Company in relation to its payments to Fianna Fail also appear to have been frustrated, at least in part, isn't that right?

A. It appears so, yes.

Q. In that the €50,000 which you were led to believe would go to Fianna Fail Central Funds does not seem to have gone into Fianna Fail Central Funds.

A. So I am advised, or if it did, it appears it did not go in as our donation.

Q. Well it was used to purchase a donation which was then attributed to somebody else?

A. Correct.

Q. Which was precisely the one thing you wished to avoid

A. Absolutely.

Q. by making your contribution directly to Mr. Haughey?

A. Correct. We did not seek or wish for anonymity.

Q. I will come back to that in a minute. In fact, the opposite, you wished just not acknowledgment but the most, how shall I put it, the most visual acknowledgment, if you like, that Mr. Haughey knew that it was your Custom House Docks Development Company, the entity associated with you, that was handing over this very large sum of money?

A. That's correct.

Q. Has your company, Custom House Docks Development Company, put in train any inquiries of its own to see what happened to this contribution which was intended by it for the Fianna Fail Party?

A. None whatsoever.

Q. Is it your intention to put any inquiries in train?

A. I think I am in your hands.

Q. This Tribunal is charged with finding facts, it's the money that you may want to find, isn't that right? It was, by any standards, an extremely large sum of money, isn't that right?

A. Yes, it was a very substantial donation.

Q. It was in fact, you if you take it as a €100,000 contribution, the equal largest contribution to Fianna Fail that year.

A. I wouldn't know that.

Q. If you take it as a €75,000 contribution, it was the second largest.

A. It was seen by us as a €100,000 contribution to Fianna Fail.

Q. As a €25,000 contribution, it was a large contribution but no different to many other €25,000 contributions. As a €25,000 contribution, which was eventually what did go into Fianna Fail, it ranked with many other €25,000 contributions. I don't want to identify all the other €25,000 contributors but there were a number of others so

that in the eyes of Fianna Fail, Mark Kavanagh and the Custom House Docks Development Company ranked with other €25,000 contributors. You did not rank with the largest contributor whereas you could have ranked as the largest contributor to the party that year but in the eyes of Mr. Haughey, on the other hand, you were a large contributor, is that right?

A. I imagine, I mean I must have been yes, because I handed the money to him.

Q. Isn't that the upshot of the way the money was ultimately disposed, that in the eyes of Mr. Haughey personally, you and your company appear to be large contributors whereas in the eyes of the party, you were not?

A. That certainly wasn't our intention.

Q. Can you think of any ordinary commercial reason why Mr. Haughey or anybody on his behalf, would have insisted or instructed that these contributions be made in a form, in the form of cash, in particular where the contribution was not to be anonymous?

A. No, I can perhaps understand why the contributions were, the contribution of €100,000 was asked to be split into different amounts, but I have I do not know why they asked for it to be in cash.

Q. And did it occur to you, just to come back to this point, that there was something odd in making out a contribution payable to Fianna Fail in the case of Mr. Lenihan's fund, and contributions made out to cash in the case of funds

which were also intended for Fianna Fail?

A. Did it occur to me was it odd? I don't remember what occurred to me in particular. I had no track record of making large contributions to Fianna Fail. In fact I am only aware that I had ever made one before and that was a relatively small amount so I genuinely don't remember what I thought at the time.

Q. I think you have made a subsequent large contribution to Fianna Fail in 1996 and 1997?

A. I have.

Q. I think it was 1996, is that right?

A. '96.

Q. On that occasion, can you recall was the contribution made out by cheque to Fianna Fail?

A. It was made out by cheque to Fianna Fail.

Q. And do you recall who it was given to?

A. I handed that particular cheque to the Taoiseach, Bertie Ahern.

Q. Personally?

A. Personally.

Q. It was not broken down in any way and it was not in cash?

A. It was not broken down and it was not in cash.

Q. Did you get a receipt for it?

A. I recently received a letter of acknowledgment, effectively a receipt, yes.

Q. A letter of acknowledgment from the Taoiseach as president of Fianna Fail and a letter of appreciation and

acknowledgment of the donation which is what you might have expected for a large donation?

A. I would have expected.

Q. And that second donation was not an anonymous donation?

A. It was made - it was not, it was made by my company, Hardwicke Limited.

Q. At the time you made that donation, did you think to compare it with the somewhat different circumstances you had made the earlier donation?

A. In what way?

Q. Well in the earlier donation it was made to Mr. Haughey in his home.

A. Correct.

Q. It was made partly by cheque and partly in cash. Nobody else was present, I take it, except Mr. Haughey and yourself?

A. Only the two of us.

Q. You received neither a receipt nor a letter of appreciation or acknowledgment?

A. No, I didn't.

Q. Aren't they very significant differences between the two situations, the 1996 and the 1989?

A. They are.

Q. Before you made your 1996 contribution, you were approached by Mr. Eoin Ryan senior soliciting funds on behalf of Fianna Fail?

A. I was.

Q. And he has indicated to the Tribunal that you were somewhat annoyed that your earlier sizable contribution had not been acknowledged or receipted by the party.

A. In the context of being asked to make another large contribution, yes, I told him I was upset that no acknowledgment appeared to have ever been made to us for what we had done.

Q. And what did Mr. Ryan say to you he'd do about that?

A. In the first instance he said he was upset that that had happened and that he would look into it and that he would bring it to the attention of the Taoiseach, Bertie Ahern, the Leader of the party.

Q. And did you tell Mr. Ryan of the circumstances in which you had made the 1989 contribution?

A. I believe I told him that I had made the contribution to Mr. Haughey, yes.

Q. Did you tell him that you had paid €100,000 or €75,000?

A. No, I think I said a very substantial sum.

Q. After he said that he'd look into it or take steps to look into it, did you hear any more about it?

A. He telephoned my office and I can't recall whether he spoke to me or left a message for me to say that he had brought the matter to the attention of the Taoiseach, that was the message I received from him.

Q. And did you receive any further communication either from the Taoiseach or from the Fianna Fail Party concerning the matter?

A. From the Taoiseach. When I made a donation in May 1996, the Taoiseach apologised to me for the fact that we had not received any acknowledgment for our earlier donation, the one in 1989, and said that that should not have happened and that it was appreciated by the party.

Q. And on that occasion, Mr. Ahern didn't mention the amount of your previous

A. We didn't discuss the details of it at all.

Q. And who was present at the meeting that you had with Mr. Ahern when you handed over that 1996

A. Well I actually handed to him, it was just the two of us.

Q. In his office?

A. In my office, it was the occasion of a dinner I gave in my office which he attended.

Q. Can you remember the date of it, even approximately?

A. May April/May, something like that, 1996.

Q. Well I am sure Mr. Fleming, judging by his records, would have the date of the cheque.

A. I am sure we have a record as well.

Q. In the ordinary way, if you pay money to somebody and you don't get a receipt or in this case even a letter of appreciation and you mention your annoyance to somebody else, wouldn't it be of assistance to the person you express your annoyance to tell them the amount of your contribution?

A. I suppose it would but in the particular case with Mr. Ryan, I knew Mr. Eoin Ryan very well and he was a friend of

my father's, I had known him for many years and we didn't have a detailed discussion about the events themselves, I simply said "Well, you are looking for another contribution and I have never had any acknowledgment for a very substantial one we made before?" And he said he knew nothing about it but I don't remember giving him any details of the amount.

Q. Was there any contact between you and the Fianna Fail Party or the Taoiseach between when you received Mr. Eoin Ryan's message at your office and when you handed the cheque of €50,000 to Mr. Ahern?

A. None whatsoever.

Q. So you were making that €50,000 payment without any assurance that your previous one had been receipted?

A. That's absolutely true, however I had the message from Mr. Ryan saying he had brought it to the - the matter to the attention of the Taoiseach.

Q. Wouldn't the scale of your annoyance be proportionate to the money you had contributed?

A. Yes, I suspect it would be.

Q. Were you that annoyed, in other words?

A. Many years later, no, I don't think I was that annoyed but I was certainly upset. How would I put it? You make a significant donation, you expect it to be acknowledged, it hadn't been acknowledged so yes, to that extent, I was upset but that's about it.

Q. Did you tell any of your partners in Custom House Docks

Development Company that you had not received an acknowledgment?

A. No, I don't think so.

Q. Presumably your partners were aware of your plan to ensure that this sizable contribution was directly acknowledged by the party by handing it to an Taoiseach?

A. I honestly don't remember if I discussed the delivery arrangements with them, I think they would have left that to me.

Q. Isn't it astounding you wouldn't have discussed that with them, Mr. Kavanagh, seeing the payment authorisation is for a cheque payable to AIB and three drafts which would be hanging around in your pocket until you handed them over?

A. They clearly trusted me to ensure that the cheques were handed over.

Q. But they must have known that at that point you were going to hand the cheques over to Mr. Haughey himself?

A. You would have to ask them, I do not recall discussing it with them.

Q. Whether you recall it or not, wouldn't you agree with me it's more than likely that you explained all of the arrangements that had been put in place at that stage?

Otherwise, weren't they reaching a decision in the dark about a very strange transaction?

A. I don't think that the, what I called earlier the mechanics of the donation were of any particular interest to any of us in fact, to them or to me, except for the issue of the

fact that the drafts made out to either bearer or cash were valuable instruments which shouldn't be allowed out, essentially out of my possession. Other than that, I don't imagine we had any discussion about it.

Q. You didn't actually convert the draft into drafts convert, I beg your pardon, you didn't convert the cheque made payable to AIB into drafts until sometime after that meeting on the 6th June, is that right?

A. That's right.

Q. You didn't in fact convert it into drafts until sometime in or around the 13th June?

A. That's correct.

Q. So therefore you had that cheque in your pocket for sometime?

A. It wouldn't have been in my pocket.

Q. Or wherever?

A. In a safe.

Q. In a safe and you presumably had no reason between the 6th and the 13th to convert it into drafts?

A. I am sure the instruction would have been it was not converted into drafts until shortly before it was to be delivered.

Q. Yes. So at that stage presumably, at the 6th June stage you must have told your partners that "It will be safe, I'll look after it until I have to convert it into drafts" and isn't it likely that in telling them that, that you must have told them that "I am going to hand it to the

Taoiseach on a day. I haven't yet made an appointment"?

A. No, I don't think I did.

Q. So you are saying to me that you and your partners had a meeting on the 6th June to give a contribution to a political party in cash with no arrangements for the handing over of that money?

A. That appears to be what I am saying to you, yes.

Q. Could I suggest to you that that is so unprecedented it's hard to credit that seasoned businessmen would have satisfied themselves that an arrangement like that was an appropriate one?

A. That's actually what happened.

Q. Were you very or were they very trusting in political parties that this is how they dealt?

A. I am not sure that any of us had any particular experience of political parties.

Q. You said earlier you may have been naive but, Mr. Kavanagh, you are now and were then an extremely successful business man. You surely knew that this was not the normal way of making a subscription to a charity, to a cultural cause, or even to a political cause, a cash contribution is an untraceable contribution, isn't that right?

A. Yes, that's right.

Q. And can I suggest that at the very least, you were casual about how you'd hand over this money?

A. (Shakes head).

Q. Would you have handed over a contribution to the director

of the National Gallery in the same way?

A. I might have done if he'd asked me.

Q. Or to the Vincent de Paul? Can I suggest to you you wouldn't have and nobody would hand over a contribution to a charity or cultural cause in the form of cash in three drafts without a very, very satisfactory explanation?

A. I must have had one.

Q. Did you have some comfort from somebody that this was a form of contribution and a type of payment arrangement which was, if you like, okay?

A. I don't recall any comfort of any kind.

Q. Well from whom did you have an explanation of the kind that you say you must have had to satisfy you that this was an unusual but nevertheless acceptable form of transfer?

A. I do not recollect who made the arrangements but I would assume since Mr. Haughey immediately explained to me how the payments were to be used, that I probably was told that Mr. Haughey would explain it to me but I don't remember.

Q. And if somebody probably told you that, it must have been either Mr. Haughey himself or somebody at his direction?

A. If you say so.

Q. Well it can't have been Mr. Paul Kavanagh, even on your account?

A. I agree.

Q. And Mr. Paul Kavanagh's own account is to the same effect and would you have accepted instructions on such an unusual method of payment from anyone other than Mr. Haughey

himself?

A. I simply cannot answer that because I do not remember who gave me the instructions. If I could help you with that, I definitely would.

Q. But it was somebody

A. I didn't think it up myself, I am sure of that.

Q. And it was somebody other than Mr. Haughey, to the best of your recollection?

A. I cannot recollect who gave me the instructions so I cannot say whether it was Mr. Haughey or not Mr. Haughey.

Q. Was this the first time you had ever met Mr. Haughey?

A. No, it wasn't the first time I had ever met him but certainly the first time I had ever been to his house.

Q. Had you any relationship with Mr. Haughey prior to this?

A. Only on the basis of meeting him at official functions. He launched the International Financial Services Centre, I believe he laid the foundation stone for the first building - at various functions of that kind.

Q. I'll come back to the International Financial Services Centre in a moment. Did you ever think to complain to the Fianna Fail Party about the fact that you didn't get a receipt at any time between 1989 and 1996?

A. No. The matter didn't arise.

Q. What do you mean by "it didn't arise"?

A. In other words, it wasn't until Eoin Ryan asked me for a donation in 1996 that I probably even thought about the fact that we hadn't had an acknowledgment and when I

thought about it, I told him about it. It wasn't something that I was thinking about constantly.

Q. To this day, have you ever got a receipt for your contribution in 1989?

A. No.

Q. You haven't got a receipt for €25,000?

A. No.

Q. €50,000?

A. No.

Q. €75,000 or one for €100,000?

A. No receipt of any kind.

Q. So to this day your company doesn't know what happened to the €100,000 it handed over?

A. The only information we have is the information you have given us.

Q. Can you say what, to your knowledge, prompted Mr. Paul Kavanagh to make contact with you in the first instance to solicit a contribution for Fianna Fail?

A. No, I have no idea why he contacted me.

Q. You had no previous significant contact with Mr. Haughey you say in a personal capacity?

A. No.

Q. You had made one previous more modest contribution to the Fianna Fail Party?

A. So I believe.

Q. That was a contribution of €5,000 made by Hardwicke I think?

A. So you have told us.

Q. Have you any idea what prompted Mr. Kavanagh to come to talk to you about making a contribution to Fianna Fail in 1989?

A. No.

Q. When you spoke to you about the need for funds, you have indicated that he mentioned that the party had a substantial debt and was trying to raise substantial contributions from a number of individuals and companies?

A. Yes.

Q. Presumably he said a bit more than that if he took the trouble to say it?

A. I asked him to come to the office after he made the phone call. He said the party was in significant debt, some millions of pounds and that the party was facing into the General Election which was going to be expensive and that the party wasn't financially in the condition he would like to be facing that General Election, therefore he was looking to a number of people to make substantial contributions and he also said that he was at the same time he mentioned that there was a fund for the transplant operation for Brian Lenihan and he was looking for contributions for that.

Q. But your record of previous contributions to the Fianna Fail Party through Hardwicke was a contribution of €5,000. You were now being asked to make a contribution of €125,000, isn't that right?

A. That's right yes, effectively so.

Q. Did Mr. Kavanagh say anything to you that would indicate to you what prompted him to ask you for such an enormous sum of money at that time, why you had been picked out to make that contribution?

A. I think he said that he thought I was doing very well and could afford it.

Q. And what did you say to that?

A. To that particular comment, I don't imagine

Q. That you were targeted because you were doing very well and you could afford it?

A. I don't remember making any particular response to that.

Q. Surely you weren't going to make a contribution to a political party just because you were doing very well and you could afford it?

A. They asked us, they wanted basically a dig out, the party was in debt and would we consider making a very substantial contribution? And I said yes we would consider it but it was a lot of money and I would talk to my partners and see what we would do.

Q. If you don't know what prompted Mr. Paul Kavanagh to target you and your company, can you say why or what contribution considerations prompted your company for the first time I think to make such a huge contribution to a political party?

A. Yes, I think I can explain that. We had taken on the Custom House Docks Development Company, had won the

contract for the development of the International Financial Services Centre. The contract in its first stage involved the construction at full risk to us without any pre-commitment on sale or lettings of five substantial buildings costing in excess of €120 million and those five buildings were under construction at different stages of the construction in May 1989. We had a Government that had been substantially responsible for the IFSC, for the creation of the IFSC, for the enactment of legislation to attract international companies to it, own a tax basis, and which was clearly committed, having appointed a high powered committee to cut through red tape and to enable, it was clearly committed to the success of it and committed to seeing it through. Therefore we felt it was in our interest to support that particular government which happened to be the Fianna Fail government, and because what we needed most of all to succeed was continuity.

Q. And you think that, is it possible that this was perceived by Fianna Fail or Fianna Fail fund raisers as a likely perception you might have had on foot of any approach by Fianna Fail?

A. I don't know why they approached us.

Q. But you were in your own mind, your perception was that whereas you mightn't have been dependent on Fianna Fail continuity, Fianna Fail continuity was undoubtedly to your advantage?

A. Yes, we were confident that Fianna Fail would continue the

same policies if they were re-elected. We were not confident that Fine Gael would.

Q. Do you think you were vulnerable to a bit of arm twisting to produce a bit more money than you might have otherwise produced on your past record?

A. I don't think we were vulnerable. I think we took a hard headed business decision that it was in our interest. We had reason to believe that if Fine Gael came into government, they would not be as supportive of the IFSC as Fianna Fail, therefore it was in our interests to make a very substantial contribution to Fianna Fail. At the same time, we did make a contribution to Fine Gael but it was a significantly smaller one.

Q. Is it the case that your sensitivity to a potential change in the government could also account for the fact that you and your partners were prepared to countenance a payment arrangement which was not, if you like, a hard headed business one?

A. No, I don't think that the two things were in any way connected. The reason for our support, why we particularly wanted to support Fianna Fail was because I had had a lunch earlier that year in the Custom House Marketing Centre which had been attended by Michael Noonan and Alan Dukes of Fine Gael and I could only describe their support for the IFSC as being lukewarm and I put that to my partners and I said that I felt that it was important to us to have the kind of continuity and they agreed with me and I think

after that, the method of payment was really of not a major concern to us. The major issue was whether we made a significant donation.

Q. Did you think that all political parties received large contributions in this form?

A. I had no idea.

Q. Did you?

A. I had no idea.

Q. But what was your impression at the time as to how political parties received their funds?

A. Oh I would say my impression would have been most of them would receive their funds by way of conventional cheques.

Q. Is that how you paid the other political parties?

A. Yes, it is.

Q. And that's how presumably the previous £5,000 Hardwicke contribution had been made, the subsequent £50,000 contribution that you made in 1996 was made?

A. I believe so.

Q. And this contribution was made in a way which would stand out, I venture to suggest, compared to any payment your company had made to anyone in this country since you went into business?

A. I would agree.

Q. And I am suggesting to you that it's hard to credit that you didn't think there was something unusual or something that might have given you even pause for thought about that unusual way of spending a very large amount of money, would

you agree with that?

A. I am sorry, would you like to say that again?

Q. Would you agree with me that it's hard to credit that you didn't think that there was something unusual or something that might have given you pause for thought about this unprecedented way of spending a very large amount of money?

A. With the benefit of hindsight, I would have done things differently and perhaps if I had I wouldn't be sitting here answering these questions but the fact is that's what we did. I wish I could remember who gave me the instructions and why I took those instructions as being quite acceptable. I can only suggest that it was because, and this is my suggestion, speculation, but that it may have been put to me that the Taoiseach would explain to me why he wanted the payments in that way and he was not only leader of the Fianna Fail, he was Taoiseach and I had absolutely no reason to believe that the payments that I made weren't going to go straight to the Fianna Fail Party.

Q. Can you tell me why, as a hard headed businessman, you would accept an explanation from even the Taoiseach that a payment to Fianna Fail should be in the form of two drafts of €25,000 each?

A. I can only repeat that I just said.

Q. You have indicated to me you were satisfied or you believed you would get explanation from Mr. Haughey. If Mr. Haughey gave you explanation and said "I want two of those €50,000s for Fianna Fail Central Funds," wasn't that an acceptable

explanation for you?

A. Yes, it was.

Q. And why wouldn't you have thought that the payment for Fianna Fail Central Funds could have been just as readily made by cheque?

A. It could have been just as readily made by cheque but he wanted it in that way.

Q. Not just as readily but perhaps more properly by cheque?

A. With the benefit of hindsight, I completely agree.

Q. Can I go further and suggest to pay it in that way was at least something which gave rise to the suspicion of irregularity?

A. Clearly there is now - otherwise you wouldn't say it - clearly there is now a suspicion of irregularity on somebody's part. I don't believe there was any irregularity on my part or that of my partners.

Q. Would you agree with me with the benefit of hindsight as you have said a moment ago dealing with political parties nowadays, you would prefer to see the transactions involving payments to them well documented on the side of the receiver as well as on the side of the giver?

A. Absolutely.

Q. You have heard the evidence of Mr. Fleming this morning showing how well they are documented on the side of the receiver and on your side this is well documented but it's in Mr. Haughey's case, in the passage of the money from Custom House Docks Development Company to Fianna Fail, that

the whole thing broke down, isn't that right?

A. Absolutely, yes.

Q. And the only thing that facilitated its breaking down was the manner of payment, isn't that right?

A. Yes.

Q. Cash payments to politicians or to anyone run the risk of irregularity, isn't that right?

Now, I have indicated that you gave no direction to Mr. Haughey that the contribution was to be anonymous.

A. That's right.

Q. And obviously if you had wanted it to be anonymous, you couldn't have expressed any surprise at not getting a receipt?

A. Absolutely.

Q. And I take it therefore you must be surprised to know that just that your contribution was whittled down to €25,000 but in fact described as an anonymous one in Fianna Fail's books?

A. I was surprised, yes.

Q. When you spoke to the Tribunal about this matter, your first response was in relation to a number of queries addressed to you by the Tribunal arising from documents made available by Mr. Paul Kavanagh, isn't that right?

A. That's correct.

Q. And then subsequently you drew to the attention of the Tribunal the other dealings you had with Mr. Kavanagh

concerning the €75,000 payment intended for Fianna Fail?

A. Yes.

Q. Is there any reason why you didn't tell the Tribunal about the €75,000 payment in your response to the initial queries concerning the Brian Lenihan fund?

A. Simply because the request for information from the Tribunal seemed a relatively narrow request, I responded to it and I had no reason to believe that there was any reason to talk about €75,000. As soon as the Tribunal asked me for further information, I immediately disclosed it.

Q. But I don't think that the further information sought by the Tribunal was information directed to queries concerning a payment of €75,000 to Fianna Fail?

A. No, no, it wasn't. I believe that the information required requested by the Tribunal was for documentary evidence and when I went to look at that documentary evidence, I realised that it was important to tell the Tribunal immediately that there had also been a payment of €75,000.

Q. When you were first responding to the Tribunal's request concerning the Brian Lenihan fund, you say that at that time you didn't think that the other information concerning the €75,000 payment in three drafts was relevant to the Tribunal's inquiries but by that stage, you'd had the benefit of a considerable amount of hindsight, isn't that right?

A. If you say so.

Q. Well you were aware of what has been happening in this

country over the past two and a half years in this Tribunal and in other Tribunals?

A. Yes, I am.

Q. And at that stage you would have been surely aware of whatever view you took of the cash payments in 1989, another view might be more, if you like, sanguine at this stage, wouldn't it?

A. Yes.

Q. Did you not think at this stage that the €75,000 payments should have been brought to the attention of the Tribunal right away?

A. What do you mean by right away?

Q. At the time of the response to the Brian Lenihan queries.

A. Well I brought it to the attention of the Tribunal within a few days of that.

Q. Had you had any contact with any person other than the Tribunal or your own lawyers in relation to this matter between the time of your first response to Mr. Davis's letters and your subsequent provision of information concerning the €75,000 cheque?

A. I have discussed it with my partners, I obviously, and I spoke to Mr. Paul Kavanagh to see what his recollection was.

Q. Apart from those two, did you have any discussion with anybody else?

A. No, I don't believe so.

Q. When you were first dealing with the Tribunal in relation

to this matter and indeed when you recently furnished information to the Tribunal, you didn't mention the fact that you had sought a receipt or that you raised queries concerning your receipt with Mr. Eoin Ryan in 1996.

A. No, I didn't.

Q. Was there any reason why you didn't bring that to the attention of the Tribunal?

A. No, no particular reason whatsoever. It didn't occur to me at the time.

Q. What do you mean by it didn't occur to you?

A. It didn't occur to me when I was responding to the Tribunal's queries that I had spoken to Eoin Ryan about the failure to acknowledge the 1989 donation.

Q. Do you mean you omitted to mention it because it wasn't in your mind or it didn't occur to you it was relevant?

A. I omitted it because it wasn't in my mind. I didn't think of it.

Q. And when you brought the matter up with your partners in the course of recent discussions with them, were any of your partners able to throw any additional light on what had happened in the interval when you first agreed to make a contribution and when you subsequently agreed with your partners to make it in the form I described earlier as being unusual?

A. No.

Q. And at that time, at the time that you made that contribution, can you recall was there anybody other than

your partners with whom you would have discussed it?

A. No, I don't think so.

Q. So that apart from Mr. Kavanagh and your own partners, you wouldn't have discussed it with anybody in 1989?

A. No, I don't think I would have done.

Q. Except of course

A. Whoever gave me instructions.

Q. Or whoever gave you the instructions?

A. Correct.

Q. Could the person who gave you those instructions have been somebody associated with Fianna Fail, with the fund raising effort or somebody directly connected with Mr. Haughey?

A. I honestly don't know.

Q. The arrangements must have been fairly precise, isn't that right, not just in relation to the payment but in relation to the meeting?

A. They must have been, yes.

Q. You had an appointment for 9:15.

A. 9:30, I believe it was 9:30.

Q. And you live on one side of the city and Mr. Haughey lives on the other side?

A. That's right.

Q. I am not sure what time you get up in the morning but you'd have to be up fairly early to get through the traffic to get to Mr. Haughey's house for 9:30?

A. It was earlier than usual for me, yes.

Q. And that appointment must have been made sometime shortly

before you were due to keep it?

A. Yes, it must have been.

Q. And you must have been awaiting instructions in relation to that appointment between the time when you made the decision to pay and when you actually made the appointment?

A. Yes, I imagine that's so.

Q. And do you think the instructions came to you directly or came to you via a secretary or official in your office?

A. I have absolutely no idea.

Q. Would you have had much direct contact with Mr. Haughey prior to making that contribution so as to warrant him having your phone number or having access to your personal phone number?

A. No.

Q. Had you ever had any personal meetings with Mr. Haughey in his house prior to that? I think you answered that already.

A. I had never been to his house.

Q. Had you ever met Mr. Haughey on a social occasion?

A. Only at a function or something of that kind.

Q. Other than official functions, had you ever met him by appointment anywhere else?

A. Never.

Q. Was the decision to make the contribution therefore solely one made by you and your partners and not influenced by any other individual that you know connected either with your business, Custom House Docks Development and I mean the

development, not your company?

A. Absolutely, it was entirely made by us.

Q. And that contact with Fianna Fail then to the extent that you have forgotten, it must have been a perfunctory one involving some official if it didn't involve Mr. Haughey?

A. I'd imagine so.

Q. But an official nevertheless who must have been acting on Mr. Haughey's instructions or reporting to him?

A. Certainly somebody must have been connected to Mr. Haughey, yes.

Q. Just to go over one or two of the aspects of the details of that. Somebody must have told you not just to make out drafts but specifically to make them payable to cash?

A. Yes, I believe they must have done.

Q. And you cannot remember yourself receiving that instruction?

A. No, I can't.

Q. And if you had received it, you think you would have remembered it?

A. I have normally got a reasonably good memory.

Q. And you remember being even surprised when you were told that that was how the drafts were to be made out?

A. I honestly don't remember anything about that whole part of it.

Q. You now know that the three drafts were in fact processed through an internal bank account in Guinness & Mahon and converted, in one case, into a credit balance on an Amiens

Account and in the case of €50,000, converted into a new draft?

A. That's right.

Q. So two of those drafts were converted from AIB drafts into a Guinness & Mahon draft?

A. Correct.

Q. They didn't go into any particular account, they were simply washed through one internal bank account and out the other end as a draft in the form of a Guinness & Mahon draft?

A. Mmm-hmm.

Q. And that draft was then transmitted to Fianna Fail and you didn't know about that until this Tribunal commenced its inquiries?

A. I knew absolutely nothing until this last week, ten days.

Q. That draft was then credited in Mr. Fleming's records in Fianna Fail as a contribution from Mr. Michael Smurfit?

A. So I believe.

Q. And again, you knew nothing about that?

A. Nothing.

Q. And you have had no contact with Mr. Smurfit about it?

A. No.

Q. So the upshot of your dealings with Mr. Haughey in 1989 is that Mr. Lenihan received nothing, as far as we know at the moment.

A. So you tell me, yes.

Q. Well I am anxious to know whether you intend to take it any

further?

A. I haven't honestly thought about it. It's, I think it's a matter for the Tribunal, I don't think it's a matter for us. We believed we were making a significant donation to Fianna Fail and if Fianna Fail did not receive that donation, it's a matter, I assume, for this Tribunal and for Fianna Fail. I don't see quite how we can take it any further.

Q. It's just that it's your money, you don't mind

A. I mind very much it didn't go where we intended it to go.

Q. And the balance of the money that you contributed which was intended to go to Fianna Fail was in fact used as €50,000 to pay for a contribution for Mr. Michael Smurfit?

A. You as you have told us, yes.

Q. Again, you didn't obviously intend that?

A. I certainly did not.

Q. Meaning no disrespect to Mr. Smurfit.

A. No disrespect to Mr. Smurfit at all, absolutely.

Q. And if you had made out payments for €100,000 in 1989 intended to go to Joe Bloggs and they didn't go to Joe Bloggs, would you be doing anything about it now if you found they went to somebody else altogether?

A. Yes, I probably would be doing something. If nobody else was doing anything, I would certainly be doing something about it, yes.

Q. You know the Tribunal cannot get this money back for you?

A. I actually don't know, I hadn't thought that through.

Q. The Tribunal has no such powers.

A. Right.

Q. Thanks very much.

MR. CONNOLLY: I have no questions, Sir.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. NESBITT:

Q. MR. NESBITT: Mr. Kavanagh, I think the first time that you thought you might be appearing before this Tribunal was when you received a letter of the 29th May 2000 and the letter stated the purpose in writing to request your assistance in connection with the initiative taken by Mr. Haughey to accumulate funds to discharge the medical expenses of Mr. Brian Lenihan?

A. That's correct.

Q. And I assume, I don't wish to understate the position but it was a matter of some substantial disappointment to you that you are learning as the Tribunal continued their work investigating into the donations you made?

A. Absolutely, I think we are all very concerned and upset about it here.

Q. Now, as has been inquired of you, to make this political donation, it wasn't a decision you could make yourself. You had to talk to the other partners in Custom House Docks Development Company?

A. That's right.

Q. And I assume that without their agreement, the donation couldn't have been made?

A. That's right.

Q. And as I understand it, not only did you have to talk to them, it was necessary to record the fact of the donation in the books and records of the Custom House Docks Development Company?

A. Yes, it was.

Q. And I assume those books and records would have been kept by a number of employees of the Custom House Docks Development Company?

A. Yes, they would have been.

Q. And I suggest to you that from the very beginning of the recording of this particular transaction, it was clearly and concisely and unambiguously recorded in the books of the Custom House Docks Development Company as a contribution to Fianna Fail?

A. Absolutely. All political contributions were recorded in exactly the same way, audited by our auditors and were entirely normal.

Q. And you personally attended on the Leader of the party, the Taoiseach, to make the donation?

A. I did.

Q. Now, were you satisfied you have done what was appropriate to ensure that the donation got through to Fianna Fail by giving it to Mr. Haughey?

A. Yes, I was handing it to the leader of the party, I couldn't think of any better person to give it to.

Q. Did you have any reason to doubt that giving it to Mr.

Haughey would not be giving it to Fianna Fail?

A. None whatsoever.

Q. Did Mr. Kavanagh, who had asked you to consider making a donation, ever return to you after the donation had been made indicating disappointment that you hadn't reacted to his request for a donation?

A. No, he didn't.

Q. Thank you very much.

CHAIRMAN: Thank you very much, Mr. Kavanagh.

A. Thank you.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Mr. Pdraig Burke.

PADRAIG BURKE, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS
BY MR. COUGHLAN:

Q. Mr. Burke, I think you furnished a Memorandum of Evidence with the assistance of the Tribunal. Do you have it with you in the witness box?

A. Not here.

Q. I'll get you a copy and lead you through it and perhaps ask you a few questions. I think you said in your memorandum, Mr. Burke, that this memorandum is done mainly from memory and that the events are over ten years old and the points made in this memorandum are as good or as bad as your memory is?

A. Fine.

Q. I think you said sometime in approximately May 1989, Mark Kavanagh at the end of a meeting at Wellington Road, informed those present that there had been a request for a once-off contribution of €100,000 to Fianna Fail/Brian Lenihan fund. He told the meeting that the request had come from Paul Kavanagh, the Fianna Fail fund raiser, is that correct?

A. Correct.

Q. I think you have informed the Tribunal that at the time at which the issue was raised, apart from yourself, those attending were Mark Kavanagh, Paul Byrne - who was Mr. Paul Byrne?

A. He was the other Hardwicke director.

Q. The other Hardwicke director.

A. Yes.

Q. Cyril Metliss, is that correct?

A. Cyril Metliss and Stephen Kalmin were British Lands directors.

Q. And Dan McInerney who was the third partner. You say that a discussion took place among the people present and it was agreed to pay the amount requested of €100,000.

A. Correct.

Q. I think you have informed the Tribunal that at a meeting in Dublin on or around the 13th June, that's 1989, at the Marketing Centre at Custom House Docks, which you were present, a payment voucher to cover the drawdown of the two

payments of €25,000 and €75,000 was initiated by members of the development committee. The voucher detailed the manner in which the payments were to be paid, that is a cheque for €25,000 and three drafts for €25,000 each. These had been recorded in the books of the company as payments to Fianna Fail. Two cheques, one for €25,000 and one for €75,000 were subsequently produced at the meeting and Mark Kavanagh and yourself signed them at the same time, is that correct?

A. Correct.

Q. I think you said that some queries were raised at the request for three drafts of €25,000 and it was agreed that the company would have to look into security of payments very carefully. Mark Kavanagh agreed to look after this, is that correct?

A. Correct.

Q. I think you say that on or about the same time, a payment of €10,000 was agreed for Fine Gael and further payment of €2,500 for the Progressive Democrats?

A. Correct.

Q. I think you informed the Tribunal you sold your shareholding in Custom House Docks in 1991 and at that stage resigned as a director. Following this you had no contact with Mark Kavanagh until approximately two weeks ago.

A. Correct.

Q. I think that's in the context of these queries being raised by the Tribunal?

A. Correct.

Q. Now, Mr. Burke, I think what was your capacity in Custom House Docks Development Company?

A. I was a director, I was representing McInerney/Hillview, it was my joint venture company in McInerneys, it was the legal entity, there were companies: Hardwicke, British Lands and Hillview.

Q. You were there in a capacity as director of Hillview/McInerney side of things?

A. Myself and Mr. Dan McInerney.

Q. You say that a meeting took place, you think, in May of 1989 at Wellington Road, was that at the offices of

A. Hardwicke, we either met there or down at the Customs House, we alternated.

Q. You say that Mr. Mark Kavanagh raised an issue towards the end of the meeting about an approach which had been made for a contribution of €100,000 for the Fianna Fail/Brian Lenihan fund?

A. That's correct.

Q. Now a discussion took place.

A. Yes.

Q. And was that discussion at that time concerned with whether or not a contribution of that size would be made and as to whether contributions might be made to other political parties?

A. I remember at that meeting it was specific to Fianna Fail.

Q. And did the discussion centre on the size of contribution?

A. Well the €100,000 was the request and that was what was on the table. Some of us thought it was a bit high but there was a debate and in the end it was decided that we could live with it, particularly in view of the fact that Dan McInerney knew that Fianna Fail were fund raising for Brian Lenihan so a number of us thought a substantial amount of this money was going to the Brian Lenihan fund.

Q. I see. And in your discussion, I take it because of subsequent events, the €100,000 was seen by those present at the meeting as being contribution both to Fianna Fail and to the Brian Lenihan fund.

A. And to Brian Lenihan.

Q. And at that meeting, was it agreed in principle to make a contribution of that sum?

A. Yes.

Q. And that's what was decided at that meeting?

A. Yes, it was at the end of the evening.

Q. At the end of the evening. Now, I think you believe that at another meeting which was sometime around the 13th June

A. I think about three to four weeks later.

Q. Yes. Which was probably held at the Custom House Docks?

A. Correct.

Q. You were present at least when a payments voucher for the drawdown of funds was presented and it was initialled by you as one of the directors, is that correct?

A. Yes.

Q. And it's also initialled by Mr. Kavanagh and Mr. Kalmin on behalf of British Lands, is that correct?

A. Yes.

Q. And that was authorising the drawing down of €100,000 specified as €25,000 made payable to Fianna Fail. Can I take it that was understood to mean that that was the contribution to Brian Lenihan's fund?

A. I am not quite clear on that, I assumed at the time some of the drafts were going to the Brian Lenihan fund but that was my assumption.

Q. I see. I'll come back to that in a moment. But in any event, there was a cheque drawn in favour of, sorry, there was authorisation for a cheque to be drawn in favour of €25,000 for Fianna Fail?

A. Yes, all payments had to be authorised.

Q. And it was done appropriately and accounted appropriately, isn't that correct?

A. Yes.

Q. And in any event, you as a director were authorising the drawing down of €100,000 to begin with and you were authorising that a cheque would be drawn in favour of Fianna Fail for €25,000, isn't that correct?

A. Correct.

Q. You were authorising that there would be a cheque drawn on your own account in Allied Irish Banks for €75,000 and that three drafts were to be purchased?

A. Yes.

Q. Just establish those facts.

A. Yes.

Q. And I think in due course, two cheques were drawn, one made payable to Fianna Fail and signed by you in the sum of €25,000 along with Mr. Kavanagh, is that correct?

A. Correct.

Q. And one drawn on your own bank account, Allied Irish Banks for €75,000 and again you believe signed by you and Mr. Kavanagh?

A. Yes.

Q. Now, I think at or around the same time, the directors agreed to make contributions to other political parties?

A. I think probably around the 13th because the election was imminent at that stage.

Q. And I think would you agree with Mr. Kavanagh's evidence that the payment to other parties was probably in the form of cheque anyway?

A. I think it's in the cheque journal.

Q. There can be little doubt but that the way that this €100,000 was dealt with in the accounts of Custom House Docks Development Limited was that both payments, the €25,000 and the €75,000 were attributed to Fianna Fail, isn't that right?

A. Correct, the €100,000.

Q. The whole €100,000 was attributed to Fianna Fail in the records of the company?

A. Correct.

Q. Now I take it that at the initial meeting when the €100,000 was requested and agreed upon in principle

A. Yes.

Q. there was no discussion at that time as to the mode of payment?

A. No, absolutely not.

Q. But at the next meeting, when the authorisation was given for the drawing down of €100,000, there had to have been some discussion as to the mode of payment because there was an authorisation for three drafts to be purchased?

A. It's set out in the voucher.

Q. What discussion did take place?

A. A number of those present were surprised with the drafts.

Q. Can I ask you first of all, was it specified that the drafts were to be cash drafts or drafts to be made payable to somebody, to the best of your knowledge?

A. To the best of my knowledge, they were to be cash drafts.

Q. Yes. And as you say, a number of those present expressed surprise?

A. Yes.

Q. It would be an unusual way for the company to conduct its business?

A. Yes.

Q. And who informed those present at the meeting that this was to be the mode of payment?

A. Mark said this was the way they wanted the payment.

Q. He said this was the way they wanted the payment?

A. Yes.

Q. Did he specify who "they" were?

A. No.

Q. So at that meeting Mr. Kavanagh knew how the payment was to be or was to be required?

A. We all knew.

Q. But he brought that information to the meeting?

A. Yes.

Q. And at that time when the discussion took place about the mode of payment and surprise was expressed, what surprise was expressed?

A. As I said, it was surprise and at my prime concern was these were literally cash and I wanted to make sure they were going to be delivered and that was my main concern. I mean this was the 13th, it's my memory when we signed the cheques so the drafts were produced on the following day, the 14th and I think Mark went to Kinsealy on the 15th.

Q. Did people know at the time that Mark was going to Kinsealy when the cheques were signed?

A. I think a number of people put it to Mark that he had to be very careful on these payments.

Q. Very careful because of the security in respect of if one of these fell on the ground?

A. If one fell in the security van or

Q. Yes. Yes. But was there surprise over and above that, that a request should be paid by a political party to have cash drafts made?

A. As I said, in my view it was clouded by the Lenihan issue, I assumed the drafts were going to the States. That's an assumption I made, no one guided me on it.

Q. But you were an experienced director of companies at that stage?

A. I was, but I think around the board table there would have been a lot of sympathy for Brian Lenihan.

Q. Absolutely and understandable but what I am saying is that as an experienced director of a company and you were authorising the spending of a substantial sum of money belonging to the company?

A. Yes, it was a substantial sum. To put it in context, I think we'd written cheques in total for about 11 million.

Q. Yes. I think that's confusing the issue a little bit, Mr. Burke. The question is was it substantial for the person receiving it?

A. Yes.

Q. It was a substantial sum of money.

A. Yes.

Q. And you were authorising this and you were a responsible director of the company, isn't that right?

A. Yes.

Q. And you believed that the drafts were going for Brian Lenihan, that's what you believed?

A. Some of them.

Q. Or some of them. Now, can I take it that as an experienced businessman, director, you wouldn't form beliefs out of

thin air?

A. No.

Q. So if you formed the belief that some of those drafts were intended for Mr. Lenihan's fund and as you say, there would have been a lot of sympathy, that somebody must have in some way made that suggestion to you?

A. I know at the first meeting McInerney said he was aware Fianna Fail were fund raising for Brian Lenihan so it was someone else at the meeting said that.

Q. I beg your pardon?

A. It was someone else at the meeting I believe to say that, were involved in a fund raising exercise for Brian Lenihan.

Q. It wasn't Mr. McInerney who said that because Mr. McInerney knew that anyway?

A. He seemed to know before Mark said it that there was fund raising going on.

Q. Can I take it that the probability is that the two directors for British Land may not have been as au fait with Mr. Lenihan's state of health at that stage?

A. Correct.

Q. And can I take it that it must have been Mr. Kavanagh who must have been the other person who conveyed the information about Mr. Lenihan? Would that be fair to say?

A. I think there was four Irish directors there, I think we all would have had

Q. But you, when you authorised the drawing down of €100,000, you yourself believed as a director of this company that

some of the drafts, and when I say you knew three were being drawn, did you know the sums they were being drawn, €25,000?

A. Yes.

Q. That some of them which, correct me if I am wrong, would indicate to me that you believed that at least €50,000 was going to the Brian Lenihan fund?

A. That's me, that was my assumption.

Q. I know that, Mr. Burke, but you were the person who was authorising the spending of the company's money here. You had to be satisfied that you were spending it for the right reason and

A. Well at the end of the day, Fianna Fail were doing the fund raising for Brian Lenihan so one way or the other it was a payment for Fianna Fail.

Q. I am not in any way asking you to deal with Fianna Fail's side of things. I am asking you, you, as a director, were authorising the spending of €100,000 and you at least as one of the people who initialled this on behalf of one of the partners, the McInerney partner in this triumvirate, believed that €50,000 was going to Mr. Lenihan?

A. Yes.

Q. Now, when Mr. Kavanagh informed this meeting of the board that this was how they wanted the payment, did he indicate who had informed him that this was how they wanted the payment?

A. No.

Q. Did anybody ask him "Who said this to you?"?

A. No, I think we probably assumed or I assumed at the time it was Paul Kavanagh but again it's assumption on my part because he had made the initial approach.

Q. I see. Did those the cheques were drawn, that's sorry the cheque for €25,000 and the cheque to buy the drafts were drawn on the 13th June, isn't that correct, 1989? We know from the dates.

A. Yes.

Q. The election was two days later on the 15th June.

A. Yes.

Q. Was it your understanding that the cheque for €25,000 was to be the contribution to Fianna Fail? Was that your understanding?

A. It was all contribution to Fianna Fail.

Q. Sorry?

A. It was all the contribution to Fianna Fail.

Q. Well, yes. Yes. It was all the contribution to Fianna Fail. But you understood the €50,000 of it was going to the Brian Lenihan fund, that was your understanding?

A. My assumption, yes.

Q. What explanation was offered as to why the drafts drawn would be made payable to cash?

A. None, it was just said this is the way they want the money.

Q. Did you know at that board meeting that Mr. Kavanagh was going to see Mr. Haughey at Kinsealy?

A. No.

Q. Did you know how the money was going to be - you say that Mr. Kavanagh was accepting responsibility for the security of the drafts because it was a lot of money?

A. I presume what was going through Mark's mind: I am going to ring up and see can I go see Mr. Haughey because it seems to be left to me.

Q. So you didn't know who was going to receive it?

A. No.

Q. Other than you knew it was all going to Fianna Fail to be used for one reason or another was your belief?

A. Yes.

Q. Did you ever find out that Mr. Kavanagh had gone to Kinsealy?

A. Around that time. I think some of us were heading off on holidays in June and I rang Mark and said "Did the payment get there?" And he said "Yes, I delivered it".

Q. Did he say that he had gone to Kinsealy and given it to Mr. Haughey?

A. He said he delivered it, yes.

Q. You didn't know to whom he was going to deliver it, Mr. Burke?

A. This is afterwards.

Q. That's what I mean. When did you find out or did you ever find out in subsequent days or months that he had been to Kinsealy?

A. Subsequent weeks I would say. Weeks rather than months.

Q. That these had been handed to Mr. Haughey?

A. Yes.

Q. You knew that?

A. Yes.

Q. Did you know that no acknowledgment or receipt had been received?

A. No.

Q. Do you know of anyone other than Mr. Paul Kavanagh, Mr. Mark Kavanagh said Mr. Paul Kavanagh did not tell him how to arrange this payment or arrange the meeting.

A. Yes, I heard him say that, yes.

Q. That accords with Mr. Paul Kavanagh's recollection of events. Mr. Kavanagh himself, in giving evidence, has no recollection of who informed him that this was to be the way it was to be done.

A. Yes.

Q. And he has no recollection of whether Mr. Haughey or somebody else arranged the meeting with Mr. Haughey, other than that it wasn't Mr. Paul Kavanagh, you heard him give that evidence?

A. Yes.

Q. I appreciate the length of time it is since those board meetings but was there ever any discussion at the meeting to inquire of Mr. Mark Kavanagh who was heading off with a large sum of money in an unsecure way, where he was going, who had spoken to him and how did they know where the money was going?

A. No, I think it was two discrete activities. There was a request for money, there was a discussion on that, there was an agreement in principle. About three, four weeks later, the mechanism was discussed and the drafts were drawn at that time. They are two quite separate issues.

Q. There isn't too much difficulty in understanding or following the initial approach. Mr. Paul Kavanagh approached Mr. Mark Kavanagh and asked him for the donation for Fianna Fail and for the Brian Lenihan fund. That was brought to the board by Mr. Mark Kavanagh and it was agreed in principle?

A. It was after a board meeting but

Q. But the board agreed it

A. The members of the board agreed it.

Q. The members of the board agreed it in principle. Perfectly straightforward, you would imagine, following whatever discussion took place that it might have been a bit steep or words to that effect but it was agreed in principle?

A. Yeah.

Q. There was undoubtedly surprise at the board meeting when the mode of payment was discussed, isn't that right?

A. Yes.

Q. And surely, Mr. Burke, there must have been some discussion as to who had conveyed this mode of payment to Mr. Mark Kavanagh at the time?

A. I don't think so.

Q. You don't think so?

A. No.

Q. Is that yes or no or maybe, Mr. Burke?

A. My memory is that there was surprise when the request for three drafts came up but a lot of this subsequent discussion was on the security for the payment. That they were cash, basically.

Q. Mmm. Did Mark Kavanagh ever mention that anybody other than somebody from Fianna Fail may have suggested this to him?

A. No.

Q. And nobody at that board meeting knew before Mr. Kavanagh met Mr. Haughey that he was going to meet him?

A. I think Mark might have been surprised at the meeting when a number of people said they weren't, you know, enamoured with the idea of drafts being paid and we had to be very careful. I think Mark took it on board at that meeting which would have been on the afternoon of the 13th.

Q. Mmm. Had this payment been discussed at the board of McInerneys?

A. I don't know, I was never a member of the McInerney board but I did discuss it with Dan McInerney.

Q. You discussed it with Dan McInerney. Do you know if the payment had been discussed with the board of British Land, for example?

A. I don't know about the board but Cyril Metliss would have been fairly senior in British Land as would Stephen Kalmin. I am sure they had a meeting back in London.

Q. And when you spoke to Mark Kavanagh some weeks later, he informed you, is that correct, that he had been to Kinsealy to Mr. Haughey and had handed him the drafts and the cheque?

A. Yes.

Q. He informed you of all of that?

A. He told me he had been to Kinsealy and that the payment was made.

Q. That the payment was made?

A. I am not sure it was payment was the word used but we both knew what we understood.

Q. And did you ever have any other discussion with Mr. Kavanagh or with any other director about it after that?

A. No.

Q. Mr. Burke, it's a question that I have to ask you because I think you would have been aware of what was going on during the course of this Tribunal, isn't that correct, from general newspaper or

A. General newspaper, I spend a lot of time out of the country so I'd only pick up half of it.

Q. Were you aware there was significant controversy surrounding what was called the Brian Lenihan fund?

A. Yes, in a general way, not in a specific way.

Q. And you had always believed, rightly or wrongly believed but you had always believed that your company had made a donation of €50,000 to the Brian Lenihan fund?

A. Yeah, I personally, rightly or wrongly.

Q. Did it ever occur to you that you should have brought that information to the attention of the Tribunal when you saw the controversy and the lengths the Tribunal was going to try and establish the full extent of that?

A. I left the Customs House company in 1991 and early 1992 and I decided to turn a new leaf at that time and I decided to go my own way and I left Customs House behind me.

Q. I see.

A. So I am nine years out of it.

Q. I understand all of that. What do you mean by turning a new leaf?

A. Just doing my own thing.

Q. Was there something about Customs House and this transaction which caused you some disquiet or upset?

A. No.

Q. That it would have prevented you from bringing this information to the attention of the Tribunal?

A. No. As I said to you, I spent - I am off to London this evening, I am gone for the rest of the week, I didn't follow, I don't follow the Tribunals in great detail.

Q. No, I wouldn't ask you to follow it in detail but you knew there was huge controversy surrounding the Mr. Brian Lenihan fund, didn't you?

A. I knew there was controversy, yeah, but at that stage I wasn't a member of the Customs House.

Q. Thank you.

MR. CONNOLLY: I have no questions.

CHAIRMAN: Thank you for your attendance, Mr. Burke.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Those are the witnesses today.

CHAIRMAN: Usual time tomorrow morning.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

WEDNESDAY, 28TH JUNE 2000 AT 10:30AM.