

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY, 28TH JUNE

2001 AS 11AM.

CONTINUATION OF EXAMINATION OF DENIS O'BRIEN BY

MR. COUGHLAN:

Q. MR. COUGHLAN: Now, Mr. O'Brien, if we could return to Mr. Walsh's note of the meeting of the 23rd October.

I think if you go to, I think it's page 12 of the note.

I think you see the page commences "Fergus Armstrong advised" and then the claim of privilege. And then the note continues: "Denis O'Brien said he had raised the matter with Barry Moloney because he felt he had to reassure Barry that nothing had been done. Barry Moloney asked Denis O'Brien why he was saying nothing had happened and Denis O'Brien had said it" and the note is illegible

A. Sorry, I am not getting this properly. It's at the bottom of 11, is it?

Q. "(a)John Callaghan queried whether any third party had been named or

(b) queried whether Barry Moloney must still have doubts despite assurances. Felt it necessary to inform the Board. Barry Moloney said the first time he had any reason to be concerned was when Denis O'Brien raised the issue and confirmed nothing had happened."

Do you see that at the bottom of page 11?

A. I have the notes typewritten so I might be on a

different page.

Q. I am operating from the typewritten notes. Do you see the bottom unless we have different numbers

A. You may have. I have the earlier version when they were typed, then they were proofed, so

Q. If you can just find for a moment

A. I have "FA advised" then "DOB said he had raised the matter".

Q. If you go to the previous paragraph?

A. I have it now.

Q. Do you see that?

A. Yeah.

Q. "JC queried whether any third party had been named. RB queried whether Barry Moloney must still have doubts as despite assurance he had felt it necessary to inform the board. Barry Moloney said the first time he had any reason to be concerned was when Denis O'Brien raised the issue and confirmed nothing had happened."

Do you see that?

A. Yeah.

Q. And then if you go to the next paragraph, then, "Fergus Armstrong advised" and then there is the privilege.

A. Yeah.

Q. And then "Denis O'Brien said he had raised the matter with Barry Moloney, because he felt he had to reassure Barry Moloney that nothing had been done. Barry Moloney asked Denis O'Brien why he was saying nothing

had happened. Denis O'Brien he had said it" and

then the note becomes illegible at that stage.

Could I just pause there at that stage for a moment and

ask you do you accept

MR. McGONIGAL: I am reading the handwritten note,

Chairman. It appears to be "Had said it got stuck."

I think that is what, in fact, the end of that sentence

is.

CHAIRMAN: Thank you for that, Mr. McGonigal.

Q. MR. COUGHLAN: Thank you. And this is Barry Moloney

speaking. "Barry Moloney asked Denis O'Brien why he

was saying nothing had happened and Denis O'Brien had

said it got stuck." I think that is a note of

Mr. Moloney speaking, would you agree?

A. Is that all of Mr. Moloney, is it?

Q. No. I think the first part is

A. John Callaghan.

Q. John Callaghan is querying

A. then Busch.

Q. then Rolf Busch.

A. then Barry.

Q. Then Barry Moloney said the first time he had any

reason to be concerned was when Denis O'Brien raised

the issue and confirmed nothing had happened. Then

Fergus Armstrong gave some advice. Then the note

continues, "Denis O'Brien said he had raised the matter with Barry Moloney because he felt he had to reassure Barry that nothing had been done." Do you remember saying that?

A. It was always my recollection that Barry raised it with me. Not the other way around. So I don't remember saying this. These are a resume (Fr) aren't they?

Q. Yes, they are Mr. Walsh's?

A. So maybe there could be some confusion in his mind who said what.

Q. Very good. But do you think that that could be the situation, that there was some confusion in Mr. Walsh's mind? You could be correct, I am just wondering

A. There could be some confusion here, but I don't remember having raised the matter with

Q. Barry Moloney?

A. I would have no reason to raise the matter, I don't think.

Q. Then "Arve Johansen queried whether there was a way to slow down the IPO. Denis O'Brien said 'No'. John Fortune queried what exposure the directors had, taking into account what he had done." And then Fergus Armstrong gave some advice in relation to that matter?

A. Mm-hmm.

Q. "Barry Moloney reiterated that his main concern was that there was a middle man/intermediary and not just a bank involved. RB reiterated that Barry Moloney must

be concerned otherwise he would not have informed the board. John Callaghan explained Barry Moloney's role as feeling he had to share the information. Barry Moloney confirmed John Callaghan's view.

John Callaghan said that Barry Moloney had shared the information and it was now the responsibility of the board members to decide how to deal with it." Do you remember that?

A. I actually don't remember that dialogue. I certainly don't remember, you know, him saying about a middle man.

Q. You don't remember him saying 'middle man'?

A. No.

Q. Now, we'll come to Mr. Walsh's evidence in due course and his view on his own note. But would you accept that it's probable that it was said if Mr. Walsh noted the word "Middle man" and "Intermediary"?

A. I have no idea, to be honest with you. Certainly in my notes of the 23rd

Q. I'll come to those in due course?

A. there is nothing there.

Q. Yes. Now, I don't think that there is any suggestion that Mr. Walsh was in any way attempting to derail the IPO, was there?

A. Absolutely not. In fact, he was a very business-like professional through the whole process, and fair.

Q. Well, we will come to it in due course, but it's on that basis, if you don't believe that he was an a person who was in any way attempting to derail the IPO, that one could place some reliance on his note?

A. I mean, these notes are a resume (Fr) of what he believed to have been spoken about on the 23rd.

Q. Now, I'll continue the note. "The discussion returned to the IPO and its timing relative to the Tribunal."

Do you remember a discussion about that?

A. I remember the discussion of the IPO, but not relative to the Tribunal.

Q. I see. You don't remember any discussion about the Tribunal?

A. I don't remember I mean, it could be in my notes of the 23rd, but I am not sure.

Q. I am just asking you for your recollection. Do you remember any discussion?

A. I can't remember any discussion unless it's in my notes.

Q. "John Callaghan said the IPO timing had nothing to do with the Tribunal. RB said he would not expose himself to any liability to get the IPO to fly.

Fergus Armstrong suggested" then there is advice

"John Callaghan said the directors were behaving

responsibly. There had been a comprehensive

discussion and people were reflecting on the issues.

John Callaghan wondered whether it was a collective or

individual decision." Then some advice about that.

"John Fortune said that he was trying to deal with interpretation" sorry "we were trying to deal with interpretation. There were conflicting recollections of conversations. There were no facts to sustain them and we were dealing with Barry Moloney's interpretation of the conversations. The discussion then moved to the matter where there were" not made out "and those relevant to the \$25,000 a plate dinner with Bruton David Austin had organised and the money was paid into an account in Jersey. Telenor are to" again illegible

A. Probably 'provide'.

Q. "Provide the paperwork associated with the payment.

In conclusion, Fergus Armstrong reiterated the view that no new advice had been taken and Barry Moloney confirmed that if he was called to the Tribunal his statement would cover what he had said this evening.

Fergus Armstrong pointed out" and then there is advice on that "RB suggested as a way of going forward that Fergus Armstrong would get us advice. We would draft a letter to the underwriters clarifying the limits of ESAT Digifone's responsibilities in addition to Denis O'Brien, Barry Moloney. KPMG letters previously discussed. It was agreed to resume the discussion next Thursday 30th October at Baggot Street."

Now, I think that completes Mr. Walsh's note of that meeting of the

A. 23rd.

Q. 23rd October, isn't that correct? And you can't remember any particular discussion about the Tribunal?

A. Unless it's in my other notes, my handwritten notes.

Q. We'll go to those.

A. I don't actually

Q. At the moment you don't recollect?

A. No, I don't.

Q. Your memory may be refreshed if it's in your notes?

A. Yes.

Q. Now, if we go to your notes so of the meeting there is just one final matter in relation to these notes and again, you weren't present, if you go to page 16 of Mr. Walsh's notes and if you go to the second paragraph under the date, the 5th November, 1997. It begins "Barry Moloney believed underwriters would want a change..." Do you see that paragraph?

A. Yeah. This is in the context, what had been changed?

Q. I am unsure about that at the moment and I am not going to ask you about it?

A. Right. Okay.

Q. "Barry Moloney was concerned because there was no insurance. Michael Walsh said they had to act as directors in the best interests of the company. Barry

Moloney said he needed to get his own advice. He had a different set of issues because he had given up a lot to take the job and it was difficult to walk away.

Then he had to consider how the underwriters viewed it." It's the next sentence that I just wondered about, whether you wished to make any comment. "Barry Moloney was concerned that a third party might know of Denis O'Brien's intent to make a payment. Barry Moloney could not figure out who the second 100K was for. There was no logical other person."

Now, were you aware that, even after the meeting of the 23rd and the inquisition on the 4th November, that Barry Moloney was still concerned that a third party might be aware of the intent?

A. Well, from what I read of all these notes it was still on his mind.

Q. It was still on his mind?

A. At the time I didn't think it was on his mind. I don't believe I did anyway. I was in the States, I had no contact with him.

Q. And I think he did inform the board members on the 23rd that if he was called to the Tribunal his statement would cover the matters which were discussed that evening, isn't that correct?

A. I think he said that somewhere, yes.

Q. Do you remember him saying that or do you accept Mr. Walsh's note of that?

A. I don't remember him saying it but Mr. Walsh kept a note of it so maybe he might have said that piece.

Q. If you go now to your own notes of that meeting, because you made notes of the meeting on the 23rd yourself, isn't that correct?

A. Well, they are a little bit cryptic, but

Q. I know

A. I just grabbed three-pieces of paper on the night but I was doing a bit of the talking so it's best as I could.

Q. There is no criticism that there isn't a verbatim account. It's just your note of what you considered the major issues as you went along?

A. Yeah.

Q. And you have that, do you?

A. Yeah, it's that one there. I don't have the blacked out version but it doesn't matter, I think.

Q. Well, if you go to the page 1, the date is on the top, isn't it, 23rd October?

A. 9.10 p.m.

Q. And then there is Mr. Armstrong says something, that's blacked out.

A. Yes.

Q. Then is there a number to the left?

A. It says "Not a board meeting."

Q. Could you read it, please, because it's your writing?

A. I don't know which piece is privileged.

Q. I'll deal with it so and if I am incorrect in

understanding any word you might correct me.

"Preliminarily legal advice has been circulated.

A. specific

Q. "Concerning impending IPO I can't make out "how it affects ESAT Digifone." Then the rest of that page is blacked out, all right?

A. All right, okay.

Q. Then if you go to page 2. Dermot Desmond I take it this is something Mr. Desmond said, 'DD', is that correct?

A. Yeah.

Q. "Is about dilemma re conversations that CEO thinks are not relevant to the company." That's to ESAT Digifone.

A. Yeah.

Q. "Barry, yes.

DD "Conversation Denis O'Brien and Barry Moloney at a meeting discussed Tribunal. Denis O'Brien told Barry Moloney there was absolutely no payment."

A. This could have been referring to July when Barry may have, and I don't fully remember what he said, but he could have raised the Tribunal with me.

Q. Then "First conversation October November. Had been

A. An attempt

Q. I beg your pardon, "First conversation October/November", is that right?

A. Yes.

Q. "Had been an intent. There was no payment." Then the rest of that page is blacked out.

"3, Rolf, postpone IPO, if not reflect the past", is it?

A. "The facts and give facts to people involved.

Q. "Give facts to people involved in IPO" I take it, is it? I presume that's underwriters and

A. Well, we obviously went to the underwriters.

Q. Then "DD

A. I'll read what he said. "We undermine the stakeholder in the company if the IPO is postponed. I am happy to accept a letter from the chairman and his company's auditors.

Q. The next piece is blanked out Mr. Armstrong.

A. Then Dermot Desmond: "There is a lust to overthrow success."

Q. Then, Denis O'Brien said 'bravado' on three occasions. Denis O'Brien also told Barry and he accepted." Then on page 4 "Contemplated or acted upon", is that right?

A. Somebody may have posed a question. "Barry said"

Q. "I don't want to know."

A. He could have said that at that time. I don't know.

Q. "Barry Moloney issue..." Sorry, I don't think that I'll just ask you about that. Do you think that Mr. Moloney said that for the first time at the meeting of the 23rd or is it somebody recounting that that was

said at the time of the initial conversation, "I don't want to know"?

A. I actually don't know because I go on to say then "Barry Moloney said".

Q. It's in quotation marks. Who do you think said it, you or Mr. Moloney?

A. I actually don't know who said that.

Q. Very good. It's unlikely it would have been put in quotation marks if it was said there for the first time, would you agree?

A. Actually I am not sure.

Q. Very good. Then we continue so with the note.

"Barry Moloney issue of success fee was in the context of getting invoices - were for roles in bid, consultants, advisers. Barry Moloney was expressing concern. Denis said relax, there were 2 other payments of $\frac{1}{2}$ 100,000. Had to make, one to Michael Lowry

A. This is what he is saying.

Q. "I don't want to know about it" end of conversation. Then we"

A. "Denis never said he wanted money refunded." I am not sure what that word my writing is not great, but

Q. "Denis O'Brien assured no. Denis O'Brien said if you think that, Barry, you have got problems,. Then PJ Mitchell" it was said at the time, all I am trying to get

A. We were rattling off the consultants and the people who were involved at the time but I don't think he was a person.

Q. Then go to page 5 of the note. "Barry Moloney: Denis O'Brien had said payment was Denis O'Brien has said payment was stuck with a third party. Denis O'Brien said if I was paying anybody, I would go to AIB and pay." Do you say that?

A. I said something like that anyway, I wrote it down.

Q. Why would you have said AIB?

A. Bank, I was talking basically in the context of a bank.

Q. Well, Woodchester was always your bank?

A. It was, yeah, but obviously I had an account in AIB at the time as well to.

Q. where?

A. In AIB in, I think in, what do you call it? I know I had one in London which I mentioned.

Q. You mentioned that?

A. I think I had an account also in Clonskeagh at some stage.

Q. Was that account in Clonskeagh operated for you by Mr. Phelan, by any chance?

A. I actually don't know. I mean it was my they were my bankers for a long time.

Q. It was at the time close to Mr. Phelan's office, isn't that right, in Clonskeagh?

A. Yeah, it's right beside his office.

Q. And of course at that time, or sorry, prior to that, you had sorry, an account was opened in the Isle of Man in AIB. It may not have been in your name, we have to get full particulars of that, isn't that correct?

A. It definitely wasn't in my name so it certainly was not in that context.

Q. Do you think it was in Mr. Phelan's name? Sorry, it was in Mr. Phelan's name, I beg your pardon, sorry, isn't that correct?

A. The point we are saying is if I was paying anybody I would go to a bank and AIB was a name that I just threw at the time, I think.

Q. Now, we continue the note. "Barry Moloney "Share understanding of events". October/November '96.

A third party has knowledge." So this seems to be Mr. Moloney informing the board of his concerns.

"So company is at risk. Denis O'Brien and Barry Moloney "Denis O'Brien to Barry Moloney concerns" probably addressing Barry Moloney's concerns.

A. concession or concern conversation.

Q. "Conversation October/November 1996 in context about issue of success fees

A. Mitchell, Cloonan, Keating

Q. Sorry, "In context amount issue of success fees."

Then three names, "Mitchell, Stephen C, PJ."

A. Mm-hmm.

Q. "Barry Moloney was expressing frustration "You think you have problems, I have had to make two payments of 100,000 each 25 August, Denis O'Brien reminded Barry Moloney of statement" and there is a dash "I did not actually do it." I don't know what "Next week

A. "Next week the statement was made".

Q. "Next week the statement was made."

A. This is what Barry was saying, I think. "I know you must be concerned."

Q. Could you go to the top of page 6? I am sorry, Mr. O'Brien, what's the first word?

A. "Next week."

Q. "The

A. "The statement was made two consecutive Mondays. I know you must be concerned."

Q. Sorry, this seems to be somebody recounting that the statement was made on two consecutive Mondays. Would those be days on which you would attend the office or have meetings with Mr. Moloney?

A. I believe what I am recounting is what Mr. Moloney said.

Q. But I am asking you, would you have had meetings with Mr. Moloney on Mondays?

A. Oh, Monday was always the day, yeah.

Q. So what is being recounted here is that Mr. Moloney, you believe, is informing those present that

A. he had a meeting or that

Q. Two meetings.

A. Two meetings.

Q. And that you reminded him of the statement and you told him that you didn't actually do it. "I know you must be concerned."?

A. Well, this is what he is saying, that I reminded him, Barry, of the statement 'I did not actually do it'.

Q. Did you say that to Mr. Moloney on two consecutive Mondays?

A. I don't know whether it was two consecutive Mondays but I would have said to him, if he had asked me, you know, 'I didn't do it'. I could have used the words "I know you must be concerned" but I am not absolutely positive.

Q. Then "The IPO, 8/9 October, sought some advice. Conversation 8 - if I had intended to make a payment" "I had intended to make a payment"

A. This is Moloney speaking because he goes on to say, "four separate attempts"

Q. Sorry - "four separate attempts"

A. "Potential position re something IPO, on re

Q. "If impact on IPO

October 13

A. "Four separate attempts. Potential position re"

Q. That may be a reference to the various meetings Mr. Moloney had with you in relation to the IPO, isn't that correct?

A. That could be, yeah.

Q. "October 13, gave draft preliminary advices.

Sandwiches. No payments had gone, proposed to give letter

A. "Sandwich" it said "no payment had gone, prepared to give a letter."

Q. Then "No material damage to licence. Barry Moloney.

Final outcome

1. Letter to underwriters making a clear statement re degree of involvement responsibility disclaimer.

2. Denis letter re Prospectus.

Expressing no view on licence". This is for ESAT

Digifone, I presume. Sorry, "Disclaimer expressing no view on licence."

A. Mm-hmm.

Q. "2. Denis letter

3. KPMG letter no payment

4. To company's lawyers, William Fry."

Then

A. "Setting out info, CEO.

Q. "Statement from Barry Moloney. Statement from Denis O'Brien to be done and sent to William Fry as

solicitors for issuer."

A. Yeah.

Q. Are we correct?

A. No, you are right. We were the issuer.

Q. Now, would you agree it appears from your note of the

meeting that Mr. Moloney had informed or was informing the board members that his concern arose in the context of you coming to him in the late summer of 1997 on two consecutive Mondays, or whenever, and that you had informed him that you hadn't actually done it and you knew that he must be concerned?

A. It's my recollection that he raised it, not me. I mean, I had no reason to raise it.

Q. Well, let's leave who raised it out of the equation for the moment. Do you accept that that was what the board was being informed by Mr. Moloney?

A. Well, the notes are there or thereabouts, of what the conversation was all about.

Q. And these are your notes, but all I want to know at the moment is do you accept that that's what the board was being informed by Mr. Moloney?

A. If as you know, they are quoted here on the notes, yeah, I'd accept that they are probably most likely to be reasonably accurate.

Q. And did you inform the board that Mr. Moloney was inaccurate in relation to that?

A. Inaccurate? I gave my view in the quotation.

Q. No, on how it was raised in this context in the late summer of 1997, did you say to the board that Mr. Moloney is incorrect or inaccurate in that?

A. I actually don't remember, but I might have said, look, I think it was he who raised it but it's not in those

notes.

Q. No, it's not in your notes and it doesn't seem to be in Mr. Walsh's notes of the meeting either?

A. No, not in his resume(Fr), no.

Q. And did you inform the board that Mr. Moloney's concern that a third party may know about the intent or that a third party may have had some involvement was an invalid concern on his part because there was no third party involved at all? Did you inform the board of that?

A. Well, I can only rely on what my notes have said here, which are four years ago, but if we go back through them. I think he had one view of what was said and I had another view.

Q. Well, Mr. Moloney, up to the, I think, 5th or 6th November on the notes we have, that is Mr. Walsh's note of a meeting with him after the inquisition or a telephone conversation, was still expressing concern that a third party may know about the intent.

A. Well, it's interesting, because if you go through Mr. Moloney's notes

Q. Yes, which I will in due course?

A. There is no reference at all to an intermediary. Very later on in tab something, when he goes, you know, steps that I tried to take to stop, you know, to, you know, I don't know what the words were, but he doesn't mention in his other notes anything about an

intermediary and it only comes in later in the day.

So, you know, I have no recollection of ever saying an intermediary or a third party.

Q. Well, it was

A. In the 23rd, it appears.

Q. It's clearly been mentioned by the 23rd anyway, isn't that right?

A. It could have been for the first time on the 23rd, I am not sure, Mr. Coughlan.

Q. Well, I think Mr. Walsh's notes of his earlier conversation with Mr. Moloney records a concern of Mr. Moloney's, isn't that correct?

A. Where is that now? Yeah, he says here, yeah, on the 13th or 14th, I am not sure, there is some debate on the date.

Q. Whether it was the 13th or the 14th. Yes, 14th, maybe, that Mr. Moloney is expressing such a concern to him, isn't that correct?

A. Yeah, again I wasn't at the meeting.

Q. No, I understand that. But what Mr. Walsh is doing is and I know you weren't at the meeting but I am just asking, Mr. Walsh is recording something Mr.

Moloney

A. that's what

Q. told him?

A. Yeah, but then in his own notes he doesn't have it so I am not sure what the difference is here.

Q. Now, again you have informed us that you had a view that Mr. Moloney had a view about the IPO.

A. Well, I think that's shared in these notes when you look at Mr. Desmond's comments.

Q. That he was trying to derail the IPO, in your view?

A. And the comment he made was "There was a lust to overthrow success" in that context. So I don't think I was alone in having that view at the time.

Q. And Mr. Walsh was a fellow director of

A. he was, yes.

Q. from Mr. Desmond's, from the IIU side of the board, isn't that correct?

A. Yeah.

Q. And what he is recording on the we take it as being the 14th for the moment is Mr. Moloney expressing a concern to him

A. In some ways, I mean, maybe I am wrong here, but Mr. Walsh was interfacing a lot with Barry Moloney at the time. They seemed to be Barry was phoning him an awful lot and that's why there is all these notes.

Q. Yes, I think you are probably right. And Mr. Walsh was keeping a note of the conversations?

A. And I think he was trying to keep, you know, make sure that Barry kept everything in perspective.

Q. Yes, I can understand that as well. But he records that Barry Moloney told him that he was particularly concerned because he believed an intermediary was

involved and that the intermediary was aware of Denis's intent to give money to Michael Lowry." Now, according to Mr. Walsh's note, he was informed of that by Mr. Moloney as of the 14th anyway?

A. Mmm. But you don't see it in Mr. Moloney's notes.

Q. I understand that, but I am asking you to accept that a third party who, in your view, was anxious to support the IPO of ESAT Telecom, would that be fair to say?

A. We have to watch the word 'third party' but he was a fellow director.

Q. Somebody other than yourself or Mr. Moloney anyway?

A. That's right, yeah. He obviously was being responsible by going through everything. And ultimately I think he voted for to go ahead or he had comments to the effect that he was happy.

Q. But if I could come back then to the question when it was being asserted at the meeting of the 23rd, I know I asked you yesterday whether you informed the board that you believed that Barry Moloney was trying to derail the IPO and that that was his reason for introducing this particular element, but did you ever say to the board that 'Barry Moloney is inaccurate on a number of accounts; first of all, I didn't approach him in the late summer, he approached me'?

A. I would have privately said it to people.

Q. You would have privately said that to people?

A. Yeah. I mean, this evening was like an inquisition.

He was giving his view of what happened and I was giving mine and, to be honest with you, I was in a rush out of there because I had a 7.30 presentation in Milan. So I knew the later this went on, the worse it was going to be for me because, effectively, I was going to be up all night.

Q. But this had become very serious, hadn't it?

A. Well, I knew it was serious on the 13th and that's why I went to Michael Walsh. And then I thought that the thing had stopped but what we didn't realise is that he had already was already taking advice and hadn't informed us.

Q. Sorry, could you repeat that, sorry, I just lost my

A. I knew that on the 13th what his intentions were and I thought at that stage it had been stopped because I was writing a letter. But what we hadn't realised, I think, I could be right or wrong in this, but that he had already started legal, getting legal advice, which we didn't know about but we thought the matter was, that he was taking everything for granted and everything was fine on the 13th.

Q. Now, of course Mr. Moloney I think you knew on the 13th, you believe you knew on the 13th that he was taking legal advice from

A. no, no I know now that he maybe there was a slip at the time but we found out.

Q. Well, Michael Walsh seems to have known that he was

taking legal advice because he seems to record that Mr. Moloney had been with Fergus Armstrong, isn't that correct?

A. At various stages in his notes. He later on, I think, I am not so sure if they are early on

Q. I think on the 13th Mr. Walsh records that "Barry Moloney contacted him to say he had talked to you and was going to see McCanns. Michael Walsh agreed to see Barry Moloney after McCanns." So he must have been aware on the 13th that

A. Where is that?

Q. If you go to the first page of Mr. Walsh's notes, of the typed version. The fourth paragraph.

MR. MCGONIGAL: That's the second page, Mr. Chairman, of the handwritten notes, I think, I think Mr. Coughlan is referring to and I was indicating yesterday and I indicated yesterday that that was that part of the reason why I thought this page related to the 14th was because in that paragraph it says "Barry Moloney contacted MW to say he had talked to DFD" which is Dermot Desmond.

CHAIRMAN: It seems to be 'DOB'. Perhaps we are not on the same matter. I am working from the fourth paragraph of the handwritten version of Mr. Walsh's notes.

MR. MCGONIGAL: "Barry Moloney contacted MW to say he

had talked to Dermot Desmond" I think that is.

CHAIRMAN: Well, you think then it's been an error, Mr.

McGonigal

MR. MCGONIGAL: No. The reason why I am saying this is because there was a meeting between, a contact between Barry Moloney and Dermot Desmond, if I am right about that. It was on the 14th and then this then comes after this, so that would all be on the 14th. I thought Mr. Coughlan agreed with me yesterday about this. Maybe we don't agree.

MR. COUGHLAN: Sorry, I don't know. This is Mr.

Walsh's note and

MR. MCGONIGAL: I may be wrong but it was the way I presented it yesterday and I thought it was accepted yesterday. But it can be clarified.

MR. COUGHLAN: It can be clarified.

A. You can ask Michael Walsh.

Q. We can ask Mr. Walsh. We can ask Mr. Moloney, we can ask McCanns, I suppose. That's the best way to

A. They'll all have an opinion.

Q. That should be a fact, wouldn't you think, when he contacted them.

Now, in any event, you believe that whilst you didn't inform the meeting of the directors which was taking

place on the 23rd October of 1997 that Mr. Moloney was inaccurate in his recollection, that it was you had approached him on two occasions in the late summer of 1997, that you did so privately afterwards, is that correct?

A. Yeah. I mean, if you look at the notes of these meetings, there was no big debate about we weren't arguing with each other who said what. Everybody just said what was their interpretation of the conversation and that was it. But privately I would have shared my concerns with some of the other people involved.

Q. Well, that was a concern which you spoke about yesterday, is it, an attempt to derail the IPO?

A. Well, yes, and I think representatives of all the shareholders had that concern that they wondered what the motive was here. I think Mr. Johansen used some words to that effect.

Q. Who used that?

A. Mr. Johansen. Maybe he didn't use the word "Motive" but he questioned was this the antagonism or the disagreement between myself and Barry.

Q. Was it Mr. Johansen or Mr. Desmond?

A. Well, Mr. Desmond I think we have dealt with but Mr. Johansen in one of the notes here, whether it was tied down to the continuing disagreement between myself and Mr. Moloney, I am not sure what word he used.

Q. Was there a continuing disagreement between you at that

time?

A. Well, I mean, as I explained at the outset, you know, our relationship was strained and that's why I kept running with him in the mountains to see if we could get some working relationship to continue.

Q. When this issue arose and when matters moved onto the 13th November of 1997, you, or you and Mr. Moloney decided to involve Mr. Walsh, isn't that correct?

A. I did.

Q. You did?

A. I immediately called him.

Q. And the other directors, that is the Telenor directors, were not involved at that stage, is that correct, as of the 13th or 14th?

A. I don't think they were but I couldn't be precise about that. It's my understanding that I was the first person to raise the issue with outside directors.

Q. What interests did IIU have at that time?

A. I think either they changed they started off with 25, then they went to 20, then they went to 15, then they went to 10, then to 1. So I think they could have had either 10 or 15%, something like that, but it was a meaningful equity position.

Q. That was a shareholding interest, is that correct, in ESAT Digifone?

A. Yes.

Q. Did they have any other interest?

A. In ESAT Digifone or in ESAT Telecom?

Q. In either.

A. No.

Q. Or any other company?

A. Not that I am aware of. My understanding is that they only had one shareholding and that's in ESAT Digifone.

Q. Did they have any interest in respect of Communicorp?

A. No.

Q. And when I use just to make it clear when I use the expression "Interest" I am not just talking about shareholding. Did they have any other interest in ESAT Telecom or Communicorp?

A. I am not sure what you mean by "interest".

Q. Did they have any position of offering financial support to either ESAT Telecom or Communicorp at the time?

A. At that time, no. They played a very valuable role and they were good shareholders and they played it down the middle. They were very important shareholders because they were in the middle.

Q. Mm-hmm. Well, and I am not casting any aspersion on Mr. Walsh or Mr. Desmond in this regard, but you went and you told them about something which Telenor was not informed of, isn't that correct?

A. Yes, I did, because they were deemed to be independent and, you know, I wasn't sure which way, what Telenor's agenda was.

Q. Agenda?

A. As I explained yesterday, we had different views as to what, whether they wanted the IPO to go ahead or whether they wanted ESAT Digifone to IPO.

Q. Would you go to Mr. Moloney's notes please?

A. The latest or the older?

Q. The first set of notes.

A. Okay.

MR. MCGONIGAL: I should indicate, Mr. Chairman, in relation to these notes I have asked Mr. Coughlan, and I know he is going to try and get them for me, is an opportunity to see the originals of these notes to try and date some of them. We have difficulty in following some of them.

CHAIRMAN: I think that's proper and correct, Mr. McGonigal, and I'd certainly be of a view that you should be facilitated.

MR. MCGONIGAL: Thank you.

MR. COUGHLAN: Now, they are at book 29 A, the divider 3, you see the statement of Mr. Moloney and then just before tab 1, there is an index to the various documents. Do you have that.

A. Mm-hmm, yes, I do. So you want to deal with his statement, do you?

Q. I am going to deal with the notes, is that all right?

A. Yeah.

Q. If you go to tab 7 and that's described as "Handwritten preparatory notes of Barry Moloney for meeting with Denis O'Brien" do you see that?

A. Yes, it's dated the 13th.

Q. The 13th October 1997. And it then reads: "DOB

1. Change in wording of statement not enough

2. Real problem for the company Irish and US law if anything comes up

3. Directors insurance will be invalid.

4. My participation in the IPO endorses the

statement.

5. My shareholding in ESAT Telecom could leave me open to actions."

Then there is a line drawn under that and then

"Appeal to him to delay the IPO until after the

Tribunal.

2. If he refuses, I want the monkey "Off my back" and the board to be part of the risk.

3. Either he calls a board meeting to get board buy in to the risk or I will share my concerns with one of the other directors."

Then over "Digifone update" "analog." I think these are irrelevant to the other issues, isn't that correct?

A. Yeah.

Q. Then on the 8th tab 8, there is a note of Mr.

Moloney's dated 14th October, 1997, handwritten note of Barry Moloney on conversation with Michael Walsh at IIU.

The first portion of it seems to be unrelated.

A. It's "Chamber of Commerce2 - something - "sponsorship".

Q. Then "Disclaimer from advisers which protect us in any way.

Need legal advice.

Mr. Walsh conversation 14/10/97 in IIU.

Do not want to take any responsibility for it.

USA request for advice.

This company is 45% owned by a company seeking to raise money in the Stock Exchange.

ESAT Digifone have no problem with this as long as we are not liable in any way for info contained herein"?

A. This seems like it Mr. Walsh, is it, saying that?

Q. Well, you may be right. "Does this cover us as a company in this situation?"

I think what appears to be the situation is does the type of disclaimer which is in the there seems to be a proposition or a question arising around the disclaimer which is contained in the Prospectus, and that seems to be some discussion as to whether it protects them in the event of any action being taken against the issuers, I think that seems to be the

situation.

A. Yeah.

Q. And then there is the, at tab 9, it's a note of the
14th

A. Telecoms

Q. Yes, 14th October, a handwritten note of Barry Moloney
on call with Dermot Desmond

MR. MCGONIGAL: This is the one that I was making in
relation to the second page.

MR. COUGHLAN: That's the point that Mr. McGonigal was
making about Mr. Walsh's note of the legal advice
having been obtained. So there is the handwritten
note of Mr. Barry Moloney on call with Dermot Desmond,
then at the bottom on the 17th October, Dermot Desmond
in Spain, it seems to be a handwritten note of a second
conversation with Mr. Desmond and it reads:

"telecoms with Dermot Desmond on 14/10/97 approximately
5-6 p.m.

After my arrival back from Brussels, had a message to
call DD. Michael Walsh had informed him of our
meeting in Malt House on the 13/10/97. Asked me what
had occurred between us and I told him. Dermot
Desmond told me I might be exposed for not bringing the
initial conversation with Denis O'Brien to the board at
that time. I told him that at that time the statement
made to me had no particular relevance and that I just

wanted to forget conversation. Dermot Desmond's

response was

1. This was a situation where we had to separate DOB from the company - ESAT Digifone.

2. We don't know that anything DOB may have done had anything to do with ESAT Digifone. It could have had to do with ESAT Telecom business, e.g., routers"

3. Instructions to me were" -

A. 1. To make sure

Q. "1. To make sure that ESAT Digifone was fully protected, to assume the worst and ensure that the board, management and employees of the company were fully protected vis-a-vis Denis O'Brien IPO document."

I presume that's a reference to the Prospectus of ESAT Telecom?

A. Yeah.

Q. And then the note on the 17th October, '97. "Received call from DD from Spain. Michael Walsh had sent him a copy of the advice from McCanns which I had sent to Michael that a.m. DD said he thought McCanns were "giving us bad advice" and that if we were to pursue the course of action we could end up causing damage to the company, its board and employees. I expressed my frustration at being the "go between" between the company's legal advisers and the 3 directors who now knew the nature of the matter. DD said he would call Fergus Armstrong and give him his views."

Now, at tab 10, on the 17th October, 1997, is another handwritten note of Barry Moloney on call with Dermot Desmond in Spain. And there is reference to a fax.

A. Is this the a summary of the other call?

Q. It seems to be, yes. This is the information which has been supplied to the Tribunal by solicitors for ESAT Digifone, ESAT Telecom, BT, everybody and Mr. Moloney. It seems to be a summary, doesn't it?

A. Yes.

Q. "1. McCanns poor advice.

2. No officer past or present has any facts.

3. No evidence or facts relating to anything that definitely happened.

3. Taking action may cause a liability.

4. No evidence or proof."

Then I think "Things to be done.

letters saying.

disclaimer ,where did it come from?

ED acted properly, taking action can cause a bigger problem against the interests of the company. No evidence of a problem not. Then disclaimer."

Do you know where the disclaimer did come from in the red herring Prospectus in the first instance?

A. Well, if I am right, mention of the Tribunal was actually in the document before the Tribunal had been set up.

Q. Before it had been set up?

A. Yeah.

Q. Before there was a Tribunal at all?

A. Yeah, because I mean it was probably in the newspaper.

Q. When? When was the first red herring Prospectus?

A. Well, they would have been working on it in September.

But I was reading this last night and there is something dated here, tab 1, I think, if we are talking about the same thing, the importance of the licence, is that the disclaimer?

Q. Yes, the disclaimer.

A. I have the 25/9 and it was typed on the 23rd of the 9th.

Q. You believe it was typed on the 23/9 sorry, it says it on it. Typed on the 23rd

A. I will just show you, there was a computer code on the bottom. There. (Indicates.)

Q. I think the Tribunal was established on the 21st September?

A. 6th.

Q. 26th, you think. There must have been debate in the Dail for anyone to have an understanding that there was going to be a Tribunal, would that be correct?

A. I think that's how

Q. that's how it came into being because of the debate in the Dail?

A. I wasn't involved in drafting this at the time but

somebody just wrote it and put it into it.

Q. Who prepared it?

A. It would have been lawyers.

Q. Where?

A. New York, Dublin, on both sides for the issuers, which was ESAT, and for the underwriters, which would have been the four investment banks.

Q. Right. So it was a joint effort perhaps, as far as

A. Yeah, there was a lot of fingers in the pie to get it right.

Q. Very good. Mr. McGonigal tells me that DPW is an American firm?

A. Denis Pope, yeah.

Q. And you believe that it must have been as a result of what was happening in Dail Eireann that gave rise to this being inserted in the red herring Prospectus?

A. Yeah, yes, I think so.

Q. A debate, I think

A. Unless I am wrong in the dates.

Q. The McCracken Tribunal the Dail had been reconvened I think

CHAIRMAN: Well, the resolution was in Dail Eireann on the 11th September and a week later in the Seanad.

Q. MR. COUGHLAN: So there was a resolution in the Dail on the 11th September and one in the Seanad on the 18th September, so it must have been arising out of that?

A. Was it? Okay. I think it was in the context of the four other investigations and this was another investigation.

Q. Now, the next note of Mr. Moloney's is at tab 11, 14th October, 1997. It's a handwritten note of Barry Moloney on a meeting with you at your home at 11:00 p.m.

A. That's right, I remember this one, yeah.

Q. "Note of meeting with Denis O'Brien on the 14/10/1997 at his home 11:00 p.m.

Tried to get him to delay the IPO. Informed him very unlikely that he would get the consent letter from the board in the same form as last time. Worst case, issues will arise for the board, Irish level, US level.

To assess Irish level will require board meeting.

Denis O'Brien does not want Telenor to be informed.

Afraid they will leak it to Sunday Times. Said he may as well do a press release to the Irish Times.

Then, "To assess US exposure, would need to involve US lawyers, Denis O'Brien does not want this. Would cause his IPO problem. Told him board may want to make changes to the document, the placement of the health warning to a different place in the document and perhaps highlighting it in some way.

Denis O'Brien said as a practical matter this may be a problem as, if it was noticeably different from the

earlier version, there would be questions as to why"?

A. If it was, yeah.

Q. "Denis O'Brien quite agitated, raised his voice several times. Said I had not handled this situation very well. Trying to make life difficult for him."

Would you agree with Mr. Moloney's note of that meeting?

A. Not all his note.

Q. Pardon?

A. Not all I don't agree with the bit where DOB does not want this in the context of US legal advice."

Q. You don't believe you said that?

A. I mean, throughout this, as an issue that was raised, I first of all shared it with an outside director and certainly I was, you know, fully happy with a complete investigation happening.

Q. Just on that note so, you don't agree with Mr. Moloney's note that

A. that I didn't want to get a US advice. I would have felt that I would have been for US advice, given my other actions.

Q. I see. Right.

A. I certainly agree with the last line.

Q. That "Denis O'Brien got quite agitated. Raised his voice several times and said I had not handled the situation very well, trying to make life difficult for him".

A. I agree with that.

Q. Did you become

CHAIRMAN: you said earlier that you gave him fairly short shrift, you weren't used to be calling up at that hour.

A. When somebody calls to your house and you are out with your wife and camps at your door step you get a bit upset, particularly when you knew, when you questioned the motives of the person concerned.

Q. MR. COUGHLAN: Now, what about the paragraph recorded by Mr. Moloney, "Told him board may want to make changes to the document, meaning the placement of the health warning to a different place in the document and perhaps highlighting it in the same way. Denis O'Brien said as a practical matter this may be a problem as, if it was noticeably different from the earlier version there would be questions as to why."

Do you remember that conversation?

A. He could have mentioned something about the document, but the interesting thing here is that the red herring wasn't changed materially to the black. Remember I explained the red herring was the first document when you start your roadshow for three weeks and the black is the one you print on the night you issue the shares and you send it out to everybody. So the red herring document wasn't materially different on these issues to

the black.

Q. Yes, correct me if I am wrong, I have seen a Prospectus and I am unsure if it was the Prospectus which was actually issued at the time, which appears to be the black version in which the health warning is in bold type, isn't that correct, or maybe I am incorrect on that.

A. I don't think it was in bold but...

Q. Well, we were given a document by the present solicitors to ESAT Digifone and what we were given was the Prospectus, the black document which was issued, it is in bold type?

A. We should get to the red herring then to see, to give and the original printed version probably.

Q. Well, what's at tab 12 appears to be the, and correct me again if I am wrong, appears to be the red herring?

A. Well, it's not in bold, so it's a headed up

Q. Do you think this is the red herring?

A. It could be now, because there is nothing on the top of it. You'd have to look at the original. But we'll get you two originals.

Q. I can get those. Now, the next document in the documents furnished by Mr. Moloney is at tab 14 and it's a fax to Paul Craig, Declan Drummond, John Hennessy, Gerry McQuaid, Patrick Doherty, Derek Handley, Barry Moloney, John O'Rourke

A. And Tom McEnneny.

Q. Tom McEnneny on the top of it. I see that in handwriting.

A. He is a journalist.

Q. Who were these people, do you know?

A. They were people that worked for ESAT Digifone.

Q. Yes, I see. And the fax encloses the Terms of Reference of this Tribunal, isn't that correct?

A. Yeah, it would have come from the PR advisers at that time.

Q. And that seems to be on the 17th October, 1997, doesn't it?

A. Yes. It doesn't seem to be three pages though, but anyway it doesn't matter no, it is.

Q. The third page is just something about people living in the location of masts.

A. Yes.

Q. Now, tab 16 is a handwritten note of Barry Moloney headed "Barry Moloney attempts to get Denis O'Brien to postpone IPO" and it seems to be Barry Moloney giving a resume (Fr) of all the attempts he made, isn't that correct, this handwritten document?

A. This is undated. So I don't know when this was written, but he'll obviously

Q. We'll just go through and see if you agree or disagree with the note.

"1. 8th October 1997 4 p.m. Malt House, meeting in office and in lane at side of building. Pleaded with

him to postpone until after the Tribunal. Not to put company in a difficult position. Asked him to consider again." Do you remember that meeting, that conversation?

A. I remember meeting precisely what he said, I don't completely recall.

Q. Do you remember him trying to get you to delay the IPO until after the Tribunal?

A. There were various conversations where he was trying to delay it.

Q. Now on the next note is "2. On the 13th October 9 p.m. Baggot Street.

Pleaded with him again to postpone IPO until after Tribunal. He said he was unable to give him a copy of the preliminary" sorry, I will read that again /-BGS

"Pleaded with him again to postpone IPO until after Tribunal. He said he was unable to. Gave him a copy of the preliminary advice from Fergus Armstrong.

Asked to leave my office and go to Paddy Kavanagh's for a coffee. Pleaded with him again." Do you remember that?

A. I think I asked him to go to Paddy Kavanagh's.

Q. Do you remember him again pleading with you and him giving you the preliminary advice of Fergus Armstrong?

A. I don't remember him actually pleading but I remember him saying 'could you not hold off on the IPO?' and I would have explained to him, as I explained the other

day to the Chairman, that if you stop the IPO, it's already in the market, that you are going to be doing an IPO, it would have a very serious impact on the company. And he would have known that.

Q. And he was Chief Executive of ESAT Digifone, you believe, making a serious request to you, don't you?

A. I don't doubt his requests.

Q. Was serious?

A. Well, the whole matter was being taken serious by both sides.

Q. Now, of course, Mr. Moloney, as the Chief Executive Officer of ESAT Digifone was being which was being asked to release information to enable the Prospectus to be prepared for the IPO of ESAT Telecom was concerned about potential liabilities for ESAT Digifone, its directors and perhaps himself, isn't that correct?

A. It wasn't his ultimate decision, it was the board's.

Q. No, I understand that, but he was concerned about a liability, you would agree?

A. Yes well from these notes he looks as if he is very concerned, yes.

Q. And as Chief Executive Officer, would you agree that that was a legitimate concern for him to have, a concern at least, that he had a potential for liability and that

A. he knew there was nothing in it though, but

Q. I see. But if we go back to the question that he had a concern. Whether there was nothing in it

A. at the time.

Q. at the time and, as he said, he wanted to get this monkey off his back and get to some board members or share it with some board members?

A. Which I personally did.

Q. But he had a legitimate concern in respect of a personal liability and a liability for the company of which he was Chief Executive Officer. That was his concern?

A. I don't agree that he had a legitimate concern but he was doing

Q. very good. Now, do you say that his concern was not legitimate because you were asserting that nothing happened?

A. Yes, that's what I mean in that context, yes.

Q. It's only in that context. You are not suggesting that as Chief Executive Officer it wouldn't be a matter of concern if your Chairman informed you that you had paid $\frac{1}{2}$ 100,000 to a man who had been a cabinet minister?

A. I think our view at the time was that he should have raised it immediately when the conversation took place.

Q. I know. I understand that that's the view. And whether that is right or wrong, do you accept that in the context of this Prospectus, nonetheless, as Chief Executive Officer it was legitimate for him to have a

concern that something like this had been said to him by the Chairman of ESAT Digifone, he being its Chief Executive Officer?

A. Did he have a legitimate concern? I understand that he had a concern because he reflected that in the conversation. Whether I think it's a legitimate concern, 'I am not sure', would be my answer.

Q. Well, if he had raised it earlier would it have been a legitimate concern, do you believe?

A. Because it would have been dealt with earlier, it would have been a lot better.

Q. No, but the raising of the concern. It's the raising of the concern I am asking you: Was it legitimate to raise a concern of this nature, of a conversation he had with the Chairman of the company?

A. Yes. Just I disagree with the timing.

Q. You disagree with the timing.

A. (Witness nods head.)

Q. Now, so therefore, as matters moved on and a Tribunal was now established, which may have had to inquire into matters relating to the minister mentioned or assumed to be the recipient of $\text{€}100,000$, wasn't it all the more legitimate for him to raise that concern with you, you were the Chairman of ESAT Digifone, and with other directors?

A. Well, he raised the concern with me and then I raised it with, what we deemed to be independent directors,

like Michael Walsh and then ultimately Dermot Desmond was told and I think, obviously, Telenor then became, everybody became involved in the issue.

Q. Now, the fourth occasion he notes as attempting to persuade you to postpone the IPO is item number 4.

"Following meeting with Fergus Armstrong, went to see Michael Walsh, IIU and then went to see Denis O'Brien at home to try again. Denis O'Brien out. Arrived at 11 p.m.. Spent approximately half hour there trying to convince him again" and "see separate note on meeting." That's the one we have been through.

Now, do you accept that you had those four meetings or conversations with Barry Moloney where he attempted to persuade you to postpone the IPO?

A. There are four meetings there. I can't categorically say that he raised at every meeting about deferring the IPO. You know, it was, his theme at the time was 'can you slow it down or stop it?' .

Q. You believe, for invalid reasons and not arising out of a legitimate concern he had?

A. He knew there was no payment.

Q. Sorry, I am asking you a question; you believe it was for an invalid motive and not arising out of a legitimate concern he had?

A. I questioned his motive, yes.

Q. We'll come now to tab 18 and it's headed "20th October

1997, handwritten notes of Barry Moloney on meeting held in IIU's office. Attendees Michael Walsh, Dermot Desmond, Leslie Buckley, John Callaghan, Barry Moloney, on conference call, Arve Johansen, Rolf Busch, and Denis O'Brien."

A. I was actually, Mr. Coughlan, in Amsterdam in a terminal about to get on a plane. I don't think I was there for all of this but.

Q. very good. "Meeting type; it was an informal amongst representatives of the shareholders and Barry Moloney as invited guests.

Advice to company had not been circulated. Conference call chaired by Dermot Desmond. Asked Denis O'Brien to explain the conversation he had with me back in October/November of 1996. What was said, what was meant.

Denis O'Brien said he'd like to take the opportunity to apologise to me because he understood the difficult position it put me in. He'd like to clarify that what he said was said while we were out for a run and that it was just a bit of bravado on his part.

I referred to the existence of an advice the company had received. Dermot Desmond got a bit aggressive stating that if we wanted to get legal he would ask me why I had not brought the initial statement that was made to me back in October/November 1996 to the

attention of the board? I did not get an opportunity to respond to this point until after the conference call broke up and with the Norwegians and Denis O'Brien. I did take the opportunity to then emphasise, to Dermot Desmond in particular, that the statement in and of itself as made to me at that point had no implication that I could see for our company in that Denis O'Brien never said he had done anything for or on behalf of the company and on behalf of the company.

The actions for the meeting were that Michael Walsh and myself would get McCanns to draft a letter."

Now, do you remember apologising to Barry Moloney because you understood the difficult position it put him in?

A. I think I did, yes.

Q. Why were you apologising if you believed that Mr. Moloney was raising an issue for the purpose of derailing the IPO?

A. I was trying to keep things in perspective and on an even keel.

Q. But Mr. O'Brien, you have asserted here that Mr. Moloney was raising these issues invalidly

A. Well, I was trying

Q. and questioned his motive for doing so?

A. I think that I have questioned his motive but I was

trying to see if diplomacy, by me apologising to him, whether that could just kill the matter and I think that's why I mean everybody was getting a bit annoyed. I mean, that's why I think Dermot, you know, said what he said, if these notes are correct.

Q. Can I take it, though, that you didn't really mean what you said when you apologised?

A. I thought if I apologised to the guy, the guy would just stop all this for once and for all but...

Q. but here was the Chief Executive Officer of the company behaving in what you believe to be bad faith.

A. I never used that word.

Q. I know that Mr. O'Brien, but it amounts to the same thing. You have said that you questioned his motive for doing this?

A. Correct.

Q. And here was a situation where you were now apologising to him for the position you had put him in. Now the difficult position now, which is it, Mr. O'Brien? Were you apologising for the difficult position you put him in or were you retaining your view that you questioned his motive for doing this?

A. Probably both, Mr. Coughlan.

Q. It's hard to understand how you could have held both positions.

A. Yes. Well, I don't agree with you there because I jokingly said the remark and then I apologised for

saying that remark. That's really what I am saying.

And there was a gap

Q. No, you apologised for the difficult position you put

Mr. Moloney in?

A. Arising from the comment that I made "If you think you have got problems, I paid i_c½200,000."

Q. Well, what the note records is that you were apologising to Mr. Moloney for the difficult position you had put him in.

A. And that related to the remark that I made in a jocose way on the 17th November.

Q. Well, can I take that you were just prepared to say anything if you thought it would bring the matter to an end?

A. Absolutely not.

Q. Now, the next note I'd like to draw

A. which one is that?

Q. Tab number 25. And just before I proceed with this, you told the Tribunal in evidence that you were prepared to say anything to Mr. Moloney, that is the spoof at the time of the run, in an attempt to get him to pay various outstanding fees to consultants or advisers, isn't that correct?

A. Could you

Q. That you were prepared to spoof Mr. Moloney to get him to do something?

A. I am not sure what you are getting at but I think I

said to him I said to the Tribunal that I was spoofing.

Q. You made a false statement. That's your evidence, that you made a false statement, that's your evidence, to get him to do this?

A. We have been over this. Of course I said that.

Q. Isn't that what you said?

A. It's in my statement.

Q. But isn't that what you said?

A. Yes.

Q. And here you were prepared to make what, in effect, was another false statement in an attempt to see the end of this, isn't that correct?

A. That is not true.

Q. You made an insincere and disingenuous apology to allow matters die, isn't that correct?

A. Who said that?

Q. You just told us that you still questioned Mr. Moloney's motives at this time.

A. You are saying that I made a disingenuous.

Q. mm-hmm.

A. I apologised to him for putting him in that position.

Q. We'll move to the note at tab 25. This is prepared prior to the meeting on the 4th November 1997. And you see at the top right-hand corner.

A. Mm-hmm.

Q. "In four attempts, October 8 and 14, while trying to

convince Denis O'Brien to delay the IPO once referred to third party intermediary as Woodchester Bank account."

Sorry, I beg your pardon, my colleague has just drawn my attention to another document. Just bear with me and I'll look at it.

MR. MCGONIGAL: While My Friend is sorting that out, Mr. Chairman. Can I just I have already asked for the original notes in relation to these things, could I also ask, in relation to 3 and 4 on the chronology of documents which we have been given a lot of these tabs are empty because there is privilege claimed in respect of the contents of those documents. But in respect of 3 and 4 which are handwritten notes of conversations between Barry Moloney and Fergus Armstrong, could I ask the Tribunal to ascertain the dates of those two communications unless privilege is also being claimed in relation

CHAIRMAN: There can't be privilege in relation to the date, Mr. McGonigal.

MR. MCGONIGAL: I am simply trying to get a full picture of some of this history, it could be of some assistance to me.

CHAIRMAN: The general tenor of the decision in re the

Padraig Haughey case has some relevance and obviously I am anxious that you be facilitated to the maximum feasible extent, whilst I'd rather avoid any legal disputes of privilege, but insofar as you can be facilitated, it's my anxiety that you have the full picture.

MR. MCGONIGAL: If I could start I am not releasing you, Mr. Chairman, from the possibility of I may discuss the privilege issue again, certainly in relation to a particular document, which the Tribunal doesn't seem to have and I know is in existence, so I just want to get that bit at the moment and we may deal with the other document at a later stage either today or whatever.

CHAIRMAN: It's probably more efficient, Mr. Coughlan, if we simply adjourn now and start a little earlier, if we are starting on to a new document now?

MR. COUGHLAN: Yes, because the very issue My Friend brought up there seems to arise because I seem to now have two copies of a document. That's why I passed over tab 19.

A. One is privileged and one is not.

MR. COUGHLAN: I just wish to check with My Friend which document he has.

MR. MCGONIGAL: We have got both and we have accepted

that the second document is, I think, a mistake in that the redacted stuff didn't appear in the second document, it should have and we assume that he wasn't referring to.

CHAIRMAN: I think it may speed matters if the legal advisers have a chance to liaise before we resume at two o'clock.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 2 P.M.:

Continuation OF EXAMINATION OF DENIS O'BRIEN BY MR.

COUGHLAN:

Q. Sorry, Mr. O'Brien, if you went to tab 19. This is a document which has been described by Messrs. McCann solicitors as "The 22nd October 1997, handwritten notes of Barry Moloney with flight details and notes on call with Fergus Armstrong" and then there is partly redacted, redacted extracts containing privileged legal advice.

Now, do you see there are three pages to begin with and the middle page has black lines through it. Do you see that or did you get it in that form?

A. The first page does have flight details. It doesn't seem to be anything relevant to what we are discussing at all. I think there was, it was a trip that Mr.

Moloney was making at the time, the 23rd November.

Q. And then if you go to the second page then, again at the top, it seems to bear no relationship to matters which we are discussing here at all. Then you see Fergus Armstrong and it's all blacked out and there is a suggestion that there was a claim of legal professional privilege in relation to it.

Then the third page again seems to be details of it's the same as the first page that I have anyway, but we also have that second page without the black lines through it and I just wanted to bring that to your attention because it doesn't seem to arise that legal professional privilege could be claimed in relation to it and it would seem that it must have been furnished to the Tribunal by somebody else in the firm.

Do you have one without black lines through it?

Perhaps we'll get

(Document handed to witness.)

MR. COUGHLAN: Mr. McGonigal made reference to this particular document before lunch, along with some other documents. I think we agree with his view about this portion, that it seemed inappropriate that black lines went through this particular portion.

MR. MCGONIGAL: I wasn't making any comment on those lines, lest anyone not here might think that we were

making a claim that these weren't privileged. I am simply indicating to the Tribunal that we had got that document and it seemed to be similar with the document in which the redacted material appeared. It's a matter for other people as to whether it's privileged or not. It's not a concern of ours.

MR. COUGHLAN: It seems the Tribunal also got it in this form. You see in the middle of the document, "Fergus Armstrong" and then there are a number of telephone numbers.

A. Page 4.

Q. I don't think anything turns on it. " In respect of any deletions or any omissions." Then you see an arrow down, "Is it in the right place?

Don't want to block them.

Don't want to consent.

Should it be in bold?

Make addition or omissions." That seems to be Mr.

Moloney's note of some conversation he had with

Mr. Fergus Armstrong.

Now, I think the next note in fact, which I was coming to, because I believed I only had the blacked out version of that document before lunch, is at tab 25.

And that's "Prepared prior to meeting in IIU on the 4th November 1997" and I think, do you have that?

A. Yeah.

Q. You see up on the top right hand corner, "In four separate attempt October 8 and 14 while trying to convince Denis O'Brien to delay IPO. Once referred to 'third party' intermediary as a Woodchester Bank account."

Then "1. Third party (A) October 8 discussion of third party intermediary. Clear impression it was an individual. No mention of Woodchester.

B. October 13 discussion including Michael Walsh. No reference to Woodchester.

C. October 23rd meeting in IIU/, first time ever that third party was not an individual but was a bank account in Woodchester."

Then 2 "Second x 100K.

3. Telenor payment what was it for? What did

Telenor think it was for?

what was on the invoice?

who did the money end up with?

bravado, statement made on 23rd October was the first characterisation of the conversation I heard being described that way.

5. Where the conversation took place? I have a clear recollection of it happening in Denis O'Brien's office in the context of success fees for work on bid."

Now, do you agree that there was no reference no mention of Woodchester on the 8th October? I suppose first of all I should ask you, do you accept there was a discussion on the 8th October?

A. I'll accept that there probably was a discussion, yes.

Q. And then do you accept that there was no mention of Woodchester on the 8th October?

A. I actually don't remember.

Q. Very good. Do you remember at the meeting with Mr. Walsh on the 13th, whether there was any mention of Woodchester?

A. My interpretation was either the 13th or 14th the intermediary was the obviously was Woodies - Woodchester. It's what I came away with from that meeting and Michael Walsh at the same time. I couldn't be absolutely sure though.

Q. I take it then that you would not agree that the first time that the intermediary being characterised as Woodchester occurred on the 23rd October meeting. You wouldn't agree with that observation of Mr. Moloney's?

A. Actually I am not sure, to be honest with you.

Q. Now, I think you can skip numbers 2 and 3 for the moment?

A. The interesting thing here is that this is a summary of his concerns post a number of meetings and the last meeting he mentions is on the 23rd, so this must have been after the 23rd, there is no reference in any other

notes to the word 'intermediary'. Now, we have been given stuff before lunch but so...

Q. and I think a handwritten note yesterday, which is undated, but I'll come to that as well.

Now, I don't think we need spend any time on the second point, "second x i;½100K ?

And then the 'Telenor payment'."

If you go to number 4. "'Bravado'.

Statement made on the 23rd October was the first characterisation of the conversation I heard being described that way." Would you agree with that that that was the first time you described the conversation as being 'bravado', to the best of your knowledge?

A. Just let me look at my notes.

Q. Very good. Yeah, I said here on page 3 of my 23rd October, I have a note here to say that I said 'bravado'.

A. So maybe that is a reference to what we are talking about now.

Q. Yes, I think there seems to be no doubt that you did say 'bravado' on the 23rd. I think what Mr. Moloney is noting here is that the first time he heard the characterisation of the conversation as being bravado was on the 23rd October, 1997.

A. I don't know.

Q. But you don't know.

A. I mean, he is saying the 23rd. In fact, I have it on mine but I wouldn't be absolutely sure that it was the first time the word was used, but...

Q. you wouldn't be sure whether that was the first time the word was used. Do you think he could be correct about that?

A. I actually don't know.

Q. Now, I think the next document is sorry, yes, the next page "5. Where the conversation took place. I have a clear recollection of it happening in Denis O'Brien's office in the context of success fees for work on bid." Well you have given your evidence. You don't agree that that's your recollection of where the conversation took place, isn't that right?

A. Definitely it was very rare that he'd actually come to my office. I'd say 80% of all our meetings were up in his office. All our Monday morning meetings were in his office.

Q. Now, the next tab is tab 26, and you are not present but if we just look at it, it's Michael Walsh, 5.55 p.m., in some conversation or communication between Mr. Moloney it's undated. This is the legend we have been supplied, that it's 'undated, handwritten note of Barry Moloney on conversation with Michael Walsh'. And it reads "Michael Walsh, 5.55 p.m.,

1, under Irish law, what is it we would need to do as directors to show we have done everything that could

reasonably be expected of us, given the advice we have now been given.

2. Get advice from Fergus Armstrong exactly what should be saying tonight to group in terms of detail of information to ensure I am not making matters worse with regard to sharing of information.

3. IPO cannot be delayed without catastrophic impact on ESAT Telecom and ESAT Digital.

US advice on a no names basis.

50K contribution. Legitimate cost for plate fundraiser New York.

Michael Walsh back from DOB."

Do you have any observation to make on that or ?

A. Just it would have been helpful to know when this was written.

Q. Yes, I agree?

A. Maybe we can get the originals on it. I wouldn't have any comment really to make on it.

Q. All right. Now, I just want to go to tab 32 and this is on the 6th November of 1997 and it's a note and it appears to be, it says, "Leslie Buckley, ESAT Telecom board meeting. William Fry and D Pope present.

Sworn affidavit from Denis O'Brien. Wording changed, page 16." That refers to the prospectus, I presume.

"KPMG commentary re audits reclassification of \$50K
for tax purposes.

Innuendo and rumours relating to granting of the
licence has been investigated by the directors.

To be added in to the section.

- assumed letter from D Austin.

- No discussion on getting a letter from Fine Gael.

- Letter from ESAT Digifone accepted. Would be changes
in the document."

Then to do "Need letters from D Austin. Need letter
from shareholders saying loan propriety took place.

Need comfort around. No insurance. Personal
indemnity" with arrows pointing to it

"Need Denis's affidavit, general statement.

Letter consent for info. Must have the documentation."

Then in a box "Personal indemnity from DD. No indemnity

available. To the best of our knowledge and belief

letter to the shareholders 6 p.m. to the

shareholders."

Down the bottom. "5.15 p.m. need to treat the
\$50,000 as a political contribution properly in the
books of the company."

Now, I think you were not present but this was a list
of things to be done or needed

A. I wasn't in this discussion at all.

Q. to be done. Were you aware that Mr. Moloney was concerned to the extent that he was seeking a personal indemnity, perhaps from Mr. Desmond?

A. No, I wasn't. It's only when I read this now that I realise what he was doing.

Q. He was concerned that he was leaving himself open to be sued, wasn't he? That would appear to be the reason he was looking for personal indemnity?

A. That would be one interpretation.

Q. Now, if you go to you see behind

A. He didn't get the indemnity.

Q. No, he didn't, no. You see B in the book, and if we go to more handwritten notes of Mr. Moloney and I should just explain to you sorry, you may not have them in the form they have been inserted in my book in that form but I think you were furnished through your solicitors yesterday morning with some further notes.

A. From Mr. Moloney?

Q. From Mr. Moloney.

A. I have them, yes. If you just bear with me, I'll dig them out. Yes, I have them now.

Q. And just to explain to you how they came into the possession of the Tribunal and why they have been brought to your attention.

The Tribunal, by letter from Messrs. McCann Fitzgerald solicitors, dated 26th June, 2001 informed Mr. Davis, the solicitor to the Tribunal, that over the weekend that's last weekend "Mr. Moloney was reviewing the documents which accompanied his statement to the Tribunal. In doing so, he felt that certain items were missing. In particular he thought that there should be a note of his own, taken at the meeting of the 4th November, 1997.

Mr. Moloney carried out a search at his home, all papers from his office had already been sent to the solicitors for review, and found some additional material which he believes may be relevant. He furnished them to us for review.

For the most part they comprise handwritten notes relating to instructions and advice given to and received from Fergus Armstrong and these are entitled to privilege. Certain items do not fall into this category. However, we attach a list of all the documents and attach copies of the items which we believe are disclosable."

Then it reads, "If you propose to refer to any of the items of Mr. Moloney in evidence we would be grateful if you would let us know so that he can include them among his personal papers."

So, that's the circumstances whereby these additional handwritten notes came into the possession of the Tribunal?

A. All evidence is helpful.

MR. MCGONIGAL: In relation to that, Mr. Chairman, two things: One, if possible I would like a copy of the letter from McCann Fitzgerald, which we didn't get, and secondly, in the same request which I made this morning in relation to seeing the original documents, I'd like to see the original documents of these. It may be of assistance to understanding their dates.

CHAIRMAN: Yes.

MR. COUGHLAN: Well, I don't have any difficulty in relation to seeking to get the originals of these documents. As regards the letter itself, it's a matter I'll take up with Mr. McGonigal and there is no difficulty in relation to the contents of the letter being disclosed, that is I have disclosed the full contents of the letter. Mr. McGonigal knows that we don't give other people's letters addressed to the Tribunal to other parties. But I will discuss the matter with him and there is no difficulty.

CHAIRMAN: I think what effectively is being communicated is that you are not going to be, in the end of the day, deprived of the information,

Mr. McGonigal.

MR. MCGONIGAL: I gather that from the transcript. I didn't anticipate that a difficulty

MR. COUGHLAN: there isn't a difficulty. It's just I wanted to point out we don't exchange letters between parties and the Tribunal.

MR. MCGONIGAL: I understand.

Q. MR. COUGHLAN: Now, I understand what you would have received then through your solicitors a number of handwritten notes; and did you receive the index which accompanied them from Messrs. McCann Fitzgerald?

A. Yes, I think I have the same as you have now.

Q. Now

A. 13 items, isn't it?

Q. Yes, 13 items.

The first note is sometime in September of 1997, we are told, and it's a handwritten note of Barry Moloney relative to IPO headed "Johnny Fortune." Isn't that correct?

A. Yeah. I thought it was an interesting note.

Q. Perhaps if I just read it so, if you wish to comment on it. "Johnny Fortune, US securities lawyer." And then there is an arrow, "an associate, not a subsidiary" - arrow - "took two years in CBT".

What's that do you think?

A. - CBT was

Q. - yes. "JF full-time on it." Then an arrow

"Effectively take Digifone public." Then I don't know if the telephone numbers mean anything to you or the names under them?

A. No, I'd say they are personal calls.

Q. So do you wish to I think you want to make a comment on that note, do you?

A. Well, this is Mr. Fortune on behalf of Telenor discussing an IPO of ESAT Digifone. I think you know, if I can recollect right, that at certain times around that time there was when we raised the issue that we were going to go public, they said that ESAT Digifone should go public and Telenor - and Barry, Barry had 2 percent options - wanted to bring ESAT Digifone public and I don't think they were particularly happy that ESAT Telecom was going public, so whatever date this was

Q. We're informed anyway that it's September 1997?

A. In September.

Q. That's what we have been informed by Messrs. McCann Fitzgerald.

A. It shows me that the lads were talking about an IPO of ESAT Digifone and that would have been ESAT Telecom was already going to do an IPO and they were obviously, examining the possibility of floating ESAT Digifone.

Q. Would that have been unusual? Was it always envisaged

that ESAT Digifone would not be floated or would be floated?

A. There was general discussion in the bid document about floating but there was no commitment. But it was, you know, it was an impossibility because ESAT Digifone was only six months trading at the time.

Q. Would it have been discussed around the time of the Shareholders' Agreement that ESAT Digifone would have gone public?

A. Broadly. But it shows that, you know, they were trying to hatch a plan to float ESAT Digifone.

Q. You think that that's what that means or that's your understanding, at least?

A. Yes. And obviously that was in conflict with the plans that we had already underway, given that we'd already drafted a Prospectus in September.

Q. Now, the second document again is described in the index to us as

A. September '97, is it?

Q. Yes just before, and I may be incorrect about this, we will have to look at the Shareholders' Agreement, but is there a clause in the Shareholders' Agreement that ESAT Digifone would go public, do you think?

A. There wasn't a categorical statement, as far as I remember now. I mean, I haven't looked at that document in many years.

Q. It's something we can check?

A. Look at, yeah.

Q. Now this document is described as a 'handwritten note of Barry Moloney, date recently annotated on the top right-hand corner' - with question mark. So the date seems to have been put on it recently and there is a question mark, so it's been explained

A. How do we know that?

Q. This is what I have been informed. I am telling you what McCann Fitzgerald have informed on the index to the documents that you have furnished?

A. Great, okay.

Q. 'Handwritten note, Barry Moloney, date recently annotated in the top right-hand' with question mark and "one page."

So if we can exclude so the recently annotated date and read the note "Is there anything in the note?"

What exactly are the plans for an IPO by ESAT Telecom Group?

2. How do these plans impact ESAT Digifone?
3. What's the ESAT Digifone's board position re the impact on the company?" And they are all questions.

Do you have any

A. Well, take 1, what exactly the plans? He would have known the plans because we would have been in touch with the company about getting information and he had already had a draft of the red herring.

Second thing is, "How do plans impact?" Well, I think

that's the key question when you look at the motive surrounding these number of weeks preceding our IPO.

And "What's the ED board position re the impact?"

What he could mean there is that because we were floating our company that meant that ESAT Digifone realistically couldn't float and that would mean that the liquidity, in other words, if you are a shareholder in ESAT Digifone, then you couldn't float, that had an issue over how you would sell shares and I think certainly that's probably what is on his mind at that time.

Q. All right. Now, the next document does have a date on it. It's the 24th September 1997. It's a handwritten note of Barry Moloney entitled "Board meeting - one page" and the first item is that's a technical matter I think, isn't it?

A. DCS 1800. It's a particular form of a licence for a mobile.

Q. Then "Information disclosure. Documentation for IPO." I don't know what the next

A. That is either "Accounting treatment" or a flight number for SAS.

Q. Is there anything in that particular document that you wish to comment on?

A. It's interesting whether Mr. Moloney met with Mr. Johansen, because Mr. Johansen in his most recent piece of statement, said that he met with Barry. So,

whether that was a discussion on an IPO of ESAT

Digifone or general business, I don't know.

Q. Now, the next document, number 4, comprises two pages

and from the index furnished by the solicitors it's

described as "A handwritten note of Barry Moloney

outlining points for discussion with Denis O'Brien and

a note following that discussion. Mr. Moloney

believes this document was written sometime in October

1997 after Mr. O'Brien had first raised with him the

conversation that they had in October/November 1996."

It comprises two pages.

A. But it is undated.

Q. Yes. And it reads: "Discussion with DOB.

1. Conversation is nothing to do with any issues

between him and I.

2. Do not want to cause any further relationship

issues between and Norwegians.

3. Do not want in any way to cause his IPO a problem.

Concerned about the reference to the Tribunal in the

IPO document and issues arising from it vis-a-vis your

request for consent from the board.

Prefer if you could delay your IPO until after the

Tribunal, therefore, removing the need to include it."

Then the second page: "1." which seems to be, or

would you agree, responses given by you to Mr. Moloney?

A. Just one second, I actually didn't read it that way

Mr. Coughlan.

Q. Well, perhaps if we just read it and we can deal with it, we can tease it out.

"1. Pushed by US investors. Doesn't want or need to do the IPO now.

2. Willing to bring up any concerns I have with the board.

3. Told me the monies did not go told me the monies did go to a middle man but never got to Lowry or his account. Did not deny any of our conversations.

4. Saying would never allow IPO go forward if any risk whatsoever.

5. Look to changing words in IPO document."

Now, do you ever remember having a conversation with Mr. Moloney about such matters?

A. The question here is when were the notes taken? You know, I never said I don't believe I said any of these things. I couldn't have said, because you know, there was never any mention of a middle man. And on the previous page, is this in preparation for a discussion or is it a list of things he was going to say?

Q. It's described I'll just explain how it is described and I presume that Mr. Moloney will give this evidence.

"Handwritten note of Barry Moloney outlining points for

discussion with Denis O'Brien."

A. 'For discussion'

Q. "Outlining points for discussion with Denis O'Brien and a note following that discussion."

A. They don't even tie.

Q. So if I am interpreting it correctly, the first page seems to be notes outlining points for discussion and the second page, a note following that discussion.

A. I can't make sense of it.

Q. Well, very good

A. As a questions and then answers because they are two

Q. I don't think it's described as that. It says "Outlining points for discussion and a note following that discussion." But if I just deal with the note which is described as following a discussion with you and just get your views on it.

A. Sure.

Q. "I pushed by US investors. Doesn't want or need to do IPO now." Do you ever say that to Mr. Moloney?

A. I could never ever have said that because of the capital requirements of ESAT Telecom at the time were immense. We were rolling out a fixed network and also contributing the cost of a mobile network, so we had an appetite for cash which is ranging from 75 to 100 million a year. So I would never ever have said that.

Q. "2. Willing to bring up any concerns I have with the board." Did you ever tell Mr. Moloney that or say

that?

A. I don't remember ever saying that. If he had concerns, he'd bring them straight to the board or he had a concern on the 13th and I immediately went to one of the independent directors about it, so...

Q. Well, just in relation to that, I think it's correct to say you didn't go to the board. You went to Mr. Walsh of IIU and you didn't go to the Telenor directors because you were afraid of a leak. That's as you described it yourself?

A. Yeah. I think the prime thing was I went to the independent director of the board.

Q. Now, I'll deal with the third issue. "Told me the monies did go to a middle man but never got to Lowry or his account. Did not deny any of our conversations."

A. I never said that.

Q. You never said that to Mr. Moloney?

A. I don't remember ever saying that.

Q. So that note of Mr. Moloney's is totally, totally wrong?

A. I couldn't have said that because there was never any middle man. So...

Q. Now, I'll come back in a moment to the reference to 'middle man' and 'intermediary' in Mr. Walsh's note of the meeting of the 23rd October.

A. Fine, yeah.

Q. I don't think you interjected at that meeting but

what sorry, what you conveyed to the meeting was that the intermediary was Woodchester Bank, isn't that right?

A. 23rd

Q. I am only paraphrasing and I am not holding you to it?

A. I think so.

Q. I'll come back to it. I am not holding you to that.

But are you saying that you never said to Mr. Moloney

"Told me the monies did go to a middle man but never got to Lowry or his account." sorry, that's the

first point "Told me that monies did go to a middle man but never got to Lowry or his account." You never said that?

A. I couldn't have said that.

Q. Then the note continues "Did not deny any of our conversations." Did you?

A. I actually don't remember saying that, but you know, it's clear in the evidence that there were plenty of conversations so - I don't know what that context is.

Q. "4. Saying would never allow IPO go ahead if any risk whatsoever." Would you have said something like at that to Mr. Moloney?

A. I don't remember saying any of these things that are in this note.

Q. And "5. Looking to changing words in the IPO document."

A. Again, I think it's evident that we were changing, you

know, we were prepared in the other memos, in the other people's notes, you know, that there was a willingness to change, within reason.

Q. Now, I take your point that this note is undated and that we have been informed that it is a note from October of 1997.

A. We weren't informed of that this is the first time I am hearing that it was October, 1997. So I would have read this last night or the night before. But nobody told me it was October '97.

Q. Well, I think the Tribunal may have furnished the index with the documents but I am not making an issue about that.

A. okay.

Q. Mr. O'Brien. What I am just saying is it's a fairly significant note, you would agree, if indeed correct?

A. undated.

Q. but if

A. when it was written.

Q. But if the content of it is correct, it's a fairly significant note; I take it you would agree with that?

A. Well, I have just told you, you know, from my point of view, I cannot remember saying any of these things that he has written down on this piece of paper.

Q. Could you have said that to Mr. Moloney?

A. I think I have answered that question already.

Q. That you couldn't have

A. I couldn't have said those things.

Q. You couldn't have said it? But I think you would agree with me that the note itself is significant, first of all, in that if it was said, it's significant and if it wasn't said, it is also significant that such a note would be made, isn't it?

A. Well, you are saying either the notes are true or they are not true.

Q. Yes?

A. So either way it's significant.

Q. It's significant, I take it you would take that as

A. I think it would be very serious.

Q. And you will appreciate that this is an issue which the Tribunal will have to grapple with now and you are firmly of the view that you could not have said this, is that right?

A. Well, here is what I think: After seven or eight days of evidence, and during that time new evidence comes into the domain suddenly out of nowhere, so when I received it this week, when I saw it undated, I just questioned where was it coming from and how it had been mislaid up until now or was it in response to my evidence? You know, you begin to ask yourself some questions

Q. Which you are perfectly entitled to do Mr. O'Brien and I will raise those questions on your behalf with Mr.

Moloney.

A. Okay. I know you'll be fair to me so I am happy with that.

Q. I want you to have we all agree this is a significant document, one way or the other?

A. It's significant if it's incorrect.

Q. It's significant if it's correct, it's significant if it's incorrect. I think you'll accept that?

A. Well, I don't believe it's correct.

Q. I know that but you accept that it is very significant.

A. I don't hold it in much credibility, but anyway, that's my view.

Q. Now, the next document, number 5, I don't think, unless you think anything turns on it, seems to be telephone numbers, mentioned some names. It's a handwritten note of Barry Moloney containing several telephone numbers. It seems to date from October 1997, is there anything on that particular document that you wish to refer to?

A. It's the 4/11, is that it?

Q. No. It's the one before that or sorry, the second one before that. Yes, the second document before that.

A. John McManus, Sunday Times

Q. Yes, that particular

A. He is looking for the IPO document, the red herring.

Q. I see. Is there anything on the document that is of

any significance that you wish to draw the Tribunal's attention to?

A. I don't think there is anything there.

Q. Well, I think there are a few names mentioned and their names haven't come out on the Tribunal here, so we might just inquire who they are, privately, of your solicitors.

A. Well, they are

Q. I'd prefer you not to mention them?

A. I won't mention the names but they are ESAT Digifone people.

Q. They are ESAT Digifone employees?

A. Yeah.

Q. That's right all right.

Now, the next document is number 8, "Handwritten note of Barry Moloney, thought to be a conversation with Denis O'Brien, one page." Again, I say, undated but we are informed that it is from October of 1997.

A. Where is my name on this now?

Q. I don't see it on it but that's what we have been informed. And I am asking you do you wish to comment on it? That's what we have been informed.

A. This is very outlandish stuff if this is a reference to me, Mr. Coughlan?

Q. Perhaps we'll just read it out so. "I am not working on an expectation that I will be called. I don't have any particular info to give them." Your name is not on

it, I agree. We have been informed that it is a handwritten note of a conversation Mr. Moloney had with you.

A. What's the date of it?

Q. We are just told 'October 1997'. Do you see up on the top left-hand corner there seems to be a number and I don't know, is it Mary or marry, I am not sure.

A. Well, my nickname is not Mary, even. I think you have the same problem as I have with this. We don't know where it came from.

Q. I don't think we have a problem in putting a date on it, we are informed it is October 1997. It is a conversation sorry, we are told it's a conversation with you, but whether it is or is not, it would appear to be some reference to somebody being called to something to be called to it go

A. But it says 'Mary' on it.

Q. Yes, I see that at the top. Somebody being called or not expecting to be called to something. Perhaps it's a reference to the Tribunal. But you can't be of any assistance in relation to that particular document?

A. (Witness shakes head). I think we need MI5 in to work

CHAIRMAN: I don't think this one is going to be the key to much.

Q. MR. COUGHLAN: Then it's just, the final document then

which we were furnished with is document number 13.

It's dated 4th November, 1997 and it's described as

"Handwritten notes of Barry Moloney which he believes he took at a meeting of the 4th November 1997."

A. This is number 13 in?

Q. Yes.

A. Are we saying there is 40 documents and that half of them are privileged? Could that be right?

Q. I am only operating on the basis of what we were furnished with Mr. O'Brien and the claim of privilege which is made and I am just dealing with the documents that we have in our possession at the moment?

A. Maybe we need to break the privilege.

Q. Which have been furnished to you.

A. This is 'ED' - something.

Q. They are technical matters at the top?

A. I think so, yeah.

Q. "A. Conversation re success fees"

A. "Concerns".

Q. Sorry, "A. Concerns re success fees.

1. From memo from Denis re who was due monies.

Frustrated with my reluctance.

2. DOB not that close to ML.

3. Discussion on..."

Then there is an arrow on memo. "Check timing of this memo in terms of when it was received?" I think the bottom note

A. Yeah

Q. Doesn't seem to make any reference

A. He obviously knows about the memo that I sent him. I wouldn't be much of a memo writer but unless something was really serious, I'd write a memo and this is what I think he is referring to.

Q. I think it was, in fact, based on a memorandum from you I think what you just said there, unless it was serious, you wouldn't write a memo, is that what you

A. I am not I wouldn't be reaching for the pen every time I want to get something done.

Q. Now, I think you'd prepare a draft statement for the consideration

A. my handwritten notes

Q. Yes, for the consideration of the lawyers, isn't that correct?

A. Yes. I wrote these when I was in the States, I believe, or sometime around then anyway.

Q. Sorry, it's for it's for McCann Fitzgerald who are the ESAT Digifone lawyers.

A. I think this is following their letter of the 29th. It could be.

Q. And I take it you had received a letter from Mr. Armstrong, or is that right? Or from Mr. O'Connell?

A. I was given six questions and I was told "write a memo."

Q. And from whom did the six questions come?

A. I believe they would have come from the investigating lawyers.

Q. Which was, in fact, a joint investigation?

A. It was Kealey or McCanns or somebody

Q. We'll clarify that. But, in any event, you wrote a draft statement or a draft letter, isn't that correct?

A. Yeah, as best as I could, I didn't have my diary or anything with me, I just

Q. I understand that. And I think, do you have a copy of that with you there? And I think it's headed "Draft statement of Denis O'Brien to McCann Fitzgerald.

1. Early on Sunday morning late in October, 1996 I was running up in Roundwood, County Wicklow with Barry Moloney. Barry was complaining about the invoices received by ESAT Digifone from consultants and lobbyists in relation to the bid. I wanted him to pay them because they were from people I had recruited. This was 12 months after the bid had succeeded and many of them had still not been paid. I indicated that if the company reneged, I was honour bound to make the payments and I added, falsely, that "If you think you have got problems, I have already paid 200 grand to other people."

2. These runs with BM were almost weekly events.

Frankly we spoofed a lot. Barry and I had been

friends for 20 years and often talked about sports, business, money-making schemes, women and other things with fantasy and reality equally mixed. At least half of what was said was bravado.

3. I did not pay any money to ML for ED licence.

When the Moriarty Tribunal was mooted in July 1997, Barry sought and I gave reassurances that the company had nothing to worry about. Barry did not mention the October 1996 comment at this time and it has only been raised by him in the last couple of weeks."

Then you say "I deeply regret the anxiety caused to Barry and the trouble created for board members by this matter. However, I am concerned that a casual and untrue remark made in a social context would not be blown into something which may have consequences out of all proportion to its significance. sorry, that will have consequences out of all proportion to its significance. On the basis of this explanation and my assurances that the payment was not made, I hope that the issue will be concluded."

I think that was prepared when, around the 30th October, would it have been, of 1997?

A. That is not quite it's a little bit unclear. It's written sometime between the 23rd and the 30th.

Q. It's when you are in America?

A. Yeah. I went to America on the 25th, which is a

Saturday.

Q. Mm-hmm.

A. And you can see there, you know, July, 1997, Barry sought and I gave the reassurance his view is that I raised it with him. But actually, my statement says he raised it with me.

Q. Was there anyone with you when you wrote the letter?

A. I don't believe no, no, this would have been done on my own.

Q. Well, did you receive any advice from anyone in relation to it?

A. No. I wrote this on a plane, I think, one day.

Q. You think you wrote this on a plane.

A. I mean, it was pretty rough but I left it as it was.

Q. It may be that what we have is a photocopy of the letter. But if you look at the top right-hand corner on the photocopy and it may be it was photocopied on top of

A. It says 'OO2' or something, is it?

Q. OOC?

A. OOC, that's Owen O'Connell.

Q. It may have been photocopied on top of some other document and there may have been a reference - are you sure you didn't receive any advice from Mr. O'Connell in relation to this letter?

A. Definitely not. But I would have given it to him as part of his investigation at some stage.

MR. MCGONIGAL: I think Mr. O'Connell may have already explained this to the Tribunal. I am not 100% sure but I am instructed that he did. He may have privately when he was dealing with his documents.

MR. COUGHLAN: I am just happy to get the explanation. I am just trying to get it clear.

A. That's to the best of my recollection now.

Q. We'll just get it clarified. It's all right Mr. O'Brien.

MR. MCGONIGAL: The date on the, the time at the top is when he received it, when Mr. O'Connell received it. That's what it is.

MR. COUGHLAN: That's grand.

Now, if you go to the third paragraph of the draft.

You say "I did not pay any money to Michael Lowry for ESAT Digifone's licence. When the Moriarty tribunal was mooted in July, 1997." I don't know if it was, but nothing much turns on that, don't worry about that.

"In July 1997, Barry sought, and I gave, reassurances that the company had nothing to worry about. Barry did not mention the October 1996 comment at this time, and it has only been raised by him in the last couple of weeks."

Now, what was meant by that, Mr. O'Brien? I am just

trying to clarify it.

A. Well, I am not sure I mean

Q. Well, could I just deal with it this way?

A. Yeah.

Q. One could get an impression from this that the Moriarty Tribunal was mooted or a Tribunal in relation to Mr.

Haughey and Mr. Lowry was mooted?

A. Would that have been in July? No?

Q. I am not concerned. It probably wasn't July, but I am not concerned

A. You see, I never had anybody check, I never got any advice on this so

Q. I am not concerned about that. It was in the late summer/early autumn of 1997. We can just take that.

A. Okay.

Q. Now, you say in this draft, and I am just asking you if this is the meaning it has "Barry sought and I gave reassurances that the company had nothing to worry about." Was that just a general inquiry?

A. I think that refers to the July/August conversations that I had with him where he said I raised it with him but my clear recollection is that he asked me

Q. That's why I ask you, because if you go on with the rest of the paragraph. "Barry did not mention the October, 1996 comment at this time and it has only been raised by him in the last couple of weeks." So I am just trying to understand what is meant here by this

particular paragraph.

There were undoubtedly discussions between yourself and Barry Moloney before the matters moved to a stage that Mr. Walsh was involved, isn't that correct?

A. Yeah. I mean, there is July/August, there is the 8th October, we had a board meeting, I think, on the 28th September.

Q. No, but what I want to ask you is when the Tribunal was mooted

A. Yeah.

Q. and I am not concerned now whether you approached Barry Moloney or Barry Moloney approached you about it.

Was it just in some sort of a general way in the context of the Tribunal or did it relate to the conversation which had taken place in October or November of 1997?

A. I say here "Barry did not mention the October/November run at that time or the comment".

Q. So is it your recollection that it was just a very broad and general matter?

A. As per this, yes. What I have said here, I think, is what my belief was at the time.

Q. Mm-hmm. And that the conversation, wherever it took place, only arose after that, a few weeks, you say a couple of weeks but I am not holding you to that, but a few weeks prior to this letter or this draft being

prepared at the end of October, 1997?

A. Yeah, I mean, if I was writing this on the 30th, so a few weeks could be three/four weeks, so...

Q. You continue that you deeply regret the anxiety caused to Barry and the trouble created for the board members by this matter. So here again you are expressing regret for Barry's anxiety?

A. Yeah, that's what I said, yeah.

Q. And did you mean that in that letter?

A. I would have well, I think, unfortunately, a conversation that happened a year earlier was misconstrued. And now it had been recited again and that had caused problem for everybody. It caused problems for me, it caused problems for the board, it caused problem for Barry, so...

Q. What I am wondering here is, is this in the similar category to the apology you had expressed at the meeting of the 23rd or were you now accepting that Barry Moloney had a genuine concern and had become anxious about matters?

A. I think I would have viewed it the same as the 23rd.

Q. The same as the 23rd. Very good.

A. The interesting remark is "However, I am concerned".

Q. Now, I think you have been furnished with a typescript

A. This is before lunch, yeah?

Q. Yes, before lunch. I'll just explain about that now

if I may.

Again, I can't, and I should just explain about this particular document. I think in the context of your draft of the 30th October or there or thereabouts, you believed that you had seen a document from Messrs. McCann Fitzgerald which contained some information given by Barry Moloney, is that correct?

A. I am not sure now. I know there was six questions that I was told, but I don't know what was what else was in it.

Q. Well, whatever it was, in the letter, it was conveyed to you that information had come from Barry Moloney and that this formed the basis of the letter or the questions, would that be correct?

A. I don't know precisely, because that's privileged now, and I would have seen that letter, whenever this was, this was in 1997, so I couldn't remember precisely, but I know there was six questions that I immediately dealt with.

Q. Now, I think the Tribunal made contact with Messrs. McCann Fitzgerald this morning and it's a letter to Mr. Davis, and it's from Mr. Clarke in McCann Fitzgerald and it reads: "Dear Mr. Davis, I refer to telephone conversation with yourself and Mr. Healy SC this morning. I understand from you that in the course of Mr. O'Brien's evidence an issue has arisen as to whether or not Mr. Moloney presented a

written statement to any of the meetings of directors or directors and advisers of ESAT Digifone which took place in the couple of weeks ending on the 7th November 1997 and addressing the matters which the Tribunal is now inquiring into.

Mr. Moloney confirms to us that he did not, at any point, present any written statement to such meetings. He did, however, read from a typescript text headed "Notes for meeting to consider legal advices" which had been prepared by Mr. Armstrong of this firm from a manuscript note similarly entitled, which had been given to Mr. Armstrong by Mr. Moloney to obtain Mr. Armstrong's advice as to what should be said.

Mr. Moloney believes that the meeting at which he spoke from these typescript notes was one at which a number of directors were present and which took place on the 30th October, 1997. It is possible that he used them instead at the meeting of the 4th of November but this is not his recollection.

When we reviewed this material originally the heading to it suggested to us that it was properly covered by legal professional privilege. Having been told by Mr. Moloney of the use for which the typescript note was actually intended, that is that it was primarily for use by him for the purpose of explaining to those present at the meeting what were his concerns in the

matter and not specifically for the purpose of obtaining legal advice, it seems to us that the document is probably not entitled to legal professional privilege and we are therefore enclosing a copy of it."

And then there is a typescript document which was furnished with that?

A. I don't know if you agree with me on this, it seems to be a la carte professional privilege. It would be helpful to you and me if everything was released. I mean, this is helpful now, but it's quite difficult because people are hiding behind privilege and not giving the information and then you get it and we get it and we try to make, obviously, comments on it.

Q. Well,

CHAIRMAN: It hasn't been an easy matter, Mr. O'Brien, dealing with this privilege and I certainly do accept with you that it's less than satisfactory that you are being hit with extra material at a late stage.

MR. MCGONIGAL: There is one other comment, Mr. Chairman in relation to the document. I don't want to make a huge issue. This is a document which I referred to this morning, Mr. Chairman, and which I had had a discussion with Mr. Coughlan about before the Tribunal sat this morning, because it was clear from parts of Mr. O'Brien's evidence that he had seen a

statement, what he called a statement, of Mr. Moloney's at some stage and on which views had been formed or not formed.

Now, this document 6 that has now been given to us, first of all, is a typed document and clearly, from McCann Fitzgerald's letter, there is a handwritten copy of the document which would have been Barry Moloney handwritten document and I think that's the one which the Tribunal should be furnished with in the first place. But secondly, I am surprised, and I have to say this, I am surprised that privilege was claimed in relation to this document at any stage. And what concerns me is that the basis upon which Messrs. McCann Fitzgerald are now waiving privilege in relation to this and I raise this issue and I want to reserve my position on it because it seems to me if they are waiving privilege in relation to this document in fact there may be no privilege in relation to any of the documents and it may be that the Tribunal should be looking at it, at the issue from that point of view. And subsidiary to that, I would be querying whether or not there are other handwritten documents, apparently given by Mr. Moloney to Mr. Armstrong, to which privilege would not attach, even though advice may be given on them. The advice may be privileged but whether the handwritten documents would be covered by that privilege is an issue which I think has to be

explored.

Now, the significance of this document in one sense is that prior to the production of this document there was a huge gap in the evidence which had been presented to the Tribunal and, therefore, the inquiries which have, to some extent, been made in relation to certain meetings and conversations have been blurred and the full truth hasn't been open to them in relation to what might or might not be the position because of the absence of some of these document. And I think this is the concern which I would have for Mr. O'Brien, and Mr. O'Brien clearly has as well.

CHAIRMAN: well, if this

MR. COUGHLAN: sorry, just in fairness to everybody, that I should, in case matters go into the public domain in a way that may not be totally accurate, and I am not suggesting that My Friend was in any way not behaving honourably and bona fide in the submission he made on behalf of his client. Perhaps I should stress that Messrs. McCann Fitzgerald, on behalf of their client, are not waiving privilege in relation to the typescript document. What they say is that it is probably not entitled to legal professional privilege, bearing in mind that the typescript document was prepared for the purpose of enabling Mr. Moloney to

address a meeting of directors, perhaps by way of a speaking note. What it was drawn from was handwritten notes, as I understand it. I just want to be very careful because there is a firm of solicitors involved here. They are not present here at the moment and I just want to be very clear about this and we can deal with the matter again.

Now, having viewed the matter this morning, there is a distinction made in the letter between the handwritten notes which Mr. Moloney prepared to give to Mr. Armstrong for the purpose of obtaining legal advice. As I understand it, there is no waiver of a claim of legal professional privilege in relation to that matter. This typescript document was prepared for a different purpose but on the occasion when that firm of solicitors were considering the documents, they, as Mr. Clarke said when they reviewed this material originally "The heading to it suggested to us that it was properly covered by legal professional privilege." But having reviewed the situation now, and understanding from Mr. Moloney the circumstances whereby this typescript document came into existence, that they believe that it is probably not entitled to legal professional privilege. So I don't want it to go abroad that there is cherry-picking in relation to a waiver in respect of privilege. There is a clear understanding by this firm of solicitors that this

document was probably not entitled to the claim of legal professional privilege and that that was erroneously made.

Now, I also want to say this, that one also has to bear in mind that matters concerning this conversation and what transpired subsequently at board meetings or meetings of directors was, in the first instance, brought to the attention of this Tribunal by Mr. Barry Moloney. I want to put that in the balance, in case it be suggested that there is anybody showing lack of bona fides in respect of claims of legal professional privilege and cherry-picking in relation to waiving of them. That's all I want to say to protect everyone's position at the moment. That's all.

MR. MCGONIGAL: Mr. Coughlan is quite right to protect everyone's position. But I am a bit confused. I thought I made myself clear that the document I was referring to was a handwritten document which I understand was may have been the one which Mr. O'Brien saw in America, not a typewritten document. I am curious

MR. COUGHLAN: That's what we are attempting to take up with the firm of solicitors at this very moment. I want everyone's position to be adequately protected.

MR. MCGONIGAL: It can be reserved. But the other

matter which concerns me is the date upon which this document was prepared.

CHAIRMAN: Well, I'll say only three very brief things in regard to this, having already commented that I appreciate it makes Mr. O'Brien's situation more arduous when some matters have come, as far as he is concerned, somewhat belatedly to light. I do appreciate that, as a former barrister myself, that drafting and deciding upon categories of privilege in discovery matters can be extremely difficult and there is certainly no suggestion that anyone involved in the legal advices to interested persons here, and in particular Mr. Clarke of McCann Fitzgerald, has in any way acted in other than an entirely professional and proper manner.

We will seek to make such progress as we can for the rest of today, I think on a de bene esse basis, because I have no doubt Mr. Clarke would have not lightly committed the typescripted version to paper, were he not satisfied that it accorded in content very faithfully with the handwritten original and, in conclusion, I will only say this, that I will be alert to the possibility of any person before the Tribunal, in any way being damaged or injured as a result of an incomplete, aggregate picture of documentation and, if needs be, I will take that up either myself or in the

course of argument at a suitable stage.

MR. COUGHLAN: Now, again my colleague, Mr. Healy tells me, just so that we can have a complete picture, that it was Mr. McGonigal's suggestion in relation to this particular document which was put to Mr. Clarke and the response followed that. But we are informed, and I don't want to hold anybody to this, but by telephone we are informed that the date of the document is between the 21st and the 23rd October, 1997 and it is most the most likely date is the 22nd October, but I am not holding anyone to those particular dates at the moment.

Q. Now, if we could just deal with the particular typescript note. And it's heading "Note for meeting to consider legal advices.

1. October/November discussion, suggest fees for work on bid. Statement made re 2 x 100K payments that Denis O'Brien had made one of these to ML.
2. Told him I did not want to know. As far as I was concerned it was nothing to do with our company ED.
3. Statement was never referred to again until 25th August 1997 at a regular update meeting. I was reminded of Denis O'Brien's statement the previous October/November with a comment "I did not actually do it, thank God. I know you must be concerned." The same statement was repeated to me at a meeting the

following week, September 1.

4. The IPO document in the first week of October and the reference to the Tribunal contained in it brought the matter into focus for me vis-a-vis potential impact on our company.

5. On October 8th/9th I sought and received advice from McCann Fitzgerald that there could be potentially serious consequences for the company with respect to the statement in the IPO.

6. In a discussion with DOB on October 8th when I inquired as to why he was now telling me that the payment never went through, he told me that he had intended to make the payment but that it got stuck with a third party intermediary.

7. I made four separate attempts between October 8 and October 14 to try to convince Denis O'Brien of the potential position the directors of ESAT Digifone could be put in with respect to the statement in the IPO and asked him to delay the IPO until after the Tribunal.

8. On October 13th, I also shared with him an initial document headed "Draft preliminary advices from McCann Fitzgerald" which I believed I would need to share with the other directors of the company if the IPO was still going ahead. I did this so that DOB could consider the type of scenario the directors of ESAT Digifone could be facing.

In my handling of this matter I had two overriding

concerns which I stated to Denis.

1. Not to be seen to be re-igniting any animosity amongst the shareholders and

2. If at all possible, to avoid enlarging the circle of individuals that needed to address this.

9. On the same day, October 13th, DOB then brought Michael Walsh into the loop on what had occurred. He again assured us that no payment had gone through and that he was prepared to give the company a letter to that effect.

10. The company then sought and received official advices of potential impact on the directors of ESAT Digifone which had been shared with all of the directors."

Now, dealing with that particular document and if the letter from Messrs. McCann Fitzgerald is accurate, it seems to reflect the handwritten notes which Mr. Moloney had prepared to give to Mr. Fergus Armstrong.

A. It seems that way, yes.

Q. And if you take item number 1. "October/November discussions success fees for work on bid, statement made re 2 x 100K payments DOB had made. One of these to ML." We heard your evidence about that?

A. I never said anything like that.

Q. "2. Told him I did not want to know. As far as I was concerned it was nothing to do with our company

ED." I think you are unsure but you accept Mr.

Moloney's word about that?

A. I think on the first bit. "Told him I did not want to know." It seems to me he may have said that.

Q. "3. Statement was never referred to again until 25th August, 1997." I know you think July, but I don't think there is any great difference, is there, between you?

A. July/August, I don't think we can fall out on that, no.

Q. "At a regular update meeting I was reminded of Denis O'Brien's statement the previous October/November with the comment "I did not actually do it, thank God. I know you must be concerned". And this same statement was repeated to me at a meeting the following week, September 1." Do you remember

A. First of all, I was on my honeymoon on September 1st. But to come back to the point. He raised it by asking a question of me and I replied, you know, that I didn't do it. I may have said "Thank God".

Q. And do you think you might have said "I know you must be concerned"? Would you have said that?

A. I may have said that, I am not sure.

Q. "4. The IPO document in the first week of October and the reference to the Tribunal contained in it brought the matter into focus for me vis-a-vis potential impact on our company."

You had no involvement with Mr. . Moloney in relation

to that?

A. Well, he had, in his evidence, in tab 1, he had, he had it on the 25th September and he may have had it even earlier.

Q. That's the red herring

A. So it's not October.

Q. That's the red herring.

A. Yeah, this is tab 1. It's my tab 1 I am not sure.

Q. Now, he is saying here that he sought and received advice from McCann Fitzgerald on the 8th or the 9th October and as to whether he did or he didn't, I am sure we just can establish as a matter of fact

A. I just don't know. It doesn't seem to be a big issue.

Q. "6. In a discussion with Denis O'Brien on October 8 when I inquired as to why he was now telling me that the payment never went through, he told me that he intended to make the payment but that it got stuck with a third party intermediary." Do you agree or disagree with that?

A. He asked me whether I paid money to Michael Lowry and I told him that I hadn't.

Q. did you

A. categorically.

Q. Did you tell him that it had got stuck with

A. I don't remember ever saying that.

Q. Now, number 7. "I made four separate attempts between October 8 and October 14 to try to convince Denis

O'Brien of the potential position the directors of ESAT Digifone could be put in in respect to the statement in the IPO and asked him to delay the IPO until after the Tribunal." I think we have been over those four meetings already and you have given your answers in relation to that?

A. Yes, I have.

Q. "8. On October 13, I also shared with him an initial document headed "Draft preliminary advices" from McCann Fitzgerald which I believed I would need to share with the other directors of the company if the IPO was still going ahead. Do you remember him showing or sharing with you draft advices?

A. This may be I just was looking at that note again. It said here on the 13th October he says either he calls a board meeting of the board to buy into the risk or I will share my concerns with one of the other directors."

Q. I am just wondering

A. But he doesn't mention in that meeting anything about advices.

Q. Preliminary advices I am just trying to find out where you agree and disagree or can't remember matters.

Do you remember you had two meetings on the 13th October?

A. One was in London

Q. The meeting between yourself and Mr. Moloney, perhaps

it was a lunch, and then the meeting which involved Mr.

Walsh, isn't that right?

A. Yeah. Well, I mean the point number 8 deals with the 13th, all events on the 13th October, but then in the detailed notes of the 13th October, there is no mention of the advice from what I can see, so...

Q. I am asking you do you remember seeing any preliminary advice?

A. Unfortunately I don't, no.

Q. Do you remember him having a document which was from the solicitors?

A. No, I don't.

Q. Which he informed you was preliminary advice?

A. No.

Q. I'll just come back to that a moment but in the original bundle of documents which we got in the index after Mr. Moloney's statement. Do you have it at just before tab 1, after Mr. Moloney's statement. It's the index to the documents appended to the statement of Mr. Moloney.

A. Is it point number 32?

Q. The index, before the handwritten notes of Mr. Moloney. I can give (Document handed to witness.)

A. So this is the latest stuff, is it?

Q. No, no, no, no. This is the original documents which accompanied Mr. Moloney's statement?

A. Yes, I have that now.

Q. And there was an index with those documents.

A. Yes.

Q. And if you go to item number 6 in the index. You see

"12th October 1997, preliminary advices of Fergus Armstrong" and then they are not included, "Not included, privileged legal advice." So it would appear that something was created on the 12th October, 1997.

We don't have it. But it would appear that

Mr. Armstrong did furnish some advices of a preliminary nature on the 12th October, according to the index?

A. But I don't remember getting them.

Q. You don't remember getting them?

A. No, I don't.

Q. Now, do you remember if we continue with this typescript. Mr. Moloney goes on "In my handling of this matter I had two overriding concerns which I stated to Denis." I am just wondering do you remember Mr. Moloney stating these to you?

"1. Not to be seen to be re-igniting any animosity amongst the shareholders.

2. If at all possible to avoid enlarging the circles of individuals that need to address this." Do you remember him saying either of those?

A. Certainly not number 1.

Q. Certainly not number 1?

A. And number 2 doesn't tally with the 13th October notes

where he wanted it widened and that's when I sought Michael Walsh as an independent director, his advice.

Q. I think paragraph number 9 then on the same day, October 13th. "Denis O'Brien then brought Michael Walsh into the loop on what occurred. He again assured us that no payment had gone through and that he was prepared to give the company a letter to that effect." Well I think you don't have much difficulty with that particular

A. No, I don't, no.

Q. And 10 "The company then sought and received official advices of potential impact on the directors of ESAT Digifone which has now been shared with all of the directors." Well that seems to have happened?

A. That seems to be

Q. Now, I wonder could you go to divider number 3 in book

29 A. It's Mr. Moloney's statement, because I want to afford you an opportunity of commenting on the statement which has been furnished to the Tribunal by Mr. Moloney.

A. Thank you. That's that document there?

Q. Yes. I think Mr. Moloney informed the Tribunal he was appointed as Chief Executive of ESAT Digifone with effect from 30th July, 1996. Your Co/CEO was Knut Digerud of Telenor. Upon his resignation he became sole Chief Executive with effect from the 1st July, 1997.

A. I'd say that's all true, yeah.

Q. Now, in relation to the second paragraph, I don't think that there is any dispute, unless you wish to make a comment on it, do you?

A. Well, it wasn't a joint venture company. 'Joint' is there is just two

Q. Perhaps I'll just run through it quickly. Digifone at the time was a joint venture company in which ESAT Telecom and Telenor owned stakes of 40% each and IIU 20%. I understood that a separate document tracing the corporate structure of the Esat Group has been, or will be provided to the Tribunal. The management of each company were independent of one another and each had independent legal and financial adviser. The name 'ESAT' was used, however, by both companies and both shared a common Chairman, Mr. Denis O'Brien. Under the Shareholders' Agreement Telecom were entitled to nominate the Chairman of Digifone (Denis O'Brien) and Telenor the CEO which as described above became himself.

A. That was only for Telenor only had for a period that right in the Shareholders' Agreement, maybe one year or two years, I think.

Q. Now, I think it continues "I have been asked by the Tribunal's legal team to comment upon two specific areas. The first is as to my own or Digifone's view of the circumstances in which a donation of \$50,000 was

made to the Fine Gael, initially by Telenor and subsequently charged in the accounts of the Digifone.

Following my appointment as joint CEO I became aware of the donation having been made. I believe that I was also aware that an invoice had been received in respect of it. The donation was not at that time a matter of any particular concern to me or any of Digifone's management. Shortly before the Initial Public Offering of shares in Telecom, which took place on the 7th July 1997, I was told by Arve Johansen of Telenor some of the complicated history of the donation and I was given a copy of the series of invoices and credit notes that related to it. At a meeting on the 4th November, 1997 at which a number of directors of Digifone were present and to which Mr. Denis O'Brien was linked by telephone, Mr. Arve Johansen of Telenor explained the background to the donation in some detail and expressed a concern to establish that Fine Gael, as such, had actually received the donation. I regarded the issues raised by Telenor as substantially ones between shareholders, that is between Telenor and Mr. O'Brien of Telecom. I had not previously had any question in my mind but that the donation had been made to Fine Gael Party and, despite the complex history of the payment described by Mr. Johansen, I do not think that I or Digifone at any stage believed that the money had not been received by Fine Gael.

The history that was described by Mr. Johansen was subsequently investigated but was not, as far as I recall, regarded as particularly important in the context of the arrangement of the IPO. The Tribunal has summarised to the solicitors for ESAT Group what it and Telenor understand to have occurred and that accords with my understanding of what was described by Telenor and was subsequently found on investigation, save for the qualifications expressed by our solicitor in their letter of the 16th May. I do not know if anyone in ESAT Telecom or ESAT Digifone directed change to the Telenor invoices."

That's where

A. Well, this is in conflict

Q. "I do not know who, or if, anyone in... Telenor invoices."

A. So this is in conflict with the statement that was released at the time of the, whoever leaked the \$50,000 donation to the newspaper, the Sunday newspaper.

Because at that time I think the version of the statement from Mr. Moloney is different to what is here. It's an aside.

Q. Right. In what way, to the best of your recollection, does it differ? It's perhaps something we can check.

A. Okay.

Q. Sorry, if we go back. Something got into the

newspapers, there is no doubt about that.

A. At a very sensitive time for, in political terms.

Q. you used the expression leaked to the newspapers.

A. Yes, that's my belief.

Q. Now, I don't think you are suggesting that anyone in ESAT in the ESAT group, if I might describe them as that leaked anything to the newspapers.

A. Well, we don't know who leaked but it certainly appeared in a Sunday newspaper. But there were only a handful of people who knew, Mr. Coughlan, at the time, about meetings with Fine Gael. The other aspect here in this do you want me to make a comment?

Q. Yes.

A. It seemed you know, when you read the notes, particularly yesterday's session, it did exercise the minds of everybody in the context of the IPO much more so than probably it deserved.

Q. The donation?

A. Yeah.

Q. Now, I just want to be clear about this because it is a matter of significance to the Tribunal that the circumstances surrounding the donation, the discussion in relation to the donation, the conversation between yourself and Mr. Moloney, the circumstances surrounding that were not brought to the attention of the Tribunal.

That's a circumstance the Tribunal is looking at. And you are expressing the view that somebody who knew,

from a small group of people, leaked this matter to the newspaper rather than bringing it to the attention of the Tribunal, is that what you are saying?

A. Well, if the person had come to the Tribunal it would not have been in the Sunday newspaper because this Tribunal, you don't see that coming out of this Tribunal.

Q. And I think after the matter appeared in the newspaper, a statement was issued, was it, by the ESAT group or?

A. I issued a statement and ESAT Digifone issued a statement.

Q. I know you issued a statement, yes. And ESAT Digifone issued a statement?

A. I believe they did.

Q. Did Mr. Moloney himself issue a statement, do you know?

A. I don't recall.

Q. Very good. You did say a few moments ago that the statement issued by Mr. Moloney is somewhat different to this. I think would I be correct in saying that ESAT Digifone issued a statement, that Mr. Moloney

A. A company he was quoted I think, that they didn't know anything about it or something to that effect.

Q. I think Mr. Moloney continues. "The second matter on which I have been asked to comment is the form of the clause on page 16 in the Prospectus for the Telecom IPO in November, 1997. Telecom and its advisers were the people responsible for deciding to include such a

provision and for drafting 6 it. I cannot give you any comprehensive explanation as to the thinking behind it or the words used in it. Digifone would have seen some drafts of the Prospectus, however, and I believe the existence of the statement, the publication of the Terms of Reference of the Moriarty Tribunal and the fact that Mr. O'Brien reverted a couple of times to the conversation we had about a year previously, alerted me again as to the possible significance of what Mr. O'Brien had said."

Now, I think you have, in fact, dealt with those in the context of the matters raised in the typescript document. But is there anything else you wish to refer to there?

A. Well, it says here "Telecom were the people involved ... and for drafting." If you look at tab 1 of Mr. Moloney's evidence. He has handwritten changes there and when then you go to tab 2, they are all accepted by the company. So it seems to me that there was, you know, a collaborative effort - Mr. Moloney and then the people who were working on the IPO.

Q. Right.

A. Will I show it to you?

Q. Yes, I see the point you are making. It continues "In these circumstances, I sought advice from Digifone lawyers and therefore I told the board that, based on

the advice received, I believed that in the context of the IPO they should make inquiries of Mr. O'Brien, which were made at the meeting of the 4th November, 1997 to which I had already referred. Questions were then put to Mr. O'Brien who was in contact with the meeting by telephone as to whether or not he had made any payment to Michael Lowry, the minister responsible for the grant of the licence in connection with the grant. Mr. O'Brien said he had not made any such payment. He had, in fact, wanted to make a payment to Mr. Lowry because he knew that Streamline, Mr. Lowry's company, was in financial difficulties and that he felt sorry for him and that he regarded Mr. Lowry as worthy of support. He said that he had in some sense 'earmarked' money for that purpose in Woodchester Bank, who he said were his bankers. Mr. O'Brien said however, that he changed his mind and the money had not been paid. He said he had never agreed with Mr. Lowry that he would ever make such payment. Mr. O'Brien, I believe, acknowledged that he had said to me about a year previously that he had paid £100,000 to Mr. Lowry but he explained that he had said this and had referred to another payment of £100,000 to a person he did not identify, in jest and as a piece of bravado in order to persuade me to pay a number of success fees which had been claimed by advisers following the award of the licence."

Do you have any matters you wish to deal with there,

Mr. O'Brien?

A. Well, I think the first paragraph on the previous page

"In these circumstances, I sought advice from Digifone

lawyers and thereafter I told the board." The board I

told, I think in the context of my the board was

quickly informed after me going to Mr. Walsh as the

independent director. So, maybe he is trying to say

that he did it, but I think that I would have taken the

step to do that with the board, to let them know.

And the second thing is, I mean, we can go through line

by line on this, but

Q. Well, if you wish, yes, but I don't think we need to

A. I don't think you want to and neither do I.

Q. I think if you can point out where you agree or

disagree with Mr. Moloney.

A. You know, he said "Mr. O'Brien, I believe, acknowledged

that he said to me a year previously that he paid." I

never said that I paid Michael Lowry a year previously.

"But he explained he said this and he referred to

another person in jest." He is trying to make out that

I actually mentioned on the day the run that it was

Michael Lowry and my point, obviously, is I didn't.

Q. I know where you disagree on that?

A. I don't mean to be pedantic but it is important.

Q. I think, "In the latter part of the meeting Mr.

Johansen described the circumstances surrounding the political donation to Fine Gael and I have described this earlier also." That's correct?

A. Yes, it is.

Q. "During the period when arrangements were made to hold the meeting on the 4th November 1997, I had a number of conversations with Mr. O'Brien where he assured me that what he had said to me had been mere bravado on his part designed to persuade me to pay the success fees which had been claimed. He said that he had made no payment. He also said at that some steps had been taken in this respect but that no such payment had actually been made because of a difficulty or hitch with the third party intermediary. At a meeting on the 23rd October, 1997 Denis informed us that the intermediary he referred to was Woodchester Bank. He said he was glad that the payment had not been made, that such a payment could be misconstrued."

A. Well, I disagree fundamentally here with the comment he said where "He also said that some steps had been taken." I mean and then he goes on again, not to be pedantic about this, but as you know from my evidence I have said categorically that I never mentioned, you know, can't recall mentioning 'intermediary' or 'third person' 'third party'.

Q. Then the statement continues "I hope it is clear and I should stress I have no knowledge of any payment having

been made by Mr. O'Brien to Mr. Lowry and the only reason which I (or I believe the Digifone board) has ever had for questioning whether or not such a payment was made were words said by Mr. O'Brien which I have tried to describe."

I have to move, Sir, now, to deal with the notes of the meeting of the 4th November dealing with the political contribution issue and I have a number of matters which I have to put to Mr. O'Brien in relation to that.

CHAIRMAN: I wonder should we just make a start on it for ten to fifteen minutes? I know it's been a long day for everybody. But just in anticipation, if possible, arrangements for other witnesses and the like.

MR. MCGONIGAL: If there is an anticipation I may be premature but if there is an anticipation of Mr. Coughlan finishing with Mr. O'Brien this evening on the basis that he was coming back at a later stage, Mr. O'Brien would be very appreciative of continuing for some time. If that is not possible or it is unrealistic, well then so be it.

CHAIRMAN: Well, Mr. McGonigal

MR. MCGONIGAL: Unfortunately I don't know what way you are structured.

CHAIRMAN: Both our ongoing commitments as regards meetings and other work has to be kept going even during sitting weeks and our own Secretariat and the stenography service have to be borne in mind. So I don't think we should go beyond perhaps another ten minutes.

MR. COUGHLAN: Perhaps the best place we can go to deal with this Mr. O'Brien is the Messrs. Kilroy's attendance on the meeting of the 4th November, 1997, which is at, I think you know the document. Yes, you have the document.

A. Which page?

Q. I am just going to bring you to the page now.

A. I came in at page 13, if that's helpful.

Q. Yes, I think the

A. 15 - sorry - and I exited on page 22.

Q. I haven't got a number at the bottom of my page but you can see the heading "Kilroy's" can you?

A. 312, no?

Q. Page 24 I think. Now, I think Anthony Lang asked a number of questions in connection with the payment made by Telenor to David FT Austin. Denis O'Brien in response confirmed the following details.

1. He, Denis O'Brien, had introduced David FT Austin to Arve Johansen." I think that's correct. Or would you agree that's a correct note of your response?

A. Well, yeah, I put the two of them together, yes.

Q. "2. It was Denis O'Brien who has suggested to Telenor/Arve Johansen that a payment would be made to David FT Austin for the Fine Gael Party."

A. I wouldn't have used the word 'suggested' but I mean, plain semantics.

Q. "3. The Fine Gael Party was in financial difficulty and needed payments." Did you say that?

A. Financial difficulty I think all parties, but I think they all have the same problem, but I could have said that, yes.

Q. "4. He was aware of an intended dinner in New York. He (Denis O'Brien) did not go but apparently it was \$25,000 a plate." I take it you said that?

A. Yes.

Q. "5. In response to Anthony Lang, Denis O'Brien confirmed that he had some idea that there was a limit of 500 or 5,000 in relation to contributions." I think we have discussed that before.

A. It was incorrect, yeah.

Q. "I think Kevin O'Brien pursued a line of questioning with you.

1. There was a dinner in New York which John Bruton was attending.

2. About ten or fifteen people.

3. I thought about going but I did not."

A. That would be right.

Q. Did you say that?

A. I probably thought about it for a minute when I got the first approach from Mr. Austin (when I).

Q. "4. I spoke to Arve Johansen and ask him whether he'd be prepared to make a contribution paying per plate."

A. I could have said that, yes.

Q. "5. Arve Johansen had asked me how I would go about making the payment." Do you remember saying that?

A. Well, I don't think I would have said that because I put Mr. Johansen in touch on the Monday the 11th I mean, I don't think I said that, but I think my evidence, Mr. Coughlan, was that I put the two of them together and we had this conversation on Monday where he took down on his yellow sticky a Smurfit Group number for David.

Q. If we go to 6 then, and this is attributed to you. "I do not remember a reference to ESAT Digifone reimbursing the payment."

A. I believe I said that.

Q. "Kevin O'Brien asked whether the payment was made by Telenor, by himself, Denis O'Brien or by Digifone.

Denis O'Brien acknowledged that he wanted the payment to be paid "Outside the country". " Is that right?

A. I don't remember precisely saying that but probably it was that Telenor as an overseas company would make the donation.

Q. Well, it seems to be a fairly precise that you wanted

it paid outside the country. You can't remember it?

A. You know, I can't remember that but I could have said it. I don't know.

Q. "Denis O'Brien replied "I am not sure who ended up paying for it. They, Telenor, paid David Austin. I did not know whether Telenor making payment to David Austin were saying that they were paying on their own behalf or on someone else's behalf."

A. It was vague.

Q. "It was Peter O'Donoghue who had dealt with the pre-trading expenses. It was he would have dealt with the issue of ESAT Digifone paying back Telenor."

A. I think I was trying to describe this and I am not sure whether it was in our private meeting or in evidence, but at the time of the Shareholders' Agreement, I think it was in public evidence, I had said that they we'd all come with lists of things that everybody had paid for and we didn't want to have a fight with Telenor at the time and they we well ESAT Digifone, then agreed, we agreed that they would refund it. And I think that's what I said in my evidence.

Q. Well, I think you reiterated your previous assertion that you were made pay it, isn't that correct?

A. Well, we were it was one of those give and take things in a Shareholders' Agreement when you have borrowed money from your partner.

Q. Now, "Denis O'Brien made the following comment: I had

been invited to a Fine Gael fundraising dinner in New York, it was \$25,000 a plate. I proposed to pay for two plates, about ten or fifteen people went. I thought about going. I spoke to Arve. I asked whether he would be prepared to make a contribution paying per plate. He asked me how I would make the payment. It was agreed that ESAT Digifone was to reimburse for this payment.

Kevin O'Brien asked whether the payment would be made by Telenor, yourself or ESAT Digifone and your response was "I am not sure who ended up paying for it. I know they, Telenor, paid David Austin."

Now, the questioning continues

A. Can I just say one thing there?

Q. Yes.

A. "It was agreed that ESAT Digifone was to reimburse for the payment." I think that is a reflection of what actually happened.

Q. Well, what I really wanted to bring your attention to, if you go to page 27 then

A. Is that backwards or forwards?

Q. Forward. Bottom of page 26, Mr. McGonigal draws my attention to. "Kevin O'Brien questioned Denis O'Brien and put to him that Telenor was paying David Austin on your behalf."

A. Where is this now?

Q. The bottom of page 26. I beg your pardon. You see "KOB questioned Denis O'Brien and put it to him that Telenor was paying David Austin on your behalf." Do you see that?

A. Yeah, and I said "I am not sure."

Q. And you said you weren't sure. Now, if you go to the fourth paragraph on page 27, "Michael Walsh questioned Denis O'Brien in relation to the position concerning the payment by ESAT Digifone. Michael Walsh asked whether the document showed that there had been a repayment by ESAT Digifone.

Denis O'Brien replied "I would not be in the loop on that."

A. And that was my evidence, I think, on the first or second day. Like, there was all these invoices.

Telenor said that I was handling the invoices and shunting them around the building and clearly, I wasn't doing that, and that's my evidence. And this is a reiteration of that when I said I had wouldn't be on the loop on that.

Q. So can we take it that you didn't have any knowledge so at the time of what actually transpired in relation to this matter at the time of the shareholders meeting?

A. Well, there is two different times. One is all the invoices between December and January/February. And then there was the question of the Shareholders' Agreement and at that time we had a bridged loan from

Telenor for 9 million. We were not in a position to start arguing over \$50,000 that they wanted ESAT Digifone to pay.

Q. Well, I think what was being asked by Mr. Walsh here was whether there was any documentation showed that there had been a repayment by ESAT Digifone and you replied that you would not be in the loop on that?

A. I would not know, you see, I was a non-executive. I know Telenor's evidence is that I effectively ran ESAT Digifone, which I didn't, but I was a non-executive Chairman.

Q. No, I don't think they are saying that. And I'd just like you to go to page 31 for the moment. I know there are other matters you may wish to refer to of this.

A. I go off the call then.

Q. You go off the call. Yes, you are gone now. 31.

A. Yes.

Q. And you can see, if you go down the fourth paragraph "At this point, Knut Digerud interrupted." Do you see that?

A. Yes.

Q. "He pointed out that the arrangements for repayment are processed by Peter O'Donoghue and that Peter O'Donoghue was involved by Denis O'Brien "In that loop". "

A. Categorically, no.

Q. Categorically, no?

A. And I am surprised that Mr. Digerud hasn't been asked to give a statement. I know we have written to you about this, but absolutely, no. Mr. Digerud was the assistant, or joint Chief Executive or even Chief Executive at the time before Barry Moloney arrived.

Q. But this is fairly important

A. it's vital.

Q. And what Mr. Digerud is saying here is that arrangements for repayment are processed by Peter O'Donoghue. That may or may not be correct. Mr. O'Donoghue was the financial controller, I think, isn't that correct?

A. He was the CFO of ESAT Digifone, seconded by ESAT Telecom, but then he went full-time, I think, on January 15th, 1996.

Q. And that Peter O'Donoghue was involved by Denis O'Brien in that loop?

A. I don't know how he can say that. Mr. O'Donoghue may have produced the accounts at the time of the Shareholders' Agreement.

Q. Well, I suppose if and we will we will hear from Mr. Digerud that what is meant here is that Peter O'Donoghue may have been the person who gave effect to it, but that he was involved by you in that regard, in the loop?

A. Well, I take the context of the loop back here.

Q. On page 27 I think, is it? I think that's your reference to a question put by Mr. Walsh; 'Was there any documentation to show that ESAT Digifone had paid the money?' and you said you wouldn't have been in the loop.

A. That's right. I mean, all I remember is at the time of the Shareholders' Agreement in the context of the scale of the project which was I mean we were spending 50,000 an hour during every business day in a that year on building our network. So in that context, fighting over 50,000 was never really going to be top of our agenda. But in terms of documentation, you know, I can't remember the documentation at that time. I just we agreed it.

Q. Well,

CHAIRMAN: I think, Mr. Coughlan, we are probably on the two hour mark now and obviously, at this stage, Mr. O'Brien, you had departed, you weren't available to the meeting, and what you take issue with is what Mr. Digerud is reported as having stated. But do you share the view that you expressed yesterday, that whilst you might quibble with one or two expressions, insofar as it is the fullest of the records the Tribunal has of what took place at the meeting while you were there, it's pretty good.

A. I think this is an extremely helpful document and it's

great that we have received it in the last few days.

I think it's good for everybody.

CHAIRMAN: Very good. We will take up matters then in the morning. Thank you.

A. Thank you, Chairman.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
FRIDAY, 29TH JUNE 2001 AT 11 A.M.