

THE HEARING RESUMED AS FOLLOWS ON THE 8TH OCTOBER, 1999, AT

10:30AM AM:

CHAIRMAN: Good morning. Mr. Healy?

MR. HEALY: Yes, sir.

The first witness who will be called to give evidence today is Mr. Treacey, but before Mr. Treacey gives his evidence, there is evidence to be given from Mr. Patrick Robert Douglas.

Mr. Douglas is not available in person to give his evidence today, but what is envisaged is his statement will be read out today so that the chronological sequence of events to which his evidence is relevant won't be broken, and he will be available to the Tribunal at a later stage, perhaps in a weeks time to give his evidence, and if necessary, to be cross-examined by any person affected by that evidence.

CHAIRPERSON: Yes.

MR. HEALY: So his evidence is in Folder 3, sir, and it is a statement made in response to a number of queries.

CHAIRMAN: And no one present has any objection to that course. Mr. Gallagher?

MR. GALLAGHER: No. Thank you.

MR. HEALY: Mr. Douglas says he is Patrick Robert Douglas

of Wyvern, Dungriffin Road, Howth, County Dublin. He says he was appointed a Director of Irish Permanent Building Society in June 1991 and remained a Director until September of 1994 when it converted to Irish Permanent PLC.

He goes on: "I was appointed a Director of Irish Permanent PLC on 21st of September, 1994. I remained a director of the company, which is now known, since the 20th of April, 1999, as Irish Life and Permanent PLC.

I have seen copies of the letters from the Tribunal of Inquiry, dated the 24th of June and the 19th of August, 1999, addressed to the Group Chief Legal Officer of Irish Life and Permanent PLC. I have been informed by the Group Chief Legal Officer, that the Tribunal requires me to make a statement dealing with the same series of questions as set out in the letter of the 24th of June.

My response to a number of questions contained in the letter is as follows:"

Now, the first question was that, or the first matter to which Mr. Douglas was asked to address his attention was, he should identify his signature on a certain cheque, and that cheque will be put on the overhead projector. It is a cheque for €40,000, to which reference has already been made in the course of these sittings, dated the 16th of August, 1991. It is a cheque payable to Fianna Fail for

€40,000, signed by Dr. Edmund Farrell and Mr. Douglas.

Mr. Douglas says: "I confirm my signature on a cheque bearing number 018814, dated 16th of August, 1991, made payable to Fianna Fail in the sum of €40,000".

The next question he was asked was whether the cheques were completed before they were signed by him? And his answer is: "The cheque was completed before it was signed by me".

He was then asked to indicate whether his signature went on first or whether that of Mr. Farrell went on first? He says: "My signature was the second on the cheque, the cheque had been signed by Dr. Edmund Farrell before it was presented to me for signature".

He was then asked to indicate whether he knew of the purpose for which the cheques were being drawn? And his answer is: "The cheque, 018814, was a political contribution made by Irish Permanent Building Society to Fianna Fail. Political contributions to two other parties were also made on the 16th of August, 1991".

He was then asked to indicate whether he was aware of the contents of the cheque stubs in each case, and in particular the reference to "(B Lenihan)" on one of the cheque stubs? I am and his answer is that he has no knowledge of the contents of the cheque stub.

I just realise that the question I am reading out, sir, is a question in a standard form letter which was written to, I think the Irish Permanent Building Society in connection with a number of cheques, and I realise that the Lenihan cheque of course has no relevance to Mr. Douglas. So what Mr. Douglas was asked in the letter addressed to him was whether he was aware of the contents of the cheque stubs in his case, and his response is: "I have no knowledge of the contents of the cheque stub". And the cheque stub is on the overhead projector, for the cheque of the 16th of August, 1991, €40,000.

The next query was whether Mr. Douglas had any information concerning how the person by whom the cheque stub was filled out came to I presume put in the information that it was payable to Fianna Fail? And his response is that it was normal practice for Ms. Margaret Coyle, Dr. Edmund Farrell's private secretary, to prepare the cheques for Dr. Farrell. He says her work included keeping the ledger in which her work was entered, he assumes the entry in the ledger relating to the cheque was made by Miss Coyle, and he believes the entry on the cheque stub was made by her. There was a reference to a cheque analysis book already referred to in the evidence given at these sittings. And this shows that a cheque for €40,000 was paid to Fianna Fail and two other cheques were paid to political parties, one to the Progressive Democrats for €7,500 and one to the Labour Party for €10,000.

He was then asked to indicate whether he was aware of the identity of the person from whom the requests for each and every one of the cheques came? And he was asked to give the name and address of any such person whose identity he knew. And his answer was: "I am not aware of the identity of the person from whom the request for the cheque came, I believe that the decision as to the amount paid to Fianna Fail would be made solely by Dr. Farrell".

The next query is a related query, and it is as follows:

If he dealt with any such person by whom any of the requests for political or other contributions mentioned came, he should provide details of all his contacts, whether direct or indirect, with any such person. And he says: "As far as I am aware the request for the contribution of €40,000 was handled by Dr. Farrell, and my only function was to countersign the cheque after Dr. Farrell had first signed it. I did not deal with any person from whom the request for the contribution came".

He was then asked to state the identity of the person to whom the cheques were given, if he knew the identity of that person, and his response was he was not aware of the identity of that person.

He was then asked whether if he did not give the cheques to any of the cheque payees but knew of the identity of the person by whom they were so given, he should identify that

person, and he says: "I confirm that I did not give the cheques to any person. I did not know the identity of the person by whom or to whom the cheque was given, do not know how the cheque was conveyed to the payee or by whom I, I assume it was paid by post".

He was asked to indicate whether where, if he knows, the cheques were handed over and he says he didn't know.

He was asked if he was aware of the identity of any other persons involved in the making of requests for, receiving of requests for or the handing over of the cheques, and if so he was to identify those persons? He said he was not aware of the identity of any other person involved in the making of the request or the receiving of the request or the handing over of the cheques, and he believes, however, it was very likely the request for the cheque was made to Dr. Farrell.

He was asked to indicate whether he and Dr. Farrell requested the cheques, and if so he should give an outline of the context of the discussion. "I am not aware of any discussion with Dr. Farrell concerning the cheque. The cheque was presented to me for signature by Ms. Margaret Coyle and I signed it. I believe, and have no reason to doubt, that that payment was a contribution to Fianna Fail. I believe that I would have been informed that that cheque and the two others which I signed that day, were

part of Irish Permanent Building Society's contributions to political parties".

He was asked to indicate whether any other members of the Board or any other executive of the company was aware of the writing of the cheques and of the beneficiary thereof?

He says: "I cannot say whether any other member of the Board or any other executive of the company was aware of the writing of the cheque or of the beneficiary thereof".

He understands there is no mention in the Board minutes of the payment. He says at the time it would have been normal for Dr. Farrell to make decisions on this matter without reference to the Board.

He was asked to indicate whether he had any personal dealings with Mr. Charles Haughey or Desmond Traynor or any person acting on behalf of either of them? He says he did not have any dealings with Mr. Charles Haughey or with Mr. Desmond Traynor or with any person acting on behalf of either party.

He was asked to indicate whether he was involved in the writing of any other cheques, the making of any other payments direct or indirect to Mr. Haughey or any person holding public office in any period between '79 and '96?

And he says he was not involved in the writing of any cheques, the making of any other payments, directly or indirectly to Mr. Haughey or to any other person holding public office in any period between '79 and '96. He says

over the years, however, he did sign cheques in respect of contributions to various other political parties.

He was asked to indicate whether he made any personal contribution to Mr. Haughey or any other person holding public office between those years? He said he never made any personal contribution to Mr. Haughey or any other person within those years.

Mr. Treacey.

GEORGE TREACEY, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS
BY MR. HEALY:

A. George Treacey.

CHAIRMAN: Thank you, Mr. Treacey. Please sit down.

MR. GALLAGHER: If I may, Mr. Chairman, indicate to the Tribunal that I represent Mr. Treacey, instructed by Cahill McCarthy as part of the Irish Permanent representation.

CHAIRMAN: Yes, I think that's discussed at an earlier sitting. There is no need to make a separate representation order, and of course you are entitled to represent his interests on behalf

MR. GALLAGHER: Thank you.

MR. HEALY: Thank you Mr. Treacey.

Q. Mr. Treacey, you made a statement in response to a number

of queries from the solicitor to the Tribunal, and that statement was furnished to the Tribunal by the Irish Permanent solicitors acting for you in this matter. Do you have a copy of that statement?

A. I have, yes.

Q. Do you have a copy of the queries in response to which the statement was made, I can get you a copy?

A. Not with me, no.

Q. I will get you a copy so that you understand the queries and the answers as we go through them. (Handed to witness).

A. Yes.

Q. Now, you say that you were appointed a Director of Irish Permanent Building Society in 1979. You retired as a Director in June of 1992?

A. That's correct.

Q. You then refer to the letters of the 24th of June and the 19th of August, and you indicate that you were informed by the Chief Legal Officer that the Tribunal required you to make a statement dealing with the same series of questions as were set out in the letter of the 24th of June of 1999?

A. That's correct.

Q. And then you respond to the queries. Now, the queries are in the main in relation to two cheques for €50,000 payable to Fianna Fail and drawn in 1986. We will just so I will just put them on the overhead projector so you will see the two cheques, you may have seen them already. The

first query was to identify your signature on each of the cheques and you say: "I confirm my signatures on cheques bearing number 11686, dated 19th of March, 1986, made payable to Fianna Fail in the sum of €50,000, and the other bearing number 112608, dated 17th of August, 1986, made payable to Fianna Fail in the sum of €50,000". And those are the two cheques that you see on the screen to your right, do you recognise them?

A. Yes, I do, subject to any subject to the signature being identified by a handwriting expert, yes those are my signatures.

Q. I don't quite understand what you mean by that. It is your signature; isn't that right?

A. I recognise it as such, yes.

Q. Yes. The answer to the Query No. 2; the Query No. 2 was requesting you to indicate whether the cheques were completed before they were signed by you? And you say: "There was a policy in Irish Permanent that if a person requisitioned a cheque that person would sign the cheque first so that the second signatory would know who had requisitioned the cheque"?

A. That's correct.

Q. The third query, third query was whether your signature went on first or whether that of Mr. Farrell went on first? You say: "My signature was the second on the cheques. I believe that it is probable that the cheques had been signed by Dr. Farrell before they were presented

to me for signature"?

A. Yes.

Q. So the practice was that if somebody came to you with a cheque requiring the signature, the person who came to you was the person who had requisitioned the cheque first day?

A. No. The person who came to me with the cheque, the signature was not necessarily the person who had requisitioned the cheque.

Q. I see.

A. The person who came to me with the cheque was the person who had drawn the cheque on behalf of the person who had requisitioned the cheque, in other words Dr. Farrell's secretary, Miss Coyle, would bring me the cheque.

Q. When you say "the person who had drawn the cheque", you mean the person who put in the name of the payee and the amount of the cheque?

A. Yes, that's my understanding.

Q. And would it be your understanding that it was normally an official other than Mr. Farrell in the case of cheques signed by him, who would bring a cheque to you for a second signature?

A. Normally the cheques would be brought to me for signature by Dr. Farrell's secretary, she would have drawn them on his behalf. He would have signed it before they came for a second signature.

Q. In relation to question, in answer to Query No. 3 or Query No. 4, which was inquiring whether you knew of the purpose

for which the cheques were being drawn, your answer was:

"The cheques numbered 11686 and 112608 were political contributions made by Irish Permanent Building Society to Fianna Fail"?

A. That's my understanding, yes.

Q. Is that simply because they have the words "Fianna Fail" on them?

A. Yes.

Q. When the cheques came to you or when cheques like that would come to you for signature would you be given any other documentation to indicate where the cheques were going to?

A. Well, there were a multitude of cheques came to me for signature, such as salary cheques, expenses cheques, sundry cheques of one sort or another, they may or may not have documentation attaching to them. The cheques to which you refer, I don't ever recollect seeing any documentation attaching to them.

Q. So that if you got a cheque such as an expenses cheque or a salary cheque, would there be some indication that this was the appropriate salary due to that person or these were the appropriate expenses due to that person, some other document indicating the amount of the expenses or the amount of the salary had been approved by somebody else?

A. There may have been, I couldn't be certain.

Q. These would have been fairly large cheques; isn't that right?

A. Which ones?

Q. These two cheques for €50,000?

A. They would, yes.

Q. In 1986 they would have been large cheques, whether you were operating the special account from which salaries and expenses were paid or even in the company's ordinary loan cheque account; isn't that right?

A. They would have been drawn on a, what was known as a private bank account to which our, from which were drawn or on which were drawn salary cheques, expenses cheques, and a variety of other sundry type of cheques.

Q. Was there any other protection or was there any other procedure put in place while you were in Irish Permanent Building Society to ensure that the cheques were being paid out on foot of a normal response for political contributions?

A. Sorry, would you repeat that?

Q. In the ordinary way, I am sure you must have been aware that political parties would apply for some assistance whenever there were general elections or local elections or whatever?

A. I would be aware of it, yes.

Q. You would have been aware of that. And you would have been aware that the Society made contributions to the various political parties from time to time as appeals were made by those parties for funds?

A. Well for whatever reason, yes I was aware that, I am aware

that cheques would be drawn in favour of political parties,
but not necessarily because of a pending election or
whatever.

Q. I see.

A. If I could just explain: The procedure was, and to my
knowledge still is, that an analysis of what I call the
private bank account was done on a monthly basis, so if I
had any queries and I would be seeing that analysis, so
that if I had any query I would have brought it to the
attention of whoever.

Q. And what kind of query might you have?

A. I can't think, but if I had I can't think but if I had,
if there was an unusual cheque.

Q. When you were when you refer to an analysis, do you mean
the analysis, that to which you may have been referred
already by Mr. Cahill or which has been mentioned in
evidence at these sittings, I will put a copy of it on the
overhead projector and I will give you a hard copy if
necessary?

A. Yes, I think that's the analysis, I can see from here.

Q. Can you? I see. Well done. Well, what this cheques'
analysis shows is a contribution, two entries 1986,
indicating in one case "Fianna Fail (Political Party) -
€50,000", and the other entry is "Fianna Fail - €50,000" ?

A. Yes.

Q. And if you are saying you would have got these cheques'
analysis on a monthly basis or had access to them on a

monthly basis?

A. Yes, I don't recollect particularly the analysis to which you are referring, but that was the type of analysis that was produced on a monthly basis, yes.

Q. And if you read that

A. Sorry, that was done for posting purpose, post to the general ledger.

Q. But when you say if you checked the analysis and something appeared out of the ordinary, you would have an opportunity of following it up?

A. That's right.

Q. Would there be anything out of the ordinary about these two things?

A. Certainly not that I recollect.

Q. With the benefit of hindsight, and bearing in mind that we do have the benefit of hindsight here, do you think there was anything out of the ordinary about these two things?

A. No.

Q. By the time the second analysis came to be prepared the political party in question, Fianna Fail, had been given, so far as the cheques analysis book went, €100,000 €100,000?

A. Sorry, what's the second analysis?

Q. By the time the second there is an analysis prepared on a monthly basis?

A. Yes.

Q. The first cheques' analysis would have related to the first

cheque which was March and the second cheque was October?

A. Two different months.

Q. Yes, so that by the time that the second cheques' analysis was made €100,000 in all would have been paid out in cheques to Fianna Fail?

A. So it would appear.

Q. Yes, and even with the benefit of hindsight, are you telling me that you wouldn't regard that as in anyway surprising?

A. Well whether I regarded it as surprising or not, I regarded it as legitimate.

Q. Even with the benefit of hindsight?

A. Even with the benefit of hindsight, yes.

Q. Looking at the contributions that were made to political parties over the years, between the time you became associated with the Irish Permanent Building Society and when you left it, wouldn't I be right in thinking that to pay €100,000 to Fianna Fail was much larger or much greater sum of money than we have heard of as having been paid by the Irish Permanent Building Society to them on other occasions?

A. Paid to Fianna Fail?

Q. Fianna Fail, yes?

A. I don't recollect that now, but political contributions were made to various political parties, and generally it was on a pro rata basis, that is depending upon the

Q. Size of the party?

A. size of the party, their Dail membership, etc.

Q. Well again, I am asking you to comment on this with the benefit of hindsight, in this particular year there were no contributions to any other political party?

A. Were there not?

Q. No. Looking at it with the benefit of hindsight, and that additional piece of information, is that not surprising that €100,000 was paid out in one year?

A. May I suggest you are putting words in my mouth?

Q. I am giving you an opportunity as a person associated with the company?

A. I have no recollection of considering that it was an unduly large amount.

Q. Yes, but, you didn't

A. Even with the benefit of hindsight.

Q. You don't regard it as unduly large?

A. I am sorry, sir, but I would require careful consideration before I could answer that.

Q. I will give you an opportunity to compare it with other contributions, and if necessary you can come back at a later stage. As far as I know, the largest contribution, and I am sure I will be corrected if I am wrong, made by the Society to Fianna Fail in the period you were associated was in or around €65,000 for the '89 general election, that was paid in one year to the party for the general election in that year. Now, in 1986 there was a payment of €100,000 with no election at all being held that

year. Wouldn't you regard that, even with the benefit of hindsight, as a very surprising payment to have made to a political party?

A. With the benefit of hindsight and the way in which you are putting the question, yes.

Q. If I just go onto the other queries, Mr. Treacey?

A. Sure.

Q. Query No. 5 required you, or requested you to indicate whether you were aware of the contents of cheque stubs in relation to these two cheques, and your answer was that you have no knowledge of the contents of cheque stubs, and I think in another answer it is clear why that should be the case, because I think you indicate Ms. Coyle would have filled out the cheque stubs, to your knowledge?

A. Yes.

Q. In Query No. 6 you were asked to indicate whether you have any information concerning how the person by whom the cheque stub was filled out came to add additional information concerning, presumably, the fact that it was a Fianna Fail sub? And your response was: "It was normal practice for Ms. Margaret Coyle to prepare the cheques for Dr. Farrell. Her work included keeping the ledger, in which I believe the cheques were entered. I assume the entries in the ledger relating to the cheque were made by Ms. Coyle, and I believe the entries in the cheque stubs were made by her"?

A. Yes.

Q. That seems to be consistent with the evidence we have heard from a number of other witnesses connected with this matter.

Query No. 7 required you to indicate whether you were aware of the identity from whom the, each and every one of the cheques came, and if so you should give the name and address of any such person whose identity you knew? Your response was you were not aware of the identity of the person from whom the requests for the cheques came. You say that you believe the decision as to the amount paid to Fianna Fail would have been made solely by Dr. Farrell?

A. Yes.

Q. Could I just ask you, and I may be anticipating to some extent an answer you have given to another query, but can I ask you what knowledge you had concerning decisions in principle to pay any money to a political party, in other words what you are saying here is that the decision as to the amount paid to Fianna Fail was a matter solely for Dr. Farrell, what about the decision to make any payment at all to a political party, do you know who was the person who made that decision?

A. I don't recollect anyone specifically making that decision, but the Irish Permanent Building Society would have been contributors to various political parties, in that they were very conscious of, the Irish Permanent Building Society that is, was very conscious of democratic process,

that sounds very pompous.

Q. Yes, I understand the point you are making, it is usual for large companies to make contributions to political parties pro rata to their parliamentary representation?

A. Right.

Q. But the decision as to whether any political party would get anything in any one year is a decision that had to be made by somebody, isn't that right? Are we going to, or are we not going to make a contribution to a, or any, political party is a decision someone had to make before an amount could be decided on?

A. Well, if anybody was to take such a decision it would have been Dr. Farrell.

Q. Um hum.

A. I am not saying that anybody took a conscious decision, but if anybody did, it would have been Dr. Farrell.

CHAIRMAN: Just before we leave that, Mr. Treacey, I think one of your colleague directors, Mr. J Enda Hogan, who gave evidence last July, he indicated in his evidence that he agreed with you, that ultimately it was Dr. Farrell's decision?

A. Right.

CHAIRMAN: But he did say that he had some discussions from time to time with Dr. Farrell, with a view to trying to keep the pro rata payments observed, and that he had some input in his view, into the decisions. I am just

wondering did you discuss with Dr. Farrell from time to time whether or not there should be this balance maintained?

A. Well, Chairman, I discussed many things with Dr. Farrell, I can't remember specifically discussing that aspect of it.

CHAIRMAN: Right.

Q. MR. HEALY: Query No. 8, you were asked whether, if you dealt with any person by whom any of the requests for political or other contributions mentioned in the letter came, you should provide details of all your contacts, whether direct or indirect with any such person? And your response was: "As far as I am aware the requests for the aforementioned contributions were handled by Dr. Farrell, and my only function was to countersign the cheques after Dr. Farrell had first signed them. I did not deal with any person from whom the requests for the contributions came".

And once again, just to clarify perhaps evidence you have given already, that means I take it, that you would have simply countersigned a cheque without there being any accompanying documentation, at least in the case of political contributions?

A. I don't recollect ever signing a cheque for any political party with attached documentation.

Q. And do you ever remember being at a Board meeting or being in attendance at a Board meeting, where the amount of, or

the decision to make a payment to a political party was arrived at?

A. I don't ever recollect that happening, it may have happened but I certainly don't recollect it.

Q. And you say that you were familiar or aware of the fact that the party was making contributions to political parties, the Society was making contributions to political parties. I don't know how politically aware or alert you are normally, but would you be able to say whether you noticed or took any account of the fact that the contributions made by the Society to political parties were usually made in years when there were elections?

A. No, I am totally apolitical and was then, still am, so I have no recollection of anything of that nature.

Q. But again with the benefit of hindsight, I take it that you wouldn't be surprised that in any election year there would have been a significant contribution from the party, from the Society to the political parties?

A. No, I wouldn't be surprised.

Q. But that if there were a contribution in a non election year, with the benefit of hindsight that would seem to be slightly unusual?

A. That's non sequitur.

Q. Perhaps you would clarify what difficulty you have with that question?

A. I am aware there were two cheques drawn in favour of Fianna Fail in 1986, I am not conscious of the fact that those

cheques were drawn during a non election year.

Q. Yes?

A. I am not now, nor was I then.

Q. I am telling you that it was a non election year?

A. If you say so, sir.

Q. Yes, and in those circumstances that would be surprising as well, that there should be?

A. If I was aware of that.

Q. With the benefit of hindsight, I am not suggesting you were aware at the time at all?

A. I beg your pardon, I thought I already answered that, yes with the benefit of hindsight, yes.

Q. In other words it is not just the amount is a large amount, but that any amount would have been paid to a political party in a non election year is surprising, with the benefit of hindsight?

A. No, I don't think that could be, I don't think that could be stated.

Q. Well I think I am right in saying that in most cases of political contributions from the Society to the Fianna Fail Party, there was a coincident or roughly coincident election?

A. Well so you tell, so you now inform me, I wasn't aware of that at the time, even with the benefit of hindsight, but I could envisage a situation in which a request for a contribution to a political party in a non election year could be made and met.

Q. Yes. I suppose the obvious example is if a political party was very short of funds they might make a special appeal for funds?

A. That's an obvious one.

Q. Yes, and if there were no such special appeal, again it would be unusual to it would be something that you would find unusual, that the Society or indeed any company would make a substantial, a very substantial contribution to a political party?

A. I wouldn't necessarily be aware of whether a special appeal had been made or not.

Q. But I am telling you now, there was no special appeal?

A. If you tell me, I accept that.

Q. And that is again, another feature of the payment of 100,000 which would make it somewhat unusual?

A. In two cheques?

Q. Yes?

A. Yes.

Q. The next query asked you to identify, if you could, any person to whom the cheques were given? And your response was that you were not aware of the identity of the person to whom the cheques were given?

A. Other than, yes.

Q. The next query is a related query. Your response is: "I did not give the cheques to any person other than Ms.

Coyle. I do not know ... How the cheques were conveyed to the payee or by whom". (Quoted). As far as you were

concerned once you signed it for Miss Coyle you gave it to her and that's the extent of your knowledge of what happened to the cheque after that?

A. Yes, and in response to Question 8, I say my only function was to countersign the cheques, in respect of those cheques, yes that was my only cheques.

Q. And I don't need to go to the next query to explain your answer, you say you do not know whether the cheques were handed over?

A. No, as I recollect you suggested or somebody suggested that they went by post, that may be, I don't know.

Q. You say that you were not aware of the identity of any other persons involved in the making of the requests or the receiving of the cheque requests or the handing over of the cheque. You say you believe, however, it is very likely that the requests for the cheques were made to Dr. Farrell?

A. Yes, as I am sure you can appreciate. I don't remember any requests being made for these cheques, therefore I cannot say that I was aware. I am not aware of the identity of any person making

Q. Of course, you are simply indicating what you believe the likelihood is, but that's as far as you can put it?

A. That is right.

Q. You were then asked to indicate whether you and Dr. Farrell discussed the cheques, and if so to give an outline of the content of your discussion? And you say: "I am not aware of any discussions with Dr. Farrell concerning the

cheques. I believe that the cheques were presented to me for signature by Ms. Margaret Coyle and I signed them. I believe, and have no reason to doubt, that the payments were contributions to Fianna Fail. I was aware that Irish Permanent Building Society made contributions to a number of political parties"?

A. Yes, I don't recollect any discussions with Dr. Farrell, that's not to say that there weren't discussions from time to time, well I met Dr. Farrell virtually on a daily basis, and we would have discussed a range of topics which may or may not have included political contributions to political parties.

Q. Um hum. Leaving aside the fact that you don't recall whether you did or did not have a discussion with Dr. Farrell concerning contributions to political parties or these political contributions, in terms of the quantum of the cheques, these were very large cheques in 1986; isn't that right?

A. So it would appear, yes.

Q. Yes, and was that in itself something that would have prompted a discussion between yourself and Dr. Farrell?

A. It may have, I don't recollect.

Q. Was there any practice of you expecting or getting or anticipating an explanation from Dr. Farrell or from any other signatory of a cheque a more ample explanation of a cheque depending on the size of the cheque?

A. If I sought the information I am sure it would be given to

me, given that I would examine the analysis of the cheques that were made on a monthly basis.

Q. But would the fact that a cheque for €50,000 was being paid to anybody not prompt you to seek an explanation for some indication of some documentation supporting such a payment?

A. I would expect it, yes.

Q. Yes. And you couldn't recall requesting any such documentation in this?

A. I don't recall it.

Q. And on the second occasion when, as I have indicated, you would have been aware that €100,000 was being paid out, you still don't recall any discussion?

A. I don't recall it, no, I am sorry.

Q. But you think that it is possible you might have had a discussion prompted by the size of the cheques, and do I take it that if you had a discussion and if you signed the cheque it must have been because you got an explanation?

A. That's a fair assumption to make, yes.

Q. You were asked to indicate whether any other members of the Board or any other executive of the company was aware of the writing of the cheques and of the beneficiaries? And your answer is: "I cannot say whether any other member of the Board or any executive of the company was aware of the writing of the cheques or the beneficiary thereof. I understand that there is no mention in the minutes of the Board a payment, at the time it would have been ... Without reference to the Board". (Quoted). As I have indicated

earlier you have to some extent anticipated that evidence in your testimony a moment ago "Dr. Farrell would have made most of these decisions without referring"

A. Well, Dr. Farrell had the authority of the Board to deal with the, with matters pertaining to the Society on a daily basis or indeed, there is a document on the board which Mr. McCarthy which gave Dr. Farrell the authority to act on behalf, sorry which gave Dr. Farrell the sole authority to act on behalf of the Society, in any matter pertaining to the conduct of the Society, which would include of course, making political contributions.

Q. And is that something which would have affected your response to any information Dr. Farrell might have given you concerning the purpose of why such large sums of money were being made, paid to a political party?

A. It could well have done.

Q. Yes. If Dr. Farrell had decided to write a cheque for a million pounds, is it something he could have done without ruffling any feathers as it were?

A. The fact that Dr. Farrell had the authority to do so did not mean that I wouldn't have questioned any such activity.

Q. But was there an amount of money which would have caused your, you to raise your eyebrows as it were?

A. Well, you have drawn attention on several occasions to the fact that £50,000 was a large single cheque to draw, yes, that would be a large single cheque to draw. The reference you have made on several occasions to the fact

that it was €100,000, that wouldn't necessarily have attracted my attention because I wouldn't have seen a cheque.

Q. That's correct?

A. Nor a cumulative series of cheques for €100,000.

Q. No, but you would have seen the, the analysis of the second cheque, you would have known by the time the October cheque was written here was another very big cheque, a €50,000 cheque regardless of the purpose for it, it was a big cheque, and surely

A. Yes.

Q. and surely you wouldn't have forgotten the earlier €50,000 cheque?

A. I certainly shouldn't have.

Q. So by that stage you did know that 100,000 was being paid out to the Fianna Fail Party and that I suggest, might have caused you to raise your eyebrows a little?

A. It might have, I don't recollect now.

Q. Query No. 15, you were asked to indicate whether you had any personal details with Mr. Haughey, Mr. Traynor or any person acting on behalf of either of them? You said you met Mr. Haughey in the company of other persons for a meal on a small number of occasions. You met Mr. Traynor and another director of Guinness and Mahon in the mid-80s for business purposes for the potential of Guinness and Mahon Limited by Irish Permanent. When you met Mr. Haughey, was that on a business occasion or social?

A. Purely social.

Q. Unconnected with Irish Permanent Building Society?

A. On the occasions I recollect, as far as I recollect there were two such occasions, one was a private dinner party in Dr. Farrell's home, the other one was, I think, I am not certain if this was, again a private dinner party in a restaurant in Dublin.

Q. What I am trying to get at is whether on each occasion there was an Irish Permanent connection, obviously the private dinner party in Dr. Farrell's home was to some extent due to your acquaintanceship with Dr. Farrell in the Irish Permanent Building Society I take it?

A. Yes, possibly.

Q. And the meeting in the restaurant?

A. I am not sure about the meeting in the restaurant.

Q. Right.

A. I have a vague recollection of being in Mr. Haughey's company at a private dinner party in a restaurant.

Q. I am not seeking to pry into your personal associations. Was this in anyway again connected with your role in Irish Permanent Building Society or do you think, it was unconnected with your role in Irish Permanent Building Society?

A. I couldn't judge that.

Q. Were there any other Irish Permanent Building Society personnel present?

A. Certainly on the occasion of Dr. Farrell's home, yes.

Q. On the other occasions?

A. I am very vague about it. I have only a vague recollection of attending a private dinner party.

Q. In relation to the dinner party in Dr. Farrell's home, can you remember the date of it?

A. I don't remember the day or the month, but the year.

Q. No?

A. No.

Q. Was it in the '80s or '90s or the '70s?

A. It would have been in the '80s.

Q. Could I press you a little on that; would it have been in the early '80s or late '80s?

A. I am sorry, I cannot be more definitive about it than saying it was sometime in the '80s, probably the late '80s.

Q. Would you recall whether Mr. Haughey was Taoiseach or Leader of the Opposition at the time?

A. I am sorry I couldn't be certain. I think he was probably Taoiseach.

Q. You were asked about your involvement in the writing of any other cheques or making other payments to Mr. Haughey, and your response is: "I was not involved in the writing of any other cheques, the making of any other payments directly or indirectly to Mr. Haughey nor or any person holding public office between '79 and '92. Over the years I did sign cheques in respect of contributions to various other political parties".

You were asked whether you made personal contributions to politicians including Mr. Haughey? You say: "I never made any personal contributions to Mr. Haughey. I believe I may have made a personal contribution of approximately €50 to either Mr. Ruari Quinn or the Labour Party"?

A. That's correct.

Q. Can you just, one other matter, Mr. Treacey, can you tell me whether Mr. Traynor was present at the dinner in Dr. Farrell's house?

A. I don't think so, I am fairly certain he wasn't.

Q. Or at the other occasion you have a vague recollection?

A. Or the other occasion, I only met Mr. Traynor at most twice.

Q. And one of those occasions was in connection with the proposed or at least the potential purchase?

A. On both occasions.

Q. And on each occasion it was about that?

A. On both occasions yes, if it was two occasions.

Q. And again I am sorry for pressing you on this, it may assist for fixing a date for your meeting with Mr. Haughey and Mr. Farrell in Mr. Farrell's house, the meeting with Mr. Traynor presumably occurred prior to 1986 which was when Mr. Traynor severed his association with Guinness and Mahon, can you tell me which came first?

A. Sorry, I didn't put a date on when I met Mr. Traynor.

Q. Of course you didn't. What I am suggesting to you is that those meetings must have occurred prior to 1986, because

Mr. Traynor severed his association with Guinness and Mahon in 1986. I simply want to know whether the meeting, the social gathering you had in Dr. Farrell's house with Mr. Haughey occurred prior to or subsequent to the meetings with Mr. Traynor?

A. Certainly, I certainly don't I can't put a handle on it in terms of the meeting in Dr. Farrell's house, the social occasion in Dr. Farrell's house, as to whether it was when Mr. Traynor was involved with Guinness Mahon or not. I could perhaps, put a handle as to the year in which it took place or subsequent to 1986, 1987 it was a year in which one of the directors of the Irish Permanent had been appointed, it wasn't necessarily in that year, but it was the person I am referring was appointed as a director or invited to join the Board of the Irish Permanent sometime in the '80s, and it was subsequent to his becoming a Board member, and he attended that social function in Dr. Farrell's house.

Q. Is that why you said a moment ago that you thought it was the late '80s and when Mr. Haughey was Taoiseach?

A. Yes.

MR. HEALY: Thanks very much.

A. Thank you.

CHAIRPERSON: Mr. Brady?

MR. BRADY: No thank you.

CHAIRMAN: Mr. Gallagher?

MR. GALLAGHER: No thank you.

CHAIRMAN: Thank you very much for your attendance.

THE WITNESS THEN WITHDREW

MR. COUGHLAN: Mr. Fleming.

MR. BRADY: I already have representation for the Fianna
Fail Party.

CHAIRMAN: Indeed. For Mr. Fleming. Thank you.

MR. FLEMING, HAVING BEEN PREVIOUSLY SWORN, WAS EXAMINED BY

MR. COUGHLAN AS FOLLOWS:

CHAIRPERSON: Good morning, Mr. Fleming. Thank you for
attending again. You are of course sworn from last July.

A. Okay, thank you.

Q. MR. COUGHLAN: Thank you, Mr. Fleming, for your continuing
assistance to the Tribunal.

I think a number of matters were brought to your attention
by the solicitor to the Tribunal and you were asked to
carry out certain examination of records of the Fianna Fail
Party at headquarters, which you furnished a Memorandum of
Evidence in respect of those; is that correct?

A. That's correct.

Q. I think the first matter brought to your attention was a
cheque for €50,000 dated the 19th of March, 1986, and that

was a cheque made payable to Fianna Fail drawn on the Bank of Ireland account of the Irish Permanent Building Society in the sum of €50,000; isn't that correct?

A. That's correct.

Q. And I think you also when furnished with a copy of this, became aware that the reverse side of the cheque was endorsed for Fianna Fail, Charles J. Haughey?

A. Yes, I have been so informed.

Q. Now, did you carry out any inspection of the financial records of the Fianna Fail Party for the year of 1986?

A. I did a complete and thorough check of all the financial records in Fianna Fail Head Office.

Q. And is there any record of this cheque having been received and entered in the records of the Fianna Fail Party?

A. There is no record whatever of that cheque ever having been received in the Fianna Fail Party Head Office or having been entered in the records of Fianna Fail Party Head Office.

Q. Yes, and did you also check to see if any receipt might have been issued to the Irish Permanent Building Society in that sum?

A. I certainly did. I checked the receipts book and there was no evidence of any receipt having been issued to Irish Permanent in respect of that cheque in 1986 or any other time.

Q. Or any other time. And in respect of such a contribution would you have expected, if received, that a receipt would

have been issued and would have been recorded in the records of the party?

A. Unquestionably it would have been recorded in the receipt, included in our books and financial records.

Q. Because I think you have given evidence before, the accounts are audited?

A. Yes, they are audited on all occasions by Coopers and Lybrand and on this occasion also.

Q. Yes, yes. Now, I will come back to you in a moment about whether appeals have been made, perhaps we will just take it cheque by cheque. Can you just say, in 1986 was there any election in that year, Mr. Fleming?

A. Not to my recollection, no, I don't think so.

Q. I think there had been local government elections in 1985; isn't that correct?

A. I am not quite sure of that, there might have been Urban District Council, they would have been very minor local elections.

Q. Yes. Well, can I ask whether any appeal for funds had been issued by Fianna Fail in that year?

A. The Fianna Fail Party Head Office made no appealing for funds to our donors or contributors in 1986 at all.

Q. And can you from examining the books and records of the party, have any understanding why this money would have been sought for Fianna Fail in that year?

A. Well, I know Fianna Fail Head Office didn't seek it.

Q. Didn't seek it?

A. Didn't seek it. And I have no idea as to why those funds would have been sought in the name of Fianna Fail.

Q. Was there any need or purpose for them in that year, as far as you were concerned?

A. There is always a need for funds.

Q. Yes?

A. Well, we would have known there was a general election due, probably by the following year, because the previous election had been 1982, but we specifically did not embark on a campaign of fundraising in 1986 because we knew we would be doing it shortly whenever the general election came, and to have done so would have militated against the proper fundraising at a later date.

Q. Yes. Well specifically, were you strapped for cash in that year that the, there would be a need for a special appeal as Mr. Healy had said?

A. Well, it is unusual you should ask that question, I think in all my years dealing with Fianna Fail, it was the only year Fianna Fail was in the black. Traditionally Fianna Fail had been in the deficit, we had cleared out debt in 1985 in advance of the '87 election, we obviously went into that towards the end of 1986 in preparation for the 1987 general election, but at those particular times it was one of the few short months of my knowledge of Fianna Fail that we were actually in the black.

Q. Right, so as far as you were concerned from your analysis of the situation it wasn't, there wasn't a need for a

special appeal to help out depleted funds in any emergency situation?

A. No, no depleted funds and no emergency situation in 1986.

Q. Now, I think you were again asked by Mr. Davis, solicitor to the Tribunal, about a cheque for €50,000 dated the 17th of October, 1986, again drawn in favour of Fianna Fail and drawn on the account of the Irish Permanent Building Society, Bank of Ireland Stephen's Green; isn't that correct?

A. That's correct.

Q. Once again I think you were shown the reverse of it, the cheque, and again its endorsed, isn't that correct, for Fianna Fail?

A. For Fianna Fail by

Q. By

A. Charles Haughey.

Q. Yes. Did you, in respect of this cheque, I think did you again carry out an inspection of the financial records of the Fianna Fail Party at Head Office to see if this cheque had been received by the party?

A. I did. It was the same check in respect of the earlier

Q. Yes?

A. cheque in March. There was one cheque, one inspection of the financial records for the entire year not just the months in question, the entire year.

Q. Yes. Did you find any records of that cheque having been received?

A. No record of that cheque having been received in Fianna

Fail Head Office.

Q. Did you examine, again in the one cheque, did you examine the receipt issue book?

A. Of course I checked the receipts.

Q. Yes?

A. And there was no record of any receipt having been issued.

Q. Yes, and again can you confirm that there was no special appeal

A. There was no special appeal.

Q. that would give rise to that particular cheque?

A. None at all, no special appeal for funds in or around that time at all.

Q. Now, I think the third cheque that you were asked to consider was a cheque in the sum of €40,000, again made payable to Fianna Fail and drawn on the account of the Irish Permanent Building Society, Bank of Ireland, this time dated 16th of August, 1991?

A. That's correct.

Q. Yes, and I think this was a year in which there were local elections?

A. There were local elections in the end of June of 1991.

Q. Yes. Now, from an examination of the records can you confirm whether or not there was any records of this particular cheque having been received or sum of money having been received by Fianna Fail?

A. Again I checked the entire records for 1991, the entire

year and there was no record of having received that cheque at any stage.

Q. And again can you say whether or not a receipt

A. And there was no receipt issued, either to Irish Permanent or anyone else at that time or any other time in respect of that cheque.

Q. I think you very helpfully provided the Tribunal with the type of standard letter which would have been issued by the party requesting or seeking funds, and you say that on the 7th of June, 1991, the Fianna Fail Party Head Office issued a standard letter by post appealing for funds in respect of the local government elections which took place on Thursday the 27th of June, 1991, and you furnished a copy of that standard letter?

A. That's correct, I have given you a copy of that.

Q. I think we just have it on the screen and it is "Dear" to whoever it is going to be addressed to, "Local government elections will take place on Thursday the 27th of June. In recent years we have been providing a successful government, both at national and local level, the work of local authorities is vital and plays a key role in the economic life of our country.

Our objective is to continue this successful economic progress at central and local level. Fianna Fail is in a commanding position in most local authorities and we need to consolidate this position in these elections. A

successful record is important for confidence in the government and political stability in the country. I am seeking your support to helping us to conduct a full scale campaign by making a generous donation.... To me personally at Fianna Fail Headquarters, 13 Upper Mount Street, Dublin 2.

Your support for this campaign would be deeply appreciated and treated in absolute confidence. Regards Charles J. Haughey, TD, Taoiseach". (Quoted). That would be the standard letter issued seeking funds?

A. On the Fianna Fail

Q. Sorry, on the Fianna Fail Head Office paper?

A. Yes.

Q. Fianna Fail Head Office?

A. Yes.

Q. And at 13 Upper Mount Street?

A. 13 Upper Mount Street, yes.

Q. And can we take it that the fixing of Mr. Haughey's signature, did he sit down and sign a whole load of these letters or is there some process whereby this can be done?

A. We had a process whereby his signature could be printed.

Q. Yes, generated by computer?

A. Well not computer, printed.

Q. Printed. Yes, so that in fact whilst the letter is signed by Mr. Haughey, and of course he as the leader of the party is making the appeal, in fact the appeal is issued by the staff at Head Office; is that correct?

A. Yes, correct. And Mr. Haughey would have cleared the wording and the text of the appeal, because it was obviously in his name. Then the administration was issuing the letters which would have been done in Fianna Fail Head Office.

Q. And when contributions would be received, whilst they might be addressed to Mr. Haughey personally at Head Office, would the post be opened at Head Office?

A. Certainly.

Q. And any cheques that came in would be lodged to the appropriate bank accounts?

A. The Fianna Fail Head Office election campaign fund.

Q. And they would be entered in?

A. Any books and records and receipted accordingly.

Q. And a receipt would be issued in respect of them?

A. Yes.

Q. So that can we take it that if the three cheques you have been asked to consider, the two cheques in 1986 for €50,000 each, and the cheque in 1991 for €40,000, all drawn on the Irish Permanent account, if they had been received at headquarters, they would have been lodged to the appropriate Head Office account; is that correct?

A. I can't say that for absolute certainty. In 1986 there was no appeal being conducted by the Fianna Fail Party Head Office, so we had, we would expect cheques to be sent to the Fianna Fail Head Office. The normal procedure was myself or somebody else in the Fianna Fail Head Office

would have opened post addressed to Mr. Haughey.

Q. Yes?

A. Because in all probability, 99 times out of 100 it related to a party matter, to people sent to Fianna Fail Head Office, and if it was something that needed to be brought to his specific attention the letter would be sent over to his office in Leinster House, Government Buildings, and if the cheque was there, we would take, process it through Fianna Fail Head Office.

Q. What I want to really ascertain from you, Mr. Fleming, is this; that if a cheque arrived into 13 Upper Mount Street, made out, made payable to Fianna Fail for €50,000 where would it go?

A. I just want to clarify, if the envelope was opened and we knew it was a cheque, it certainly went into Fianna Fail Head Office.

Q. Yes, that's what I am saying?

A. Absolutely.

Q. If it was received at Mount Street, made payable to Fianna Fail where would it go?

A. Into the bank account and records of Fianna Fail.

Q. Into Fianna Fail, yes?

A. Yes, Head Office.

Q. Yes, and you say that no appeal was made in 1986?

A. '86.

Q. From the evidence you have given, that if cheques arrived at Mount Street made payable to Fianna Fail, they would be

lodged to the appropriate Fianna Fail account?

A. I put the one category, if an envelope arrived in Fianna Fail Head Office in 1986 addressed to Mr. Haughey, you know "Strictly Personal and Confidential", and was possibly hand delivered and there was no reason to suspect a cheque may be in it, the envelope in that situation could have gone unopened and handed it over to Mr. Haughey. But that would be unlikely.

Q. That would be unlikely?

A. That would be most unlikely, that we would have opened in the normal course of events we would have opened all the post coming into Fianna Fail Head Office, but there could possibly be an exception where a member of staff just took it directly over for his personal attention, if the envelope was marked "Strictly Personal, and to be opened by addressee only", which had been written on the envelope, I am not saying that did happen, but I am just saying it is possible.

Q. I understand that. Less likely in an election year?

A. Not likely at all because

Q. You open every

A. We open everything with his name during an election year, because the only letters really issued by Head Office in his name would be the appeal for funds.

Q. Yes, so that in 1991 when the local government elections were on and the cheque you have examined for €40,000, if that had arrived at Mount Street addressed to Mr. Haughey

in the normal course of business, it would just have been opened?

A. It certainly would have been opened.

Q. And once it was seen that the cheque was made payable to Fianna Fail it would go into the Head Office account, no doubt about that?

A. No doubt about it whatsoever.

Q. Now, when a cheque came made payable to Fianna Fail, there was no need to endorse it to lodge to the Fianna Fail accounts; isn't that correct?

A. None whatever.

Q. And was there any resolution or authorization for members of the party to endorse cheques made payable to Fianna Fail, that you are aware of?

A. Ask that question again please?

Q. Was there any, anybody authorised to endorse the back of Fianna Fail cheques, to lodge them to another account?

A. I don't see how that could arise. The only people who would be authorised to have funds on behalf of the Fianna Fail, would be the Fianna Fail trustees who were the party trustees. Fianna Fail in itself hasn't a legal entity, it operates as three trustees, of which Mr. Haughey was one of the trustees.

Q. Yes, and we don't need to go into great detail about the duties of trustees?

A. Yes.

Q. But was there any necessity, as far as you can see, for the

trustees to have to endorse the back of any cheque?

A. There was no need whatever.

Q. It just goes into the account?

A. Yes, no need whatever for any trustee or anybody in the party to endorse the back of a cheque, none whatever.

Q. And I think it has been drawn to your attention, and you can see from the stamps on the various cheques, that in fact they were in fact ultimately lodged to the Leader's Allowance Account?

A. So I gather.

Q. Isn't that correct?

A. Yes, so I gather.

Q. And again not trying to put you in any difficult position, Mr. Fleming, can you see any reason whatsoever, or why the Fianna Fail cheque, a cheque made payable to Fianna Fail would end up where these three cheques appear to have ended up?

A. Well, I don't see why it should have ended up anywhere other than in the account of Fianna Fail Head Office.

Q. Now, could you just confirm, I think from your analysis of the situation when you gave evidence on a previous occasion about doing certain things with the Leader's Allowance Account, when Mr. Reynolds took over as leader of the party, taking it into Head Office and matters which you dealt with at that time; isn't that correct?

A. Yeah, that's correct.

Q. And could you just confirm that at the time of Mr.

Haughey's resignation as party leader, that the Leader's Allowance for the Fianna Fail Party paid out of Exchequer funds was €10,263.25 per month?

A. That's correct.

Q. Now, there is just one other matter, I think you can assist the Tribunal with, and that is any movements there may have been on a temporary basis, between the Leader's Allowance Account and Fianna Fail Headquarters?

A. Yes.

Q. Isn't that correct?

A. I have a document on that as well.

Q. And I think this arises, because in a general way evidence has been given by other witnesses that there may have been certain movements one way or the other where a loan might have been obtained when there was a shortage of funds in one account or the other?

A. That's correct.

Q. And then that would be subsequently reconciled; isn't that right?

A. That's correct.

Q. And I think you have carried out an analysis of the records to assist the Tribunal in this particular aspect?

A. The records of Fianna Fail Head Office.

Q. The records of Fianna Fail Head Office; isn't that correct?

A. That's correct.

Q. And I think you can only come across two particular occasions?

A. Two transactions.

Q. Two transactions. And for, the first one was in 1987; isn't that correct?

A. That's correct.

Q. And you have informed the Tribunal that there was a cheque for €50,000, €15,000 I beg your pardon, drawn on Fianna Fail Head Office No. 4 election account, account number 25707207, cheque No. 659, and that this was lodged to the Haughey, Ahern, McSharry account on the 10th of March, 1987, as to loan to the Haughey, Ahern, McSharry account 30208062; is that correct?

A. That's correct.

Q. And that this loan was repaid by three cheques which would appear were drawn on the Haughey, Ahern, McSharry account and lodged to the Fianna Fail Head Office No. 4 election account on the following days: Cheque number 1001, 31st of July, 1987, €5,000. Then on the 4th of September, 1987, and you don't have the cheque available for that, there was another €5,000; is that correct?

A. That's correct.

Q. And then cheque number 1048, the 5th of November of 1987, €5,000?

A. That's correct.

Q. Yes. Now, on a second occasion in 1991 there was again a cheque for €15,000?

A. That's correct.

Q. And this was drawn on the Fianna Fail Head Office trustee

account, number 25807124, cheque number 227, and this was lodged to the Haughey, Ahern, McSharry, account number 30208062 on the 7th of March of 1991 and was paid out of the trustee account on the 11th of March?

A. That's correct.

Q. And this was a reimbursement, which you understand was in respect of the cheque number 500235 for 15, paid on the 13th of March of 1991 in respect of personal costs due by Fianna Fail Head Office?

A. That was my understanding, the only two transactions.

Q. That you could trace seeing a movement between the Leader's Allowance Account?

A. And Fianna Fail Head Office.

Q. And Fianna Fail Head Office?

A. That's correct.

MR. COUGHLAN: Thank you. Thank you very much indeed and

CHAIRMAN: Mr. Brady?

MR. BRADY: I have no questions.

CHAIRMAN: Just a few very small matters in conclusion, Mr. Fleming, then. Because of the new system that you have installed, the risk of any confusion between the Baggot Street and Head Office accounts has now precluded?

A. Yes, they are separate accounts and separately audited, separate financial statements.

CHAIRMAN: Yes. In making an appeal for local elections would it be fair to say any political parties' expectations would be a good deal more conservative than for a general election?

A. It would. We wouldn't collect anywhere near the same amount for a local election appeal as you would for a general election appeal.

CHAIRMAN: Yes. In general terms as regards the records of donations of contributions from your own observations and stewardship of them, in Fianna Fail Headquarters, could they in general terms be described as careful, painstaking and professional, not just as regards large amounts but as regards small amounts?

A. I would concur completely with that.

CHAIRMAN: Thank you very much for your work, assistance to the Tribunal. Thank you.

THE WITNESS THEN WITHDREW

MR. HEALY: Mr. John Barnicle please.

JOHN BARNICLE, HAVING BEEN PREVIOUSLY SWORN, WAS EXAMINED

AS FOLLOWS BY MR. HEALY:

CHAIRPERSON: Thank you, Mr. Barnicle. You are already sworn.

Q. MR. HEALY: Thank you, Mr. Barnicle. Now, just to put

the evidence that you are going to give in context, Mr. Barnicle, you have already given evidence to the Tribunal concerning what were then thought to be entries on the accounts of Celtic Helicopter's records, the lodgement, a lodgement of 30,000 to the account of Celtic Helicopter's consisting of two cheques drawn on the account of the Irish Permanent Building Society, one cheque in the amount of €20,000 and one cheque in the amount of €10,000; isn't that right?

A. That's correct.

Q. Now, at the time you last gave evidence, you were giving evidence in the context in which the available information to the Tribunal and to you, as I understand it, was the two cheques or the returned cheques and the notations on the back of them, and the entries on your own Celtic Helicopter's bank account at the Dublin Airport branch of the Bank of Ireland; isn't that right?

A. That's right.

Q. Just so we can recap on the documents, I don't want to go over all the evidence. If we can have the Celtic Helicopter's current account, Bank of Ireland branch, Dublin Airport for the month of June of 1988 on the overhead projector please. That's a page from the bank statement from which all irrelevant or non relevant information has been excluded, and it shows what we now know to be the 13th of June, there was a lodgement of €30,000?

A. Correct.

Q. And if we go on to what is I think the next page of the statement, we see that on the 21st of June was a debit to the account by way of a cheque in the sum of €30,000?

A. Correct.

Q. Now, when you last gave your evidence you were giving your evidence in which the Tribunal had two returned cheques from the Irish Permanent Building Society, Stephen's Green, Bank of Ireland account. If we can have these on the overhead projector.

The first of these cheques is a cheque for €20,000 payable to Mr. Charles Haughey, TD. This was the cheque for the Brian Lenihan fund, that cheque was endorsed on the back by Mr. Haughey, and lodged to the account of your firm at Dublin Airport, and if we could then pass to the other cheque, for €10,000, again payable to Mr. Haughey, and again lodged to your account at Dublin Airport.

Now, when you gave evidence in relation to this matter, you were asked to explain whether you had, or to indicate whether you had any knowledge as to how two cheques made out to Mr. Haughey came to be endorsed and lodged to your account, and also to explain the entries on the bank statement, and I think what you said was that you couldn't remember the lodging of those two cheques for €30,000 in all, nor could you remember the credit to the account of 30,000 followed by the debit, but that you did believe, and

this was purely I think an assumption on your part, that the only explanation could be that they would have been a prepayment for flying hours followed by a cancellation?

A. Exactly correct, the only possible explanation that I can come up with.

Q. Now, subsequently, I think as a result of your own efforts the actual cheque for €30,000 which was recorded in the bank statement has come to light, and if we can have that cheque on the overhead projector, that's a cheque for €30,000 payable to cash, dated the 13th of June of 1989.

We know from the evidence of Mr. Ciaran Haughey that he probably wrote the cheque and that the handwriting on the cheque is his and that the signatures on the cheque are your signature and his signature, and I think you agree with that?

A. That's correct, yes.

Q. And do you recall where you got the cheque from, subsequent to giving evidence here in the summer, do you recall where you got it?

A. Where I got that cheque from?

Q. Yes?

A. It would have come out of your cheque book.

Q. I meant, my question was, where did you get the cheque from subsequent to giving evidence here in, at the sittings last July?

A. From the Bank of Ireland.

Q. From the Bank of Ireland?

A. Yes, yes.

Q. Now, that cheque was written on the same day as the other two cheques were lodged to your account. The amount of the cheque wasn't debited from, from the account on that day but it was written on that day. And when you got that cheque, when that cheque came to hand and you could see that the cheque was written on the same day as the day on which the other two cheques were lodged to your account, did that assist you in anyway in recalling what might have happened?

A. No, other than the statement made by Mr. Haughey, it was inadvertently sent to us.

Q. When you got the cheque first it didn't jog your memory in anyway as to what happened?

A. No, no.

Q. And you have made you have indicated to the Tribunal that notwithstanding the statement made by Mr. Haughey, you still think that what happened was a prepayment followed by a cancellation of a block booking of flying hours?

A. That would have been my assumption.

Q. And that is still your assumption?

A. Yes, it is.

Q. You are familiar with the statement issued by Mr. Haughey which he has confirmed to the Tribunal?

A. Yes.

Q. And we can put that on the overhead projector and I can give you a copy of it, if you like. (Document handed to

witness). And when you mentioned what Mr. Haughey said a moment ago, you were obviously referring to the third paragraph of the statement: "These two cheques were inadvertently lodged to the account of Celtic Helicopter's on the 13th of June. On the same day a cheque for 30,000 was drawn on the Celtic Helicopter's account in Bank of Ireland". And you have no recollection of any query to you from Mr. Haughey or from anyone on his behalf indicating that there had been a mistaken lodgement to your account?

A. No.

Q. And did you ever, did anyone ever in the history of your company make a mistake in the lodgement of a large sum of money into your account?

A. Not that I know of, no.

Q. So if it happened as Mr. Haughey says it happened, it was probably the only time it ever happened?

A. To my knowledge.

Q. Well you have no knowledge, you don't remember it at all?

A. No.

Q. And the cheque that was paid out, to correct this, whether it was a mistaken lodgement or a prepayment followed by cancellation, whichever explanation, it was a cheque paid out to cash. Now what I want to ask you is whether you would agree with me that it would be unusual, an unusual thing for a company like yours to make a large cheque out like this to cash?

A. Unusual probably, yeah.

Q. There would be no reason for a trading company to pay a cheque out to anyone for cash for œ30,000?

A. Well if we owed somebody money and they could have it that way, but I have no problem.

Q. If you owed somebody money?

A. Yeah if we had to return somebody some money and they requested cash.

Q. If you had to return somebody some money, as you indicated to me you have no recollection of mistakes like that happening?

A. No.

Q. If you had to pay somebody money you would pay on foot of an invoice?

A. Yes, if we owe somebody money, normally an invoice, then we make

Q. You make the payment out as per the invoice?

A. Yes, yes.

Q. Otherwise your accountants would be wondering what was the payment for, they wouldn't know, there would be a payment in your cheques analysis book and there would be a debit to your bank account and the accountants would look and see cheque paid to cash and they would say "where is the invoice to this? We don't know what the money is for"?

A. The 30,000 came in

Q. Um hum.

A. and had to be returned. Now

Q. Well you don't know that?

A. Sorry?

Q. You don't know that?

A. I know now.

Q. But you didn't?

A. I know it now.

Q. You believe?

A. I don't remember.

Q. You don't remember it?

A. No, but that's the only possible explanation in our books,
it would have been a

Q. Somebody would have had to get that explanation, your
accountants would have had to be told that is a contra, it
is because of a prepayment followed by an cancellation of a
block booking, that's what you would have had to tell your
accountants; isn't that right?

A. More than likely.

Q. You didn't think it was a mistake, you didn't know anything
about mistakes at that time?

A. No.

Q. And you still don't know anything about mistakes?

A. No.

Q. Mr. Haughey is the only person who thinks it was a mistake?

A. As far as I know, this is it.

Q. Did you play any role in making a statement or putting it
together, did you play a part?

A. This statement, no.

Q. The statement Mr. Haughey has made?

A. No.

Q. Because one of the other things he says, and Mr. Ciaran Haughey has been asked about this, is that he examined, he says: "An examination of the available bank records indicate that this cheque for €30,000 was in fact lodged to the Party Leader's Account on the 20th of June of 1989 in Allied Irish Banks". He goes on to say: "This is the same account to which the contributions for the Brian Lenihan fund were lodged". Do you see that?

A. Yes.

Q. Yes, and the statement is dated the 20th of July, 1999?

A. Correct.

Q. Now, the available bank records at that particular time would have been your bank records; isn't that right?

A. Available bank records?

Q. The bank records available in connection with this whole query or question, if you like, would have been your bank records which would have shown 30,000 in and 30,000 out?

A. Correct.

Q. And you haven't or wouldn't have access to the Leader's Allowance Account, but you are aware that Mr. Haughey would have access to it and the Tribunal has access to it?

A. Correct.

Q. When you wrote to the Tribunal enclosing the cheque for 30,000, or rather a copy of the cheque for 30,000, you also forwarded to the Tribunal a letter from the Bank of

Ireland; isn't that right?

A. Correct.

Q. Indicating what information they had concerning this matter, and the Bank of Ireland had informed you that the cheque in question had been remitted by Allied Irish Banks, 1 - 3 Lower Baggot Street?

A. Correct.

Q. But the Bank of Ireland went on to say, and this is the manager speaking: "I am unable to advise to what account this was lodged". So you, neither you nor your co-director were able to say what account this money had been lodged to?

A. Correct.

Q. And amn't I right in saying therefore you have seen no documentation to indicate that this money was lodged to the Leader's Allowance Account in Allied Irish Bank, Baggot Street?

A. No, no.

Q. And at the time you wrote that letter, which was on the 23rd of July, 1999, enclosing the cheque, that was the extent of your information; isn't that right?

A. Yes.

Q. And following that letter, up to the time you saw this statement, you saw no documentation to indicate otherwise?

A. No.

MR. HEALY: Thank you very much Mr. Barnicle.

THE WITNESS WAS EXAMINED BY MS. COSTELLO AS FOLLOWS:

Q. MS. COSTELLO: Just a couple of points, Chairman.

Mr. Barnicle, I believe in his dealings with your company

Mr. Haughey frequently was concerned that the

confidentiality would be maintained; isn't that correct?

A. Correct.

Q. And his flights were often booked under a pseudonym; isn't

that correct?

A. Correct.

Q. And if Mr. Haughey or someone on his behalf had requested a

refund of money, the cheque could have been made out in his

name; isn't that correct?

A. Correct.

Q. But the cheque in question which we are concerned with

today is made out to cash; isn't that correct?

A. Correct.

Q. Where do you think the impetuous, if I might put it that

way, for describing the payee on the cheque as cash, rather

than a name, came from?

A. I have no idea.

Q. It wouldn't have come from your offices, it wouldn't have

been your idea to write that?

A. No.

Q. So it probably would have been the prompting of some other

person?

A. More than likely.

Q. I don't want you to speculate more than is necessary, but

would you have been surprised if Mr. Haughey had requested it to be made out in cash as opposed to his own name?

A. No.

Q. And then turning to the statement of Mr. Haughey, Mr. Haughey's statement refers to "available bank records", that's the third paragraph, the fourth line?

A. Yes.

Q. I think you have informed the Tribunal that you had no part in the making of that statement, isn't that correct?

A. Correct.

Q. So had you any knowledge of what particular bank records were referred to in that statement when it was made?

A. No.

MS. COSTELLO: I have no further questions, sir.

CHAIRPERSON: Thank you, Mr. Barnicle, for your attendance on this occasion again.

THE WITNESS THEN WITHDREW

MS. O'BRIEN: Mr. Alan Kelly please.

ALAN KELLY, HAVING BEEN PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS BY MS. O'BRIEN:

CHAIRMAN: Thank you, Mr. Kelly, for coming back to the Tribunal. You are already sworn from the earlier sitting.

Q. MS. O'BRIEN: Thank you, Mr. Kelly. Mr. Kelly, I think you are the Manager of the branch of Allied Irish Banks at

1 - 3 Lower Baggot Street?

A. That's right.

Q. I think as you know the Tribunal in the course of this public sittings, and indeed last July, has been inquiring into movements on, at an account held in the Baggot Street branch in the name of Mr. Haughey, Ahern and Reynolds?

A. McSharry.

Q. Sorry, McSharry, and we are referring to that account as the Leader's Allowance Account, that account was operated up to early 1992 at the branch?

A. Yes.

Q. Yes, and I think as Manager you are familiar with the books and records that are at the branch?

A. That's correct.

Q. Now, the Tribunal has requested the bank to assist it in relation to a series of transactions across that account, and you have prepared for the Tribunal a statement of the evidence which you are in a position to give, and I think a copy of that should be before you, is it?

A. That's right.

Q. It is Divider 21, sir. And if I could take you through that statement of evidence I can deal with each of the transactions in turn. I think you state by way of caveat that in relation to the transactions dealt with in the statement that you do not have, hold the waste sheets for them, I think the waste sheets are the bank's internal analysis documents; is that correct?

A. That's right.

Q. And I think nor do you hold in the case of certain bank drafts or international cheques copies of the requisitions for the drafts of the cheques. So that to that extent while you are in a position to give evidence on the basis of probables and circumstances, you can't be absolutely certain as to what the transactions relate to?

A. That's right.

Q. The first of the two transactions relate to International French Franc cheques that were drawn on the account, I think the first of the transactions which the Tribunal has asked you to address was the issue of a cheque on the 4th of January of 1991 in the sum of 61,605 French Francs. If we have a copy of the French Franc cheque on the monitor, I think that's an international cheque which effectively is the same as a foreign currency bank draft?

A. That's correct.

Q. That's in the sum of 61,605 French Francs, dated 4th of February of 1991 and payable to Charvet Paris and drawn on Credit Commercial de France in Paris, an international cheque issued by Allied Irish Banks itself.

Now, I think you have informed the Tribunal that it appears that this cheque was funded and purchased from a cheque which was drawn on the account 30208062. I think that was a cheque for œ8,332.32, and I think we have a copy of that on the monitor as well. I think in fact you may not have

been here in July when the evidence was given, I think Ms. Eileen Foy also gave evidence, she being the administrator of this account also gave evidence in relation to this cheque.

I think you have informed the Tribunal that there are two matters that lead you to the view that the international cheque was purchased with the proceeds of this Irish pound cheque. I think the first of those is that an examination of the currency draft credits account indicated a tracer number in close proximity to that of the cheque in the transaction in the sum of €6,829.82 on the same day, and this does leave a balance however of €1,502.50.

I think we have a copy of the currency draft credit account which you have provided to the Tribunal. Just to pause there for a moment. I think this is an account which has entries in respect of all foreign currency drafts issued by the bank; isn't that correct?

A. Yes, that's correct.

Q. And if a draft is issued by the bank, the Irish pound equivalent of the cost of the draft is credited to the account?

A. That's right.

Q. And then when the draft is presented and paid by the bank the money is there, it is debited from the account and the draft is paid?

A. That's correct.

Q. So at all times, there would be sufficient funds in that account to meet all outstanding foreign currency drafts issued by the bank?

A. That's right.

Q. I think you have noted there that there is an entry on this which was, in fact the statement for the 4th of February of 1991 and there is an entry there marked with an asterisk, 28709, and I think that corresponds with the number of the international cheque, the French Franc international cheque, isn't that correct 28709, I think is the number of the Charvet cheque?

A. I don't think I have that cheque with me, but I am sure it is.

Q. We can hand you a copy, we can hand a copy of it up to you. In fact it is on the overhead monitor there, you see it on the left side of the cheque, "28709"?

A. Okay.

Q. (Handed to witness). If we go back to the statement of the currency draft credit, you see the entries marked, and the "A" is œ6,829.82. And the tracer number which is in the second column, the middle column on that statement is 1576. I think you stated that that's in close proximity to the tracer number of the debit shown on the account, and to that extent you believe that they are one and the same transaction?

A. That's correct.

Q. I think secondly, you have also established that is teller

number six, and that appears from the brand on the back of the cheque, the teller number six, was the teller on the foreign exchange desk on that particular day?

A. At that time, yes.

Q. So on the basis of those two matters, I think you are of the view that the funding of the Charvet cheque came from the proceeds of the cheque drawn on the Leader's Allowance Account?

A. Subject to the earlier caveat that you have already mentioned.

Q. Subject to the caveat that you don't have the waste sheets?

A. Um hum.

Q. I think the second of the French Franc cheques which the Tribunal asked you to address yourself to, was a cheque of the 18th of September of 1991, I think that's in the sum of 63,000 French Francs, again payable to Charvet, and it is also drawn on the same bank in France, and issued by Allied Irish Banks in Baggot Street.

I think you have informed the Tribunal that it would appear that this cheque was funded by a cheque of the same date drawn on the Leader's Allowance Account, and that's a cheque of the 18th of September 1991, in the sum of €7,500 payable to cash.

Again I think there are two matters that lead you to that view. The first of these is that, arises from a notation on the reverse side of the cheque; isn't that correct?

A. Yes.

Q. And we can see the notation's reverse side, maybe if we turn around I think you have been able to ascertain the teller who made that notation on the reverse side; is that correct?

A. Yes.

Q. I think she informed you that that notation represents a French Franc draft plus cash?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Yes, and I think other than that the teller has no further recollection of this particular transaction?

A. That's also correct.

Q. Now, the second matter which leads you to the conclusion which you have drawn, is an examination of, again the currency draft credit account, being the account to which funds will be lodged to meet foreign currency drafts, and there is an entry, I think on that for the 18th of September, '91, with the "1" just before the "8" on the left is slightly obscure, but I think it is the 18th and that has been confirmed. There is an entry there with an asterisks, 81516, which I think is the number of the French Franc draft payable to Charvet?

A. Yes.

Q. And that's for œ6,939.09. And I think again there is a close proximity between the numbers on the cheque and the

numbers on the draft account?

A. Yes.

Q. And based on those two matters I think it is your view that the probability is that the French Franc cheque payable to Charvet was funded by the cheque drawn on the Leader's Allowance Account on the same date?

A. That would be my reading.

Q. Now, there are two further matters dealt with in your statement. As I indicated to you we have already heard evidence from Mary O'Connor in relation to those, so we can skip forward to the consideration of the US dollar drafts.

I think the Tribunal brought to your attention a series of US dollar international cheques which appear to have been issued by the Baggot Street branch between about mid-1989 and mid-1990, and asked you to assist the Tribunal as to the apparent source of the funds that met these drafts?

A. Um hum.

Q. I think if we take them in turn. The first of the drafts is the 22nd of June of 1989 in the sum of \$7,840.50 payable to the Mayo Clinic. I think that's drawn on Marine Midland Bank of New York, the number of the draft is 658 I think shown there on the lower left-hand side of the face of the draft?

A. Um hum.

Q. I think you informed the Tribunal that there is a debit to the Leader's Allowance Account on that date of œ5,758.'95,

I think that's shown there on the statement that you have, of the account for that date.

I think you have informed the Tribunal that due to an error within the bank there doesn't appear to be a lodgement to the bank's foreign currency drafts account for that particular day, and that apparently all of the lodgements were made on the following day?

A. Correct.

Q. Is that correct?

A. Correct.

Q. I think you have, we have a copy of the foreign currency draft credits account and we can see that there are, there do not appear to be any lodgements that match that particular draft?

A. Other than the first one there, 5863 is reasonably close in terms of amount.

Q. 5863.89?

A. Yes, usually the amounts would be absolutely corresponding.

Q. Spot on except for a possible charge of, I think you said €2.50 which would be a transaction charge?

A. Yes, they should correspond in any event, but we suspect what happened, on the 22nd of June due to an oversight the credit or item wasn't passed to our own internal account until the 23rd and then was probably amalgamated with something else, that would be a little unusual and was due to an error.

Q. Right, you believe it was due to a bank internal error, because I think we can see there doesn't appear to be any lodgement to that account corresponding to the number on this draft?

A. Which there would normally be.

Q. And yet because of the bank's internal practices there must have been a lodgement to this account to meet the funding for this draft?

A. Yes, that's right.

Q. The next, the second US dollar draft which we asked you to address is one dated the 20th of July of 1989 in the sum of œ65,923.29, also payable to the Mayo Clinic, and that's draft number 757. And I think you informed the Tribunal that this was purchased at the branch, and it would appear that this cheque was funded by drawings from the Leader's Allowance Account in the amount of œ47,090.56, as a corresponding amount was lodged to the branch's currency draft credits account on that day, less a œ2.50 transaction cost.

I think you further stated that the international cheque number 757 appears on the branch's currency draft credit account as 757, in the amount of œ47,088.06, that would be precisely the same as the debit to the Leader's Allowance less the œ2.50 transaction cost.

I think there we can see the currency draft credit account, and you can see the lodgement to the account. I think the

second last transaction on the page of œ47,088.06 also on the 20th of July, and corresponding with the number that appears on the face of the draft; is that correct?

A. That's correct. That's correct.

Q. I think the third US dollar draft was a draft of the 21st of September of 1989, and that's in the sum of \$1,409.60, also payable to the Mayo Clinic and also issued by the branch at 1 Lower Baggot Street. I think you informed the Tribunal that it would appear that this cheque was funded by drawings from the Leader's Allowance Account as a corresponding amount œ1,029.91 less œ2.50 transaction cost, being œ1,027.41, with a tracer number in close proximity to the aforementioned drawing was lodged to the bank's currency draft credit on that day. 333930 appears on the bank's currency draft credit account as 930, both of those are on the overhead screen, that's the currency draft credit account which shows the lodgement to that on the 2st of September of 1989, and the number shown for that lodgement matches the number on the face of the international cheque.

Now, I think also you indicated that the tracer number of that lodgement is in close proximity to the tracer number of the debit to the Leader's Allowance Account?

A. That's right.

Q. Right. Now, the next Mayo Clinic US dollar cheque is dated the 7th of December of 1989 in the sum of \$324.01, and you have informed the Tribunal in relation to this

instrument, that it appears that that cheque was funded by drawings from the Leader's Account in the amount of œ619.96 as a lodgement with a tracer number in close proximity to that drawing which was made to the branch's currency draft credit account on that day. However, this lodgement was in the amount of œ217.45. The international cheque number 001189 appears on the branch's currency draft credit account as 1189, so that the debit from the Leader's Allowance Account, which you believe relates to the funding of that draft, was in fact for a greater sum than the amount of the draft, so presumably what your view is, is that the balance was applied in some other way?

A. That's right.

Q. There were then three US dollar drafts all dated the 7th of March of 1990, and the first of these is for \$6,810 payable to the Mayo Clinic. The second Mayo Clinic. The second is for \$1,885.65 payable to the Calor Hotel, and the third \$235.75 payable to Gold Crown Limousine Services. I think the numbers on those international cheques are sequential and they run from 1438 to 1440, and I think that you have informed the Tribunal that they appear to be funded by a single debit to the Leader's Allowance Account of œ5,727.23, and that was on the 7th of March of 1990?

A. Yes.

Q. I think you can see there that it is on the screen, and it is being pointed to. The tracer number there is 0912?

A. Yes.

Q. I think that corresponds with three separate credits to the foreign currency draft account of œ1,207.56, which presumably was the US dollar cheque payable to the Calor Hotel, œ4,361.19 payable, I think was the cheque payable to the Mayo Clinic. And œ150.98 would have been the cheque payable to Gold Crown Limousine Services. You can see the serial numbers there, and also the tracer numbers are in very close proximity to the tracer numbers on the debit, and the tracer numbers are 908 on the foreign currency account and 912 on the Leader's Allowance Account?

A. Yes.

Q. So from that your conclusion, I think is, that they were funded by that one single withdrawal from the Leader's Allowance Account?

A. That's the probability.

Q. Then finally there is a very small US dollar cheque of \$79, dated the 29th of June of 1990, also payable to the Mayo Clinic, and the number on that, if we can see it there just on the lower left-hand side, is 213417. I think you have informed the Tribunal that that appears to be funded by debit to the Leader's Allowance Account on the 29th of June which is the same date, if you can just bring it down slightly of œ3,835.09, and again presumably the balance of that debit was applied for some other purpose?

A. Yes.

Q. And I think you conclude that by reason of the credit to your foreign currency credits account, I think it is quite

faint and difficult to read just there, the third last entry from the bottom of the page, it shows an entry of œ49.33, and the number of the instrument to which it appears to relate corresponds to the number of the international cheque, and again it is the closeness of tracer numbers which leads you to the conclusion that that debit funded the \$79 cheque?

A. That's right.

Q. I think the tracer number on the statement is 2200 and sorry on the Leader's Allowance Account statement is 2200 and on the currency draft credit statement is 2197, there are only three apart?

A. That's right, which would be explained if there were other transactions making up the difference.

Q. Now, I think that you can confirm that, assuming that the first cheque, that was the first of the US dollar cheques on which there was some error at the branch in the lodgement on the 23rd of June, assuming that all of those were funded by funds drawn from the Leader's Allowance Account, I think you can confirm that including the transaction costs, the total funds debited to that account to meet the US dollar drafts is œ59,875.93?

A. Yes.

Q. There is just one final transaction which the Tribunal wishes you to address, and that's in fact a cheque which was drawn, nothing to do with an international cheque, it was a cheque drawn on the account cheque book on the 12th

of February of 1991, payable to Allied Irish Banks in the sum of €12,914.50, and this was also a cheque on which Ms. Foy gave evidence in the course of sittings last July.

And I think you have informed the Tribunal that, in relation to that cheque that it was debited to the account on the 13th of February. It would appear that this cheque was used to purchase an Irish pound draft at the branch as a corresponding amount with a tracer number in close proximity to that of the cheque was lodged at the branch's Irish pound draft account on that day. However, you cannot be absolutely certain that the two transactions are related and you have appended a copy of the Irish pound you said a copy of the draft or requisition order are no longer held and the retention period having passed but you have included a copy extract from the new style demand draft account which you attached to your statement, and again I think you can see there on the same date with an asterisks beside it, a credit of €12,914.50 which matches exactly the debit to the account?

A. Yes.

Q. Just to put that, that the Tribunal expects to hear evidence from the Department of Defence that a payment in that amount was received by the Department of Defence on the 15th of February of 1991.

Just finally, Mr. Kelly, the Tribunal has also asked you to comment on the exchange control requirements and

formalities in relation to these cheques, and you have stated in your statement as follows: You have said an E 4 Form would only be required in respect of payments for services in excess of €10,000. Under exchange control regulations this was required to be returned to the Central Bank not later than the fifth day following the end of the calendar month in which the form was executed and copies are not retained by the bank, and you note that the cheques which had been reduced these are the US dollar cheques were all payable to the Mayo Clinic.

Now, you say in your statement that copies of the E 4 Form are not retained by the bank, by that do you mean that when the return is made copies are not retained at that time or that the document retention period has passed and so for that reason they aren't retained?

A. Typically they weren't retained, they were simply sent onto the Central Bank.

Q. Simply sent on, and a copy wasn't retained within the bank's own records, I presume because they were for statistical purposes?

A. That's correct.

Q. So, the transaction we have referred to during your evidence was the only one that would have required an E 4 Form was the 645 US dollar payment to the Mayo Clinic?

A. That's correct.

Q. The other foreign currency transactions and drafts in value between €250 and €10,000, they would none the less have

required you to have sight of documentary evidence?

A. Typically an invoice.

Q. Typically an invoice, so that in the case of the Mayo Clinic invoices or Mayo Clinic payments, you would have had sight of a Mayo Clinic invoice?

A. That's what you would have expected to have seen, yes.

Q. I take it that the same would apply in the case of the cheques that were paid to Charvet?

A. That would be the normal practice.

MS. O'BRIEN: Thank you very much, Mr. Kelly.

CHAIRMAN: Thank you for the additional work and assistance you have given the Tribunal, Mr. Kelly. We will adjourn now for lunch until ten to two.

THE HEARING THEN ADJOURNED FOR LUNCH.

THE HEARING RESUMED AS FOLLOWS AFTER LUNCH:

MR. COUGHLAN: Mr. Patrick McKeirnan.

PADRAIC MACKERNAN HAVING BEEN SWORN WAS EXAMINED BY MR.

COUGHLAN AS FOLLOWS:

CHAIRMAN: Thank you very much.

Q. MR. COUGHLAN: I said McKeirnan, I am sorry. Now I think Mr. MacKernan, you have furnished a memorandum of evidence for the assistance of this Tribunal in this inquiry; is that correct?

A. That's correct.

Q. And I think do you have a copy of that with you?

A. Yes.

Q. And I intend taking you through it and perhaps then asking you a few questions to clarify one or two matters at the end, if that is .

A. By all means.

Q. if that is acceptable to you. Now, I think you have informed the Tribunal that by letter dated the 21st of September of 1999, and addressed to you as Secretary General of the Department of Foreign Affairs, from the solicitors to the Tribunal, it was requested that an official of the Department provide the Tribunal with a memorandum of evidence covering a number of specified matters; is that correct?

A. That's correct.

Q. And that you have had informed the Tribunal that you now therefore in your capacity as Secretary General of the Department of Foreign Affairs, are pleased to provide the requested memorandum of evidence; is that correct?

A. That's correct.

Q. That the memorandum has been prepared on the basis of the information contained in the Departmental files concerning the hospitalisation of the late Brian Lenihan, Tanaiste and Minister for Foreign Affairs, at the Mayo Clinic, Rochester, Minnesota USA in 1989 and 1990; is that correct?

A. That is correct.

Q. I think you say that in 1989, 1990, you were serving in Washington, D. C., as Ambassador of Ireland to the United States of America?

A. That's correct.

Q. And that for ease of reference your memorandum of evidence is set out so as to cover, seriatim, the matters referred to in subparagraphs one to five of Mr. Davis' letter of the 21st of September, 1989; is that correct?

A. That's correct.

Q. And I think in fact for further ease of reference in your memorandum you set out those questions also; isn't that correct?

A. That's right, as paragraphs.

Q. As paragraphs.

A. Paragraph, headings, I should say.

Q. Yes; and the first paragraph heading which raised a query with you that you were asked, the arrangements which were put in place between the Taoiseach's office and the Department of Foreign Affairs with regard to the raising of invoices by the Mayo Clinic, the transmission of invoices through the Department of Foreign Affairs to the Taoiseach's office, the receipt of US dollar cheques by the Department of Foreign Affairs, and the forwarding of cheques through the Washington Embassy to the Mayo Clinic; is that correct?

A. That's correct.

Q. And is it correct that you informed the Tribunal that the

records of the Department contain a note of the 20th of June, 1989, to the Assistant Secretary in charge of the Department's administration division, Mr. Patrick O'Connor, from the then Secretary of the Department, Mr. Noel Dolan; is that correct?

A. That's correct.

Q. I think you furnished that particular note to the Tribunal; is that correct?

A. Yes.

Q. And I am just going to put the note up now at this stage and I think it is marked "confidential" and it is the Assistant Secretary O'Connor, Tanaiste stay in Rochester, Minnesota?

A. That's correct. That's right.

Q. I think at the moment unless, you wish to specifically refer to the total content of the note, I think you have given a resume of the note in the memorandum of evidence; is that correct, yourself?

A. That's correct.

Q. And you say: "The note refers to discussions which had taken place between the then secretary and the then Taoiseach on how the expenses were to be dealt with". The note indicates that the medical invoices were to be directed to the Ambassador in Washington, D. C., for onward transmission to Dublin. That of course you were the resident ambassador at the time; isn't that right?

A. That's right.

Q. That the Taoiseach was to make private arrangements for payments of the invoices on behalf of the Lenihan family; is that correct?

A. That's right.

Q. That the Department of Foreign Affairs was to act simply as a Post Office in this regard?

A. Yes, of course.

Q. And that subsequent departmental records show that this method was followed in practice and that invoices were received by the embassy in Washington and transmitted to the Secretary's office in Dublin; is that correct?

A. That's correct.

Q. I think from your examination you can say that records show that one of the invoices dated the 3rd of August, 1989, for \$1,409,60 was transmitted, was transmitted with the Secretary's letter of the 15th of September of 1989, to Miss Catherine Butler of the Taoiseach's office; is that correct?

A. That's right.

Q. And that the wording of the letter, of that letter indicates that the earlier invoices had also been forwarded to Miss Butler by the Secretary's office, that is the secretary of the Department of Foreign Affairs office; is that correct?

A. That's right.

Q. And you have furnished a copy the letter to the Tribunal; is that correct?

A. Yes that's right.

Q. Now, I think you then go on to say in your memorandum, that the Department received 10 invoices from the Mayo Clinic in 1989 and 1990; is that correct?

A. That's right.

Q. I think you have furnished an attachment called "Attachment B" for the assistance of the Tribunal for ease of understanding and looking at this, and that there listed in date order and numbered 1- 10 in the table that you furnished; is that correct?

A. That's right.

Q. And I think if you just confirm on the monitor, that is the table furnished by the Department?

A. That's right.

Q. Is that correct?

A. Yes.

Q. I will go back over it in a moment I will just continue on with the memorandum?

A. Sure.

Q. That details of the date, amount, and method of payments are also included; is that correct?

A. That's correct.

Q. And you say that for ease of reference, the six payment cheques corresponding with invoices are numbered one to six in column five of the table, and that copies of the cheques, again numbered one to six are also enclosed with "Attachment B"; is that correct?

A. That's right.

Q. I think you go on then to say that invoices No. 1 to 7 and nine to ten were received by the embassy in Washington while invoice number 8, for US \$625.01 was received by the Consulate General in Chicago and that all were forwarded to Dublin for the attention of the Secretary of the Department, Mr. Noel Dore with the exception of invoices No. 6 and 8, which were faxed direct to Denis Malone then the Assistant Principal in charge of the Department's Finance Unit. That is the Department of Foreign Affairs Finance Unit?

A. That's right.

Q. I think if we just - if we just for a moment now, perhaps we might look at the table which was helpfully provided for the assistance of the Tribunal. And do you have that Mr. MacKernan?

A. Yes.

Q. And I think that shows invoice number 1 and the date of the invoice is the 23rd of May of 1989, and the details of the invoice are the medical expenses for Brian Lenihan, for the 3rd to the 17th of May 1989, at the Mayo Clinic, Rochester; is that correct?

A. That's right.

Q. And that the method of transmission of the invoice, it was forwarded by the Ambassador, you, in Washington to the Secretary Mr. Dore in Dublin on the 8th of June, 1989; is that correct?

A. That's right.

Q. And that this was a cheque, No. 1 was the method of payment, is that correct? An international cheque for the sum of \$7,840.80, international cheque for this amount was forwarded to the Mayo Clinic by the Consulate in Chicago on the 28th of June, 1989; is that correct?

A. That's correct.

Q. And I think we can just, if we had the cheque No. 1 also, just to show Mr. MacKernan? I think that is the international cheque in that dollar sum; isn't that correct, which was forwarded?

A. That's right.

Q. Now, if we might return to the table again please? And invoice No. 2 was dated the 23rd of May, 1989, and it was for the medical expenses for Mr. Lenihan, again for the 3rd to the 17th of May of 1989 at the Methodist Hospital, Rochester and this was forwarded to you as the ambassador, forwarded by you as Ambassador in Washington to Mr. Dore the Secretary in Dublin on the 7th of July, 1989?

A. That's right.

Q. Is that correct?

A. That's right.

Q. And this is cheque No. 2 and the amount was \$16,950.59 and it was included in an international cheque for \$65,923.29 which was forwarded by the embassy in Washington to the Mayo Clinic on the 27th of July of 1989. In fact it formed part of a number of invoices which were added together; is

that correct?

A. That is correct.

Q. And made the greater sum of the payment. Can you just for the purpose of the assistance of the Tribunal and the public, there will be references to the Mayo Clinic and to the Methodist Hospital in Rochester, you can see that on the table Mr. MacKernan?

A. Yes.

Q. Do you have any particular knowledge of the actual set up at the Mayo Clinic?

A. Yes. I have been to the Mayo Clinic several times during the course of Mr. Lenihan's treatment there.

Q. Yes?

A. It is a large complex and I would imagine that if you look at the details of the whether you intend to do that or not is for you of course, of what was being paid for the treatment that was being paid for.

Q. Yes?

A. There are presumably two aspects to it. One, the actual surgery and the preparation for the surgery and they were performed in two different locations. That is my assumption.

Q. I see. It all forms part .

A. It is all forms part of the same affair.

Q. Yes?

A. There was a period in which Mr. Lenihan was awaiting the actual operation because in these matters one is obliged so

to do until there is a suitable donor.

Q. Of course?

A. And there was of course, a preparation assessment and so on.

Q. Yes?

A. That is my assumption.

Q. Yes. It was just that I wondered, just in case there was any confusion in the public's mind?

A. They are not two .

Q. They are not two separate matters?

A. No.

Q. I think the third invoice which was dated the 6th of July, 1989, again for the medical expenses for Mr. Lenihan, this time for the period the 23rd of May to the 22nd of June, 1989 at the Mayo Clinic, Rochester, and again this was forwarded by you to the Secretary in Dublin on the 11th of July, 1989; is that correct?

A. That's right.

Q. And the amount of that was \$48,972.70 and this was included in the international cheque that we have just made reference to in respect of the previous sum invoiced and that cheque was for \$65,923.29 which was forwarded to the Mayo Clinic by the embassy in Washington on the 27th of July, 1989; is that correct?

A. That's right.

Q. And I think we will just put up that cheque, the international cheque at this stage. That is the cheque for

\$65,923.29 made payable to the Mayo Clinic; is that correct?

A. That's right.

Q. Now, the fourth invoice is dated the 6th of July, 1989, and it was for, again, medical expenses for the late Mr. Lenihan, from the 23rd of May, 1989 to the 12th of June, 1989 at the Methodist Hospital, Rochester, and this was forwarded by you from Washington to the Secretary here in Dublin; isn't that correct?

A. That's right.

Q. On the 11th of July 1989?

A. That's correct.

Q. And you have no cheque available in respect of this and the bill was forwarded by the embassy in Washington to Dublin, but the Department's records do not make reference to payment of this bill; isn't that correct?

A. That's correct.

Q. I think that is the bill for the actual operation, isn't it, at the Mayo Clinic?

A. I can't really say that, because one would have to examine the corresponding invoice.

Q. Right?

A. But what appears clear is that this particular payment, there is to record of payment of this particular there is no corresponding cheque, shall we say.

Q. From the Department?

A. From .

Q. Coming from the Taoiseach's Department to the office and from the Department to you?

A. That's correct.

Q. But we can establish this; I think that you can say that it was in the sum of \$81,602.74; isn't that right?

A. That's right.

Q. But that didn't, as far as you can ascertain, go through the Department?

A. No, it did not come through a dollar draft and settlement of that particular piece, the settlement of that was not forwarded through the Department of Foreign Affairs, nonetheless if it is permitted to jump a little bit ahead?

Q. Yes?

A. The Mayo Clinic have certified that that particular bill was paid.

Q. I think we will be showing at a later stage how that just that it didn't .

A. As far as the Department is concerned, we forwarded the invoice but we did not forward or receive a cheque payment of that invoice to forward.

Q. And again, you received an invoice dated the 7th of July of 1989 for medical expenses for Mr. Lenihan for the 21st to the 22nd of June, 1989 at Saint Mary's Hospital and Mayo Clinic, Rochester and again this was forwarded by you to the secretary here in Dublin on the 17th of July 1989; isn't that correct?

A. Yes.

Q. And again, you sorry the Department, the Department did not as you can, as far as you can ascertain receive payment in respect of this invoice for transmission to you for ultimate transmission to the Mayo Clinic; isn't that correct?

A. Are we referring to item number 5.

Q. 5?

A. Yes, that's true. But the explanation is clear, it is also set out in the table.

Q. I was going to go on to that now. That the, that your secretary, your private secretary, told you on the 19th of July, 1989, that the Mayo Clinic advised that this bill was not payable; isn't that correct?

A. That's correct. The reason being was that it was in respect of the cost of carrying out an investigation which the Mayo Clinic was doing for its own research purposes.

Q. For its own research purposes, yes. Now, I think invoice No. 6, is dated the 7th of July, 1989, and again, it was for medical expenses for Mr. Lenihan for the 22nd of June; 22nd of May I beg your pardon, 1989 at the Methodist Hospital, Rochester, and this was faxed by your private secretary in Washington to the Head of the Finance Unit in Dublin on the 5th of December 1989; is that correct?

A. That's correct.

Q. And I think that the records of the Department show that this was in the amount of \$261.50 and it was included in an

international cheque for \$324.01 which was forwarded to the Mayo Clinic by the embassy in Washington on the 11th of December, 1989; is that correct?

A. That's right.

Q. And I think we can just show the cheque for \$324 of which it formed part. Then, invoice number 7, was dated the 3rd of August 1989, and it again was for medical expenses for Mr. Lenihan for the period the 23rd to the 26th of June of 1989 at the Mayo Clinic, Rochester and this was forwarded by you to the Secretary here in Dublin on the 6th of September, 1989; isn't that correct?

A. That's correct.

Q. And I think that the amount was for \$1,409,60 and that this was paid by way of international cheque for this amount and it was forwarded to the Mayo Clinic by the embassy in Washington on the 28th of September 1989; isn't that correct?

A. Yes.

Q. Now could we have the cheque there, the international cheque? And then invoice number 8 is a statement dated the 6th of the 10th '89; is that correct?

A. That's right.

Q. And it is medical expenses for Mr. Lenihan for the 7th and 8th at Saint Mary's Hospital Rochester and this was faxed by the Consulate General in Chicago to the Head of the Finance Unit in Dublin on the 7th of December, 1989, and it was for \$62.51 and the method of payment and transmission

by the embassy to the Mayo Clinic and was part of the cheque, international cheque we have previously seen for \$324.01; is that correct?

A. That's right.

Q. And invoice number 9, was dated the 7th of February, 1990, and it is for medical expenses for Mr. Lenihan, for the 2nd to the 25th of January, 1990 at the Mayo Clinic and again this was forwarded by you to the Secretary here in Dublin on the 12th of February, 1990, and it was for the amount of \$6,810, and it was forwarded to the amount in international cheque for - this amount was forwarded to the Mayo Clinic by the embassy in Washington on the 23rd of March, 1990; isn't that correct?

A. Yes.

Q. 6,800

A. 21st of March.

Q. 21st of March. I beg your pardon, yes, the 21st of March.

It is the cheque, the international cheque is there,

\$6,810. And then there was invoice number 10, the final one on the table, which was dated the 4th of June, 1990, it again was for medical expenses for Mr. Lenihan and was for the 10th of May, 1990 at the Mayo Clinic Rochester and this was forwarded by you to the Secretary in Dublin on the 13th of June, 1990 and it was for the sum of \$79 and an international cheque for this amount was forwarded to the Mayo Clinic by the embassy in Washington on the 10th of July of 1990. I think that is correct?

A. That's right.

Q. And we have that. And I think in respect of all invoices which were sent to the embassy in Washington and then transmitted to the Secretary in Dublin, the total amount in dollars, if one excludes the invoice for \$81,602.74, which is item number 4 on the table?

A. Yes.

Q. And the \$207.10 which is item number 5 which there was no payment due in respect of; but that taking into account all the other invoices, the total amount was \$82,386.70; is that correct?

A. That's right.

Q. Now, I think you then go on in your memorandum to deal with the second query raised by Mr. Davis, solicitor to the Tribunal, and the query raised was the personnel in the Department of Foreign Affairs and the Taoiseach's office who were involved in the receipt and payment of invoices; is that correct?

A. Yes.

Q. And I think that you state in your memorandum that according to the Department's records, the following personnel in the Department of Foreign Affairs were involved at different stages in 1989, and/or 1990 in the receipt of the medical invoices and the transmission of payments. And they are Mr. Noel Dore, who was the Secretary of the Department at the time of course?

A. Yes.

Q. Yourself, Mr. Pádraig MacKernan, at the time you were the ambassador to the United States at Washington, D. C., Mr. Paul Malone, private secretary to Mr. Dore. Miss Ann Byrne who was your private secretary; that was private secretary at Washington I take it; is that correct?

A. That's correct.

Q. Mr. Peter Gunning, Consul General, Chicago. Mr. Gary Ansboro, Consul General at Chicago. Mr. Denis Malone, Assistant Principal in charge of the Department's Finance Unit. That is the Department of Foreign Affairs Finance Unit, I take it?

A. That's right.

Q. Miss Kate Slattery, private secretary to Mr. Dore. Mr. Kevin Dowling, private secretary to Mr. Dore. Mr. Martin Bourke, Consular, Washington Embassy. And that according to the Department's records the following person in the Department of the Taoiseach was involved in the receipt of the medical invoices, and the transmission of the payments was Miss Catherine Butler; is that correct?

A. That's correct.

Q. Now I think the third query is one in fact which has been dealt with already, in that you were asked the date and the amount of each invoice raised by the Mayo Clinic and the date and method of payment and I think you have gone through that exercise in the table that you so helpfully produced for the Tribunal?

A. The date and method of payment insofar as the Department

transmitted payments.

Q. Insofar as the Department transferred?

A. As you pointed out earlier, two invoices which we had transmitted were not paid, one because the Mayo Clinic said it is not payable and the other for \$81,000 which you mentioned earlier, was one that we transmitted as an invoice but did not transmit payment for.

Q. Yes?

A. Making a total of \$82,000 which you covered earlier.

Q. Which was actually transmitted?

A. Transmitted by the Department and its agencies.

Q. Yes. The next matter which Mr. Davis raised in his letter was the date and amounts of the direct payments made to the Calor Hotel?

A. Calor Hotel.

Q. And to Gold Crown Limousine Services and I think that you, the table in attachment C, details two cheques number 7 and 8, which were forwarded on the 21st of March, 1990 by the embassy in Washington to the Calor Hotel and Gold Crown Limousine Services respectively, in settlement of the invoices number 11 and 12. Now, the invoice for the Calor Hotel was forwarded by you to the Secretary in Dublin on the 21st of January, 1990, and it was in the amount of, I think \$1,885.60; am I correct there, Mr. MacKernan?

A. That's right.

Q. And that the date and method of payment was an international cheque, dollar cheque for this amount

received from the Secretary's office in Dublin and forwarded to the Calor Hotel by the embassy in Washington on the 21st of March, 1990; is that correct?

A. That's right.

Q. And then on the, we have the international cheque there, in that sum for \$1,885.60 I think dated the 7th of March 1990. And the next matter then was an invoice dated the 5th of February, 1990, and it was from Gold Crown Limousine Services for car hire, expenses for the Tanaiste, Mr. Lenihan, during the period 31st of December, 1989 to the 7th of January 1990 in Rochester and this was forwarded to the secretary's office in Dublin by the Consulate in Chicago, I think; is that correct?

A. That's right.

Q. And that was for \$235.75 and a US dollar international cheque for this amount was received from the Secretary's office in Dublin and forwarded by the embassy in Washington to Gold Crown Limousine Services on the 21st of March 1990; is that correct?

A. That's right.

Q. And I think you have calculated and we have the international cheque of that sum on the screen now. \$235.75. And you have calculated that the total amount in respect of those invoices which were transmitted via the Secretary's office in Dublin through the services, the embassy service in Washington were \$2,121.35; is that correct?

A. That's right.

Q. Now then, I think you were asked for details of the three sums reimbursed to the Department of Foreign Affairs in respect of hotel and subsistence costs incurred by the late Mr. Lenihan and his party during the course of his treatment in May, June of 1989; is that correct?

A. That's right.

Q. And I think you have informed the Tribunal that a total of €12,497.02 was reimbursed to the Department of Foreign Affairs in three Irish pound cheque installments to cover personal charges which had been paid by the Department on behalf of the Tanaiste and Mrs. Lenihan in connection with the May/June 1989 visit to Rochester; is that correct?

A. That's right.

Q. And I think the amounts of €2,489.90, €4,933.59, and €5,073.53 were lodged to the account of the Department of Foreign Affairs in the Central Bank on the 25th of July, 1989, approximately - sorry, on three dates the 25th of July, 1989, approximately the 27th of September 1989, and the 21st of December, 1989, respectively; is that correct?

A. That's right.

Q. I think you have again very helpfully set out a table dealing with that; isn't that correct?

A. That's right.

Q. And the first sum for €2,489.90 date of the refund, approximately the 25th of July 1989, the details are there, what it is in respect of. And it is refund of three

advances of funds made by the Department to the Tanaiste and Mrs. Lenihan before and during their stay in Rochester. The first advance had been made by the Department Finance Unit in Dublin while the remaining two were issued from the Chicago Consulate account?

A. That's right.

Q. And the second refund was on the 27th of September of 1989, and it was for €4,933.59, and it is refund of hotel costs paid from the Chicago Consulate account in respect of the Tanaiste and Mrs. Lenihan and the Tanaiste's medical team. One on the 21st of December, 1989 for €5,073.53 and was a refund of personal car hire; charge incurred by the Tanaiste and Mrs. Lenihan which had been paid from the account of the Chicago Consulate?

A. That's right.

Q. So, we have three cheques, sorry two cheques, and I am afraid the quality is quite poor, but they are from what is known in this Tribunal as the Leader's Allowance Account, this is from the Taoiseach's office. I take it that the refunds came from the Taoiseach's office as far as the Department were concerned; is that correct?

A. Yes. They came from Allied Irish Banks.

Q. They came from these are the cheques?

A. Yes.

Q. These are the cheques and if we just, we have two of them which correspond exactly with the sums lodged, and the Department can confirm that the Department actually got the

cheques. They were lodged to the Department's account in the Central Bank?

A. That's correct.

Q. Sorry, if we put the first one up that we have. The September cheque. That is the €4,933.59. Drawn on the Haughey Ahern McSharry account, Allied Irish Banks and payable to the Department and corresponds to the lodgement in the Department's account in the Central Bank; isn't that correct for that sum of money?

A. Yes. Yes.

Q. And then the next cheque is €5,073.53 which was lodged to the account of the Department at the Central Bank and that was lodged on the 21st of December, 1989, I think; is that correct, that is what the record shows?

A. That's right.

Q. And I think that you have informed the Tribunal that the three refund cheques were processed in the Department Finance Unit by Miss Irene Dolan, Executive Officer of the travel section; is that correct?

A. That's right.

Q. I think you have covered in your memorandum a fair amount of technical detail, at paragraph 5.1 towards the end of that which is really internal departmental treatment of the handling of the transactions; is that correct?

A. That's right.

Q. I don't think we need to actually go through that in such detail for the purposes of the Tribunal. I know it is very

detailed but it doesn't bring the matter perhaps any further, unless you think it does, Mr. MacKernan?

A. No.

Q. Now, I think that you have informed the Tribunal that the first cheque, this is the refund cheque now; the first cheque for €2,489.90 was received by Miss Dolan on the 25th of July 1989, from Gabriel Burke of the Minister's Office, is that the Minister for Foreign Affairs?

A. Minister for Foreign Affairs, Gabriel Burke was acting as his private secretary at that time, or for that purpose, you will recall that Gabriel Burke was the officer who was with the Lenihans in Rochester, and the cheque was simply sent to her and she sent it to Miss Dolan from which ultimately it was transferred to the Department in Central Bank.

Q. Yes. I think that the second refund of €4,933.59 was requested by the secretary, Mr. Dore, in his letter of the 15th of September, 1989 to Miss Catherine Butler in the Taoiseach's office, is that correct?

A. That's right.

Q. And Miss Dolan's file note of the 14th of September, 1989 shows that the amount of the refund, that is €4,933.59, on that occasion having been discussed between herself and Paul Malone, private secretary to Mr. Dore, Miss Dolan subsequently received a cheque for this amount from Mr. Malone on the 25th of September, 1989; is that correct?

A. That's right.

Q. And I think the third cheque for €5,073.53 covered amongst other items car hire charges, which had been paid by the Chicago Consulate and deemed personal to the Tanaiste. Miss Dolan had noted on file on the 24th of November, 1989, "car hire statement is now with secretaries office. The letter will be sent to the Taoiseach's office requesting refund of the personal charges per DM". DM in this case refers to Mr. Denis Malone then head of the Department's Finance Unit and the relevant refund cheque was subsequently received by Miss Dolan and lodged to the Departments account; is that correct?

A. That's right.

Q. And I think you have informed the Tribunal that the Department's files do not contain copies of the three refund cheques received, however that at the Department's request the Central Bank has searched its microfiche records and produced copies of the two copy cheques which we have seen on the screen here today, that is the cheque for €4,933.59 and €5,073.53 upon which they are marked "refund two and refund three"; is that correct?

A. That's correct.

Q. The Central Bank has not yet located a copy of the first cheque for €2,489.90 but I don't think there is any doubt that it was received?

A. No doubt.

Q. I don't want to go into, into detail with Mr. Dore's letter, but can you just confirm that the agreement or

arrangement that was put in place with the Taoiseach or the Taoiseach's's office, that where ever there had been an expenditure of departmental funds, that there was to be an immediate refund to the Department or to any other department, I presume?

A. Yes.

Q. Where that might arise?

A. Well there was to be a refund. I don't know if there was an immediate pursuit, but

Q. Yes?

A. They were to be refunded.

Q. They were to be refunded?

A. Yes.

Q. And I think well Mr. Dore's note to the Assistant Secretary, I think uses the expression "immediate refund" but refund and as far as the Department of Foreign Affairs was concerned the Department was refunded?

A. The Department was refunded with, as you have noticed there were reminders letters implicit.

Q. There were reminders of course, yes?

A. Yes.

Q. MR. COUGHLAN: Thank you Mr. MacKernan.

CHAIRMAN: Does anybody else have any questions? Thank you for the work you have done Mr. MacKernan and for making yourself available as head of the department to deal with this matter, which has been of much assistance to us.

Thank you.

THE WITNESS THEN WITHDREW.

MS. O'BRIEN: Mr. Brian Spain please?

BRIAN SPAIN HAVING BEEN SWORN WAS EXAMINED BY MISS O'BRIEN
AS FOLLOWS:

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

Q. Mr. Spain, I think you are Principal Officer in the
Department of Defence; isn't that correct?

A. That's correct.

Q. I think in the years of the late Mr. Brian Lenihan as
Minister for Defence that you were his private secretary?

A. That's correct.

Q. I think that was from the date of his appointment to the
date that he ceased to hold office in October of 1990

A. That's right.

Q. And I think you have assisted the Tribunal in and provided
a detailed memorandum of the evidence that you have in a
position to give and in particular in relation to the late
Mr. Lenihan's return visit to the Mayo Clinic in early
January of 1990?

A. Correct.

Q. And perhaps if I could take you through that and maybe one
or two matters which we need to clarify as we go along. I
think in the first paragraph you have informed the Tribunal
that you were appointed private secretary to the Minister
for Defence on the 9th of October of 1985?

A. That's correct.

Q. And I think you were the private secretary in situ when a new government was formed on the 12th of July of 1989?

A. Correct.

Q. And Mr. Brian Lenihan TD was appointed Tanaiste and Minister for Defence in that government and you continued as private secretary in that capacity?

A. That's correct.

Q. And I think on the 6th of September of 1990 you were promoted to the rank of Assistant Principal Officer and you ceased to be private secretary, but you continued to work full-time in the Tanaiste's private office until he ceased to hold office in October of 1990?

A. That is correct.

Q. I think you have had informed the Tribunal that it was generally known at this time that there was a fund established to defray the medical expenses of the late Mr. Lenihan?

A. Yes.

Q. And I think you say that besides, this fact was generally known and it also became very obvious to you that such a fund existed because of your contact with the Minister of the Department of Foreign Affairs where Mr. Lenihan had been Minister, for his appointment of Minister of Defence and from conversations with Miss Eileen Foy and Ms. Catherine Butler in relation to Mr. Lenihan's return visit to the Mayo Clinic in December 1989 and January 1990?

A. That's correct.

Q. I think you state that in the course of preparing for the visit of Mr. Lenihan to the Mayo Clinic you spoke with Miss Catherine Butler and/or Miss Eileen Foy on a number of occasions in their office in the Department of the Taoiseach, both persons shared the same office?

A. That's correct.

Q. And your contacts at that time Mr. Spain, with Miss Butler and Miss Foy, were they solely in relation to making arrangements for Mr. Lenihan's return visit?

A. I would have contact with Miss Foy and Miss Butler in the course of my duty, but they would have mainly related to the, if you like the personal affairs of Mr. Lenihan in that they related to the return visit to the Mayo Clinic.

Q. And was it from the point of view of making the actual arrangements; the dates, the booking of hotels, or was it primarily in relation to the funding of that return visit?

A. Well, I was in no doubt from my contacts with both of those persons, that any expenses which were incurred in relation to the return visit would be refunded to the Department and it was in that context that I had discussions with both of those persons.

Q. I think at paragraph 3 of your memorandum you state that Mr. Lenihan's return visit to the Mayo Clinic was arranged to coincide with the Christmas holiday period. The arrangements for the visit were made by yourself and Mrs. Lenihan. All arrangements in relation to flights and

hotels were made by you, and the Department of Foreign Affairs were also made aware of the visit; I suppose that was because of protocol reasons and so on?

A. And we would have obviously informed the Consul general in Chicago who would have met us at the airport when we arrived in Chicago, so they would have been fully aware of the visit.

Q. I think you go on to state that the party travelled - the party who travelled to the Mayo Clinic was Mr. Lenihan, his wife and his daughter and yourself?

A. Correct.

Q. And that you departed from "... Aerodrome on 31st of 1989 by government jet and flew by commercial airline to Chicago and then on to Rochester" (quoted). I think in fact the position was that the reason you flew by government jet to London was that there were no flights on commercial airlines available on the 31st of December?

A. It was New Year's Eve, it was difficult to get connections.

Q. I think you state further that the party stayed at the Calor Hotel for the duration of the visit. During the visit you had at least one telephone conversation with Miss Catherine Butler and Mr. Charles Haughey in relation to Mr. Lenihan's check in at the clinic. Were they separate phone calls that you had with Ms. Butler?

A. No. It was one phone call where I rang Catherine Butler and I was put through to the Taoiseach.

Q. Was this simply to indicate .

A. The state of progress. What was happening in relation to the then Tanaiste's medical check up at the clinic.

Q. I take it that you weren't discussing details of his medical condition because presumably you weren't apprised of those?

A. I would have had knowledge of some aspect of that because of the closeness of the relationship, but it was simply to inform the Taoiseach and Miss Butler initially and then the Taoiseach as to what was happening, how long he was likely to stay there etc.

Q. And when he was likely to be discharged and so forth?

A. Exactly.

Q. I think you go on to state that you departed Rochester on the morning of the 7th of January. The Lenihan family stayed on and you returned to Dublin?

A. That's correct.

Q. I think you go on to state at paragraph 4, that in accordance with discussions with you had with Miss Catherine Butler and Miss Eileen Foy before the visit, the invoices in respect of the hotel and limousine hire were sent to the Irish embassy in Washington?

A. That's correct.

Q. And I think you understood this was in accordance with the practice that had pertained when Mr. Lenihan was in the Mayo Clinic in May/June of 1989?

A. That was my understanding.

Q. And all expenses were paid for by the Department, your

personal expenses were paid by the Department of Defence?

A. That is correct.

Q. I think in fact you saw there on the monitor during the course of Mr. MacKernan's evidence, two international bank cheques that were paid by; one to the Calor Hotel and one to Gold Crown Limousine Services on the 7th of March of 1990?

A. That's correct.

Q. I take it that would have been in respect of the expenses incurred by Mr. Lenihan and his family, personally, during that visit in early January of 1990. Is that correct?

A. That is correct.

Q. I think you go on to state that in relation to the airline tickets for travel, between Ireland and the USA all the tickets were purchased through the Department for convenience. Would that have been normal practice, Mr. Spain, at the time, that if a minister was travelling abroad otherwise than on government business, and was travelling by commercial airline, that the ticket would have been bought through the Department?

A. No, normally if a minister is travelling on private business or for pleasure, then it is up to the minister to make those arrangements. However, in this particular situation, while the Tanaiste was travelling away on private business I was accompanying him as his private secretary and in that role as private secretary, I made the arrangements with the normal travel agent that the

Department would have used at the time, and I would have booked the tickets for the Lenihan party as well, purely for convenience purposes.

Q. For convenience?

A. Yes.

Q. And had that been agreed beforehand with Miss Foy or Miss Butler or Mrs. Lenihan?

A. As I said previously, it was always my clear understanding that any expenses incurred by the Tanaiste in relation to his medical expenses would be refunded to the Department.

Q. I see. You go on to state that it was always your understanding that the cost of tickets in respect of Mr. and Mrs. Lenihan and Miss A Lenihan would be refunded to the Department and that this did in fact occur. The full costs of the tickets €12,914.50 was refunded to the Department on the 15th of February of 1991 and in that regard you attach a copy extract from the Department's receivable orders book. I think that we can put a copy extract from your receivables order book on the overhead projector. I think it is quite difficult to read but there is an entry there "private secretary to minister, something, to clear"?

A. "Request to clear suspense".

Q. Clear suspense €12,914.50 and it is there received on the 13th of February of 1991.

A. Yes.

Q. And I think in fact evidence was heard this morning you may

not have been here Mr. Spain, from Mr. Kelly of Allied Irish Banks in relation to a cheque for that amount which was drawn off the Leader's Allowance Account in Baggot Street on that date. But I think in fact you haven't been able to obtain a copy of the cheque or instrument by which this payment was made for the airline tickets?

A. No. The Department would not keep that cheque because it would go through the clearing-house system when it was lodged to the Department.

Q. I think you go on to state that with particular regard to this refund you can remember having a conversation with Mr. Charles Haughey in relation to this payment in which he advised you that it would be a little while before he could let you have payment for the amount involved?

A. That's correct.

Q. Now, can you recall more clearly when that conversation may have occurred and how it arose?

A. No, I can't give a date for the conversation. I do remember having the conversation with the Taoiseach in his office in Government Buildings.

Q. Well, maybe I could help you a little. In the ordinary course I suppose the cost of the tickets was incurred in January of 1990?

A. That's correct.

Q. And they were paid finally in February of 1991?

A. That's correct.

Q. So this was over a 13 or 14 month period?

A. Yes, but I would have to say in fairness, that I was still in correspondence with the finance branch of my own department in August of 1990 in relation to those tickets. But when the tickets were purchased they were purchased for travel between Dublin and Rochester and return, and there was some internal flights booked as well. Those internal flights were not the actual flights that were used, so an adjustment had to be made in relation to the tickets; so in August of 1990 I was still in correspondence with the finance branch of my own department as to the exact usage of those tickets, so any .

Q. So it is possible?

A. It is possible that the bill or the tickets were not paid for.

Q. Until around .

A. Until around that time. Now I have tried to establish when we were actually billed by Aer Lingus for the ticket, but unfortunately because of time lapse that file is not available in the Department.

Q. Given that as you say, there may well have been some dispute about it, until August of 1990, it may well have been that that conversation took place after August of 1990?

A. Yes, I would .

Q. Sometime between August and February of 1991?

A. The conversation would not have taken place until such time as I was in a position to ask the Taoiseach's office for a

particular amount of money.

Q. I see. And do I take it therefore that you would have asked for that money?

A. Yes.

Q. And not received it and for that, would that have prompted the conversation between you and Mr.

A. No, to the best of my recollection, again you have to appreciate it is over nine years now. The approach came that the Taoiseach asked to see me and explained to me that it would be a little while before that payment would be made.

Q. I see. Did he give you any further explanation as to why would be sometime?

A. No.

Q. I see. I think you go on then to say that you remember having a further conversation with him, this is presumably with Mr. Haughey, with regard to how the outstanding amount would be shown in the Department's end of year accounts, and you say that both of these conversations took place in Mr. Haughey's office in Government Buildings. So do I take it, therefore, there was a second discussion with Mr.

Haughey?

A. That is correct.

Q. In relation to this?

A. That is correct.

Q. Now, have you any clearer idea in your mind as to when that might have been given, that you were discussing the year

end?

A. Obviously subsequent to the earlier conversation. Towards the end, I would guess sometime may be in December when the Department would have been beginning to prepare its final accounts for that period.

Q. Accounts for the year end?

A. Yes.

Q. So your best view on it is that it would have been December of 1990?

A. Yes. As I say that is only an estimate of the time. I cannot say for certainty the date of the conversation.

Q. And that conversation, was that prompted by you or prompted by Mr. Haughey?

A. No. I think what happened was when Mr. Haughey had the first conversation with me and said it would be a little time before he could let me have the payment of €12,000, he just asked would that cause any problems for the Department because of the fact, I presume, that it was coming up towards the end of the year, and I returned to Mr. Haughey and informed him that it wouldn't cause any problem for the Department.

Q. And why would you need to have a discussion with him as to how the outstanding amount would be shown in the Department's end of year accounts?

A. Well, as I just mentioned, my recollection is that when Mr. Haughey told me that it would be a little while before he could let me have the payment of €12,000, that the question

arose that it was coming up towards the end of the year, would that cause a problem for the Department in its end of year accounts? And as I stated, I returned to Mr. Haughey having checked it with the department, would it cause any problem, and I came back to Mr. Haughey and said no, it would not cause the Department a problem to have that amount outstanding on the 31st of December.

Q. In fact, I think it was treated here as to clear suspense?

A. It was put into a suspense account.

Q. When you say you went back to the Department to check whether this item was outstanding on the Department account would cause any difficulty; who would you have made that inquiry of?

A. I would have made contact with people within our finance branch.

Q. In the finance branch?

A. Yes.

Q. I am just not quite clear in relation to this discussion that you had with Mr. Haughey, maybe we could just come back to this briefly, and when you say that he inquired as to whether it would create a problem; I am not quite clear as to what that problem might have been. Would that have been a query being raised on the accounts, or some other matter?

A. Would the fact that there was an outstanding amount due to the Department of €12,000 on the 31st of December, would that cause a problem to the Department showing that in its

accounts at the end of year.

Q. I am not quite clear what the exact problem to the Department would be, would it be a problem in terms of the auditors, external auditors raising it?

A. I can't say what he thought the problem might have been. But perhaps that could have been one of the things that he had under consideration. I cannot say what he thought the problem to the Department might be.

Q. Well, it is just that if you are not clear what problem he was anticipating, what I am not clear is on how the people that you raised the query with could have known what problem you were inquiring about?

A. The problem that I was asked to, the question I was asked was; if an amount of £12,000 was outstanding at the end of the year would this have caused a problem to the Department? And how would it be shown in the Department's books etc. I discussed it with members of the finance branch and they said that no, it would not be a problem. That it would be quite normal, on occasions, to have amounts outstanding to the Department, obviously at the end of a finance year and that the item could be put into a suspense account and would be; could then be cleared in the new year.

Q. And would this be a suspense account in the name of the minister?

A. I cannot say whether it was in the name of the minister. I imagine it was more likely to be a general suspense

account.

Q. A general suspense account?

A. Yes.

Q. MR. O'BRIEN: Thank you very much.

CHAIRMAN: Do you have any questions? In essence Mr.

Spain, your remit was to see that everyone who was owed

money arising out of the then Tanaiste, or the then

Ministers final visit for medical reasons to America, was

paid?

A. Correct.

CHAIRMAN: In the first instance, and thereafter, to see

that it was duly accounted for and/or indemnified depending

on whether it was private or public. All expenses were

refunded to the Department.

CHAIRMAN: Thank you very much.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: That completes the available witnesses

today, sir. So in the circumstances, I would ask you to

adjourn until 10:30 on Tuesday morning.

CHAIRMAN: So-be-it. Thank you.

THE HEARING WAS THEN ADJOURNED UNTIL TUESDAY THE 12TH

OCTOBER, 1999, AT 10:30 AM.