

THE TRIBUNAL RESUMED AS FOLLOWS, ON TUESDAY, 12TH JUNE

2001, AT 11:00AM:

MR. COUGHLAN: Before I recommence examining

Mr. O'Brien, Sir, I should indicate that the Tribunal has now received a large quantity of documents which are relevant to the matters that are currently under inquiry and some other matters which will also be inquired into. The Tribunal is considering the documents at present. A large number of people are mentioned in the documents and the Tribunal will have to notify people. The documents will be necessary to continue the inquiry and also they will be necessary for Mr. O'Brien to deal with certain matters and Mr. Johansen. Mr. O'Brien will only has only received the documents in recent times from the Tribunal and it would be, in the circumstances, inappropriate to pursue inquiries today with Mr. O'Brien in relation to those matters. Both the Tribunal and Mr. O'Brien would need to consider the documents in greater detail and it is hoped that this could be done later in the week and perhaps we would give a brief outline statement of where the Tribunal is going at that stage, so the public will have a full understanding of the inquiry being pursued.

For the moment, I intend just dealing with a few other matters today with Mr. O'Brien and then we will move on

to some other witnesses today and tomorrow, we hope.

MR. McGONIGAL: I don't think there is anything that I need to add, Mr. Chairman, other than to say that the documents which we have received, most a lot of them we only received this morning, so that Mr. O'Brien has had an opportunity of considering some of them. And in relation to other documents which have been furnished to the Tribunal by solicitors, that documentation, I understand, will be dealt with by Mr. O'Brien on Thursday and Friday, if that's convenient to the Tribunal.

CHAIRMAN: I understand that is what the Tribunal team have in mind also, Mr. McGonigal, so obviously fair procedures have to be followed, but it would be my anxiety to expedite the processing of this further evidence as quickly as possible.

MR. McGONIGAL: I appreciate that, and Mr. O'Brien will be keen to try and get it finished for other reasons.

CHAIRMAN: I understand. Thank you. Mr. O'Brien.

CONTINUATION OF EXAMINATION OF MR. DENIS O'BRIEN BY

MR. COUGHLAN:

Q. MR. COUGHLAN: Now, Mr. O'Brien, for the moment, I wish to move away from matters which were being

discussed and considered around the time of the IPO of  
ESAT Telecom in November of 1997.

I think the matter of the donation next arose in 1998,  
isn't that correct?

A. That's correct.

Q. And I think that was when Telenor went to Fine Gael?

A. That's correct.

Q. And I think before Telenor went to Fine Gael, I think  
you have been furnished with a statement from

Mr. John Fortune

A. Do you mind if I just pull that out?

Q. Yes, please do. I just want to deal with that now.

Is that your tab at 12? It's at tab 12, yes.

A. I have it now, yes.

Q. I think I am correct that Mr. Fortune was a director on  
the board of ESAT Digifone and he was nominated to that  
role by Telenor Invest. He was one of the Telenor's  
directors on the board of ESAT Digifone?

A. He was an alternate director first and then he was  
appointed a director.

Q. I think he was appointed as a director of ESAT  
Digifone, according to his own statement, on the 26th  
August, 1997 and he ceased to be a director on the 3rd  
September 1998, would that accord with your own

A. That would appear to be the case, yes.

Q. Now, he was not a director of ESAT Digifone at the time

of the donation of \$50,000, but he has informed the Tribunal, and I am just looking for your response, if you have any, that shortly before the 11th February 1998, probably on the 10th February 1998 or thereabouts, he verbally informed Mr. Michael Walsh of IIU and you of ESAT Telecom of the intention of Telenor to obtain confirmation directly from the Fine Gael Party that the donation was actually received by the Fine Gael Party.

A. That is not my recollection. I have, in my diary, a meeting on the 11th, the morning of the 11th February, which is a Sub-Committee of the board of ESAT Digifone, to discuss IT matters. He was a member of that committee, because of his background. But I do not remember him saying that he was going off to talk to Fine Gael.

Q. You don't remember him saying that?

A. No.

Q. Well, did he tell you at any other time around that period that he was going to talk to Fine Gael?

A. As far as

Q. Or that Telenor were going to talk to Fine Gael, not Mr. Fortune personally, necessarily?

A. If I recollect properly, I think, first of all, they didn't tell us before they went to Fine Gael and then we discovered that they had approached Fine Gael.

Q. Well, it's just so that you can deal with the intended

evidence of Mr. Fortune at this stage.

A. I have read his statement.

Q. You have read his statement, I'll just take you through it for your comments so.

A. Sure.

Q. He said that Mr. Walsh of IIU

A. Whereabouts is this?

Q. If I could just go to page 2 of his statement,

Mr. O'Brien. He says, at paragraph 2, he explained to Mr. Walsh and Mr. O'Brien that Telenor considered the handwritten letter from David Austin to be inadequate and that direct confirmation of receipt by Fine Gael of the donation was required by Telenor in order for Telenor to be fully satisfied or to fully satisfy itself as to the position. His recollection is that Mr. Walsh showed an immediate understanding of Telenor's wish to clear up the issue, but that Mr. O'Brien's response was initially negative. Do you have any recollection of that?

A. No, I don't.

Q. He says that Mr. Fortune that he recollects that Mr. O'Brien pointed out that because ESAT Digifone had paid the donation, it having reimbursed Telenor, that's on the reconciliation of the running account ESAT Digifone should seek confirmation from Fine Gael, not Telenor, do you remember that?

A. No, I don't.

Q. I'll just go through it and you can come back and deal with it then in greater detail if you wish.

A. My overall sense of the statement is that there is an awful lot of detail with no notes.

Q. Yes, I'll come to that, that there were no notes.

A. I don't know how somebody can remember six years ago, a fax or a phone call.

Q. Well, he goes on to say that you were negative about the approach to the Fine Gael Party and that you volunteered that you would go to David Austin first and arrange for David Austin to obtain a response from the Secretary General of the Fine Gael Party, that you proposed that you would contact David Austin, but that you would have to wait for a short period for David Austin's availability because Mr. Austin was undergoing chemotherapy at the time. Do you remember that conversation?

A. No, I don't.

Q. Do you remember whether Mr. Austin was undergoing chemotherapy in February of 1998?

A. No. I know that he was having chemotherapy

Q. Over a long period?

A. Over a long, long period.

Q. Now, Mr. Fortune says that in response to your suggestion, he confirmed to you that it will be done, which is that Telenor must proceed with a direct inquiry from Fine Gael. Do you remember him saying

that, that it will be done that Telenor will proceed with an inquiry?

A. No.

Q. Now, he says that when he spoke to you and Mr. Walsh, no meeting had been arranged, so he wasn't in a position to say when the approach would be made.

A. He would have made an approach at the meeting of the 11th February when he came to my office or the office of ESAT Digifone; that would have been the natural place

Q. What I am saying is he didn't tell yourself and Mr. Walsh was Mr. Walsh at that meeting of the 11th February, do you know?

A. I think he was a Sub-Committee member. Whether he was there, I don't know.

Q. I think what Mr. Fortune is saying here is that when he spoke to you and Mr. Walsh, no date had been arranged for the meeting with Fine Gael, so he wasn't in a position to tell either of you when the meeting would take place. You don't have any recollection of that?

A. It's my recollection that Telenor did an absolute solo run with Fine Gael in going to Fine Gael.

Q. Very good. Now, are you sure that Mr. Walsh was present at a meeting with you on the 11th February, because he seems to, and he seems to remember having a meeting with Telenor solicitors on the 11th February 1998 as well. There is no reason why both meetings

couldn't have occurred, of course.

A. I have an entry in my diary on the 11th February for this Sub-Committee meeting of which John Fortune was a member and so was Michael Walsh. So I assume the meeting took place, but I couldn't be absolutely sure.

Q. Did you travel to America on the 11th February?

A. I believe I did, yes.

Q. Do you remember receiving a fax from Mr. Fortune at the hotel you were staying?

A. No.

Q. Do you remember receiving any message on your mobile phone to contact Mr. Fortune?

A. No. If there is a copy of the fax, it would be helpful.

Q. And when was the first time that you discovered that Fine Gael had been contacted by Telenor?

A. I think I dealt with this in my statement, but

Q. It's at tab 2.

A. The first I knew about it was around sometime in February, 1998 when I was contacted by Jim Miley, or else Telenor may have raised it at a meeting after it happened. That's the best of my recollection.

Q. Well

A. Then I was visited by Mr. Miley.

Q. Now, it is the intended evidence of Mr. Fortune that he is satisfied that you were certainly aware of the intention of Telenor to go to Fine Gael. You disagree



with that?

A. It's not my recollection that they told us before they went to Fine Gael. We were I believe that we were told after the event.

Q. Well, if Mr. Fortune, or somebody on behalf of Telenor, but Mr. Fortune was probably the appropriate person, had informed you before going to Fine Gael, would you have had any objection to them going to Fine Gael?

A. Probably not.

Q. Perhaps objection is too strong a way of putting it. Would you have preferred if it had been approached a different way?

A. Telenor were in the middle of a merger at the time with Telea, I think that they wanted to get clarification on the donation before they went forward with their merger discussions. So it was part of their underwriters probably asking them a lot of questions.

Q. Can you remember how long you were in America that time, around the 11th February of 1998?

A. Probably a couple of days.

Q. Now, could you go to tab 7, so, for a moment, Mr. O'Brien, which is the statement of Mr. Jim Miley, who was the then-General Secretary of the Fine Gael Party. Now, if you go to the third paragraph, and I am not going through this in detail, it's just to fix a date.

Mr. Miley says that on the 11th February 1998, he was

contacted by somebody on behalf of Telenor and they wanted to arrange a meeting.

A. Yes.

Q. And I think a meeting took place, according to Mr. Miley, between the Telenor people and Fine Gael on the 13th February of 1997

MR. FITZSIMONS: Sorry, Sir, I don't want to interrupt, but I think Mr. Miley's statement says that on the 11th February 1998 he was contacted by Mr. Drury seeking a meeting in the matter of mutual concern, he indicated that it related to a client of his. In other words, he did not tell Fine Gael on that date who the client was; that was disclosed in the following sentence, when the meeting subsequently took place on the 13th February. Just, Mr. Coughlan put it to the witness that on the 11th Mr. Drury contacted Mr. Miley on behalf of Telenor.

CHAIRMAN: I note that, Mr. Fitzsimmons.

Q. MR. COUGHLAN: Whatever Mr. Drury said, it would appear that he did, in fact, contact Fine Gael on behalf of Telenor without disclosing who they were on the 11th. I'm just trying to fix dates.

A. It seems that way, yes.

Q. A meeting occurred on the 13th February, according to Mr. Miley, you have no reason to doubt that?

A. I don't, no.

Q. Then Mr. Miley recounts in the rest of paragraph, and you weren't present at this meeting, what he was told by the Telenor people in relation to the donation, isn't that correct?

A. Yes.

Q. He then goes on to say that he carried out a check of the Party's records to establish the David Austin aspect of the donation, isn't that correct?

The next paragraph: "I subsequently carried out a detailed examination of the records and established that a  $\frac{1}{2}$  \$33,000 donation from David Austin in May 1997 seems to be one and the same as the \$50,000 donation which was referred to by Telenor."

He then goes on that he spoke to the Party leader.

And if you go over the page then to the next full paragraph, he says that he spoke with David Austin by telephone on both the 17th and the 23rd February 1998, when he confirmed that he had approached Denis O'Brien for a contribution to the fundraising dinner in New York. Does that accord with your recollection of Mr. Austin this is Mr. Austin recounting something to Mr. Miley now. Does that accord with your recollection that Mr. Austin approached you for a contribution to the Fine Gael dinner in New York?

A. I have already stated in previous evidence, it's my recollection in November 1995, yeah.

Q. Whatever the date, that it was Mr. Austin approached you in relation to the fundraising for the dinner in New York. You accept that it was Mr. Austin approached you?

A. Correct, yes.

Q. Now, Mr. Miley continues that Mr. Austin advised him that Mr. O'Brien indicated that he wished to have the money paid via Telenor in order to ensure confidentiality. Do you remember having that conversation with Mr. Austin?

A. No. It doesn't seem to corroborate with Mr. Miley's notes of his conversation that I read in another piece of evidence. Will I point that out to you?

Q. If I can just deal with that and we can go back and deal with Mr. Miley's

A. There are detailed notes of this conversation. It doesn't even mention this.

Q. And again, Mr. Austin is informing Mr. Miley he then made arrangements with Telenor to have the money paid to him and held the money until May 1997 when he passed it on to Fine Gael.

"He" Mr. Austin "informed me" Mr. Miley "that he had confirmed to Telenor in 1997 that he had passed the money on to Fine Gael. He referred to a conversation which he had with Deputy John Bruton concerning the donation. He said he was contacted by

Telenor sometime last year and asked to confirm that he had, in fact, passed the money to Fine Gael and he confirmed in writing that he had. He said he remembered mentioning the fact that such a donation might be available to Deputy Bruton." That's a matter we'll deal with later.

A. Mm-hmm.

Q. Now, there are perhaps two or three matters there I'd like to ask you about and for your recollection or view on them.

When Mr. Miley spoke to Mr. Austin, you agree with what Mr. Austin told him, that Mr. Austin approached you; that's the first thing, isn't that correct?

A. Mr. Austin did approach me, yes.

Q. Mr. Austin, according to this statement, advised or informed Mr. Miley that you indicated that you wished to make the payment via Telenor in order to ensure confidentiality. Do you agree with that?

A. I disagree with that statement.

Q. Which portion do you disagree with? That you would want the money paid via Telenor, is that what you disagree with?

A. I would disagree with that whole sentence.

Q. That whole sentence. Either that it would be paid via Telenor and also that it would be paid via Telenor to ensure confidentiality. You would disagree with that whole statement.

A. Yes.

Q. Now, in that paragraph, Mr. Miley records, or informs the Tribunal that Mr. Austin told him that Telenor that he was contacted by Telenor sometime last year. That would have been in 1997.

A. Yes.

Q. And asked to confirm that he had, in fact, passed the money to Fine Gael and he confirmed in writing that he had. Do you see that sentence there?

A. That seems to be what actually happened.

Q. I'd just like to break it up if I could. That seems to be a reference to the handwritten note that was obtained from Mr. Austin at the time of the IPO, would you agree? That was the confirmation?

A. It looks that way, but I can't be a hundred percent.

Q. We can take it that appears to be the situation, you would agree?

A. Appears to be.

Q. He seems to have informed Mr. Miley that he was contacted by Telenor in 1997. Now, does that accord with your understanding of the facts?

A. I think the letter was procured not by a Telenor person. Somebody who was working on the IPO for the company.

Q. It appears to have been Mr. Phelan who obtained the statement?

A. Or Mr. Connolly, one or the other.

Q. Either Mr. Phelan or Mr. Connolly anyway.

A. Yes.

Q. And neither Mr. Phelan nor Mr. Connolly were on the Telenor side of the Digifone equation, if I could put it that way.

A. No.

Q. Now, if you go to the Mr. Miley, in his statement, then deals with internal dealings in Fine Gael that he is having. And if you go to the final paragraph on that page.

A. There is no mention of my meeting.

Q. Yes, if I just deal with this first and I'll come back to deal with the other matters with you, Mr. O'Brien, okay?

Now he says that he was aware that on the 29th May 1998, the cheque was returned to Fine Gael by ESAT. This was the cheque had obviously been sent out to Telenor in the first instance. We know the route it took. Telenor, through Mr. Johansen, says that it was handed to you, as Chairman of ESAT Digifone, with a covering letter. And we now come to a stage where Mr. Miley is recording that on the 29th May, the cheque is returned to Fine Gael by ESAT. Do you remember the cheque being returned, first of all, if I could just fix that particular issue?

A. It's my recollection that I gave the cheque I

received the cheque from Mr. Johansen, then I gave it to Michael Walsh, who, I think in a letter, wrote back to Telenor with the cheque back to them.

Q. I'll come to that in a moment.

A. Now, is there a letter on the 29th May?

Q. I don't have the covering letter just to hand, if there was one. But I am just wondering, do you remember the cheque going back to Fine Gael?

A. I think Telenor were sending the cheque back to them.

Q. Well, do you remember talking to Mr. Miley at the end of May or the beginning of June? He thinks it was on the 2nd June 1998, but I am not holding anyone to specific dates.

A. I had two or three conversations with Mr. Miley, and one of them was probably in around June, which was probably the last conversation I had with him that year.

Q. Now, Mr. Miley says that you informed him that you had sent back the cheque and said words to the effect that:

"Given that we were asked for the money in the first place, we don't feel we should give it back." Do you remember saying that to Mr. Miley?

A. Maybe not the precise words, but that was the message and that was the message repeatedly.

Q. "And we think if we took it back, we would look guilty."

A. I am not sure if I used the word "guilty."



Q. Well, something like that. Or used the words "There was nothing to be guilty about" or "there was no wrongdoing" or words

A. I wouldn't have used the word "guilty." But, I mean, the basic premise was, Fine Gael asked for a donation, they got a donation, why are they giving it back?

Q. And that you advised him that as far as and that you advised Mr. Miley, that as far as you and your board were concerned, that it was not possible to give the money back and that you were adamant on that point.

Would that seem to reflect

A. I don't agree with the words: "It is not possible to give the money back." "Give the money back to Telenor" or to sorry, to

Q. To yourselves, I presume.

A. It was Fine Gael's money.

Q. Now, if we go to in fairness, we should perhaps put up Mr. Miley's file note. I think you wanted to make reference to that as well, did you?

A. There is a handwritten note of a conversation which I think it says "DA," I assume that's David Austin.

Q. Okay, I'll put that up first, so.

A. I think it's tab 6. It says

Q. After the invoices.

A. It says: "McMahon." It says : 17/2/98.

Q. If we go to the second page of the handwritten notes.

A. I read the handwritten notes, and there doesn't seem to

be any reference to what Mr. Miley is saying in the statement.

Q. If we put up the handwritten note. If we go to the first page of it and we'll deal with it all.

It has it starts off: "MV, i;½33,000 payable to Fine Gael and endorsed on back.

"Phone call D Austin, 17/2/98.

"JM outlined position to DA.

"DA sent note to say money had been passed on."

"I am clear that Telenor gave money to me, only thing that would look strange was delay in passing it on to Fine Gael." I can't remember where invoice was issued, no recollection of matter of invoice.

"DA agreed to make informal inquiries with Telenor.

Agreed to revert to JM by Thursday 19/2."

It goes over: "Phoned DA, 20/2/98. Left message on answer phone. Telephone David Austin 10:15am Monday 23/2/98. Annoyed that Telenor did not approach Fine Gael directly.

"Had meeting Telenor last Thursday. They want us to give letter. Feeling from their side handing back would look as if it were underhand or dirty

"DA spoke to FC" that's Frank Conroy, I think. The cheque was, in fact, made payable to Frank Conroy and

endorsed over.

"JB never inquired that money was paid in.

"JB genuinely didn't know that payment had been made.

Telenor has due diligence. DA gave letter to say he had received money and paid it into party. Suggest we deal with a Mr. Fortune.

"Original cheque was paid by Telenor to David Austin.

DA believes that more problems will be created by handing it back.

"Why not make payable to Fine Gael?" These are obviously Mr. Miley's own notes "Why held for so long? Why paid via offshore account? Why paid via Frank Conroy when finally processed?"

Then there is a reference which is irrelevant to these matters altogether. Then we continue:

"Phone call D Austin 23/2/98. JM raised issue of account. This is my bank account, my own personal bank account for my own private dealings. I had no discussions with ML. He had nothing whatsoever to do with this. DA made it absolutely clear that ML not involved."

And then on the right: "From David Austin," the address of Mr. Johansen in Telenor and a telephone number and a fax.

Now, I think you wished to make a point about those handwritten notes, did you, in relation to the statement?

A. Yeah. There is no reference to those handwritten notes, from what I can see in the statement, and it could be Mr. Miley is accepting Telenor's version of events. That's the only point I'd make.

Q. I think the point you are making is that the conversation which Mr. Austin is recounting in his statement or Mr. Miley is recounting in his statement, of his conversation with Mr. Austin to the effect that you had said that the donation would be made via Telenor for confidentiality, is not in the notes of any conversation you had, handwritten notes he had of the conversation with Mr. Austin?

A. That would seem to be the case. But Mr. Miley may have found these after writing his statement.

Q. Now, I think in fairness, I don't think that is so.

A. Is it not? Okay.

Q. We got it with the statement.

A. Okay.

Q. Now, I think there is also a file note, there is a file note which is a typewritten file note of Mr. Miley's?

A. Which tab would that be?

Q. That is again at tab 6. I'll put it up on the screen and I'll give you a hard copy.

A. Is it the 23rd February?

Q. No. It's a note of the 2nd June. The date is at the bottom, it's initialled by Mr. Miley, 5th June 1998, and it relates to a conversation that he had on the telephone with you on the 2nd June 1998.

(Document handed to witness.) This is Mr. Miley's file note of his telephone conversation with you on the 2nd June of 1998.

A. Which is in the statement.

Q. Yes. So I just wish to deal with it, if I may.

"Phone call arose from return of Telenor cheque to Fine Gael following earlier exchange of correspondence and contact via legal representatives. Denis O'Brien said he felt that they had to send back the cheque. Given that we were asked for money in the first place, we don't feel we should take it back. 'We think it would look that if we took it back, we would look guilty. We have nothing to be guilty about.'" And those are in quotation marks. "Said he spoke to small group of his board and they were a bit upset at having the cheque offered back. 'It's not on at this point to take it back,' he said. JM sought absolute clarity on DOB's position and established that he was resolute in his position. Told DOB that he would need to inform Chairman of the Board of Trustees and would divert if there was to be any further action on the matter by FG. Conversation ended with some discussion of matters of

general interest."

Then he goes on that he discussed the matter with the Chairman of the trustees of Fine Gael.

So, that's his note of the telephone conversation he had with you on the 2nd June which is recorded in the statement.

Now, is it your understanding that before that telephone conversation with Mr. Miley, you had a meeting with Mr. Miley?

A. It's my recollection that I had a meeting with him earlier, some months earlier, yes.

Q. And can you remember who called the meeting or how it arose?

A. He called up looking for a meeting and he came around to see me. He raised the matter of the Telenor donation and they wanted to give it back.

Q. And what was discussed between you?

A. I just said, look, Fine Gael asked for the donation originally. I don't see why now they want to hand it back.

Q. Do you agree with Mr. Miley's note of what you said on the phone?

A. I wouldn't have used the word "guilty." But the message would have been similar, that why would we take it back when we did nothing wrong?

Q. Well, whatever about the word guilty, wrong,

inappropriate, whatever, it was a word to like effect,

or maybe less

A. He wrote the note.

Q. I am just asking you, do you disagree with what he is saying?

A. No. I mean, the gist

Q. The gist you'd agree with?

A. Is probably there or thereabouts, but I wouldn't have used the word "guilty."

Q. I think what you were telling him there is that we were asked for the money in the first place, we don't feel we should take it back. That is the board of ESAT Digifone, isn't that right?

A. Well, not the board of ESAT Digifone, but there would have been a conversation between Michael Walsh, Arve Johansen, and myself. And there would have been disagreement.

Q. But the term "we," that includes you, doesn't it? "We were asked"

A. Yes.

Q. And "We don't feel we should give it back".

A. We didn't think we should give it back, no.

Q. Now, there is another typewritten file note of Mr. Miley's I'll just draw to your attention, if I may.

If you go to the handwritten notes, and it's about seven pages after that.

A. 23rd

Q. 23rd, I think, yes. (Document handed to witness.)

It's the one dated 23/2/98. And it reads:

"File note re: Telenor.

Spoke with David Austin by telephone on the 17/2/98 and again on the 23/2/98. DA confirmed that he had approached Denis O'Brien to request a contribution for Fine Gael in the context of the Fine Gael fundraising dinner in New York in November 1995. He said that DOB indicated that he wished to have the donation paid via Telenor in order to ensure confidentiality. He then made arrangements with Telenor to have the money paid to him and he held the money until May 1997 when he passed it on to Fine Gael.

"DA said he was contacted by Telenor sometime last year and asked to confirm that he had, in fact, passed the money to Fine Gael and he confirmed in writing that he had. He said he remembered mentioning the fact that such donation might be available to JB, but that JB had expressed misgivings about accepting such a donation. He said JB would never know that the payment had, in fact, been made. He advised against giving the money back on the basis that he believed that there was nothing wrong with the donation in the first place. But he said it was really up to the Party to make the decision as to whether to return the donation or not.



"DA confirmed that the donation of i;1/233,000 that he made in early 1997 was that which he had received originally from Telenor with interest/exchange rates taken into account. He agreed that I had not been aware of the original source of the donation. Frank Conroy who passed on the cheque from DA. Also confirmed this by telephone on the 23/2/98. DA was also emphatic that he had no discussions with Michael Lowry on the matter - he had nothing whatsoever to do with this, he said." And he signed the note.

I just bring that to your attention because it is a file note which does contain a reference to David Austin as is recounted by Mr. Miley in his own statement.

A. If you look at the handwritten notes, they are verbatim. There is quotes. And it makes no reference there, what apparently I said, or what Mr. Austin said, that "DOB indicated that he would have the donation paid via Telenor." Why would, if he was relying on his handwritten notes, why would he put that in?

Q. I'll come back to that in a moment if I may, Mr. O'Brien, because I just want to deal with some other documents now, on this aspect of the affair.

After Fine Gael decided to send the money back, they send it in the first instance to Telenor, isn't that

correct? That's how it was first sent back. I think

you can take it that that was so?

A. I don't have the chronology of all the letters and the cheque going backwards and forwards between Fine Gael and Telenor.

Q. But in the first instance, it went to Telenor and it was Mr. Johansen who brought it to you as Chairman of ESAT Digifone, isn't that correct?

A. Can you help me with the date of that, Mr. Coughlan, just so that I there is a letter, I think, is there?

Q. I think it was on the 24th March, if you go to tab 1, Mr. Johansen's statement, and the documents attached to Mr. Johansen's statement. And you will see that it's numbered at the bottom, do you see, these are Telenor's documents, they furnished them to the Tribunal. Tel, 15, do you see?

A. Yes.

Q. Perhaps I'll just go a little bit back from that, if I may at the moment, and deal with the letter, Tel 12, it's the letter from Mr. O' Higgins, solicitor to Fine Gael to Mr. O'Brien, solicitor for Telenor.

A. Which date is that now?

Q. That's a letter dated 2nd March 1998. It's the

A. Yes, I have that.

Q. And if we could just deal with that, just to understand Fine Gael's thinking on the matter.

"Dear Sirs, we refer to our meeting on the 13th February when your clients brought certain information to our clients' attention concerning a political contribution then believed to have been made.

"Jim Miley, the General Secretary of the Party, noted that your clients had presented information not previously known by him. Mr. Miley has now completed his examination of the matters raised and can verify that a donation amounting to £233,000 was received by the Party on the 6th May 1997 from David Austin who had supported Fine Gael in various ways in the past. This contribution was drawn on the personal account of Mr. Austin at the Baggot Street branch of the Bank of Ireland and appeared to our clients to have been a contribution from Mr. Austin himself.

"As a result of your meeting with us, the General Secretary has spoken to Mr. Austin and has been informed by him that a donation of \$50,000 US had been received by him in January 1996. You indicated to us that the contribution in question had been provided on foot of an invoice from Mr. Austin for consultancy services. Mr. Austin has now confirmed your account to us that the contribution was made in respect of fundraising activities for Fine Gael in which he had been involved. We are informed by Mr. Austin that the monies were then lodged by him into an account with

Bank of Ireland controlled exclusively by him and in respect of which he was the sole and beneficial owner.

"As a result of your intervention, Fine Gael is now aware for the first time as to the origin and mechanism by which the contribution, in the name of David Austin, was made. Had the totality of information been available to the Party, namely, the circuitous manner by which the contribution was routed, then such contribution would not have been acceptable to Fine Gael.

"Subject to normal ethical contributions, it is Fine Gael policy to accept contributions directly from donors or where contributions are made through intermediaries, only when the Party has established clearly the identity of the true donor at the time of the receipt of the contribution.

"As a result of the information given to us by your client, Fine Gael is now aware that these conditions were not met in the case of this donation.

"If a contribution had been offered directly by Telenor/ESAT, then Fine Gael, having considered the circumstances applicable (if any) would have had to decide whether to accept the contribution or to decline it at that time. However, in the light of the circumstances prevailing in the case of this

contribution, we are returning the donation and enclose cheque payable to Telenor in the amount of  $\text{€}1/233,000$ .

"When you requested a meeting with us on the 13th February last, you made it clear that you expected absolute confidentiality. Apart from what was necessitated by the inquiries which you requested us to make, we continue to respect that confidentiality on the basis that it will be reciprocated by your clients, its servants or agents and by all those whom you have consulted in this matter.

"Yours faithfully, Kevin O'Higgins, solicitor."

Then there is a photocopy of the cheque at the bottom of the letter which Fine Gael returned to Telenor.

The next sequence in the correspondence is that on the 6th March 1998, Mr. O'Brien of Kilroy's, wrote to Mr. O' Higgins.

"Dear Sirs, we refer to your letter of the 2nd March 1998 with enclosed cheque in the sum of  $\text{€}1/233,000$  payable to Telenor.

"We confirm that our clients are returning these monies to ESAT Digifone Limited, the owner thereof.

"Our clients have no comments to make on your letter as, being a non-Irish company, they are not familiar with the protocol relating to political donations to

Irish political parties. They were, however, informed that David FT Austin was Chairman of the Fundraising Committee on behalf of the Fine Gael Party. Our clients were asked to make the donation on behalf of ESAT Digifone Limited for two tables at a Fine Gael fundraising event in the 21 Club in New York.

"Our clients contacted you through our offices in the context of the Moriarty Tribunal. Our clients regard your letter of the 2nd March as confirming that the contribution was received by and went into the Fine Gael General Party Fund through accounts owned and controlled by David FT Austin.

"Our clients also need you to confirm that Mr. Michael Lowry was not a named account holder on any of the Fine Gael accounts into which the monies were paid. On the basis that your clients can confirm this, our clients believe that the donation does not fall within the Terms of Reference of the Moriarty Tribunal of Inquiry.

"On the question of confidentiality, our clients fully recognise and endorse your concern that this matter be kept confidential and should not be revealed unless our clients are compelled to do so by law."

And it's from solicitors on behalf of Telenor.

The next matter then is a letter from Mr. O' Higgins to Messrs. Kilroy, dated 20th March, 1998.

"Dear Sirs, thank you for your letter of 6th inst.

"As to the matter raised by you and relating to Michael Lowry, our clients confirm that at the time when your client's contribution was paid over to the Party, Mr. Lowry was not a named account holder and at that time had neither authority nor signing capacity in relation to the same.

"Yours faithfully, Kevin O'Higgins."

Now, were you aware or were you made aware that there was some correspondence between Telenor and Fine Gael in relation to the matter?

A. I actually don't remember. I know that Mr. Johansen handed me a cheque and I handed it to Michael Walsh, but I don't remember seeing a letter with the cheque.

Q. Well, I'll just come to that, because Mr. Johansen gave evidence that the next thing that happened was that he handed the cheque with the letter, the copy of which we have here dated 24th March 1998, to you as Chairman of ESAT Digifone. And it reads:

"Dear Denis, I refer to the donation of \$50,000 which you requested us to make on behalf of ESAT Digifone Limited to the Fine Gael Party in November 1995 for two tables at the Fine Gael fundraising event at the 21 Club in New York. The donation was reimbursed to us by

ESAT Digifone Limited.

"This donation has now been returned to us by the Fine Gael Party and as we have already been reimbursed by ESAT Digifone Limited, we have endorsed the cheque over in favour of ESAT Digifone Limited. The payment is in Irish pounds and is  $\text{€}1,233,000$ .

"Accordingly, we enclose a cheque in the sum of  $\text{€}1,233,000$  from the Fine Gael Party endorsed in favour of ESAT Digifone Limited for lodging in the company's bank account.

"Your sincerely, Arve Johansen."

A. I remember that letter, but not a letter from Mr. O'Higgins. What's interesting here, though, is that in his evidence, he said the 8th December was the first time we spoke about the donation. It says here November 1995. He is saying that you requested us in November 1995.

Q. Yes. And do you wish to make any

A. It seems to be in conflict with what he recalled on the 8th December.

Q. If I could just tease that out with you, because we are trying to establish all the true facts around this,

Mr. O'Brien.

Will you just bear with me for a moment, because you have raised a point and I am conducting the sorry, I



am asking the questions in this inquiry.

If I might just ask you this: There is no doubt there was a meeting on the 8th December?

A. Yes, there was.

Q. Mr. Johansen's evidence was that was the first time that the matter was raised with him.

A. That's right, that's what I recall in his evidence.

Q. You have already given evidence that you believe that you were approached by Mr. Austin sometime in November, that it must have been before the dinner, because sorry, the carrot that was being offered was there was a chance to meet the Taoiseach at the dinner, isn't that right?

A. That's right.

Q. You have given evidence that you believe that you contacted Mr. Johansen by phone yourself sometime around that time?

A. Yes, that's right.

Q. And the point you are now making about this letter, is that it makes reference to November?

A. It does, yeah.

Q. Now, just if I could, because I have a duty to the public to explain this line of inquiry. It could be that this is the result Mr. Johansen mentioned November as a result of the discussions he had with Mr. Miley, that's one way of looking at it. But you are drawing it to our attention in that it could be

confirmation of your recollection that you were

contacted sometime in November?

MR. MCGONIGAL: I am not sure, Mr. Chairman, what

discussion Mrs. Coughlan is referring to between

Mr. Miley.

MR. COUGHLAN: Sorry, the discussions which the

Telenor representatives had with Mr. Miley.

A. I wasn't present obviously

Q. MR. COUGHLAN: No, no, you weren't present. There are

two issues here. You were drawing attention that it

could be confirmation of your recollection that you

contacted Telenor in November as well as discussing it

in December. That's

A. That would be an interpretation.

Q. That's one.

A. Or one interpretation.

Q. One interpretation. Another interpretation could be

that this, the reference to November in this letter, is

as a result of, I won't say discussion, but contact

which Telenor had with Fine Gael and information they

may have gleaned as to when the event was or related

to?

A. It seems tenuous.

MR. FITZSIMONS: Just for the record, Mr. Chairman, I

am going to intervene here because a decision was

obviously taken by Mr. O'Brien's counsel not to put

these questions to Mr. Johansen when he was here and Mr. Johansen, had he been asked the question, said the reference to November 1995 was a reference to the dinner in November 1995, not anything else. This question could have been put in cross-examination to Mr. Johansen when he was here. It wasn't. Presumably a deliberate decision was taken not to confront Mr. Johansen with difficult questions. This letter

CHAIRMAN: Well, I think, in fairness, Mr. Fitzsimons, I should point out that the model of this Tribunal, which was spelt out by me at a very early stage, is that the vast preponderance of questioning will be done by Tribunal counsel in pursuance of the fact-finding task, and it's only such limited or ancillary matters that pertain to the specific interests of particular persons given representation that ordinarily latitude would be given to cross-examine.

MR. FITZSIMONS: Absolutely, Mr. Chairman, I am not seeking to transgress in that area at all, but Tribunals procedures must not be manipulated, if that's not too strong a word, to allow witnesses in the witness-box behave as advocates in response to questions which have not been put to them in the ordinary way.

MR. COUGHLAN: If I may say this to you, Sir. The

duty is on the Tribunal to conduct the inquiry as broad and as wide as possible. The, as you say, the model as enunciated by you, is that in all cases, if possible, the questioning should be carried out by counsel to the Tribunal. Nobody will be cut out from a situation of coming back to deal with matters. In fact, during the course of this Tribunal, we have had witnesses back on many occasions to deal with matters. The Tribunal is only attempting to get at the facts.

There was no or there has been no obligation on counsel attending this Tribunal to make a case on behalf of any client at the Tribunal. I just want to make that clear. I want to diffuse this issue. I do not want any suggestion to go forward from this Tribunal that any counsel is manipulating any position.

MR. MCGONIGAL: Chairman, I don't want to raise the temperature of this, but I actually consider Mr. Fitzsimons' intervention both insulting and professionally wrong and the real question which Mr. Fitzsimons did not address to you is that he himself, as Mr. Johansen's counsel, did not deal with this matter in his own examination of Mr. Johansen. There is no legal duty on any counsel appearing for a party against whom allegations are not made, for him to either make a case or, in fact, there may not even be a legal obligation to him to cross-examine any party.

But what actually stuns me about this, is that Mr. Fitzsimons seeks to blame Mr. O'Brien's counsel for not cross-examining Mr. Johansen, when quite clearly, Mr. Fitzsimons himself spotted the point and did not bring it to the attention of the Tribunal, which in my respectful submission, was his primary duty, if it required explanation, and it clearly did.

CHAIRMAN: Well, I see it as not being helpful that we embark upon any matter that may involve a conflict of personalities which is not going to assist the fact-finding task. I appreciate Counsel have their tasks to perform on behalf of their clients, but it is specifically the case that this is not an adversarial process. We do not have cases to be made. We do not have Pleadings. We have an evolving picture of facts which can change quite rapidly from day to day and I'm not going to regard any person as being shut out from making a particular observation because in a particular timeframe, a particular aspect may not have been put. I'd rather we just proceed.

MR. COUGHLAN: May it please you, Sir.

Q. Now, I think, in fact, you passed on the cheque and the letter, whatever you received from Mr. Johansen, to Mr. Walsh, isn't that correct?

A. Yes, he was acting as the coordinator.

Q. And I think you are aware of a response which Mr. Walsh made?

A. I made a draft response.

Q. I know, and we'll deal with that in a moment, and I just furnished that this morning to My Friend, Mr. Fitzsimons. I furnished it came from you, and I furnished it to Mr. Fitzsimons. I think I have the sequence right. And I'll deal with that in one moment.

This was a draft which was prepared by you in conjunction with your solicitor, but it was never sent, but you wish to bring it to the attention of the Tribunal as being reflective of your view of events at the time, is that correct?

A. Correct, yes.

Q. Now, I'll come to that in a moment. I had copies made we'll put it up on the screen at the moment.

Now, I just want to emphasise, this was a draft which was prepared, but never sent, isn't that correct?

A. Yes.

Q. And it reads:

"Dear Arve, I refer to your letter of the 24th March, 1998. I have been away a great deal in recent weeks and so have been unable to reply to you until now. In the interim, I passed on your letter and cheque to Michael Walsh whom we agreed at our last meeting would

act as coordinator. Michael has informed me that the cheque could only be lodged to a Telenor account as it was made out to Telenor and crossed "account payee only."

I did not request you to make a payment on behalf of ESAT Digifone Limited. Rather, I informed you of the fundraising event in question and suggested that you might want to participate. You agreed and did so. I subsequently learned that you had sought and obtained a reimbursement of your contribution from ESAT Digifone and chose to make no objection in the interest of shareholder relations.

"As far as I am aware, Telenor has not done anything inappropriate in supporting the Fine Gael fundraiser and I believe the cheque should be returned to Fine Gael confirming the donation."

Now, that was the draft that was prepared by you in conjunction with your solicitor, is that correct?

A. Well, I drafted it and then he had a look at it.

Q. It wasn't sent?

A. No, it wasn't sent.

Q. Why wasn't it sent?

A. I spoke to Michael Walsh and he felt that he would write a letter because relations between ESAT Telecom and Telenor were poor at the time and that he would be

better as being seen in the middle. But the letter reflects my views at the time.

Q. Now, if we then go to the letter which Mr. Walsh sent to Mr. Johansen. And I'll come back to deal with Mr. Johansen's view about this in a moment, because he gave evidence about this.

It's a letter to Mr. Johansen, dated 30th March, 1998.

And it reads:

"Dear Arve, Denis O'Brien has passed to me a cheque for i;½33,000 made payable to Telenor from the Fine Gael No. 2 account. This cheque is crossed 'account payee only' and consequently can only legally be lodged to the account of Telenor.

"I am particularly concerned as to the detail and background in relation to said payment. We had no knowledge of the payment of \$50,000 by Telenor to Fine Gael prior to disclosure of it in late October 1997, some two years after we had been induced to underwrite ESAT Digifone Limited. When you disclosed the contribution paid by Telenor to Fine Gael, you appeared satisfied that this was appropriate provided the money had gone to Fine Gael. Fine Gael has now sent the money back to you. Without more detailed knowledge of the conversation and correspondence between Telenor and Fine Gael, I can only assume that either Telenor or Fine Gael or both feel that they have



been guilty of impropriety. If Telenor do not believe they are guilty of improper behaviour, given that Telenor was happy to make the political contribution in November 1995, the cheque should be returned to Fine Gael.

"I refer you to the assurance you provided to me by letter of November 6th, 1997 where you confirmed that Telenor had taken no action which could in any way jeopardize the ESAT Digifone mobile licence. I wish to put you on notice that if Telenor have taken any action before or since the issue of that letter which damages the ESAT Digifone licence and in particular, our investment, then we will hold Telenor fully liable.

"In the interim, I would appreciate copies of all correspondence and minutes of all meetings held by Telenor and/or its representatives with Fine Gael and/or its representatives.

"Yours sincerely, Michael Walsh."

Do you see that letter which Mr. Walsh sent to Telenor?

A. He would have copied me, yes.

Q. He would have copied you.

Now, Mr. Johansen has given evidence that when he received this letter, the view he had of it was that it could only have been written by Michael Walsh, because

it contained completely erroneous information or understanding of the true events surrounding the making of the donation and that you yourself could not have written to him to that effect, or could not have stated it to him?

A. I haven't seen that part of Mr. Johansen's evidence.

And certainly I wasn't I didn't draft this letter with Michael Walsh. This was a Michael Walsh letter, which I received a copy of subsequently.

Q. And if I might just continue the inquiry along the lines of Mr. Johansen's evidence. The reason why the letter, your draft letter was not sent was because you could not have stated to Mr. Johansen what was contained in your draft letter. In other words, an inaccurate account of how the donation had been made?

A. I don't know what was in Mr. Walsh's mind when he drafted this letter and sent it in, but my letter that I drafted that I didn't send was a reflection of my thoughts at the time.

Q. But certainly it did not accord with Mr. Johansen's recollection or evidence of how the donation was solicited and secured?

A. I haven't seen that part of his evidence.

Q. Well, you know that he said that you spoke to him on the 8th December, Telenor you asked if Telenor would make the donation. It was indicated to you that Telenor would not make the donation, and then you said

that the donation would be made by ESAT Digifone, but that you asked that Telenor would facilitate that at the moment.

A. I am taking at face value that Mr. Johansen does not agree with Mr. Walsh's letter.

Q. Or with what's in your draft.

A. Well, he would only have probably received that today.

Q. Yes, I understand that, but it does not accord with the evidence which Mr. Johansen gave, of how the donation was solicited, you would agree?

A. He has a different view of the circumstances than I would.

Q. And I am just inquiring now, if the suggestion was put to you that your draft could not have been sent because it was totally inaccurate as to how the donation was solicited and that Mr. Walsh was asked to write this letter because he could state it, he not having been party to the soliciting of the donation?

A. I would agree with that.

Q. It's just something that the the draft letter which you sent to your solicitor was sent to your solicitor on the 7th April of 1998, isn't that correct?

A. Mm-hmm. And Mr. Walsh's letter is the 30th.

Q. The 30th March. Do you know why that would be so, if Mr. Walsh was going to, as you say, you decided that you wouldn't send your draft, that it would be better if Mr. Walsh wrote.

A. Well, as far as I can recall, I mean, this is sometime ago, that Mr. Walsh was handling the matter.

Q. Well, very good

A. So, it could have been a series of letters from Mr. Walsh, but my draft of the 7th April was what I was going to propose to send out. Whether the letters had crossed at that stage, I don't know.

Q. Well, if I could just stay with this matter for a moment, Mr. O'Brien. You felt that the reason why the draft shouldn't go was because you didn't enjoy the best relations with the Telenor shareholder in ESAT Digifone, would that be

A. We were trying to buy them out at the time.

Q. And that was your reason for not sending your draft, that you felt it was a bit frosty, and perhaps it would be better if Mr. Walsh, who was the shareholder in the middle, IIU, being the smaller shareholder, would deal with the matter, is that what you

A. Correct, yeah.

Q. But Mr. Walsh had already written to Mr. Johansen on the 30th March and your draft wasn't sent to your solicitors anyway

A. Till the 7th

Q. till the 7th April of 1998.

A. I can only deduce that I may not have seen a copy of that letter for sometime, the Michael Walsh letter, or else we were going to write another letter on top of

it.

Q. Did you have any discussion with Mr. Walsh about your draft, do you think?

A. I don't remember. I could have maybe.

Q. How many drafts of this letter were prepared, do you know? I just ask that because on the fax cover sheet.

A. I may have read it out to my solicitor over the phone.

Q. There is a cover sheet from ESAT Telecom, facsimile cover sheet, and I think that's your personal assistant who is sending the matter over to your solicitor?

A. That's right.

Q. And it reads: "Hi Owen, further draft of letter discussed with Denis. Best regards." Were there a number of drafts prepared?

A. I probably could have spoken to him on the phone as I was dictating the letter.

Q. That is, spoken to your solicitor?

A. Yes.

Q. I suppose what's causing me some confusion, Mr. O'Brien, is if you had already decided with Michael Walsh, because of the difficult relationship which existed between yourself and Telenor, that he should deal with matters, and that he had already written on the 30th March, why would you have been preparing a draft of a letter to send to Mr. Johansen as well ?

A. It could have been a letter on top of a further letter on top of Michael Walsh.

Q. Doesn't that kind of defeat the purpose of Michael Walsh writing, so?

A. Well, not really, because he sent a letter out, as he was coordinating the matter, and then I probably intended to send a letter out, that's why it was drafted, but I, in the end, didn't send it out.

Q. That, of course, could be consistent with the view expressed by Mr. Johansen, that you could not have confronted him directly as to how the donation was solicited and that it was Mr. Walsh who should write, because he was not present?

A. I don't agree with that statement at all.

Q. Well, we'll continue the correspondence so.

When Mr. Johansen received Mr. Walsh's letter of the 30th March, he wrote back to him on the 14th April, 1998.

"Dear Michael, I acknowledge your letter of the 30th March in the above.

"The cheque is capable of being endorsed and lodged to the account of ESAT Digifone Limited. It is only if the words 'not negotiable' appear on the cheque that it cannot be endorsed over. This view has been confirmed by our Irish lawyers.

"You seem somewhat confused as to the details of this political donation and I am surprised at this given the fact that the matter was fully aired in October 1997

prior to the IPO. At that stage, the Chairman clarified and confirmed that the donation in question came from ESAT Digifone Limited. This is also perfectly clear that at the Chairman's request, we facilitated the payment on behalf of ESAT Digifone Limited and were subsequently reimbursed. Now that Fine Gael has decided to return the donation, we are obliged to return it to ESAT Digifone Limited as the money belongs to the company.

"I cannot understand why you raise the issue of impropriety in the context of Telenor. Our company has clearly done nothing improper.

"I do not understand your reference to, 'after we had been induced to underwrite ESAT Digifone Limited.' If this is referring to your shareholding in the company, Telenor is not aware of any such inducement and was not involved in IIU becoming a shareholder in the company.

"The correspondence and minutes of meetings held by Telenor and/or its representatives with Fine Gael and/or its representatives were on the express basis of confidentiality. Accordingly, and having taken legal advice, Telenor declines any further communication with you on this issue.

"Since the donation was made under the original direction of Denis O'Brien, may I suggest that the

cheque be dealt with by ESAT Digifone Limited in accordance with the instructions of Denis O'Brien as Chairman of the company and the original promoter of the donation."

Did you see that letter?

A. Yes, I did. This is a matter of getting the file right.

Q. You mean, Mr. Johansen getting the file right, is that what you are saying?

A. I think there is a question of bottom covering here, in relation to the Telea merger.

Q. Very good. Well, I'll deal with it now in a moment. I'll just finish the correspondence. That would have been brought to your attention, no doubt, by Mr. Walsh as the coordinator?

A. Probably would have.

Q. I think what happened then was that by letter dated 16th April 1998, Mr. Walsh responds to Mr. Johansen.

"Dear Arve, following my letter of the 30th March 1998, I tried to contact you a number of times but without success. However, I am in receipt of your letter dated the 14th April 1998.

"Regardless of the circumstances which gave rise to the initial payment, it is clear that the current situation is one which stands on its own. In relation to Telenor's recent contact with Fine Gael, neither you



nor your representatives were authorised by ESAT Digifone Limited to enter into any discussions with Fine Gael on behalf of ESAT Digifone Limited. Equally, it is clear that you were not authorised by ESAT Digifone Limited to seek or receive any payment from Fine Gael for ESAT Digifone. We would not have given you such authorisation if you had requested it and we would have refused to accept a payment from Fine Gael. Accordingly, I believe it would be wrong for ESAT Digifone Limited to lodge the cheque made payable to Telenor to the ESAT Digifone account.

"I am concerned that you feel you are not in a position to provide details of Telenor and or its advisor's contacts with Fine Gael. It is of even greater concern that you are taking serious actions which may effect ESAT Digifone Limited without prior agreement. If your actions ultimately cause damage, then you must accept the responsibility."

And then Mr. Johansen responds, 22nd April 1998.

"Dear Michael, I acknowledge your letter of the 16th inst. in the above.

"Telenor did not make contact with the Fine Gael Party on behalf of ESAT Digifone Limited. Telenor was acting entirely on its own behalf in seeking clarification of certain issues which caused us concern. We informed

the other members of ESAT Digifone Limited that we were doing this.

"The Fine Gael Party carried out its own investigations into the circumstances surrounding the payment and it has now decided to return the monies. His was never requested by Telenor and it is a decision made by Fine Gael Party entirely on its own behalf and is outside Telenor's control.

"The cheque was made payable to Telenor, as we had been the facilitator of the original payment, and as we had already been reimbursed for facilitating ESAT Digifone Limited, we were obliged to see that the monies were returned to ESAT Digifone Limited.

"You will appreciate that our discussion with the representatives of the Fine Gael Party were conducted on a confidential basis. The final sentence of your letter is unhelpful. I cannot see how our actions could cause any damage when their sole purpose was to clarify something which happened some years ago."

Then the most recent situation is correspondence as of 7th March 20001. Of course, you were the this was to do with the most recent movement of the cheque. You, of course, are here giving evidence in your own capacity as Denis O'Brien, isn't that correct?

A. Correct, I don't have access to the ESAT Digifone

files.

Q. You have no involvement with ESAT Digifone, ESAT Telenor, or any affiliate companies now?

A. No.

Q. Now, if I could just go back to the letter which Mr. Johansen sent to Mr. Walsh on the 14th April 1998 where he sets out the Telenor position in relation to this donation, isn't this correct?

A. Yes.

Q. And your view is that that was getting the file right?

A. In reading it now, two/three years later, yes.

Q. What do you mean by that? Sorry, just so that I am clear.

A. Well, he keeps rehashing the same things.

Q. Mm-hmm. He's stating in this letter how the donation was effectively solicited and how they facilitated it, isn't that correct? That's what he is telling

Mr. Walsh.

A. Yes.

Q. And he is also telling Mr. Walsh that he is surprised at the contents of Mr. Walsh's letter of the 30th March, because these matters had been discussed at the time of the IPO between the directors representing the various shareholders in ESAT Digifone, isn't that correct?

A. Yes, there was an issue, yes.

Q. Where Mr. Johansen is pointing out that the position of

Telenor would have been stated at that time?

A. It may have been stated, it may not have been agreed.

Q. It's something we have to come back to, because we have documents.

A. Yes.

Q. Now, Mr. Walsh would have brought this to your attention, because he was coordinating this issue between yourself and Mr. Johansen, would that be fair to say?

A. He may have, but I have no recollection of him saying to me, I got this letter in. I mean, he probably would have sent me a copy of the letter, but...

Q. When you say that getting the file right meant rehashing the same thing, what do you mean? I am still not clear about getting the file right.

A. It would be my belief that the reason why Telenor went to Fine Gael was because they were in the middle of merger discussions with Telea and this was probably something they wanted to clarify.

Q. Whatever their reason, they wanted it clarified?

A. Yes.

Q. They are, in this letter, informing Mr. Walsh, first of all, that they are surprised at the contents of his previous letter because Mr. Walsh should have known and you should have known what the Telenor position and understanding in relation to this donation was as of the time, at least, of the IPO in November of 1997,

when the matter was discussed?

A. Well, I would have known way before then, and my view would not have changed.

Q. Now, this letter was not responded to in terms of detail, isn't that correct?

A. I don't know, but if you are saying to me this is the

Q. Well, we'll go to Mr. Walsh's letter, and of course Mr. did Mr. Walsh discuss his letter of the 16th April with you?

A. He may have, he may not, I can't absolutely recall having a conversation about either of the letters.

Q. Because Mr. Walsh replies to Mr. Johansen's assertions in his letter of the 14th April, about how the matter came about, and begins the second paragraph:

"Regardless of the circumstances which gave rise to the initial payment," he is just putting it out of the equation, isn't that correct?

A. It looks that way, yeah.

Q. Does that surprise you?

A. Telenor had their own view of the world.

Q. I am not sorry, what was your view of the world?

A. Well, they had a view which may have been different to my view, it could have been even different to Michael Walsh, what his view was.

Q. But again, these are serious corporate matters, aren't

they? There is no doubt about that.

A. Well, it's one of thousands of corporate matters in any one year that a Chief Executive would be dealing with.

Q. Absolutely. It was so serious now, Mr. Walsh will have to give evidence about this. It is so serious are you saying that this was not a serious corporate matter?

A. I am not saying that it wasn't serious, but it was just one of thousands of matters at any one time.

Q. Well, would you look at Mr. Walsh's letter of the 16th April of 1998. Mr. Walsh is writing to Mr. Johansen in fairly strong terms and this is only relating to Mr. Johansen or Telenor going to Fine Gael. And he is writing to Mr. Johansen in terms that even that could have affected the licence?

A. The Telenor letter of the 14th April is equally strong. Both of them were being strong with each other.

Q. This was a matter of huge significance from a corporate point of view, wasn't it? There was a worry there was still a worry here that the licence could have been affected?

A. Sorry, there was absolutely no worry.

Q. No worry?

A. No worry.

Q. None at all? Never any worry about that?

A. We were asked for a donation. And we gave a donation.

Q. You keep using that expression and it's the expression

you used to Mr. Miley, "We were asked for a donation" and "We gave a donation."

A. Well, sorry, in the context of Telenor, I was asked, then I spoke to them.

Q. Now, Mr. O'Brien, I asked you the other day to be careful about using language in the witness-box. And might I suggest to you that that just wasn't a slip of the tongue by you there. "We were asked for a donation" and "We gave a donation" because it's exactly the language you used as recorded by Mr. Miley in your conversation with him. "We were asked for a donation" and "We gave a donation."

A. You recall my evidence on the very first day, Mr. Coughlan. You asked me whether it was Denis O'Brien or ESAT and I said we were asked, in other words, ESAT was asked, ESAT Telecom. So when I am using the corporate name, I say "we." So I don't know where you are going on that.

Q. No, I understand that, Mr. O'Brien. "We were asked," that's correct, and I accept that you use it in that broad sense, but "We made the donation" is what you said. You said to Mr. Miley you have, -you have said it in the witness-box now: "We made the donation."

A. Telenor made the donation and then they requested the company to pick up half of it at the time of the Shareholders' Agreement, which was done, in the context of other issues.

Q. Well, I'll be coming back to it, Mr. O'Brien, because of the documents that we have received, and in fairness to you, you need to consider them also. We'll come back to that.

It was clear, was it not, to everybody concerned, that Fine Gael didn't want this donation?

A. The correspondence, yes.

Q. And they wrote a cheque for  $\text{€}33,000$ . They didn't want it.

A. It looks as if they didn't want it, yes.

Q. And there can be no doubt that on the facts, ESAT Digifone ultimately picked up the tab for this particular donation, isn't that correct?

A. That is part of wider issues in May 1996.

Q. Let's be careful now or clear. There is no doubt about it, this money was paid for by ESAT Digifone, at the end of the day?

A. Telenor were reimbursed by ESAT Digifone and ultimately it was a cost of ESAT Digifone.

Q. It was paid by ESAT Digifone. Telenor were reimbursed?

A. Telenor were paid it and then they came to us at the time of the Shareholders' Agreement and asked that ESAT Digifone

Q. But ESAT Digifone would have carried ESAT Digifone were carrying this as a cost or a payment in their accounts?



A. A cost, yes.

Q. And Fine Gael didn't want it, as was clear now. There was a cheque sent out from them. Why wasn't it just lodged to the account of ESAT Digifone and reflected in the accounts as just getting rid of that particular cost which was being carried?

A. Go back to the original point, that is Fine Gael approached we, me, or however we describe it, okay, and ultimately Telenor made a donation, which was eventually picked up by ESAT Digifone. They made the request, they had the money. We didn't see why we should take the money back from them.

Q. Sure, they didn't want it.

A. That was their decision.

Q. Yes. What was the difficulty? Fine Gael didn't want this €33,000. They are saying, here, we don't want it. I'll go into the reasons in a moment, but they are just saying, we don't want this money, here it is, where does it ultimately find its home? And can there be any doubt but that the ultimate home was the accounts of ESAT Digifone, because of the way the thing was handled?

A. Well, I would have thought it would be quite unusual for a political party to ask for a donation and then some years later, that they want to give it back.

Q. But apart from it being unusual, that to do with the reasoning of Fine Gael, what was wrong with taking the

money back from Fine Gael?

A. I think people would have thought that there was something wrong with the original donation.

Q. As you did yourself.

A. From an ESAT Telecom point of view, yes.

Inappropriate, I wouldn't use the word wrong.

Q. Inappropriate, we'll use the word inappropriate. And I think you had, on the last day, we explored this, you accepted your view was, sorry, that it would have been inappropriate for you, for ESAT Telecom or for ESAT Digifone to make the donation when the request came in from Mr. Austin because of the proximity of the request or donation to the announcement of the reward of the licence a week or two previously?

A. I don't have my direct evidence, but it sounds broadly

Q. That in broad terms

A. Broadly.

Q. was your view then and continues to be your view, isn't that correct?

A. Well, I suppose people would then say, why did you let ESAT Digifone pick up the cost of it? I think you know the answer to that.

Q. Well, sorry, I know you have said yourself in your statement that the payment was a legitimate political contribution by an affiliate company, ESAT Digifone?

A. Yes, that's how it was described.

Q. Now, you went on to say, at the time of the shareholders meeting and that's something we'll have to come back to, because in fairness to Telenor, we have to deal with information which they furnished us about that and you will have to have an opportunity of considering that. But you say that at the time of the Shareholders' Agreement, along, we'll use the term you made, but along with a number of issues, it just was taken up

A. I have no problem with the word "made."

Q. Okay, you go back to that maybe?

A. Yeah.

Q. Coerced?

A. I didn't use the word coerced.

Q. The word "made," could you define that a little better?

A. We were pushed into it

Q. You were pushed into it?

A. Yeah.

Q. Very good. Now, on the last day when you were giving evidence, you said, yes, you considered at the time for you, ESAT Telecom or ESAT Digifone to make the donation would have been inappropriate. And you still believe that, don't you, that it would have been inappropriate?

You said that on the last day.

A. Well, a lot of water has passed under the bridge, but in a general sense, yes.

Q. You still believe it to be inappropriate?

A. (Nods head.)

Q. Now, leave aside the question of pressure being made to do something which we'll come back to at a later time.

Things had moved on considerably by 1998 when Telenor went to Fine Gael, because now Fine Gael didn't want it?

A. And still don't want it.

Q. And still don't want it. And you can see from the correspondence of Mr. O' Higgins, Fine Gael's solicitor, that the circumstances surrounding the donation, that is how it was paid, made Fine Gael also believe that it would be inappropriate for Fine Gael to accept a donation in those circumstances. I think you understand that, don't you?

A. Well, we weren't made aware of those circumstances until a later time.

Q. Yes, I am talking about this later time.

A. So if you it was paid whenever it was paid in '95 or early '96. I think there was an assumption that it had gone straight to the Fine Gael Party.

Q. I understand that, Mr. O'Brien, but when Fine Gael wanted to give this money back, they wanted to give it back because they had now become aware of the true circumstances whereby the donation had arrived into their party, having consulted

A. That wasn't our fault though.

Q. I am not saying that.

A. We had nothing to do with how they accounted for monies.

Q. But they now knew how the money came to them and because of the way it came to them, they considered it inappropriate to accept the donation. Do you understand me?

A. That seems to have been their opinion.

Q. So you now had a situation where the recipients considered it inappropriate to receive it, and the company, which had ultimately picked up the tag, was in a position where its Chairman, at least, considered it inappropriate that it should have been made by that company

A. I wasn't alone in that view.

Q. Right. So what was the you also had the situation where the Chairman, being you, was a significant, through ESAT Telecom, a significant shareholder in ESAT Digifone, isn't that correct?

A. I owned about 5, 6%, through companies into ESAT Digifone. I didn't have a controlling interest.

Q. I am not saying you had control. Telenor, who were another significant shareholder and had directors on the board of the company, did not appear to have any difficulty as shareholders in ESAT Digifone, of the money coming from Fine Gael and going to ESAT Digifone, isn't that correct?

A. They would have had a view to accept the money back.

I think IIU and ESAT Telecom would have had a different view.

Q. But I am trying to understand why. What was the difficulty about taking the money back?

A. Because it looked as if we had done something improper, which was not the case.

Q. I am just trying to understand your reasoning, your reasoning and the reasoning of IIU. What was the something improper that it could have given the impression of?

A. If we had handed back the money to Fine Gael

Q. No, if they had handed it back to you.

A. Sorry, the other way around, yes, if we had taken the money back, it looked as if we had done something improper at the outset.

Q. Like what?

A. That we had made a donation that was deemed to be improper in the eyes of whoever.

Q. Well, how do you mean improper? Perhaps I can help you. Do you mean that it might be viewed as something which was a payment which had some connection with the announcement of the award of the licence? Was that your concern?

A. We viewed it as a legitimate donation.

Q. You never did?

A. Pardon?

Q. You never did.

A. Well, it's in our prospectus. We had a view that it was a legitimate political donation. And there was nothing illegal in the donation, but we were asked to make the donation. Why would we take it back?

Q. Because the person didn't want it.

A. Sometimes you don't agree with everybody, what they want what they want you to do and we wanted to do at the time.

Q. You are not suggesting, Mr. O'Brien, that you'd force money on people if they didn't want it?

A. Well, Fine Gael were trying to force money on us.

CHAIRMAN: It's just gone five to one. Ten past two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 2.10PM:

Q. MR. COUGHLAN: Now, Mr. O'Brien, I was asking you before lunch, a situation had arisen where Fine Gael wanted to give the money back, and ESAT Digifone didn't want to take it back; does that appear to be the situation?

A. ESAT Digifone and Telenor ESAT Digifone, yes.

Q. We had reached a stage where it was ESAT Digifone's concern, it was a cost to them. And I was trying to understand the reason why it wasn't taken back.

A. That's correct, yes.

Q. I know you have used that a broad brush approach to the issue, but you said that it might have been considered improper.

A. I think if it had become public at the time, people would have said, well why did you give the donation back or why did you take it back? Sorry.

Q. What would have been wrong with that?

A. People then will probably have said, well, was there something wrong with the original donation?

Q. And you'd have said "no".

A. No, there is nothing wrong with it.

Q. I might have thought it was inappropriate, but there was nothing wrong; isn't that your

A. It was a legitimate political donation.

Q. Could you just explain, for the assistance of the Tribunal, your understanding of the concept of a legitimate political donation and one which is inappropriate?

A. Well, legitimate, you know, we could say it was legal, there was no laws broken by making a donation. I think that's described in the prospectus.

Q. Inappropriate might be concerned about perception or

A. Inappropriate at a time when it was asked for. I would have thought it was a sensitive time.

Q. Now, we discussed before lunch if a donation was made to a political party which you considered inappropriate because of the sensitivity of the time, it could only



have related to the question of the licence, in terms of time, isn't that correct?

A. I never really related it to the licence.

Q. Sure isn't that the only thing it could be related to?

The time the licence it was announced about two weeks prior to Mr. Austin approaching you that you had won the contest, the beauty contest, isn't that right?

A. Mr. Austin approached me sometime around the 2nd, 3rd, 4th November.

Q. I think it was around the 23rd October that it was announced that you had won the beauty contest?

A. In around that time, yes.

Q. So the sensitivity would have had to relate to the licence, the timing of it, would you agree?

A. Most likely, yes.

Q. There couldn't have been anything else, could there?

A. No. Well, not that I can recollect.

Q. I think in fairness, there couldn't have been anything else. You had made contributions to Fine Gael prior to this, hadn't you?

A. Absolutely, yes.

Q. So it must, by process of elimination, be related to the time it was announced that you had won the beauty contest, would you agree?

A. Probably, yeah.

Q. And just to tease it out a little further: was the worry that it might have indicated that this was some

type of thank you, not for any wrongdoing, but just

thank you in general terms?

A. Well, first of all, ESAT Telecom refused to make the donation. And then there was a discussion between myself and Telenor, and they said they would do it and that's how the whole thing started, after an approach.

I mean, the mistake was, we should never have been approached, in my view.

Q. You say that. Why shouldn't you have been approached?

A. Because there was a lot of controversy in the newspapers. There was a lot of whinging by people who didn't win the licence and that would be the reason.

Q. Mr. Austin was a very, I think as you have said before, an experienced businessman, wasn't it?

A. He was, but I think I know your question but he wasn't living in Ireland, so probably didn't recognise the sensitivity.

Q. Well, I think you said that he would have known the distinction between ESAT Telecom and ESAT Digifone?

A. But he may not have known that there was, you know, a lot of comment in the newspapers.

Q. And you think that that would be the reason why such an experienced person would misjudge the situation so badly as to make an approach on an appropriate occasion?

A. I can surmise by saying that if you live outside the country, as he did at the time, you may not have the

finger on the pulse that you thought you had.

Q. Well, by the time he spoke to Mr. Miley, which was, of course, in 1998, and the conversations he had, he seemed to have a reasonable appreciation of matters political and business by then, would you agree?

A. Well, can we go to his notes, because I am not sure whether he goes into that level of detail of what was going on.

Q. Well, I think if you look at Mr. Miley's draft statement, he is pointing out that there was nothing wrong about this, that Fine Gael shouldn't reject it, but that it was a matter for the Fine Gael Party itself, of course, at the end of the day. So he seemed to have some appreciation of matters?

A. Well, he did, yeah.

Q. Now, after Mr. Johansen handed you the cheque and the letter from Fine Gael, that is on the 24th March of 1998, whatever transpired between yourself and Mr. Walsh, Mr. Walsh certainly wrote to Mr. Johansen on the 30th March, 1998, isn't that correct?

A. Yes.

Q. And I think we have taken an extract from your 1998 diary, and I should - I hasten to add, of course, that you have made your diaries available to the Tribunal.

A. Fully.

Q. But if you take the extract for the 30th and the 31st of March of 1998 - we have blanked out all other

references for those days - but I think you will see that on the 31st, which is Tuesday 31st, in your diary is an entry, "7pm, dinner, David Austin, 7.30 for 7.45." And I think down underneath that, it gives the location for the dinner.

A. Carlton Intercontinental Hotel.

Q. Is that in France?

A. Yes.

Q. And I take it this diary was this diary kept by your personal assistant to you or did you make that entry yourself?

A. I think that is my yeah, it's my office diary.

Q. It's your office diary. Did you make that entry yourself?

A. That looks like my writing, yes, it is, yeah.

Q. I notice on the page there is other writing which is probably entries made by

A. That's my assistant's.

Q. Your assistant's. And did you have dinner with Mr. Austin on the 31st March, 1998?

A. I did.

Q. And when had that dinner been arranged?

A. I would have as soon as I knew I was going down to speak at a conference in Nice for Cowen, who are one of our underwriters - they have a TMT conference every year down there and I was speaking at 8.30, it's on the top of the yellow sheet there. So I would have

probably phoned him up and said, 'Listen, I am coming down, are you free for dinner?'

Q. And did you discuss this matter with him?

A. To be honest with you, I don't know what I discussed with him that night. I mean, it's a good while ago, but I doubt if this would have arisen.

Q. Well, surely it was something that would have been on your mind?

A. It didn't exercise my mind greatly, this whole matter.

Q. This whole matter did not exercise your mind greatly?

A. It was one of thousands of things that were on my mind in 1998.

Q. I know you have many things on your mind, Mr. O'Brien, but from what the Tribunal has seen, people resorted to their solicitors quite regularly in relation to these matters, so it was a matter of some significance, wasn't it?

A. No. Any letter that went to Telenor, because we had strained relations, we would always send it up to our solicitor to check the letter before we'd send it out.

So that was the only reason.

Q. So you can't remember if you had any discussion with Mr. Austin at dinner on the 31st March, the day after Mr. Walsh wrote this letter?

A. Probably not. But I am only guessing, because I can't I don't have a full recollection of the dinner. It was a light-hearted dinner, I am sure,

because he is good company.

Q. He was sick at the time, wasn't he?

A. He was in and out for treatment virtually on a weekly basis.

Q. I think he died within a couple of months of this, towards the autumn of that year?

A. He died in November, unfortunately. But for the record, like, I stayed in touch with Mr. Austin throughout his illness, so there is nothing unusual in the contact that I had with him.

Q. No, I understand that. This wouldn't have been the only occasion you probably had dinner with him or spoke to him on the phone?

A. Absolutely.

Q. Can you remember if there was anyone else at the dinner at this stage?

A. No, I mean, probably just there was the two of us.

Q. Now, you had certainly met, I think it's correct to say, Michael Walsh, the day before, that's on the 30th, the day the letter went out, isn't that correct?

A. I don't see a diary entry.

Q. Well, I think

A. It says, "3 o'clock, Michael Walsh". If it's there, I probably did have a meeting with him.

Q. You probably did, and it probably related to the letter, would you agree, because you then notice that the next entry at 4 o'clock, there is a reference of a

meeting with another director, and your solicitor?

A. That's right, Owen O'Connell. It could have been something completely different.

Q. It could have been. Very good.

A. We were announcing our results that day, so it could have been anything to do with that.

Q. Well, I'll come back to deal with these perhaps on Thursday when we are dealing with other matters, if that's all right with you

A. That's fine.

Q. I just wanted to bring it to your attention for the moment.

Now, another matter which I'll have to come back to is when you said you were made or pressurised to allow ESAT Digifone accept the cost of the donation, and you say that that occurred at the time of the negotiations leading to the Shareholders' Agreement?

A. Correct, yes.

Q. And I just want to be clear about this now: That is your view, that you were pressurised or made accept that?

A. Yeah, at a particular time.

Q. At a particular time. And when I asked you about, on the last occasion, as to who might have been present, you said that you yourself were present for some of the time, but you were in and out of the meeting, and that the people present were two solicitors, Mr. Owen

O'Connell and Mr. Gerry Halpenny, is that correct?

A. It depends on what period we are talking about.

Q. Sorry, I am just trying to get clarification on this.

This is what you said on the last occasion when I asked you who was present on your behalf, or on behalf

A. They were consistently involved, certainly

Mr. Halpenny.

Q. Mr. O'Connell and/or Mr. Halpenny?

A. Mr. O'Connell, I think, was negotiating the licence; Mr. Halpenny was doing the Shareholders' Agreement, as far as I can recall.

Q. Was there anyone else present on your side?

A. There would have been people coming in and out. This went on for a number of months. There were fourteen different drafts, so every time a new draft came out, there would be another set of negotiations.

Q. Well, we know we can fix the date from the reconciliation on the running account as to when it was accepted, more or less, I take it, can we? It would have been around the time

A. It could have been agreed before then.

Q. Who agreed it, do you know?

A. Well, certainly I agreed it.

Q. Who did you speak to before you agreed it?

A. It was an agreement between ourselves, being ESAT Telecom, and Telenor, that we would allow ESAT Digifone to pick up the payment.



Q. I just want to know who was present, because

A. I can't recall.

Q. Well, this is important, Mr. O'Brien, because in fairness to Telenor, you have now given sworn evidence that you stand by the expression "made" or "pressurised."

A. I absolutely do, Mr. Coughlan.

Q. Very good. It's important, so that we can conduct this inquiry, to know who was present at all times so we can ask these people what actually happened, because the Tribunal has to come to an understanding

A. Well, there would have been four/five different people from Telenor negotiating the Shareholders' Agreement; that's one set of people. Or else I could have agreed them with Arve Johansen at a side bar; or else it could have been agreed with the solicitors.

Q. But you can remember being pressurised?

A. Well, yes, because we were in a very weak position.

Q. I just want to be careful about this, Mr. O'Brien, now, because it is a serious matter. Do you remember being pressurised on this issue or was it a general feeling of pressure, is what I am trying to understand?

A. On this issue, we weren't fully happy to allow ESAT Digifone to pick up the contribution to Fine Gael. And it was part of maybe 15 or 16, maybe more, issues that we had in protracted negotiations for a Shareholders' Agreement.

Q. Well, we are going to have to try to get to the bottom of this, Mr. O'Brien, so if there is anyone else you remember you can inform the Tribunal about because this is a matter that, in fairness to your side, and to Telenor, we have to go into in a little bit more detail?

A. I am saying that I remember it and certainly the company would never have agreed to actually pick up the payment unless Telenor were in agreement, so somebody within Telenor would have been aware of this, otherwise the company would never have picked up a payment.

Q. I understand the point, Mr. O'Brien, as Digifone were picking up the tab for it there had to be agreement amongst the shareholders because it affected all shareholders?

A. It was just Telenor and ourselves at the time.

Q. Just yourselves and Telenor. And it affected both sets of shareholders, obviously, if the company that you were both shareholders of were picking up the tab.

Now, I think at that time, you had not yet become shareholders, is that correct?

A. That would be right, as far as I can recall.

Q. They became shareholders on the date that the licence was signed?

A. That, or when the Shareholders' Agreement was signed.

Q. They seem to be around the same date?

A. Then probably they are concurrent.

Q. Then one final matter I'd like to deal with today. I

hasten to add we'll return to all of these matters

later in the week, Mr. O'Brien, and perhaps some other

matters. But for the moment, I think you are aware

that Mr. Frank Conroy furnished a statement to the

Tribunal, and Mr. Conroy was a long-standing member of

capital branch of Fine Gael and he was a friend

A. What's the capital branch?

Q. It's just a branch of Fine Gael in Dublin.

A. What tab is this?

Q. It's at tab 5. Do you know Mr. Conroy?

A. I do, yes.

Q. I think Mr. Conroy was a good friend of Mr. Austin's?

A. He was.

Q. And I think we now know that when Mr. Austin sent the

money to Fine Gael, he wrote a cheque on his own

account at Bank of Ireland in Baggot Street, and made

it payable to Mr. Conroy, isn't that correct?

A. I think that's part of the evidence.

Q. And that Mr. Conroy then endorsed the cheque over to

Fine Gael. You can take it that is the factual

situation.

A. Okay.

Q. Now

A. That was in the press as well.

Q. That's what I want to come to, because an article

appeared in the Sunday Tribune on, I think, Sunday, I think it was the 5th March of this year, about this donation, isn't that correct?

A. There was a series of them, yeah. I don't know whether there was one on the 5th March, but I'll take it there was, yeah.

Q. And then it was carried in other newspapers on the Monday and you issued a statement yourself on the Tuesday I think, isn't that correct?

A. Okay.

Q. You needn't go into the statement, but I think you can take it that is correct.

A. Okay.

Q. Now, Mr. Conroy has informed the Tribunal that, "On the weekend following the breaking of the story by the media, I received a telephone call at my home on my unlisted telephone number from Mr. Denis O'Brien. I do not know, nor did I ask Mr. O'Brien how he obtained the number, but certainly it would have not been from me. I had never before received a phone call from O'Brien either at my home or, I believe, anywhere else."

Could I ask you firstly, did you ring Mr. Frank Conroy?

A. Of course I did, yes. I think I called him on his mobile.

Q. No, it was on his fixed line, Mr. O'Brien. Mr. Conroy is quite adamant about that and I am going to come back

to ask you in a moment, because his number was unlisted and he didn't give it to you. Do you know where you got his number?

A. I have had his number for maybe five years.

Q. And would he have given it to you himself, then, five years ago?

A. One of the things one of the matters that I dealt with Mr. Conroy originally was the obtaining of a site for a mast on one of his properties, I think in Cabinteely.

Q. So you believe that you had Mr. Conroy's number for about five years and that's how you rang him?

A. Easily, yeah.

Q. Now, why did you ring him?

A. Because I read in the newspaper that he was linked to this whole thing about endorsing the cheque and I had also known that he was extremely ill and I rang him to sympathise because he is a very low-key person and he would not have liked to have seen this dragged into the newspapers, and that's why I rang him.

Q. Mr. Conroy's account is: "The telephone conversation was brief. Mr. O'Brien had expressed regret I had become involved in what he referred to as 'this mess' about the cheque and gave me his mobile telephone number in case I wished to contact him."

A. That's not a bad recollection of what happened.

Q. Mr. Conroy said that, "not wishing to pursue the

matter, I indicated to Mr. O'Brien in a very general way that he was not in any way concerned. Thanked him for his call and there the matter rested."

A. Probably.

Q. Why would you want to ring Mr. Conroy or give your mobile number to him?

A. Well, first of all, I rang Mr. Conroy out of sympathy about what was happening and a great number of people were upset at that time, including Mrs. Austin, and I also phoned her. And I phoned him as well. And that's how I gave him my number, that was it. That was the conversation.

Q. So you were ringing Mr. Conroy because you knew that he was an ill man.

A. Correct. And I had also spoken to him soon after he had his operation. So...

That was many I mean, that was a good while ago, but I would have phoned him up to see how he was. I think it was either after or before his operation.

Q. At his home?

A. Yes.

Q. And you had his number all the time?

A. I have his number here with me, if you want it.

Q. I am not doubting you had his number because you rang him. But what I want to know is: Mr. Conroy expressed surprise that you had his number because it was an unlisted number and he didn't give it to you and he was

wondering where you got his number from.

A. He gave me his number years ago. In fact, he had invited me to various things, one of them was a Fine Gael launch; we conversed on the phone. I mean, I have had plenty of conversations with Mr. Conroy over the years.

Q. Thank you, Mr. O'Brien. I don't want to ask you anything further at the moment. We will be returning to many of these matters again on Thursday. And it's a matter I'll just come back to. I suppose I can commence later on in the week. I think you said that the question of the payment being a legitimate political payment or donation as described in the prospectus; it isn't described in the prospectus, of course, because it wasn't a payment being made by ESAT Telecom at all. It's not described in the prospectus. It's not referred to, because people took the view it was a legitimate political donation.

A. That was the opinion we had.

Q. It's not described in the prospectus as that.

A. Oh, is it not?

Q. Or is it?

A. It's in some correspondence, maybe it's probably not in the prospectus in hindsight, but it's somewhere.

Q. Thank you. That's as far as I intend going with Mr. O'Brien today, Sir. And it would seem inappropriate at this stage that there be any further

questioning of Mr. O'Brien until we return to matters later.

CHAIRMAN: I was going to obviously give senior counsel for the four persons represented a chance to be heard, but, gentlemen, my strong feeling, subject to hearing anything you want to say at this stage, is that both in fairness to Mr. O'Brien and for the orderly presentation of evidence later in the week, it would be greatly preferable, it seems to me, if questioning by the four relevant persons be deferred until that later stage in the week.

MR. FITZSIMONS: If that's your ruling, Sir, we are, of course, quite happy to abide by it, save to say this:

I have to intimate that Mr. O'Brien wishes to leave on Friday evening and we wouldn't wish to find ourselves confined in terms of time by virtue of that fact. I just make that

CHAIRMAN: I think we can do our best to make sure that there is no prejudice to anybody arising from that.

But I think if I make an exception for one person, Mr. Fitzsimons, I'd have to do it for everybody. I think we should perhaps allow Mr. O'Brien to stand down with a view to resumption

MR. FITZSIMONS: I am not suggesting that he shouldn't stand down. I just wish to make sure that I would not be confined or restricted by virtue of losing a day and



a half.

CHAIRMAN: I am conscious of that.

MR. COUGHLAN: Perhaps My Friend hasn't been up at this Tribunal much, Sir, but witnesses have had to come back over and over again. Nobody is ever cut out from pursuing matters.

MR. FITZSIMONS: I am obliged for that.

CHAIRMAN: Thanks for your attendance, Mr. O'Brien.

THE WITNESS THEN WITHDREW.

MR. HEALY: Mr. Jim Miley.

JIM MILEY, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS

BY MR. HEALY:

CHAIRMAN: I think, Mr. Meenan, as was the case with Fianna Fail when they appeared earlier, I am taking it as a matter of course that you, as general lawyer for the Fine Gael Party, representation extends to officers or ex-officers such as this witness, and it doesn't seem that any additional representation need be

MR. MEENAN: No. I am obliged.

MR. HEALY: Thanks, Mr. Miley.

Q. Before you go into your evidence, Mr. Miley, maybe I should just mention that the Tribunal has been provided

with a statement from you as General Secretary of Fine Gael, and with quite an amount of, what I'll call, internal Fine Gael documentation, and has, in addition, been provided with all of the Fine Gael solicitor's file concerning this matter, isn't that right?

A. That's right.

Q. Now, it may not be necessary to go into every nook and cranny of the Fine Gael solicitor's file, and I think it may save some time if I don't go into each and every line of it, but I should say that all of this information has been provided to all of the other affected parties by way of background in case it provides them with any information which they think it will be appropriate that the Tribunal should lead. So if I do not refer to something, Sir, it may be that one of the counsel for the other parties may draw it to the attention of the Tribunal as something which they feel should be ventilated at these sittings.

Mr. Miley, I'll go through your statement and I think what I'll do then is go over some of the documents with you, although, in the course of your statement, I may need to refer to one or two of those documents to make sense of things that you refer to, if that's all right with you? Do you have a copy of your statement?

A. I do indeed, yes.

Q. And of the documents?

A. I think I have most of them here, yeah.

Q. You say you were General Secretary of Fine Gael from 1995 from July of 1995 to April of 1999?

A. That's correct.

Q. I think you have left since and gone to work in the private sector. Of course, that was the private sector too, strictly speaking, when you were with Fine Gael?

A. I am not sure of the status of political parties, but I am certainly in the private sector now.

Q. You say Mr. David Austin was known to you as a result of his involvement on occasional party fundraisers.

Your first recollection of meeting him was in relation

to the organisation of the Party's national Golf

Classic in the autumn of 1995. He was furthermore

involved in organising the Party's fundraising dinner

in New York as well as the Golf Classic in 1996 and

possibly 1997. The fundraising dinner you refer to in

New York is presumably the 1995 fundraising dinner that

has been mentioned in the course of evidence at this

Tribunal?

A. That's right, on the 9th November, I think.

Q. Were there any other fundraising dinners in New York that year?

A. No.

Q. You say you are familiar with the so-called Telenor payment made to Fine Gael indirectly in May of 1997.

You say, "I was not then aware as to the true origins

of the donor as I believed it to have been a personal contribution of £233,000 from the late David Austin, who had phoned me sometime before the receipt of the contribution and had indicated his wish to make a personal contribution. This was in the immediate run-up to the 1997 General Election and Mr. Austin's contribution was very welcome."

Now, because you then go onto the events of 1998 when all of these matters were recalled, I think I'll stick for a moment with what actually happened and with the events that you were directly involved in in 1997.

You say that Mr. Austin phoned you sometime before the receipt of the contribution. Can you remember the date or the approximate date that he phoned you; the months, in other words?

A. I don't have a clear record or recollection of the date, but can you remind me of the date of receipt of the donation?

Q. I think it was the 7th May of 1997?

A. 7th May, yeah. At a reasonable guess, I would have thought it was somewhere between two and four weeks before that, so I would have thought sometime in April.

Q. And can you recall the thrust of what he said to you in the course of that telephone conversation?

A. Well, I hadn't heard from him for quite a while. He had been ill, as you know, and he hadn't really been

involved in any fundraising event for the Party for, I don't know, quite a while before that. So he rang.

I obviously asked him how his health was and so on.

And he said that he wished to make a donation to the Party. I can't remember the precise words he used, but it seemed very clear to me that it was a personal donation.

Q. Well, did he mention how much he wanted to contribute?

A. As I recall it, no. I think he might have said something, I want to make, or it's a sizable donation or something of that nature. I know when I received the cheque I you know, I didn't know how much it was. He did I do remember he made a reference in the conversation that 'it's in my dollar account and I'll have to arrange to get it to you'. Which I suppose, when it arrived, although it arrived as an Irish punts cheque of  $\text{£}233,000$ , I remember doing a quick mental calculation and saying that must be, you know, something of the order of \$50,000.

Q. But you are absolutely certain he said to you "it's in my dollar account".

A. Well, I don't as someone who would never say I am absolutely certain unless I have documentary evidence, but in as far as I can remember it, it was certainly the words 'dollar account' were words that he used. I have a recollection of that, yes.

Q. He said, "It was my account. It's in my account," he

said?

A. Yes, I'd be I mean, certainly there was a clear inference from him that this was his account, yes.

Q. So after the telephone conversation, you were satisfied you were going to get a contribution. It was going to come from David Austin. There might be some delay because it was in his dollar account and he had to get it to you and that was all you knew after the telephone conversation?

A. That was all I knew. And as I say, he said it was sizable. Now, I didn't know, I suppose if that was 5, 10 or  $\frac{1}{2}$ 25,000. As it turns out, it was even a little bit more than that, but...

Q. Well, it would have been one of the largest contributions you'd have got that year?

A. It was certainly on the larger end of the contributions. It wasn't the largest, but it was

Q. I am not saying it was the largest.

A. It was on the larger end, certainly.

Q. You wouldn't have got that many contributions of  $\frac{1}{2}$ 33,000?

A. No.

Q. You might have got five, you might have got six, you might have got one or two?

A. I think you have probably the records of what was received so, yes,.

Q. I can't recall myself, but my recollection is there

would have been very few, it would have been in the top 10 or 20 contributions?

A. It was large, yes.

Q. When you got it, it must have been quite a pleasant surprise?

A. It certainly was.

Q. Did you give any did you think at all when you got it that there was anything unusual in getting a contribution of this size from David Austin?

A. Well, I suppose first of all, you have to understand the context of the timing when all this was happening.

We were in the run-up to an election campaign, so life

was pretty frantic overall at that time. So while, I

suppose, I can sit here now and calmly reflect on what

or what I may not have thought, I imagine at that time

in spite of its size and in spite of it being welcome,

it got pretty rapid consideration; it was passed onto

the accounts keeper for lodgment to the bank and it was

next business, be that political or other business that

I was engaged in.

Q. In fact, Mr. Austin wouldn't have been a

large historically he wouldn't have been a large

contributor to the Party?

A. No, he would not.

Q. I think his previous contributions would have been in

the order of hundreds of pounds?

A. Well, he would have supported various events, golf and

dinner events, that sort of things, as far as I can recollect.

Q. Now, can you tell me how would the Party have receipted contributions either of this size or any size at that time?

A. At that time we had there was a precedent I suppose, or a practice which I inherited and which I continued that donations were acknowledged generally by letter usually to the donor. Formal receipts were not issued up to that time, but as I recall it, up to the actual the election date of that year, which I think the day before or whatever it was, the 14th or 15th May, when the Electoral Act came in, quite obviously the Electoral Act, for the first time, brought specific responsibilities on Parties and indeed on individual politicians, to account for donations in a public way with declarations over a certain limit. And that required a very detailed procedure in terms of receipts and so on. So I would say definitively, from the date of the Electoral Act onwards, there was, and I presume still is in place, a systematic method of acknowledging and receipting all donations, large or small, but prior to that it was more by way of a letter of acknowledgment or some form of acknowledgment.

In the case of Austin contribution, I am told by Fine Gael, and the records supplied, that there is no record on file of an acknowledgment, of a copy of an



acknowledgment to David Austin, but I imagine I would have acknowledged it in some way. I may have sent him a short handwritten note. I may have phoned him. I don't recall having another telephone conversation with him, I have to say, but he was someone who wasn't always easy to get on the phone, so I may have phoned him and left a message on his answer phone or something like that. But I imagine I would have acknowledged it in some way or another.

Q. You are telling me there was no systematic system of acknowledgment in Fine Gael at that time?

A. There was no systematic method of receipting, so in other words, receipts were not issued for all donations with, you know, X pounds received on X date.

Q. Leave receipts out of it; there was no systematic system of acknowledgment: thank you very much for your contribution...

A. All donations would have been acknowledged, as I say, in one way or another. I suppose the context of this, you were dealing with someone who himself had fundraised for the Party, and I suppose, I had had a telephone conversation with him prior to that as well, so as I say, I am sure I would have acknowledged it in some way, it may have been but I don't have a recollection of it now. I certainly don't have a record of it.

Q. Do you remember personally acknowledging other

contributions?

A. Oh yes.

Q. Do you remember personally acknowledging other substantial contributions?

A. Well, I don't remember them individually, but in a general way, of course, yes, I do.

Q. And would it be surprising that you wouldn't personally acknowledge in writing substantial contributions, we'll say, after the heat of the election was over?

A. Oh, I didn't say this one wasn't acknowledged. I am saying that I am pretty sure that it would have been acknowledged.

Q. I am concerned about whether there would have been a written acknowledgment.

A. I would have thought I issued a written acknowledgment.

But as I say, there is not a record of it. Equally, there would not be a record of a written acknowledgment for all other donations received, but written acknowledgements would have been sent. I suppose the point there is that there wasn't a systematic method of ensuring a very tight file on all donations received.

What was obviously kept was a very clear file in terms of a receipt book, a cash book, of noting a date a donation came in, noting the donor, and obviously the bank lodgment and in this case, in David Austin's case, the cash book copy of which you have received, clearly has that acknowledgment.

Q. I note that you have told the Tribunal that since the Electoral Act came in, Fine Gael has a much sort of tighter system of acknowledgment. But leave statutory obligations under the Electoral Act out of it; doesn't it seem only good sense, or common sense, if you are trying to collect money for people and hopefully collect large sums of money from people, that you'd have a file on each and every large or any sum indeed, that you'd collect, so as to be sure to know how to approach the same person the next time round?

A. Absolutely. But that's a somewhat different matter to keeping a copy of a particular letter that was sent to a particular donor in relation to a donation. What I can tell you in this case, is that it was noted in the Cash Book as a David Austin donation and while there isn't a record of an acknowledgment, I would have imagined, as I say, I may have written a handwritten note, I really don't know.

Q. To get back to your earlier point

A. Can I just say in terms of my working life, which stretches across almost 20 years at this stage, I would say the, you know, the six or eight weeks in or around the General Election of that year was probably the most intensive period of my working life. So recalling precise details of an individual piece of correspondence, it would be extraordinarily difficult.

Q. I appreciate there may be difficulties in recalling. I

am simply expressing, I suppose, some surprise, or, well surprise is I suppose all I can say I am expressing at the fact that the Party doesn't seem to have had a very systematic or readily retrievable record of having acknowledged payments from substantial contributors. That's all I am saying.

A. What I am saying to you is all acknowledgements would have been acknowledged all donations would have been acknowledged.

Q. But you don't have a readily retrievable record of it. You can't retrieve a record to this day of an acknowledgment of this substantial

A. Of this particular payment no, we can't, but you know...

Q. The question is: was this because people dealing with the Party didn't want records or was it because the Party simply didn't set up a systematic system of recording transactions like this?

A. Well, I don't know what the position in the past was.

It may well have been that I mean, from the donor's point of view, as long as the donor the donation was acknowledged and they had, from the Party's point of view, to satisfy the donor that it had actually been received and lodged to the Party account was the important piece. I suppose in this case, you are dealing with somebody who was, in one way or another, a friend to the Party and who himself had been involved

in the fundraising activities. And someone who had, prior to sending in the donation, who had phoned me and in that conversation I would have expressed my prior thanks for it, but as I say, I am sure I would also have, either by letter or perhaps I made a phone call, again I have no recollection or knowledge of that, I perhaps, I am pretty sure I would have made some sort of post acknowledgment anyway.

Q. In any case, whatever about the question of acknowledgment, this contribution was definitely recorded as a contribution from David Austin?

A. Oh absolutely.

Q. And while you may have some doubt about what David Austin said to you in your telephone call, by the time you got the money you were in no doubt it was a David Austin contribution?

A. I had no doubt at all about what David Austin said to me in the telephone call either. I don't think I have said that. I have said very clearly in his telephone call that he said to me it was a personal donation, and that he had it in his dollar account or words to that effect.

Q. You are, I suppose, now aware from your knowledge of the Tribunal's inquiries, that the money was not in fact in his dollar account.

A. Absolutely, yes.

Q. Or in any dollar account?

A. Absolutely, I am, yeah.

Q. You go on to say that "On the 11th February, 1998 I was contacted by a public affairs consultant, Fintan Drury, seeking a meeting on a matter of mutual concern. He indicated that it related to a client of his and that would he have in attendance their solicitor. I requested that the Party's solicitor, Kevin O'Higgins, would also be in attendance and the meeting took place in Headquarters on the 13th February, 1998. They indicated that Denis O'Brien of ESAT had approached Telenor with whom he was in partnership in the winter of 1995 saying he wished to make a contribution to a Fine Gael fundraising dinner in New York. They said that Denis O'Brien indicated that he wished to buy two tables at \$25,000 Per table. They said that Denis O'Brien asked that Telenor pay the money to David Austin who was organising the dinner on behalf of Fine Gael. He said he wished to do it this way in order to ensure confidentiality. He said that the money was paid by Telenor in January of 1996 and both Mr. Drury and Mr. O'Brien indicated that an equivalent sum was passed from Denis O'Brien to Telenor. They mentioned that they had a concern that the matter may fall been the remit of the Moriarty Tribunal, yet, if Fine Gael could confirm that the Party had in fact received the money, it was their legal advice to the effect that it would not come within the Terms of Reference. I

indicated to them that I would have to check out the matter and would then revert to them."

You say, "I subsequently carried out a detailed check of the Party records and established that a  $\text{€}33,000$  donation from David Austin in May of 1997 seemed to be one and the same as the \$50,000 donation referred to by Telenor."

Now, can I just ask you at this point: how did you link up a payment of  $\text{€}33,000$ , if you like, \$50,000, in May of 1997 with a contribution that was supposed to have been made in January of 1996?

A. Well, it was they said clearly that the donation was made via David Austin and this was the only donation received by the Party from David Austin. So and quite obviously if you looked at the exchange rates of the time, the amounts roughly coincided. And I think in their discussions with us, they would have they would have talked about the time-lag that there was some uncertainty about when the money was actually received by Fine Gael and all of that so, you know, there was it was quite clear

Q. How much of a time-lag do you recall as having been mentioned in the course of the meeting?

A. I can't remember precisely, but they did talk they talked they gave us a lot of new and very surprising information that day, not just in relation to the

timing of the donation, but they mentioned the issuing of invoices for consultancy and such matters. And they talked about various things that happened, you know, at different times over a period.

Q. Do you recall, in the course of evidence of this Tribunal, a letter being produced from David Austin confirming that he had

A. A letter introduced at that meeting?

Q. Yes.

A. I don't think they handed us the letter to read. But they did have a letter on their file and they may have read from it or read excerpts from it or explained what was in it.

Q. And what do you understand they were referring to by reference to that letter?

A. Well, they were explaining that he had confirmed to them that he had passed on this donation to the Party.

Q. You say, "I then spoke to the Party leader John Bruton by telephone on the 16th February, 1998 and I advised him of the position. He was very alarmed and distressed at the information and instructed me to return the money immediately. Deputy Bruton informed me that he wouldn't have authorised the receipt of such a donation had he known about it and insisted that it be returned immediately. I had indicated to him that it was my belief that when the money came in on the 6th May 1997, I believed it had been a personal



contribution from the late Mr. Austin."

Then you refer to two telephone conversations with Mr. Austin and you say, "I spoke

A. Three, I think, on two separate days.

Q. I see.

A. There were two on the second day.

Q. I understand. So the conversations took place on the 17th and the 23rd February, but there were, in fact, three of them?

A. Yes.

Q. "I spoke with David Austin by telephone on both the 17th and the 23rd February, 1998 when he confirmed that he had approached Denis O'Brien for a contribution to the fundraising dinner in New York. He advised me that Mr. O'Brien indicated that he wished to have the money paid via Telenor in order to ensure confidentiality. He then made arrangements with Telenor to have the money paid to him," meaning David Austin obviously?

A. Yes.

Q. "... and held the money until May of 1997 when he passed it on to Fine Gael. He informed me that he had confirmed to Telenor in 1997 that he had passed the money on to Fine Gael. He referred to a conversation which he had with Deputy Bruton concerning the donation. He said he was contacted by Telenor

sometime last year and asked to confirm that he had in fact passed the money to Fine Gael and he confirmed in writing that he had. He said he remembered mentioning the fact that such a donation might be available to John Bruton TD, but that Deputy Bruton had expressed misgivings about receiving such a donation. He said that Deputy Bruton would never have known that the payment had in fact been paid. He advised against giving the money back on the basis that he believed that there was nothing wrong with the donation in the first place but he said it was really up to the Party to make the decision as to whether to return the donation or not. He confirmed that the donation of  $\text{€}1,233,000$  that he had made on the 6th May, 1997 was that which he received originally from Telenor with interest exchange rates taken into account. He agreed with me that I had not been made aware of the original source of the donation and was emphatic that he had no discussions with Michael Lowry on the matter as he had nothing whatsoever to do with this contribution."

When you had your discussion with John Bruton on the 16th February of 1998, and John Bruton informed you that he wouldn't have authorised the receipt of such a donation had he known about it and insisted that it be returned immediately, did Mr. Bruton tell you on that occasion that he had, if you like, had words with David Austin about the same contribution some years earlier

and that he had indicated that the contribution would not be welcomed?

A. Yes, he did. I believe you have a file memo from me detailing, at the time, the content of that phone conversation with Deputy Bruton. And that he would have outlined to me clearly in that phone conversation his recollection of that conversation back in, I think it was February of 1996.

Q. We'll come to the file memo in a minute. Then when you had your subsequent conversation with David Austin, did you draw up with David Austin your knowledge of what had transpired in the course of the telephone call between himself and John Bruton?

A. I drew up a number of things with him. I suppose to explain - well I mean the whole situation that had been presented to me and the Party solicitor from the Telenor representatives was extremely surprising. I suppose I'd say I was even a bit annoyed at the complicated web that was presented to us on this scenario. So I had a number of questions I wanted to ask Mr. Austin. However, I suppose, in my telephone conversation, I didn't undertake a forensic analysis with Mr. Austin because he was someone who, you know, had been helpful to the Party in the past and more importantly, he was quite ill at that time. So I was probably trying to elicit as much information as I could, you know, without being overly aggressive or

interrogative. So, yes, there were a number of points I would have put to him and I am not sure, I mean looking at the note I made of the telephone conversation, I probably didn't get information on all aspects of the questions I wanted, which is, you know, why we had a subsequent conversation on the 23rd February, four days later.

Q. I think perhaps in fairness to you then I'll go through the rest of this and we'll go to those notes, because they do contain a certain degree of analysis, on your part, of the issues that were arising.

You say: "Having reported on the above to the Party Leader and consulted further with the party solicitor, I approved of a letter sent by the Party solicitor on the 6th March to Kilroy's on behalf of Telenor returning the cheque for the reasons stated." We'll come to the letter in a minute. "I became concerned to note that by the middle of May the cheque had not been encashed and requested the Party solicitor to write a further letter to Kilroy's and this was sent on the 13th May, 1998. I was advised by the Party solicitor following a telephone discussion which he had had with the Telenor solicitor on or around the 18th May, 1998 that the return of the cheque had caused some concern within Telenor. However, they indicated that they had merely passed the cheque on to ESAT.

"I am aware that on the 29th May, 1998 the cheque was returned to Fine Gael by ESAT. I sought an explanation from ESAT for its return and spoke on the phone with its Chairman, Denis O'Brien, on the 2nd June, 1998. Mr. O'Brien informed me that he had sent the cheque and said words to the effect that, "given that we were asked for the money in the first place, we don't feel we should take it back. We think if we took it back, we would look guilty. We have nothing to be guilty about." Mr. O'Brien also advised that as far as he and his board were concerned, that it was not possible to give the money back and he was adamant on that point. I advised him that I would need to inform the Chairman of the trustees and would revert to him if there was any further action on the matter by Fine Gael. I then spoke with Buddy Kiernan, the Chairman of the Trustees who agreed that there was nothing further we could do if ESAT/Telenor refused to accept the return of the cheque."

You say, "I should mention at the conclusion, at the request of the Trustees I was asked to consult with the Party's solicitor with a view to obtaining the opinion of senior counsel on the issue as to whether or not these matters fell within the terms of the remit of the Moriarty Tribunal and thereby requiring disclosure at that stage to the Tribunal. I confirm, having

received advice to the effect that the Terms of Reference of the Moriarty Tribunal did not encompass the particular payment."

Now, you have provided the Tribunal with a significant amount of documentation, and the first section of that documentation contains material which I take it you have obtained from Fine Gael files, would I be right, relating to the fundraising event in New York?

A. Yes. But Fine Gael would have supplied that directly to you, or the Party solicitor.

Q. Do you have that documentation with you there?

A. I have copies of it here. If I don't have, I'll ask you for the relevant

Q. The first document I want to mention is a document dated 4th July, 1995. It's from David FT Austin of 99 Salthill Apartments, Monkstown, County Dublin, addressed to Michael Lowry, TD, Minister for Transport, Energy and Communications, Office of the Minister for Transport Energy and Communications, Dublin 2.

A. Yes.

Q. This document, it seems to have come into existence at the inception of the proposal or the plan to have a dinner, a fundraising dinner in New York later on in that year, 1995?

A. Yes.

Q. It's from David Austin's then home address in County Dublin - Salthill Apartments in Monkstown.

A. Yes.

Q. And I think he retained that apartment throughout all of the matters that have been the subject of the Tribunal's deliberations.

The letter says:

"Dear Michael.

I would like to propose that we meet to discuss the following in greater detail. Perhaps my secretary could contact your office to ascertain your availability for the afternoon of either the 20th or the 21st July.

However, I have set out below some brief details on my ideas for a fundraising event in the United States for the Fine Gael Party in November of this year.

1. A private dinner to be held on Thursday, 9th November, with the Taoiseach as the guest of honour.
2. A maximum of 30 US business executives to be invited.
3. Suggested cost per head - I am recommending \$7,500.
4. My choice of venue would be either a private club in New York or Park Plaza Hotel. This is to be confirmed later.
5. There should be a small committee formed chaired by Peter Sutherland and I would liaise directly with

Peter with the support of Maurice Buckley in the US.

We could then call upon certain people on an ad hoc basis who may be able to provide us with some help in order to achieve the 30 names.

6. I will personally look after the organisation and make the necessary arrangements for the dinner etc..

7. I am suggesting that the following people should be in attendance for the dinner in the USA: The Taoiseach Mr. John Bruton, Ministers Lowry, Barrett, Yeats, Kenny and Peter Sutherland.

8. The Party could for the duration of their stay at the Fitzpatrick Manhattan Hotel in New York and I would suggest that they could fly out on the morning of the dinner from Dublin. This is unless the Taoiseach has prior engagements or wishes to make alternative arrangements.

9. I feel there should be invitations of the highest quality and an accompanying letter issued to each guest, some of which may need to be signed by either the Taoiseach or Peter Sutherland or perhaps some of the ministers, as I feel that this would reinforce the support behind the event.

As you know, I have briefly discussed the idea of fundraising in the United States with the Taoiseach and yourself. I have since had further discussions with Peter Sutherland and we have decided to secure names



from both sides of the Atlantic that would be of interest to us here in Ireland and who would be interested in attending this very exclusive dinner.

At these initial stages of the organisation, I have approached Solomon, Smurfits, Pamarco and Pratt, all of whom have shown a definite interest in their involvement. I attach a draft A list for your perusal of those people whom I feel we should make contact with over the coming months with a view to extending an invitation. I will appreciate your comments on these.

I do not feel that it would be necessary to have a large committee on this side. With the support and commendation of the Taoiseach and yourself, I feel that the best course of action to follow would be to make contact with prospective guests on a one-to-one basis.

For instance, it would be people such as Dan Tully of Merrill Lynch, who have just set up their first operation from Dublin at the IFSC, who would be interested to make definite contact and to avail of the opportunity to discuss their future within Ireland under a Fine Gael government and I am sure that there are many others in a similar position.

I am dictating this from Spain as I am taking a few days break. However, should you have any queries on the above, please do not hesitate to contact me.

Again I am open to all suggestions and appreciate any

comments you might have. As you are aware, this will not be an easy task.

I look forward to discussing this in further detail with you soon or on the dates I have suggested above."

Now, with that letter is a very big mailing list of US corporations.

A. Yes.

Q. which I needn't go into. And then there is the next document is a list of supporters a list of people who actually indicated that they would attend the event and who either, by the time of so indicating, had paid their money or who had made a commitment to paying money. Now, I should say that all of these people engaged in this activity on a transparent and up-front basis, and I mention their names here because they're relevant to describing what exactly was going on and also because, while all of the people whose names are mentioned did or did not contribute, the one name which is singularly absent, as you are no doubt well aware from all of this, is the name Telenor/ESAT, Mr. O'Brien or Mr. Johansen or any of those names, isn't that right?

A. Yes, that's right.

Q. So it would appear both from the analysis produced by Mr. Austin sometime around the 15th November I think, of the people who had attended, of the amounts they had

paid, or committed to pay, that there was no reference whatsoever to ESAT Digifone, ESAT Telecom, Telenor, Mr. O'Brien, Mr. Johansen, or anyone else like that.

A. That's right.

Q. And I think that in addition, you will be aware that the sum of \$50,000 would have been two and a half times greater than the largest commitment made by any other attendee at that dinner, isn't that right?

A. Absolutely correct, yeah. It struck me, I remember, when Telenor came to meet us, there was this reference to they being asked to buy two tables at this event at \$25,000 per table. That immediately jarred with my memory of what the actual reality of the event was.

Q. It wasn't a question of tables; it was a question of a place at a table?

A. It was individual places and the price was, as you say, a multiple of what, in fact, was in place.

Q. I think in the evidence over the past day or two a reference to places at a table rather than tables at an event. That's perhaps more consistent with what actually happened in New York.

Now, the next set of documents provided by Fine Gael consists of a list of, I suppose, target individuals and target companies to be followed up with a view to securing commitments from them to attend the event.

A. Yes.

Q. With an analysis of with an analysis, if you like,

identifying the minister or other person associated with the party who was to follow-up the individual in question. Then a legend indicating what follow-up action had been taken, whether a result was to be expected and so on and so forth, isn't that right?

A. Yeah.

Q. And looking at this document, it would appear that Michael Lowry, apart from having been put into the picture in the original letter from Mr. Austin and apart from whatever other meetings they had concerning the matter, seems to have been given the job of targeting a number of people with a view to ascertaining whether they would attend the meeting, isn't that right?

A. Yeah. His name seems to be beside four or five names.

Q. Now, before I pass from those documents, I just want to come back to one thing that you have recounted as part of your conversation with Mr. Austin. You have noted, and we'll come back to it again in your actual file notes, that Mr. Austin stated to you that he was emphatic that he'd had no discussions with Michael Lowry on the matter as he had nothing whatsoever to do with this contribution.

A. Mm-hmm.

Q. Whether or not that is or is not the case, it's a matter ultimately for the Tribunal. It is clear that he seems to have had quite an involvement with the

event to which the contribution was supposed to be related. Would you agree with that?

A. He certainly seems to have, on the face of this, would seem to have an involvement. I have to explain: I personally was not involved to any great extent in the organisation of this event, so I don't have I can't give you a whole lot of first-hand knowledge about that.

Q. Now, have you studied the actual fundraising the financial analysis of the US fundraising event?

A. I have looked at it certainly, yeah.

Q. While it's my impression, and you can correct me if I am wrong, that it is impossible to be sure whether this sum of \$50,000, was or was not included in the financial analysis, if you look at the list of companies drawn up on the 15th November, 1995 as having attended, as having provided money or as having committed to provide money, there is no reference to ESAT or Telenor, isn't that right?

A. That's right.

Q. And if you look at the gross income of the event which perhaps you might put on the overhead projector, which was \$230,000.

A. Yes.

Q. The gross income is 230. That is, in fact, the I know it says income, but it is, in fact, the total I think of the amount promised or committed by the

various people who either attended or offered to support the event and the figure underneath that 'received to date', is a note of the number of people who had actually paid by that date.

A. That's right.

Q. Now, the analysis of the companies who had attended or committed support to the event is dated 15th November, 1995.

A. Mm-hmm.

Q. And the analysis of the fundraising is dated 30th January of 1996.

A. Yes.

Q. And I suppose by that time, as we know, the \$50,000 had been paid to David Austin, so one would have expected it to have swollen the total amount received?

A. Well, certainly if it had been included, it would have, yeah, but of course we had no knowledge of that.

Q. I fully understand that. I am simply offering you, as the then Fine Gael General Secretary, an opportunity to assist me, in that I don't know enough about what was happening in Fine Gael.

I now want to go on to your handwritten notes and your file notes. And what I'd like to do firstly is identify each note as your note, whether a handwritten note or a file note.

I think the first document I have here is a handwritten

note of a phone call on the 17th February of 1998.

A. Yes, that's mine.

Q. The next document is a handwritten note of a further call, I think from David Austin, on the 20th February, followed by a note of what seems to be a return call by you on the 23rd February. Is that right?

A. The other way around I would say. I would say I phoned David Austin, by the look of it, on the 20th and I left a message on his answer phone I may well have phoned him again on the 23rd, I am not sure, whatever.

Q. It's just that you have his telephone number down.

A. I probably did phone him.

Q. Obviously nothing much turns on who phoned who.

A. Yeah.

Q. Then the next document, which I must say I had assumed to be a continuation of your 23rd February, 1998 phone call, would seem, in fact, to be the second phone call that you mentioned you had with Mr. Austin on the 23rd February, is that right?

A. I am pretty sure he called me on that one, yeah.

Q. I see. The next file note is a file note of yours of the 13th February of 1998, is that right, dated 14th February of 1998, but signed on that day?

A. Yes.

Q. There is a file note of the 16th February of 1998.

A. Yes.

Q. And another one of the 23rd February of 1998.

A. Yes.

Q. I think I am right that those are the only file notes relevant to this?

A. Yes, I think so.

Q. made by you. Obviously the Party solicitor made his own notes and we may come to those at a later point.

A. Yes.

Q. Now, your first the first of those documents is the document headed 'MV  $\frac{1}{2}$ €33,000 payable to FC and endorsed on the back'.

A. Yes.

Q. Perhaps you could take me through the document and

A. MV is an official of Bank of Ireland who managed our account and I imagine that probably the previous is whatever, some days before that when I first became aware of this issue, one of the first things I would have done was contacted, once I had looked at the party records, was contacted the bank to get bank records of the particular payment so that this entry in the Cash Book could be cross-checked. And I take it, I presume he phoned me back and gave me that information on that day, that it was  $\frac{1}{2}$ €33,000, that the cheque had in fact been made payable to Frank Conroy and crossed and he subsequently would have supplied me with a copy of that.

Q. Now, we'll just come back to something you mentioned in



your statement, and this seems an appropriate time to clarify it. When you received your phone call from Mr. Austin, he told you he wished to make a personal contribution?

A. Yes.

Q. You didn't actually receive any cheque signed by David Austin, isn't that right?

A. I received no, the cheque

Q. I beg your pardon, you didn't receive any cheque made out to Fine Gael by David Austin?

A. I didn't receive a check made out to Fine Gael but I received a cheque made out on David Austin's personal account, Bank of Ireland, Baggot Street, made out to Frank Conroy and endorsed by him to Fine Gael.

Q. When you got the cheque at that time, did the fact that it was made out to Frank Conroy raise any eyebrows or?

A. It did. You know, I certainly it would not have been the norm. But I suppose, had the cheque or the payment not been preceded by a phone call from David Austin, it would have raised serious eyebrows. I would have been I would have gone back and checked, but you have to bear in mind that I had already got a phone call from David Austin to say I am sending you on a donation. I'll arrange to get it to you and then Frank Conroy either, I can't remember if he personally delivered it or sent it into me, but he said, "This is a donation from David Austin." So the circle was

squared, so to speak. While one eyebrow was raised, the other was lowered, I suppose.

Q. And when you got it from Mr. Conroy, whether he hand delivered it to you or left it for you, he provided you with no further enlightenment as to how it came to him or why it came to him?

A. No. He just said he was passing it on from David and I would have known that they were, apart from their mutual involvement in Fine Gael, they were friendly, so you know, it wouldn't have at all surprised me.

Q. Your next note then is 'phone call, David Austin, 17/2/98, JM outlined position to DA.'?

A. Yes, I suppose I would have outlined the position as outlined by Telenor, Telenor representatives to us. I would have given him a summary of that. And asked for clarification from him on certain points. Then

Q. Can I ask you before you pass on to that. How did you contact David Austin?

A. I telephoned him in he was in the south of France.

Q. How did you get his number is what I mean?

A. Well, we would have had I mean, from his previous involvement, I would have had his numbers. I am not sure I had, at that time, his number in the south of France, but I may have contacted his former secretary in Smurfits to get it. It wouldn't have been difficult for me to get it, but I may well have had it, in fact, because he seemed to spend quite a bit of time

there.

Q. Okay. So you outlined the position to him based on the information that had been relayed to you?

A. Correct.

Q. Then you say: 'DA sent note to say money had been passed on.'?

A. He must have I suppose I am interpreting my own notes here, but I would say that David Austin told me that he had sent a note to say to Telenor to say that the money had been passed on. I think the tone of his, of the conversation from his side was sort of, you know, almost, what's the fuss about? Why did Telenor approach you about this? I have already sort of sorted all that out. You know, don't bother with it now.

My attitude was quite different obviously. But it was in that context that he said, "Look, I have already sent a note to Telenor to say that we passed on that money to you".

Q. Then you have in quotation marks, "I am clear that Telenor gave money to me. Only thing that would look strange was delay in passing it on to FG."

A. I presume that would have arisen I may have said to him, you know, why did you delay passing this money on? I mean, it looks from what we heard that you got this money quite a long time before that. I mean, why this time-lag in passing it on? And I have written down

that quotation from him where he talked about that

obviously and he was, I suppose

Q. Did he explain the strange delay in passing it on?

A. No, he didn't, no. It's probably, just looking at the

notes again and even at the time, he didn't I don't

think he ever adequately or fully explained that to me.

Q. The next section of your notes is again in quotation

marks: "I can't remember whether AN invoice was

issued. No recollection of matter of invoice."

A. Yeah, again I would have I mean this whole business

that we had been informed about by Telenor that not

only was this payment made, but that, in fact, an

invoice had been raised for consultancy services to

match the donation, so to speak. That obviously was

something that would have concerned me greatly in any

situation. So I raised that with him and that was his

response. I think my interpretation of it was he

seemed to sidestep that issue. He simply didn't want

to address it.

Q. What about the other issue of his ultimately passing

this contribution on to you without identifying the

true identity of the donor? Was that issue discussed?

A. Well, again, you know, as I said at the outset, I think

my discussion with him may not have been as forensic as

I would have liked it to be. You know, sitting here, I

think that probably I would have persisted with some of

the questions, but, you know, at the time I was

attempting to get information without, I suppose, breaking the relationship. So yes, there may well have been issues there that should have been or could have been pursued a little bit harder. And that's why, ultimately, there was a second telephone conversation; that I wasn't happy with, you know, the sort of level of information I had arising. I mean, I remember he probably talked quite a lot but, you know, in terms of the actual hard information that I was getting there, it was relatively limited.

Q. You say 'DA agreed to make informal inquiry with Telenor and agreed to revert to Jim Miley by Thursday, 19/2.'?

A. Yes.

Q. You go onto the next page. Clearly, I suppose I am right in assuming that clearly he hadn't come back to you by the 19th and you phoned him on the 20th?

A. And I left a message for him, yeah.

Q. And then one way or another he phoned you or you phoned him on the 23rd.

A. I may well have phoned him, yeah.

Q. And your note is that, "Annoyed that Telenor did not approach FG directly."

A. Yeah. I remember his well, I suppose, his focus, as I recall it, of that conversation seemed to be on, you know, on the fact that Telenor had contacted us. My focus was entirely different. I was focused on the

original details of how the donation had been made, the time delay, those other factors that we have talked about. So you know, he was going on about why, you know, why did Telenor approach you with a PR consultant and a solicitor? Why didn't they go to you directly if they wanted to talk to you? All of those sorts of things.

Q. Can I just clarify this: at this point, through the leader of the Party, John Bruton, you had clarified that the Party did not want this money. It was going back.

A. Absolutely.

Q. So what you were now doing was trying to get as much information as possible about what had happened so that you could ultimately advise the Party in relation to the implications and so on.

A. Well, not just that, but there was a very serious issue for us as to we didn't want the money. I mean I remember the Party leader on the day I spoke to him saying, "Jim, give it back today." But there was I remember discussing it with our solicitor, there was an issue as to well who do we give it back to? We were relying on what, at that stage, I mean, we have now a huge array of information in front of us. At that stage we had still limited information and we needed to establish you know, did we give it back to David Austin and let him figure out where it goes from there? Did

we give it back to Telenor? Or do we give it back to ESAT? And certainly that was one of the purposes of this conversation as well as obviously finding out the facts of what had happened.

Q. I appreciate that. So you had two purposes. But Mr. Austin was, it seems, insisting to you, that as far as he was concerned, all that mattered was he had got the money from Telenor. He gave it to Fine Gael and why didn't people approach Fine Gael directly to find out whether that was or was not so? Would that be right?

A. Correct. He seemed to be suggesting, you know, in that note later, he suggests a name that I would make contact directly with an executive of Telenor and he was volunteering that information. So you know, that seemed to be the thread of

Q. You go on to say. Your note then goes on, "Had meeting (Telenor) last Thursday. They want us to give letter. Feeling from their side."

A. Yes, these would have been his words I take it. That he gave me the understanding that he had been speaking to somebody in Telenor, and that they had this meeting the previous Thursday and he was reiterating, I mean we knew this already from their representative. They were looking for Fine Gael to furnish them with a letter to confirm that we had actually received the donation, which was the basis of their approach to us

in the first place.

Q. So that even though they had shown you a letter that they received from Mr. Austin much earlier, they had had another meeting with Mr. Austin and their attitude was they wanted a letter from Fine Gael and he was complaining about this again.

A. Sorry, I don't take to understand that Mr. Austin had a meeting with Telenor. I mean, it's had meeting brackets Telenor. It's probably Telenor had the meeting. I would interpret that, based on my own notes, as an internal Telenor meeting had taken place the previous Thursday. So I don't think that Mr. Austin would have been present at that meeting.

Q. But you think it was Mr. Austin was speaking?

A. Oh absolutely, absolutely, yes.

Q. So Mr. Austin is telling you that Telenor had a meeting and that they decided or concluded at that meeting that what they wanted was a letter from Fine Gael, not merely a confirmation from Mr. Austin?

A. Yes.

Q. And the next note is: "Handing back would look as if it were underhand or" something crossed out and then "dirty." Now, at this stage, Mr. Austin knew that from the Fine Gael point of view, Fine Gael wanted this money handed back. Did he know that from you or did he know it from Telenor?

A. Well, he certainly knew it from me from our first



telephone conversation, I would have made it very clear to him. I probably would have asked his advice on who he should give it back to you.

Q. Your next note is, "David Austin spoke to FC."

A. I presume it's Frank Conroy.

Q. Again he told you he had spoken to him.

A. He told me he had spoken to him. I presume he was just saying that I don't remember the full context of that, but obviously as the payment had come through Frank Conroy, it may have been mentioned along the way.

Q. Do you remember was he saying he had spoken to Frank Conroy at sometime proximate to the conversation you were having with him or at a much earlier time?

A. Right now I couldn't say, I don't know. I don't know. I would guess that that's the situation, but I wouldn't know.

Q. Then you say you mean that you guess it was sometime proximate to your own conversation?

A. I would guess that, yes.

Q. Then "JB never inquired that money was paid in." What does that mean?

A. I would say, based on the next comment or note in my notebook, was, you know I would have, and this was probably one of the issues I hadn't discussed with him or got into in the first telephone conversation with him, was the fact which the Party Leader had made me aware of, that Mr. Austin had had this telephone

conversation in February of 1996 and that the Party Leader had indicated to him at that stage, that if this kind of donation were available, that it wouldn't be welcome by the Party. So I would have raised that issue with him and, you know, the fact that the donation ultimately had been paid into the Party in this indirect way.

Q. And you wanted to know whether John Bruton ever got back on to David Austin to inquire whether the money

A. Yes, yeah, I wanted to know had he been authorised by John Bruton to receive this money, because obviously the Party Leader had been very clear and I wanted to just get David Austin's account of that or as to I may have said it to him, you know, "who did authorise you to accept this on behalf of the Party?" So, in terms of those two notes, the first one is "JB never inquired that money was paid in." I think that would have been a sort of, I interpret that as a response, an off the cuff response he gave me to one of my questions. Then he went on to say, "JB genuinely didn't know that the payment had been made".

Q. So he was anxious to emphasise to you that John Bruton didn't know the payment had been made?

A. Well, he was very emphatic in that, yes. There was no issue in relation to it.

Q. When you were canvassing the notion of what authority he had to receive the payment, isn't it of course the

case that he had authority initially from, I suppose, Mr. Lowry, to receive payments on behalf of the Party, because it was to Mr. Lowry that he vouchsafed his original plan to promote this fundraising event, isn't that right?

A. Well, you could say that in a general way, but I think, you know, in these situations, you don't in case somebody helps out with organising an event, but they are not allowed free reign to invite everyone and anyone. The Party would always have maintained an element of control ultimately as to who they wanted at such an event.

Q. I understand that.

A. So in general terms, your point is a correct one.

Q. I just mean by whom would that control that you mention have been exercised in this case, if not by Michael Lowry?

A. Well, ultimately the account of who paid what and all of that was furnished to me by David Austin and you know, in the context of US fundraising, not just to me, but to the US Department of Justice. You may be aware that in order to raise money in the States, you must register - Fine Gael registered at that time as Friends of Fine Gael and you must submit a return every six months which details in very, sets out in very great detail the nature of any activities in the previous six month period and in relation to any fundraising, who

attended and how much they paid and what costs were associated with it and so on. Now, those returns would have been made for that period in the US and would have been they must be signed by the person, the key organiser of a particular event and David Austin would have signed off on those. But

Q. If we could just go back then for a minute if we could just go back to the analysis of the event then for a moment.

A. Yes.

Q. So would it be a legal requirement then to say who had attended? What they agreed to pay and so on?

A. Not what they agreed to pay; what they paid. This is a reporting after the event.

Q. I understand. So if you look at the document on the monitor; that contains a list of the various people who have made commitments and it's not clear from this that the amounts committed had been received from them and I'd hasten to add, this is the 15th November 1995; many of them may have put up their money after that date. That information, whether or not in that form, would go to the relevant authorities?

A. That information would. Now, I just note on that, you know, some of those did not attend the event and therefore the money may not have been paid in the United States and therefore, you know, some of the individual payments would not be eligible to be

reported in the United States. But you know, I don't know I don't have the records as to what precisely was given to the Department of Justice but at the time

Q. So if you didn't pay the money in the United States, you wouldn't have to record having received it, would that be right?

A. If someone attended an event in New York and paid the money I mean, if somebody were to commit to make a donation to Fine Gael but didn't go to the event and didn't make the payment in the six month period which is being reported on, well then it couldn't be recorded because it hadn't been received. You could only record money that had been received for the relevant period.

Q. If you received the money and didn't receive it in the United States, would it be liable to be recorded?

A. If the person had attended at the event, that in itself I am not familiar, I haven't kept myself familiar with the details, there are very detailed rules in this, but there was an attorney acting on behalf of Fine Gael in Boston I think, who looked after these matters and he would have ensured that the full requirements were met in terms of reporting, whatever that may have been.

Q. If you go back to your memorandum then of the 23rd February, of 1998. On the top right-hand corner you

say, "Telenor had due diligence, DA gave letter to say he had received money and paid it into party."

A. I think he was explaining there the origin of the Telenor concerns that they were going through and I hadn't known this I suppose, so he was going through that Telenor had a due diligence process as part of this IPO or perhaps ESAT or but that Telenor were involved in this due diligence process, and that it was they had asked him to supply this letter to say he had paid it into the Party and he had done that and then he goes on to say, he suggests that idea with a Mr. Fortune. Now, I didn't pursue that. I simply left it lie.

Q. Then you say, "Original cheque was paid by Telenor to David Austin." That's a repetition of something he had said to you in the earlier telephone call?

A. Yeah, I think I probably wanted to be satisfied who did Telenor pay. Did they make a payment you know, to the with the Party's name on it whatever? But he confirmed that the payment had been made to him.

Q. Then you say this again is a repetition of something you have already said: "David Austin believes that more problems will be created by handing it back." And he has already mentioned that it could look underhand if it were handed back.

A. Yeah.

Q. Then you have underneath that what looks to me like an

analysis. Perhaps you could confirm, did you discuss these issues with David Austin or are they your own notes of what you felt needed to be canvassed in relation to the facts as disclosed to you by Telenor and David Austin?

A. I mean, they were obviously prompts for me obviously either in sitting down afterwards and saying, now, what do I know at this stage and what else remains a mystery? And I was jotting down some key questions or I do have a habit, in making notes, in not necessarily following from top left to bottom right on the page.

The page could be filled at various times. I may have made those notes even before the conversation. But they certainly were, I suppose from my point of view, key questions that I felt needed to be addressed.

Q. "Why not made payable to Fine Gael?" It's a fairly obvious question. "Why held for so long?" "Why paid via offshore account?" "Why paid via FC" meaning Frank Conroy, "when finally processed?"

A. I think if you look at the notes of the conversation, a lot of those points are addressed, not very directly in some cases, but they are reflected in some way in the conversation.

Q. Then there must have been another phone call, as you have already indicated on that day, which resulted in the next note.

A. Yeah, I think I recall that the conversation was

relatively lengthy and I do recall that this

Mr. Fortune that he mentioned, he was looking around for a phone number or something for him and I was sort of saying, well look, don't worry about it. And I think later that day he phoned me back, I take it primarily, to give me the name, you see on that page, of Arve Johansen, the managing director or CEO of Telenor and his accounting details and telephone and fax number. And in the course of the conversation as was the issue, "JM raised the issue of the account," so again, I wanted to know, you know, I had this thing of that when I knew when we received this personal donation, this dollar account had lodged in my memory from that, so I was saying, well whose account was this? Was this, you know, your account? Was it an account specially set up for the purpose? What was it? So he said, "This is my bank account, my own personal bank account for my own private dealings." And he went on to say, "I had no discussions with ML" that means Michael Lowry. "He had nothing whatsoever to do with this." He reiterated that. As I recall it, he volunteered that information to me, and was, you know, seemed to be very intent on telling me that.

Q. So when he rang you back, you raised the issue of the account and he said, "My own personal bank account for my own private dealings" and you think it was he introduced the other two items or at least laid some



emphasis on them by bringing them up. "I had no discussions with Michael Lowry. He had nothing whatsoever to do with this. He made it absolutely clear that Michael Lowry not involved."

A. Yeah, I would have a habit in important conversations or telephone discussions like this, to note, you know, key points and I mean, there is a lot of general conversation goes on in between the key points, but you know, I seem to recall that he emphasised this very strongly a number of times, so I felt it relevant to write it down.

Q. And it was he volunteered it in the afternoon you think?

A. I certainly didn't I wouldn't have I don't recall raising it with him, no.

Q. In the course of your discussions with Mr. Austin, was the background of the New York fundraising event mentioned? You remember that you outlined the position to him. Did you outline what you had been told by Mr. Drury?

A. I did, yeah, because

Q. And the Telenor solicitor?

A. This business of \$25,000 a table and being asked for that, because that jarred very much with the reality of what had happened and I remember he sort of brushed it aside and said, well, you know, this approach may have been made in the context of the New York dinner, or

something of that nature. I don't that seemed to be what he said. So, it wasn't, you know, I was certainly confused as to, you know, when Telenor came with that information, and as it now transpired I think at these proceedings, there is an issue as to when contact was made as to whether, in fact, it was before or after the dinner.

Q. You have one advantage, Mr. Miley, over everyone here, in that unfortunately this matter didn't come to the attention of the Tribunal until regrettably, after the late Mr. Austin's death.

A. Yes.

Q. And you did speak to him in 1998.

A. Yes.

Q. Now, if you were if you can recall the portions of your conversation that touched on the New York dinner, can you perhaps amplify a little what you discussed about it? You say that he said that it may have had something to do with the New York dinner. Do you recall any further detail or any more detail than that?

A. I don't. Just in a general way, I would have raised the fact, you know I would have said I mean, I obviously can't paraphrase it, I have no record of it but, you know, I would have asked, it seemed strange that you would have been told that Telenor/ESAT were asked to buy two tables at \$25,000 a table. You know, where did that come from? It doesn't seem to fit in.

So I would have certainly pursued it in that context and you know, my recollection is he would have said, "Well look, it was in the context of the New York dinner that this contact was made."

Q. I just want to come back once again to the note that David Austin provided.

A. Which note is this?

Q. I'll get it now. (Document handed to witness.) I'll maybe just read it first.

I have read it a few times, so I can read it out to you if you want.

A. I can read it, yeah.

Q. Now, do you recall whether that document was given to you or shown to you in the course of your discussions with Telenor in which, as I recall, the problem was that that was all they had by way of confirmation and they wanted more confirmation directly from Fine Gael; wouldn't that be right?

A. They referred to a note which I presume was this. They didn't show it I mean, this is the first time I have seen it in a way that I could read it, but they would have had it on a file that day and they were referring to it in the file, or a copy of it.

Q. I see. If you look at the note, you will see that it very clearly refers to a dinner in December, and not in November, but in any case, at the 21 Club in New York for the purpose of raising funds for the Fine Gael

Party. Now, that note certainly suggests that the contribution was explicitly for that dinner. Do you recall leaving your meeting with the Telenor representatives with the firm impression that the money was to do with the New York dinner?

A. Oh absolutely. They made it that was the

Q. And Mr. Austin wasn't in any way trying to deflect you from that impression?

A. Well, he was he seemed to say that it was in the context of the dinner. I mean, he was I was interested in the detail of how come you were talking about \$25,000 tables? And he was going with a broad brush stroke and saying that it was in the context of the dinner. But I mean, from a Fine Gael point of view, as someone I certainly, in my capacity as General Secretary, would not have authorised Mr. Austin to make that approach at that time. You will see from the records available to you from the invitation lists and so on, that Telenor, ESAT or any of those related companies were not on it. So you know, I can't go beyond that I guess.

Q. At the time that you were having that discussion with Mr. Austin, and at the time presumably when you had certain misgivings about what was actually happening concerning this New York connection, did you have access to or do you remember looking at the file concerning the New York event and making the kind of

observations I was making earlier?

A. Oh yes, absolutely, I did, yes.

Q. But do you recall seeing, at that time, Mr. Lowry's involvement with the New York event?

A. I would have been aware of that. I mean, that letter was on I held that file or they were held in my office, so I would have been aware of that letter prior to the event being held.

Q. It's just that that letter would suggest a connection with Mr. Lowry, at least on the face of it, which would, to some extent, be inconsistent with something Mr. Austin was saying to you, isn't that right?

A. I suppose that's a conclusion which you would have to draw.

Q. But wouldn't you agree that Mr. Lowry did have a connection with the event?

A. Mr. Lowry certainly had a connection just in terms of my

Q. The internal Fine Gael records?

A. In terms of my own personal and direct knowledge, I took up the position of General Secretary of Fine Gael on the 1st July. That letter was written on the 4th July. The notion of having an event in New York that year seems to have been in place at the time I took up my position.

Q. I think you misunderstand me, Mr. Miley. I am not suggesting that you'd have remembered that letter from

July of 1995. What I am asking is when you were having your discussion with Mr. Austin in 1998 and when you were querying or canvassing in some way the New York connection, did you have that letter in mind or had you had access to the file or examined the file at that point?

A. I had access to the file. I probably

Q. Well, had you examined this document? I wouldn't criticise you if you hadn't. I am just saying was it in your mind?

A. I would have checked the attendance list and I would have checked the invitation list. Now, I don't particularly remember seeing the letter from Mr. Lowry at that time, but I may well have done.

Q. Further evidence has been given to this Tribunal by Mr. Arve Johansen that he had a conversation with Mr. Austin, of which he also took a note, on the 11th December of 1995. You will see it on the monitor in front of you. And if you look at the second or the bottom half of that document, it contains some notes of a telephone call on the 11/12/95 from Budapest. Do you see the words "Budapest"?

A. Yes.

Q. Underneath that you have "7.25" - which apparently is the local time in Budapest - "16.25" the Dublin time.

Mr. Austin's name - "Mr. David FT Austin" which, Mr. Johansen says was Mr. Austin's full name and

something to do with the nature of the invoice or the characterisation of the payment that was to be made. Underneath that then you have Mr. John Bruton's name; then Mr. Denis O'Brien's name; Mr. Michael Lowry's name; and then two words in Norwegian which apparently mean sending an invoice. But the Tribunal has been told that the reference to Mr. Bruton and Mr. Lowry's names was a reference to the fact that they would be informed, as it were, of the nature of and of the contribution, because otherwise it would just appear as a consultancy fee for David Austin.

Now, if those documents had been in front of you at the time you had your discussions with Mr. Austin, and I don't just mean during the course of your conversations with him, but around that entire time, could I suggest that they would have been further facts that should have gone into the melting pot in deciding whether there was a Michael Lowry connection and therefore, a potential need for a reference to the Tribunal?

A. Yes.

Q. And this document, this particular document, do you recall that document ever being drawn to your attention?

A. Oh absolutely not. The first time I heard of it was in media reports

Q. In the last few days?

A. In this Tribunal, yeah.

CHAIRMAN: Well, it seems fairly clear, Mr. Healy. I had hoped you'd be able to finish today. There are two or three other memos. I don't think they'll be as long as this one because we have covered them in some earlier documentation. It will take some more time.

Mr. Miley it's not causing you excessive trouble if I ask you to come back in the morning. What time in the morning? Eleven. Very good.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,  
WEDNESDAY, 13TH JUNE 2001 AT 11AM.