

THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY, 29TH JUNE

2001 AT 11AM.

CONTINUATION OF EXAMINATION OF DENIS O'BRIEN BY

MR. COUGHLAN:

Q. MR. COUGHLAN: If I could just go again to Messrs.

Kilroy's note of the meeting of the 4th November. I

think if we work yes, that document. If we just

work from that document, there is just a few matters

I'd like to ask you about.

On page 11 of the document, do you see that? There

are a number of lines blacked out on it. You can

see what I really wanted to do you see number 1,

do you see that, down at the bottom?

A. Yes, Mr. O'Connell.

Q. That reads "Owen O'Connell had spoken to Denis O'Brien

and had quizzed him for almost a full day." Is that

correct?

A. I think that is reference to the 1st November.

Q. Yes, when Mr. O'Connell went to the United States?

A. In Boston, yes.

Q. Would that be correct that he quizzed you for almost a

full day?

A. Yes, most the day, yes.

Q. And what was the purpose of the quizzing?

A. My recollection is that he was asked by the board to do

a report to them and to interview me on the basis of the information that had been made available at that time.

Q. And what documents were you sorry, first of all, were you working off any documents at that time?

A. Well,

Q. I think you probably had Mr. Armstrong's letter from McCann Fitzgerald?

A. I probably had at that stage.

Q. And that probably incorporated the questions

A. Yes, the six questions, it would have, if it was the letter dated the 29th, yes.

Q. And it either incorporated the concerns of Mr. Moloney or else you may have also received Mr. Moloney's concerns on another sheet of paper. There is no big issue turning on it.

A. I am not quite sure on that.

Q. Very good. And were there any other documents? I think Mr. O'Connell would have had the notes we have seen which he prepared on the plane on the way over, isn't that right?

A. I don't actually remember having them and going through all these notes, but certainly he was structured in his questioning of me.

Q. And the purpose of that was to enable him to inform the board of ESAT Telecom, would that be right?

A. Yes, it was going to be important that he would look at

everything and then go back to the board because I had stepped out of the board and all of their meetings.

Q. And I take it that he was, as one would expect, being careful in his questioning of you and noting your replies, would that be fair to say?

A. I know from his evidence that he was writing some replies down. Whether he had captured all the replies, I don't know.

Q. Now, I think that was in a hotel room or hotel suite in Boston, isn't that correct?

A. We rented a room or we had a room available to us, like a suite, and

Q. and was there anyone else present?

A. Aidan Phelan was with me but he only came in and out at various times. He wasn't involved in the discussion.

Q. Now, if you go to then page 20, I think it's page 20 of this note prepared by Messrs. Kilroy's.

A. I think there is an error on the date here. It's 1995 in 1996 instead of 1995. I don't know

Q. Yes?

A. You probably saw that.

Q. At the beginning of the page they are dealing with or if you go to the previous page, it just records "Denis O'Brien replied as follows" do you understand that?

A. Yes, I see.

Q. It continues a note which is attributed to something you said. "I have all this money, I am a very

generous person when people are in difficulty. I thought that $\frac{1}{2}$ 100,000 would be transferred from Woodchester. All my deposits are in Woodchester. I had earmarked the money in my mind."

Now, I just want to clarify this. Can I take it that as far as the members of the board were concerned, the only reference you ever made to a bank on this occasion, that's the 4th November, was to Woodchester?

A. I believe that is the case, yes.

Q. Now, I think your own note of the meeting of the 23rd October

A. mentions AIB.

Q. mentions AIB, isn't that correct?

A. Yeah.

Q. Now, if you go on a number of pages and this is coming to the question of the political donation or the political contribution?

A. Which page?

Q. 24, I think.

A. Okay.

Q. It begins on the previous page, "Kevin O'Brien then pursued the following additional questions to which Denis O'Brien replied as follows." Do you see that on the previous page? It begins on the previous page?

A. On page

Q. 21 sorry 24.

A. Yeah, "AL" that Tony Lang?

Q. Yes, you see "Kilroy's" at the top of the page. If you go to the bottom of the page. "KOB" that's Mr. O'Brien of Kilroy's "then pursued the following additional questions to which DOB replied as follows.

1. There was a dinner in New York which John Bruton was to attend.

2. About 10 to fifteen people went.

3. I thought about going but I did not.

4. I spoke to Arve Johansen and asked him whether he would be prepared to make a contribution paying per plate.

5. Arve Johansen had asked me how I would go about making the payment.

6. I do not remember a reference to ESAT Digifone reimbursing the payment. Kevin O'Brien asked whether the payment was made by Telenor by himself, Denis O'Brien or Digifone. Denis O'Brien acknowledged that he wanted the payment to be made "outside the country". Is that correct?

A. It depends on what the context was, because I could have said that but I actually don't precisely remember saying that.

Q. "Denis O'Brien replied "I am not sure who ended up paying for it. They, Telenor, paid David Austin. I did not know whether Telenor making payment to David Austin were saying that they were paying on their own behalf or on someone else's behalf. It was Peter

O'Donoghue who dealt with the pre trading expenses.

It was he who would have dealt with the issue as to ESAT Digifone paying back the money to Telenor.""

Do you remember saying that or words to that effect at the time?

A. "I am not sure who ended up paying for it." Do you see, if you look where I was at the time? He was outside the country so I had no access to notes or files or anything.

Q. I understand that.

A. So I was I could not be specific at the time because I didn't really look he asked me this question and I said "I am not sure who ended up paying for it." And it's when the Tribunal came along that when I looked back, I saw that the company had ended up paying for it and then I remembered what actually took place.

Q. Because if we go onto the next page then, I'll just draw to your attention a couple of references to remarks which are attributed to you. Go to the next page and we go to the second paragraph.

"I spoke to Arve. I asked whether he would be prepared to make a contribution paying per plate. He asked me how he would make payment. It was agreed that ESAT Digifone was to reimburse for this payment".

Do you see that reference there?

A. I think, Mr. Coughlan, that would have been a

reflection of what had actually happened.

Q. I am just asking you at the time you spoke to Arve, you were linking here that it was agreed that ESAT Digifone was to reimburse for payment.

A. I think that was with the benefit of hindsight more than anything else, by reflecting on what had actually happened, what I believe to have happened.

Q. But do you accept that that was the actual position, that ESAT had agreed to reimburse at the time you spoke to Arve?

A. No. Oh, no, no. I think it would have been quite clear, I hope in my evidence, about that.

Q. I just want to finish this page then. If you go to the bottom of the page "Kevin O'Brien questioned Denis O'Brien and put to him that Telenor was paying David Austin on your behalf" and you replied "I am not sure."

A. "I am not sure".

Q. And you accept that you said that at the time?

A. I don't actually remember exactly what I said but I could have said that.

Q. And then if you go to the next page, which is page 27 you see the second paragraph, it's just a line.

"Denis O'Brien said it was a reasonable assumption that ESAT Digifone paid back Telenor."

A. I was kind of grappling with my memory of what happened around the Shareholders' Agreement and I didn't put in

an awful lot of preparation at all for the I was acting, really, on instinct at the time of this interview.

Q. Well, on the day that you had been quizzed by Mr. O'Connell, had he discussed this issue of the political contribution with you?

A. We may have but it wasn't, you know, it wasn't a big issue at the time in my mind.

Q. In your mind.

A. But I didn't in other words, between my conversation with Mr. O'Connell and this Tuesday call very early in the morning, I wouldn't have sought any information to find out what happened.

Q. I'll come to a note of Mr. O'Connell's in a moment. I just want to just check that that I think that more or less ended your involvement in this aspect of the meeting of the 4th November because the page continues, then, they were shouting at you to go?

A. They were knocking the door down to get me out of my room to go to the presentation. You see, the call, you know, having gone through, the call was about an hour late and that's why I think we ran out of time.

The call was supposed to be an hour earlier. And from what I have seen here, is that there was a big discussion before I arrived on the call and they were delayed with that.

Q. Now, if I could just ask you about Peter O'Donoghue's

involvement because there is a reference by you in the first instance that it would have been Peter O'Donoghue would have handled the question of reimbursements. I think Mr. Walsh had asked whether any documents surrounding the reimbursement to Telenor by ESAT Digifone

A. just where is that?

Q. and I think you referred to the fact I think that's on page 27. That final page we were dealing with, if we continue, we start off "Denis O'Brien said it was a reasonable assumption that ESAT Digifone paid back Telenor. In response to Kevin O'Brien, Denis O'Brien said "I asked Arve whether he would be prepared to make a contribution to Fine Gael". Michael Walsh questioned Denis O'Brien in relation to the position concerning the payment by ESAT Digifone. Michael Walsh asked whether the documents showed that there had been a repayment by ESAT Digifone. Denis O'Brien replied "I would not have been in the loop on that."

A. Well, I think what I was really saying was that I couldn't remember any documentation.

Q. Sorry, if you go to the beginning "The meeting then discussed the situation. It was pointed out that Peter O'Donoghue was the person who had been dealing with pre-trading expenses. The money back would have been dealt by him." Do you see that? What was your understanding of Mr. O'Donoghue's involvement?

A. He took over as Chief Financial officer on the 15th December. I think I mentioned incorrectly the other day 15th January. So that was the 15th December, 1995. He would have been responsible for the full accounting function within ESAT Digifone

Q. Sorry, if we just deal with I think he was first of all Chief Financial Officer of Communicorp?

A. Then he was seconded.

Q. To ESAT Digifone?

A. Then he took a full-time position.

Q. Then he went full-time with ESAT Digifone?

A. Yeah. So he would have been in charge of the financial side of ESAT Digifone. So somebody in his team, I mean he just wasn't on his own. He would have had a department and they would have been working on the accounts of the business. So the Telenor invoice and everything, that would have been handled by them and, as I have said in my evidence, I don't know anything about the invoices, so when it came to the Shareholders' Agreement, people had spent money on behalf of ESAT Digifone or picked up paid bills or incurred costs and everybody would have arrived in and said, 'well, I spent two million, I have spent two and a half million' and there would have been a balancing act. So he would have been responsible to make sure that the balancing of all these chits, if you like to call them, was properly handled.

Q. Now, I know you had left the meeting but if you go to page 31.

A. Mmm.

Q. You know that the reference made by Knut Digerud "At this point Knut Digerud interrupted." I think it's about the fourth paragraph. "At this point Knut Digerud interrupted. He pointed out that the arrangements for repayment are processed by Peter O'Donoghue and Peter O'Donoghue was involved by Denis O'Brien "In that loop."

A. Well, it looks as if, Mr. Coughlan, that I was directing Peter O'Donoghue. Now, he wasn't reporting to me. There was a Chief Executive called Jan Edward Thygesen first of all, then Mr. Digerud, then Mr. Moloney and Mr. Digerud shared the CEO's office. So I think this was implying that's why I answered it in the negative yesterday that I was directing Peter O'Donoghue, which was not the case.

Q. That's why I was just trying to understand, if you could expand really on the relationship you would have had with Peter O'Donoghue at the time, first of all, when the invoices would have been received by Digifone which would have been in December and January, December '95/January 1996, you know, that first series of invoices we looked at.

A. Yes.

Q. Mr. O'Donoghue would have been the Chief Financial

Controller for ESAT Digifone at that time, would he?

A. Yes, he headed up the finance function from, I think, the 15th December.

Q. And he was Chief Financial Controller at the time that the reconciliation or the settlement took place on the account, part of the Shareholders' Agreement, in May of 1996?

A. I think it was May, Mr. Coughlan.

Q. Around that time. But he was the Chief Financial Controller all of the time?

A. Yes, he would have been the Head of Finance.

Q. And did you have any involvement with him in that capacity in ESAT Digifone?

A. No. Because the reporting structure would have been that there was I mean there was an independent management structure within ESAT Digifone. I know this is contrary to other evidence but this is I am trying to be factual here. ESAT Digifone had their own Chief Executive, they had their own management team, their own offices. They had for a short period of time offices in our building but they moved very quickly to the new building. So Peter Donoghue moved from Communicorp over to ESAT Digifone, became Chief Financial Officer and he reported directly to the Chief Executive

Q. Of Digifone.

A. Then I was non-executive Chairman, then there was the

board. So on a day to day basis, I had nothing to do with his work. He didn't report to me. He reported to the Telenor nominee as per the Shareholders' Agreement and that was the reporting structure.

Q. Right. So that

A. I think that conflicts with day 116, which is the 1st June, line 106, because it said here that "Mr. O'Brien ... and ESAT employees dealt with administration and marketing contact"

Q. Whose evidence is that you are reading?

A. This is Mr. Johansen's. So just to make the point.

Q. because I just want to try and get this clear. We have to understand this; that the invoices which would have been received from Telenor, first of all, the invoice making reference to Mr. Austin, then the second invoice which was in dollars, I think, and then the third invoice which was the invoice which was accepted, the invoice per consultancy on behalf of Telenor; they would have been received into ESAT Digifone where at the time Mr. O'Donoghue was the Chief Financial Officer?

A. Yes. It would be my belief, and I could be wrong, that because it was a shareholders invoice and there was certain things in the Shareholders' Agreement where related party transactions, how they would have been dealt with, it probably would have ended up in the Chief Executive's offices, the invoices.

Q. This probably predated the Shareholders' Agreement. I am just trying to understand. When these invoices came in I am just trying to understand how the office worked at the time, do you understand?

A. Yeah. To help you there, normally in business, if you have a shareholder and they are billing the company of which they are a shareholders and there is other shareholders, that's known as a related party transaction. People would be always very careful in handling that situation so there would be no conflict of interest. It would have probably been the case that the invoices would have gone to Mr. Jan Edward Thygesen or Mr. Knut Digerud and then found their way to Mr. O'Donoghue, but I could be wrong about that.

Q. Whether they came to the Chief Executive first and he passed them onto the financial the Chief Financial Officer or his department?

A. yeah, his department, yeah.

Q. or if they arrived in to the Chief Financial Controller's department in the first instance, it's your understanding that he would have then been reporting on that to the Chief Executive, whichever

A. Him or somebody else. I couldn't be precise that it was Peter O'Donoghue.

Q. Yes, but whether they came from the Chief Executive to the Finance Department or it came in to the Finance Department, because this involved a shareholders

invoice, that would have to be reported by that department to the Chief Executive at some stage; that's your understanding?

A. I think it would have been a sensitive enough issue that it would have ended up

Q. I think we gave you a handwritten page in the first instance. I'll just find it for you in a moment?

A. Is this part of this one here? These notes?

Q. No, no. It's a December, 1995 document. I'll just find

A. the sticky, is it?

Q. No. It's the first document in book 29 A.

A. I have that, this is it, is it?

Q. Yes, and it's been described to us as being an "Extract from draft pro forma balance sheet showing intercompany liabilities as of the 31st December, 1995".

A. Mmm.

Q. And we understand that this was these entries were made on this page by an accountant who was employed in Mr. O'Donoghue's section or team?

A. Team, yeah.

Q. And you can see it's "ESAT Digifone Limited, 31st December, 1995". And it has "Intercompanies" and then "Payable ESAT Telecom 12,275. Communicorp" and then they say '1/25,000-odd, 98 FM.' and then it has, "Telenor mobile re David Austin 1/231,600.

A. Yeah.

Q. That seems to be somebody in Mr. O'Donoghue's team received the first invoice, anyway, and was noting it just on a sheet of paper dealing with shareholders issues. Would you agree?

A. Well, I received this some weeks ago and I was looking at it at the time and I actually don't remember seeing this before.

Q. No, I am not suggesting that you necessarily would have seen that before.

A. But it could have been produced by a chap called Colm Moloney who was working for Peter O'Donoghue at the time.

Q. And as we understand it, he would have been receiving in

A. was he?

Q. invoices, perhaps correspondence, and he'd be keeping a note of these matters for the purpose of preparing some sort of a balance sheet showing intercompany liabilities.

A. This wouldn't have gone to the board because it would be typed normally

Q. I am not saying it went to the board.

A. Okay.

Q. What I am just trying to deal with here is the workings of Mr. O'Donoghue's team, if you understand.

Now, I think, correct me if I am wrong, is it as a result of information you received from the Tribunal

that you know that this was Mr. Moloney or do you recognise his writing?

A. I understand it was information from the Tribunal, I think, we knew of that.

Q. I think you are correct. Now, somebody in Mr. O'Donoghue's team anyway was working on the first invoice, the one making reference to David Austin, it would appear from this?

A. But you have also got to look at the pressures that everybody was under in his team. I mean, Peter had a very demanding job in that it was a start-up, it was a huge probably one of the biggest infrastructural projects ever seen in the history of the State. So it was very demanding times for him and his team.

Q. I understand that. All I am trying to do is find out, obviously the invoice came in.

A. Yes.

Q. This man, Mr. Moloney, at least took a note of it for the purpose of inter shareholders of intercompany liabilities, it would appear, would you agree?

A. Well, he would have, I am assuming he would have taken an invoice from Telenor. I didn't really know anything about it and

Q. Took a note of it?

A. Took a note of it.

Q. So then as we know, at the Dublin end something appears to have happened to this invoice after this man Mr.

Moloney took a note of it?

A. I don't know precisely happened after this. I don't know how this was produced, so I can't really help you on that.

Q. So if Mr. Per Simonsen's note as recorded on the Norwegian side is correct that the invoice was shredded at the Dublin end, you know that note of his?

A. I didn't know anything about shredding of invoices and I think I mentioned that before in my earlier evidence.

Q. It would appear that that an instruction had to be given by somebody to destroy the invoice, that particular invoice making reference to David Austin, in Dublin, would you agree?

A. Again, I wouldn't know because I genuinely was not involved, Mr. Coughlan, in this.

Q. What was Mr. Simonsen's role in ESAT Digifone?

A. He had a role in the early days when we were putting the bid together, from June all the way to September, as a liaison person. He was a very good fella. A young guy and he was, like, the liaison person for Telenor. He worked on the bid, a bright fellow.

Q. And did he go back to Norway then in

A. yes, he did, because they were he was in their mobile looking for licences around the world.

Q. And he would have, nonetheless, continued to liaise from Norway with Dublin, would that be fair?

A. Well, he was working in Head Office for Telenor so he

would have been a person that could have been talking to some of the people in Dublin.

Q. I don't suppose you can assist the Tribunal as to whom he would have been liaising to in relation to an intershareholders invoice or?

A. I would only be able to guess Mr. Coughlan, so I don't know if that's helpful.

Q. Now, I think this question of the donation is dealt with in one of Mr. O'Connell's handwritten notes as well. I'll just find the tab for you now.

I think it's behind tab 4. The first part of tab 4 deals with MW, do you see that? The first two pages

A. It's undated, would it be?

Q. Yes. "Re Fine Gael contribution, December '95." Do you see that note "Denis O'Brien call from DFTA re two plates - 25K - initially agreed but thought better.

Rang Arve asked him whether he would do it and could get back either directly or through company half.

Did this, Arve paid 50K, no one attended the meeting from Telenor or ESAT Digifone. Subsequently Telenor half reimbursed, can't remember now, check this, Jersey account."

Now, is that something you would have told Mr. O'Connell?

A. Well, I mentioned this before but, first of all, it's unattributed in terms of who Mr. O'Connell is talking

to. Well, certainly it was not me. It could have been Michael Walsh reporting a conversation of his with Arve Johansen or Barry Moloney having a conversation, reporting his conversation with Mr. Johansen.

Q. So you don't think that that is you talking?

A. Well, I know I mean the factual the facts that are in this I wouldn't agree with so...

Q. Because the facts that are in this are reasonably consistent with the contents of Kilroy's note of what transpired at the meeting on the 4th November, would you agree?

A. No, not fully, no.

Q. Well, maybe Mr. O'Connell can help us at some stage as to who

A. I mean there is evidence that there was two plates, or two for 25, but...

Q. Let me just deal with this for a moment if I can, if we can clarify it. I think Mr. O'Connell furnished us with a memorandum explaining, to the best of his recollection, the notes and I think at paragraph 11

A. is this his statement, is it?

Q. Yes. It's the memorandum of Mr. O'Connell, paragraph number 11. And he has informed the Tribunal, he refers to notes at document number 4. And there are two notes, there is one a note headed "MW" Michael Walsh. And he continues "I believe that these are the notes made by me of my conversations with Michael Walsh

and Denis O'Brien on the 31st October. This is consistent with both their content and their position in my file. However, as the notes are undated, I cannot be certain of this. I should say that the note 'Catherine not related in this document' leads me to believe that it may have been written by me on the 1st November, during or after my meeting with Denis O'Brien. Since my preparatory notes for that meeting include the query as to whether Catherine, Denis O'Brien's wife is related to Michael Lowry. She is not. However, I have retained the notes and the others which I have provisionally ascribed to the 31st October." Well, perhaps we can clarify it because it certainly is at variance with your understanding in the context of the evidence you have already given about this matter, would you agree?

A. Quite definitely, it is, yes.

Q. And would you agree that the information you gave the members of the board on the 4th November when Mr. Kevin O'Brien questioned you is also at variance with your recollection and does not accord with the evidence you gave concerning this particular donation and how it was received?

A. No. Well, I wouldn't agree with that fully, no, because I mean, we can go back over it if you want but, you know, there were some things in the Kevin O'Brien notes or the Tony Lang notes that I didn't agree with,

that I couldn't remember saying and then I have my own notes as well. So I suppose it's difficult for everybody to be consistent. Then there is the sort of semantical detail as well.

Q. Well, is the main thrust being made by Mr. O'Brien and Mr. Lang on behalf of Telenor here, is that Telenor was paying David Austin on your behalf, or an

A. their own behalf.

Q. No. If you go to the page 26

A. Of the 4th, is it?

Q. Of the 4th November. This is Mr. Lang's note.

A. What page?

Q. 26.

A. Yeah, this is what we spoke about earlier.

Q. Yes. The middle of the page. "Ken O'Brien asked whether the payment was to be paid by Telenor, by yourself, Denis O'Brien or Digifone. Denis O'Brien explained that the payment was to be made outside the country. He replied to Kevin O'Brien 'I am not sure who ended up paying for it. I know they, Telenor paid David Austin.' There was a discussion in relation to how it was costed. Kevin O'Brien asked Denis O'Brien and put it to him that Telenor was paying David Austin 'On your behalf' and Denis replied 'I am not sure'."

A. Well, first of all, I think we have got to put this in the context. First of all, I didn't realise that I was going to be questioned about Fine Gael on that day

so I had no notes, I had no access to files and I was sitting in the west coast of America. So obviously I wasn't sure, when he was asking me the question that he was asking me.

Q. I am suggesting to you that it culminated in Mr. O'Brien putting it to you that Telenor was paying David Austin on your behalf.

A. I knew that he wasn't paying money I think in my evidence you were suggesting to me that, you said 'was it Mr. Austin was ringing you in a personal capacity or a company capacity?' I think I said at the time that it was from an ESAT point of view. So when he was saying here, probably I mean, I didn't quite understand what he was questioning me, but he said 'Was Telenor paying David Austin on your behalf?'

Q. And you replied "I am not sure."

MR. McGONIGAL: That conversation begins at page 4 at number 6 where Mr. O'Brien said "I did not know whether Telenor were making payment to David Austin and saying they were paying on their own behalf or..." I think that's where the conversation begins.

Q. MR. COUGHLAN: But it culminates in Mr. O'Brien putting something to you and you telling him you are not sure.

A. Well, he was asking me very detailed questions and I didn't know I was going to be asked about this, as far as I can remember, and I didn't have any access to any

notes. I mean, this is a complicated enough issue and it's now in all the material that you can actually see what is happening.

Q. Now, I think you understand there is a significant difference between your position, if I might summarise it as this, that you thought about going to the dinner when Mr. Austin approached you. You thought that it would be inappropriate then for you or for ESAT Digifone or Telecom to make

A. ESAT Telecom.

Q. Or for Digifone, I think you also said

A. yeah

Q. to make a donation or a contribution but that you thought that you might refer him or interest Telenor in making the contribution and that it was Telenor who made the contribution and it was at the time of the Shareholders' Agreement because there was a lot involved and a lot at stake that you accepted or were made or felt pressurised into accepting the payment or the reimbursement of Telenor by Digifone?

A. In May, yes.

Q. There is a big difference between that and the position of Mr. Johansen whereby it was his understanding that this contribution was being made by Digifone and that Digifone would reimburse Telenor.

A. I think, yes, there is diverging views there. There is also diverging views on the supposed influence I had

and also on the handling of the invoices, where some people are saying I handled the invoices, destructive people around the company, and my evidence is contrary to that Mr. Coughlan.

Q. And I take it if you accept that Mr. Lang's note of the meeting is correct, that it was put to you that the payment was being made, Telenor were making the payment on your behalf and you said you were not sure, that your explanation for it at the time. You said that you hadn't access to information or files, is that correct?

A. Well, if you are away for three weeks doing an IPO and in the middle of it you have a big, massive inquiry, you know, certainly I was pretty exhausted this was four o'clock in the morning. So because, I mean, I just I had no preparation for what I was going to be asked about in the context of the Fine Gael thing. So it's only when I would look at this, you know, whatever it was, four or five years later and you look at my evidence and you look at what I have said, I stand by that.

Q. And your understanding of Mr. O'Connell's handwritten note is that you didn't say that to Mr. O'Connell?

A. Well, what he says is that he couldn't be certain who he was talking to but, you know, it's unattributed and I have already said I believe it was either Arve Johansen having a conversation with Barry and that being relayed to Michael Walsh or Michael Walsh talking

to Arve Johansen. But I know initially there are

some errors in it.

Q. It's not a conversation you had with Mr. O'Connell?

A. It wouldn't, no, no.

Q. That's what you are saying.

A. It's completely at variance to what my evidence has

been.

Q. I know. We both agree it's a complete variance, isn't

it?

A. Yes. You have got to look at these notes, I think,

that we have been told that they were handwritten

notes, so anybody keeping notes of a meeting would have

you know, some differences. This could be just one of

the differences.

Q. I can understand that but Mr. O'Connell's note is more

consistent with the understanding which Telenor gave

evidence about rather than an understanding of your

evidence?

A. Well, it wouldn't be Mr. O'Connell's note, the

unattributed note wouldn't it doesn't have the 4th

November. I mean, we are talking about a meeting in

time for two hours on a teleconference.

Q. Mr. O'Connell I know the note is undated Mr.

O'Connell tries to put a date on it by reference to

other matters which were occurring at the time and the

place of this note in his file and he thinks it may

have been on the 31st October or perhaps on the 1st

November.

A. Mmm.

Q. So he has a note to this effect.

A. I think what the note doesn't it's unattributed, in other words, he doesn't know who he is talking to in the context of the note. I think that's a very, very important point.

Q. But it is undoubtedly consistent, or more consistent, with the note made by Messrs. Kilroy's of the 4th November of what transpired there?

A. I don't see how you could say that. I mean...

Q. This was an agreement that Telenor would be reimbursed.

A. No. I mean, that was a reflection of what happened.

And then I go on to say "I am not sure who ended up paying for it. I know Telenor paid David Austin." And I opened it by saying "I asked AJ whether he would be prepared to make a donation to Fine Gael."

Q. Well, perhaps we can sort that out with Mr. O'Connell.

A. I think point number 6 is "I do not remember reference to ESAT Digifone reimbursing the payment" which is a quotation as well.

Q. Now, another matter I'd like to deal with, Mr. O'Brien, for the moment is the evidence you have already given and the evidence which Mr. Fortune gave to the Tribunal.

A. Yes.

Q. And I think at the time you gave evidence it was put to

you the contents of Mr. Fortune's statement of proposed evidence.

A. If I recall rightly, this is the statement which had no notes to back it up.

Q. Yes. You made the comment at the time that there were no notes to support this particular statement.

A. Yes. Whereas I think all the other statements we have been looking at over the last number of weeks have detailed handwritten notes.

Q. And I think you have now been furnished I think Mr. Fortune in his evidence informed the Tribunal that as things progressed he was reporting back to the solicitors for Telenor informing them of what transpired and that they were keeping a note of that.

A. Yes.

Q. And I think they have been furnished to the Tribunal by Messrs. Kilroy's and they have been forwarded to you for your consideration, isn't that correct?

A. Yes, I have, thank you.

Q. And I think they are divider 1, isn't that correct, of the book 29A?

A. Is this what you mean?

Q. That's them. Now, if you go to the second page I think you see "Telenor political contribution" and this is a note which the solicitors are making of what Mr. Fortune is telling them.

MR. McGONIGAL: There is a front page

MR. COUGHLAN: There is a front page which reads.

MR. McGONIGAL: just to clarify it's "11th February
'98 re Telenor meeting" is that the one?

Q. MR. COUGHLAN: That's the one. And "present at the
meeting Knut Digerud, John Fortune, Kevin O'Brien,
Anthony Lang. Purpose of meeting to review and
discuss two issues:

1. The PR presentation for ESAT Digifone and
2. The intended communication with the Fine Gael
Party(John Bruton) to establish that the Fine Gael
Party acknowledges that it has received the political
donation which was paid through David FT Austin."

And then if you go over the page.

"TELENOR POLITICAL CONTRIBUTION TRANSACTION.

JF confirmed that he had met MW and DOB on the
intention of Telenor to obtain confirmation from Fine
Gael that the payment of \$50,000 was a 'political
donation' and that it was received by Fine Gael Party.

John Fortune explained that he had put this in the
context that David Austin's letter was inadequate and
that 'the circle need to be squared'.

Michael Walsh had readily seen this. Denis O'Brien
had initially rubbished the suggestion. Eventually
Denis O'Brien came around to some degree. His initial

response was probably an 'off-the-cuff' response.

Michael Walsh was of the view that it was something he could understand Telenor wanted to do.

Denis O'Brien on the other hand, pointed out that Digifone had paid the contribution, (i.e. it reimbursed Telenor) and therefore Digifone itself should seek confirmation.

The attitude of Michael Walsh was that they, IIU, did not write the cheque.

Denis O'Brien was very negative about saying anything to John Bruton. There was speculation as to Denis O'Brien's response on this issue.

Ultimately Denis O'Brien had pointed out that he would prefer to go to David Austin first and for David Austin to arrange the response for the Secretary General of the Fine Gael Party.

John Fortune said that understood that Denis O'Brien had a continuing relationship with David Austin. At a Christmas meeting, John Fortune had pointed out that Denis O'Brien had stated to him that David Austin had just undergone chemotherapy for the 10th time. Denis O'Brien had intended to ring to see how David Austin was but that he would postpone it for a few days until David Austin was available for phone calls.

Denis O'Brien said it was the company ESAT Digifone which should be looking for confirmation that the political donation had been received by the Party.

Denis O'Brien had also pointed out that the first port of call should be David Austin himself.

John Fortune had pointed out that he had taken the approach that 'it will be done', that is, that Telenor must and inevitably will proceed with the inquiry, that Telenor however would do nothing without communicating its prior decision to be other shareholders.

The response from Denis O'Brien was that he believed that it would be far better for him personally to approach Fine Gael.

The dilemma is that Telenor are unable to trust Denis O'Brien in this respect.

Knut Digerud pointed out that in his view, it was Telenor itself which had to make the inquiry. If it was Denis O'Brien who made the inquiry, this would tend to increase the importance of the inquiry.

Furthermore, Denis O'Brien was the original initiator of the payment and it would be preferable that a separate company or party should investigate the payment.

Knut Digerud pointed out that it was Telenor itself

which made the payment, that is that it was the route for the payment also at the material time there was no Digifone in reality. Digifone was not operational and therefore, Digifone was not the appropriate party to make the inquiry.

Knut Digerud commented upon concern in Norway by the Norwegians in Norway over this issue and the concern that Telenor at a high level wished to establish precisely what the position was and to clear up the 'loose thread'.

John Fortune clarified in response to Kevin O'Brien, that he had not indicated who would approach John Bruton, that is that it would be Fintan Drury or any other person. He had, however, assured Denis O'Brien that any communication would be kept within the 'tight circle' so that there would be no leaks.

The reaction of Denis O'Brien was predictable. He had said that this was handling the matter the wrong way.

Knut Digerud pointed out that only we, [Telenor] can ask the right question and satisfy ourselves as to the position'.

There was a discussion as to whether Denis O'Brien might be brought to the meeting so as to 'keep him in the loop'.

Knut Digerud responded that he thought that this would raise the matter 'out of proportion'.

Knut Digerud summarised by saying that the Norwegians in Norway were concerned over this 'missing thread'. They wanted to clear up the position and they wanted a guarantee that the funds had been paid into Fine Gael.

There was then discussion over the context of the meeting, who would attend the meeting etc.. It was agreed that the appropriate thing would be for Kevin O'Brien/John Fortune to contact Fintan Drury and to set up a meeting to decide how it should be approached.

Anthony Lang recommended that the meeting should be held in the context of it being 'legally, professionally privileged' and that this would require a phone call in advance to Fine Gael requesting they would have a solicitor present for Fine Gael so that there would be an assurance that what was communicated at the time meeting was not discoverable.

Knut Digerud suggested that perhaps Eileen Gleeson and Fintan Drury might get together at some point so as to coordinate their PR representation for of the shareholders and it was agreed that this might be a useful exercise.

Again the issue of legal professional privilege was identified.

It was agreed that the meeting should be held as soon as possible and that Telenor would be represented by a solicitor and Fintan Drury.

It was agreed that it might be preferable to keep away from the meeting any representative of Telenor, that is John Fortune and Knut Digerud or other Norwegians, so that the matter would not be given undue prominence.

KOB telephoned Fintan Drury's telephone number but Fintan Drury was not available at the time. However, it was proposed to set up a meeting later that evening at 5 to 6 p.m. because Fintan Drury would be travelling the following day.

Finally, Knut Digerud confirmed that he was in agreement with the approach to be taken and with the fact that it was Telenor itself that should make the appropriate inquiries. [It was quite clear that Knut Digerud was largely influenced by senior management in Telenor wishes to establish directly that payment had gone to Fine Gael.]"

Now, do you remember now that this note has been brought to your attention, of Mr. Fortune approaching you and Mr. Walsh about Telenor wishes to approach Fine Gael?

A. I read this attendance and I was quite puzzled by it

because at 11.15 a.m. on the 11th I was supposed to have a meeting with Mr. Fortune earlier that morning, a Sub-Committee meeting of ESAT Digifone, to discuss IT issues. We then have this attendance note at 11.15 where he is saying that he has spoken to me, where in his other statement he is saying that he was trying to contact me on that day that I went to New York, which is the 11th, and that he failed to reach me, that he faxed me, left messages on my mobile. This now says that he spoke to me but, even more interestingly, the next attendance note at four o'clock, all right?

Q. Yes.

A. I think it goes on to say that he didn't speak to me.

Q. Well, perhaps in fairness to Mr. Fortune now, this note is recording that Mr. Fortune is confirming to the solicitors that he had told Michael Walsh and Denis O'Brien of the intention of Telenor to obtain confirmation.

A. I think we need to examine Mr. Fortune's earlier statement to really get a good picture of this.

Q. I think Mr. Fortune, in his evidence in relation to the second meeting which is recorded in the attendance, is informing those that he attempted to make contact with you this is the matter which was in the statement and of leaving messages for you in New York?

A. This is the key point. I think, is that in the second attendance at four o'clock that day he is saying that

he is attempting to get Denis O'Brien. On the attendance at 11.15 or that morning it says that he has already spoken to Denis O'Brien and Michael Walsh.

Q. Yes, but I think in relation to his statement, correct me if I am wrong, he is not saying that both matters occurred at the same time. I think in his statement he informed the Tribunal that he had initially spoken to yourself and Mr. Walsh?

A. No. He said sorry

Q. In his statement?

A. But it says here "JF confirmed that he had told Michael Walsh of the intention of Telenor." And in his statement was he not saying that he was trying to tell us before going to speak to

Q. they are two separate matters I think. One is that he spoke to you and Mr. Walsh and informed both of you of the intention of Telenor?

A. Which we can't recall. I think that was our evidence sorry my evidence is that I don't remember him saying.

Q. I am just asking you in light of this particular note where he is confirming the matter to the solicitors, whether it refreshes your memory in any way, that you can remember the conversation with Mr. Fortune and Mr. Walsh, when Mr. Fortune informed you of Telenor's intention that they were going to inform Fine Gael?

A. No

Q. Or they were going to go to Fine Gael to seek clarification.

A. The straight answer is 'no'. But I question there is something wrong here because, I am not sure if you share my concern or not, Mr. Coughlan, but there is one attendance at 11.15 saying that he told me and the second attendance at four that afternoon says that he didn't get hold of me. It says "Kevin O'Brien responded that John Fortune had not yet been in contact with him."

Q. Go on, Mr. O'Brien.

A. So

Q. I am just trying to understand the point you make so that we can all deal with it.

A. In the first attendance he is saying that he had spoken to me at eleven in the morning.

Q. No, no. Sorry, I think perhaps that's a misunderstanding there, Mr. O'Brien, and maybe I am wrong.

A. okay.

Q. maybe I am wrong, but as I understand the first attendance, it is a meeting he is having with the solicitors and Mr. Digerud at that time, as I understand it.

A. Yes, that's right.

Q. He is informing them that he has confirmed that he has already spoken to yourself and Mr. Walsh prior to that.

Do you understand me?

A. Then look at Mr. Fortune's statement.

Q. But if we could just deal with it statement by statement or memorandum by memorandum in the first instance. The second memorandum, I think, deals with his attempt to inform you that they were now going to Fine Gael. That was the intent, that they were now going to Fine Gael?

A. Okay. I think we are on the same lines here. But can I just explain to you? He said that in the earlier conversation, 11.15, that he had spoken to me about going to obtain confirmation from Fine Gael, in other words going to Fine Gael, right? Now, if we look at the second memo it says he was unable to contact me.

Q. I wonder is there confusion here, Mr. O'Brien? As I understood Mr. Fortune's evidence they are two separate matters. In the first instance, he said that he had spoken to yourself and Mr. Walsh and at that time had indicated the intention of Telenor to go to Fine Gael; that Mr. Walsh readily accepted that. You disagreed.

That's one

A. I am saying 'no'.

Q. That didn't happen?

A. No.

Q. Sorry, I am just trying to understand this now.

A. Okay. It is complicated.

Q. You don't accept that he ever spoke to you and informed

you of Telenor's intention?

A. No.

Q. Now, again if I understand his evidence correctly, at that time when he spoke to yourself and Mr. Walsh, he had indicated that you would be informed when they were going?

A. That's his evidence. That's not what I believe. Because he never told us in the first place.

Q. But I am just am I correctly paraphrasing his evidence as you understand it now, that at the first occasion when he told you of the intention, both of you were also informed that you would be told or that there would be an attempt to contact you when they were going to Fine Gael?

A. No, no.

Q. The second attendance, as I understand it, made by the solicitors, is recording the attempt to inform you that they were going to Fine Gael and he couldn't make contact with you?

A. Well, you see, he opens the first attendance by saying "John Fortune confirmed that he had told Michael Walsh and Denis O'Brien of the intention to obtain confirmation from Fine Gael." The second thing is he was unable to contact me. I know we disagree on this.

Q. I am not disagreeing at all. I am just trying to put Mr. Fortune's evidence in context?

A. I don't understand the gap at the top of the page here

as well. It seems an unusual way to start an attendance note. Secondly, the conflict between the second attendance note and the first one begins that he is trying to say that he contacted me in the New York Palace Hotel and he faxed me, mobile call

Q. Could I

A. Maybe there is a simple explanation.

Q. Maybe I can identify the issues first of all. It's Mr. Fortune's evidence that he spoke to you and Mr. Walsh and conveyed to both of you Telenor's intention to approach Fine Gael. He gave that evidence.

A. That's his evidence, I believe, yes.

Q. And you say that that did not happen?

A. In my evidence, yes.

Q. That's one issue?

A. Mm-hmm.

Q. He also in his evidence informed the Tribunal that he then subsequently attempted to contact you to inform you that Telenor were going to Fine Gael and that he didn't make contact. A separate issue.

A. Why would he do it twice though? It's not logical.

Q. That is his evidence, as I understand it.

A. All right.

Q. And what he said in response to your assertion that there were no notes to support his statement, that he had informed the solicitors and that they had noted the contents of his conversations with you and Mr. Walsh

and of his attempts then to contact you and notify you that they were now going to Fine Gael. But on the main issue you do not accept that Mr. Fortune spoke to you and Mr. Walsh and informed you of Telenor's intention?

A. I have no recollection of that, no.

Q. Now, just so that we can have a full understanding of your position and any view you may have, we better open the second attendance as well.

A. Yes, if you want to do that, yeah.

Q. And that was an attendance on the 11th February, 1998 and it's at a meeting between 4.07 and 6.15 p.m., meeting and telephone call, 69 Lower Leeson Street, Dublin 2. Present, Knut Digerud, Kevin O'Brien, Anthony Lang - Fintan Drury joining at 5.12 p.m.

KD attended the office as per appointment and met with KOB and AL. KOB pointed out that Fintan Drury would join the meeting later and we would then discuss the arrangements and also the intention of Telenor to go directly to Fine Gael and/or John Bruton.

KD asked KOB whether John Fortune had been in contact with Kevin O'Brien concerning John Fortune's attempts to contact Denis O'Brien and Michael Walsh to see what their response would be to the intention of Telenor to go directly to Fine Gael Party, perhaps to John Bruton."

A. Sorry, Mr. Coughlan, that's a really interesting point in relation to that here, in relation to this.

Because it doesn't tie in.

Q. Right. "Kevin O'Brien responded that John Fortune had not yet been in contact with him but they will put a call to him either during or after the meeting with FD.

These questions were as follows:

1. Do Fine Gael accept the contents of David FT Austin's handwritten letter?
2. Kevin O'Brien explained to Fintan Drury the terms upon which there might be a meeting with the Secretary General of Fine Gael and/or John Bruton."

"Kevin O'Brien reviewed the issues and what was involved in the matter for Telenor. Kevin O'Brien then concluded that there were two questions for Telenor which Telenor would wish to have answered at the meeting with John Bruton/the Secretary General of the Fine Gael Party. These questions were as follows:

1. The second letter from David FT Austin. The handwritten letter written during the IPO process should be shown to the Secretary General/JB and they should be asked to confirm the contents of the letter and acknowledge receipt in writing.
2. The Secretary General/JB, should be asked to

confirm that Michael Lowry was not a trustee, nominee, named account holder of the account into which the payments from David FT Austin were made.

KD confirmed that these were the questions which Telenor wished to have answered and he was of the view that they were the two core questions which remained unresolved."

CHAIRMAN: A lot of this, Mr. Coughlan, seems to be very much internal Telenor matters. It seems to me the most pertinent portion is at the bottom of page 8.

Q. MR. COUGHLAN: Yes, Sir, I agree with you. I just wonder whether Mr. O'Brien is happy to deal with it on that basis?

A. I'd be very happy, Chairman.

MR. COUGHLAN: And if you go to the third last page so, page 8, "John Fortune explained as follows:

1. He had attempted to contact Denis O'Brien but that Denis O'Brien had taken a plane to New York and had gone straight to the airport from Dublin. John Fortune has faxed the hotel requesting Denis O'Brien to telephone him. John Fortune said he did not know whether Denis O'Brien would contact him. John Fortune proposed that Denis O'Brien might contact him by lunch time tomorrow."

"2. John Fortune spoke to Michael Walsh. John

Fortune explained that having discussed the matter with the legal advisers, Telenor decided to have a direct meeting with Fine Gael to obtain confirmation from Fine Gael in relation to the payment.

John Fortune had explained that this meeting would be held under legal privilege so that it would be kept confidential.

Michael Walsh had replied 'right, okay, we will have to see what we will do about that'.

In relation to the timing of the meeting, John Fortune said that he had said that the meeting with Fine Gael will be held expeditiously. He pointed out, however, by 'expeditiously' he had not intended this Friday.

Therefore John Fortune was concerned that Michael ... should have been told about it. It was agreed that John Fortune might contact Michael Walsh closer to the meeting.

In relation to DOB, John Fortune confirmed that he had done his best to contact DOB. It was agreed as soon as John Fortune talks to DOB he will contact either KOB or AL to confirm the outcome of the discussion.

KOB pointed out after the end of the conversation with John Fortune and Knut Digerud that KOB was anxious that the meeting should proceed, that notice had been given

to the other parties and that, perhaps, having the meeting shortly would be of advantage in giving either... ESAT Telecom less time within which to attempt to do anything. John Fortune had said at an earlier meeting that he did not think it was likely that Denis O'Brien or Michael Walsh on behalf of either IIU or ESAT Telecom would apply for an injunction to restrain or prevent the meeting. It was agreed that a further attempt would be made to contact Michael Walsh so let Michael Walsh know that the meeting would be proceeding this Friday, and this was agreed.

At this point KD left the meeting, approximately 5.55 p.m.. KOB/AL remained to receive telephone call from FD and FD telephoned two times, the first call to confirm that Fine Gael were prepared to agree a meeting that evening in view of the urgency of the matter, for 6.30.

KOB pointed out that in view of the fact that DOB had not yet been contacted, because their response had not been received, the meeting could not proceed today.

KOB suggested Friday and FD reverted later to confirm that the meeting had been arranged for 6.30pm on Friday with both FD and KOB to attend the meeting. This was agreed."

Now, is there a point that you wish to make about that,

Mr. O'Brien.

A. I just I am puzzled a little bit between the two attendances. That's my point. I think I have covered it as best as I could.

Q. But you are standing over your previous evidence that Mr. Fortune did not have any discussion with you about the intention of Telenor to approach Fine Gael?

A. I don't remember him coming to me and saying that.

Q. Very good.

A. I think Mr. Johansen would have been the person anyway, because he dealt with the matter on March 28th. He was the person handling this.

Q. Okay. When you believe that Mr. Johansen would have been the person anyway, do you mean that it would have been if anyone were to speak to you, it would have been Mr. Johansen?

A. Well, he was the person that I can remember was trying to give the cheque back on the 28th, which I handed on to Michael Walsh and then he wrote there was a series of letters and correspondence.

Q. That was after the meeting with Fine Gael, of course?

A. It was. But Mr. Johansen was involved.

Q. At that stage?

A. At that stage, yeah. The other factor is we will give you a letter this afternoon for evidence about the matter in regard to why they were looking for this confirmation. That was a letter addressed to ESAT

Digifone from Telenor talking about the due diligence that the with Telea, the relationship with Telea that was evolving at the time in relation to a merger.

Q. That's a letter from Telenor to ESAT Digifone?

A. Yes.

Q. Do you know what date that letter is, Mr. O'Brien? We haven't seen it yet, obviously. My Friend tells me it's the 11th February, 1998. We can deal with it over lunch time.

Now, yesterday, Mr. O'Brien, you said that you were the person who brought the matter to the attention of the board, that is the matter of the conversation with Mr. Moloney or the dealings with Mr. Barry Moloney to the board, because you were the one who introduced Michael Walsh into the discussion, isn't that correct?

A. Yes, that's right.

Q. And that you were the one who was anxious to bring it to the attention of the board for resolution?

A. Yes.

Q. And was that always your view?

A. I think it reached a certain stage where, at the outset I thought he wasn't, you know, I thought the matter had been handled and then I thought when he started talking about the board, that he'd 'have to do this, have to do that', I just knew things were moving to a new plane and I went immediately to Michael Walsh.

Q. And is it your understanding so, it was because Mr.

Moloney wasn't happy with the situation that you felt the board had to be involved because he would have brought it to the attention of the board?

A. No, I just felt that it was the right thing that we would raise it with the board, share the problem and just fully disclose it to the board.

Q. And was that always your view, that this is a matter which should be brought to the attention of the board?

A. When you have the Chief Executive raising an issue like that, it would have to, ultimately, go to the board, that it would be dealt with the Chairman, I was the Chairman, and then it would be shared with the rest of the board.

Q. Now, I think on the 22nd October of 1997 the matter had been raised by Mr. Moloney a number of times with you, isn't that right, by the 22nd October of 1997?

A. The matter we had July, August, 8th October, 13th, 14th.

Q. And it was your belief that on the, say the 13th October when Mr. Walsh became involved for the first time, we'll say around the 13th or the 14th October anyway, it was your view that the situation had arisen that there was some concern between the Chief Executive of the company and you, you were the non-executive Chairman, and that it was appropriate that the matter should be brought to the board and, therefore, Mr. Walsh should be involved, is that correct?

A. There was an issue in December, 1996 and immediately the board was involved in it.

Q. No, but I think you informed us yesterday in your evidence that it was you who wanted to bring the matter to the attention of the board. That's why you said to Barry Moloney, 'let's go down and see Michael Walsh or get Michael Walsh involved in this'?

A. I didn't tell him at the meeting. I actually phoned Michael Walsh and told Michael Walsh roughly what was going on. I said 'would you be available at short notice for a meeting with Barry and myself?' That's when we met in my office, I believe on the 13th, at one o'clock for about a half an hour.

Q. Am I correct in understanding your evidence yesterday that you wanted the board involved now?

A. That was the step that I took, the first step, I think.

Q. Because you wanted the board involved?

A. Yes.

Q. This was becoming an important matter. The board had to be involved.

A. I was concerned about the confidentiality. I think I mentioned that, about leaks and stuff like that.

Q. And because you, as chairman of the company and your Chief Executive had an issue

A. We had a serious issue to deal with.

Q. You had a serious issue. And the appropriate thing was to bring it to the attention of the board?

A. I raised it with the independent director and then ultimately the board became involved.

Q. But it was your understanding that it was appropriate, because this was an issue that wasn't resolving, that the board had to be involved in it?

A. Yes.

Q. And that was the responsible thing to do as Chairman of a company of course?

A. Yes.

Q. And that would have been on the 13th or the 14th October or thereabouts, you had formed that view.

A. In around then, yes.

Q. I think on the 22nd October, 1997 yourself and Mr. Phelan went to see Mr. Owen O'Connell, isn't that correct?

A. In around then, yes. You see, I had started the roadshow and was back in Dublin to meet institutions in Dublin, so that was the first opportunity of raising it with him.

Q. And I think Mr. O'Connell kept an attendance of that particular meeting, isn't that correct?

A. Yeah, I think we went through it earlier this week, yes.

Q. And that's at divider number 1.

A. Will I go to it?

Q. Yes, I want you to go to this particular note. It's tab number 1 of Mr. O'Connell's memorandum.

Now, you see, it's a file, it's a memorandum to file from Owen O'Connell, "Client - ESAT. Matter - IPO."

"Denis O'Brien, Aidan Phelan here. Discussion re Barry Moloney allegations Michael Lowry per run payment. Digifone board discussions and pending meetings. Likelihood of Barry Moloney being called and repeating allegations are assessed at 50/50:90/10 Owen O'Connell, possible consequences, Denis O'Brien to refute."

"Denis O'Brien, not relevant, nothing in allegation, no payment to Michael Lowry. Allegations very destructive. Spreading it damaging to all, especially company. Starting fire in cinema. Not responsible to inform board. Not necessary. No board of ESAT Telecom imminent. Calling one would create crisis air. Statement not misleading. DOB can refute BM, regulatory statement not misleading. DOB can refute. BM in box. No payment made."

Then an Owen O'Connell privilege deletion.

"DOB, no need for concern, assurance nothing in it."

Then there is an Owen O'Connell.

Now, did you say those things to Mr. O'Connell at that meeting on the 22nd October of 1997?

A. I can't remember precisely what I said but if he has an

attendance note here I wouldn't disagree with the

context of what he is saying here.

Q. And there were two companies involved here, isn't that right?

A. Two boards.

Q. Two boards. ESAT Digifone and ESAT Telecom. And this particular issue which had arisen between yourself as Chairman of ESAT Digifone board and its Chief Executive, if it got out-of-hand, as far as you saw it, it would have been catastrophic, catastrophic for the IPO of ESAT Telecom, isn't that right?

A. I have explained before, that you get one chance to do an IPO. If you pull an IPO there are serious consequences for all the investors concerned and also the reputation of the company.

Q. So bearing in mind all that subsequently transpired, inquiries and getting affidavits and letters and all of that, this was a major issue, not only for the board of ESAT Digifone, but a major issue for the board of ESAT Telecom, isn't that correct?

A. At the time it was more of an ESAT Digifone board matter and ultimately became an ESAT Telecom issue.

Q. But it was a major issue, one way or the other, for both boards but it was a major issue, particularly, for ESAT Telecom but this was at the time of the IPO of that company, isn't that right?

A. Yes, but the sequence is important.

Q. What sequence?

A. Chief Executive of ESAT Digifone talks to the Chairman.

The Chairman then approaches one of the independent directors, shares the problem. There is then discussions with the rest of the board members of ESAT Digifone. There is a meeting then of the 23rd where, I think coming out of that meeting, there is a strong movement towards sharing the problem another stage, which is to the ESAT Telecom board. So you have got to break it into pieces.

Q. How many common directors were there?

A. Just three and there were twelve directors, I think, of ESAT Telecom in total.

Q. Why did you inform Mr. O'Connell that it was not responsible to inform the board and not necessary?

A. Because, first of all, we thought we had the issue dealt with on the 13th. That was the conclusion of the meeting of the 13th, that lunch meeting.

The second thing is this, that we were handling it at ESAT Digifone at that level, at the board meeting, and until that had gone through its process, it wouldn't be right to bring our board into it.

Q. It wouldn't be responsible?

A. Well, it wouldn't be relevant and I think I am taking the words out of Mr. O'Connell's statement here or not statement, it's evidence and because we knew that there was nothing in the allegation.

Q. Who did?

A. I knew, being the central person involved.

Q. And you informed Mr. O'Connell that it wasn't relevant and it was not responsible to inform the board?

A. I don't see the word "Responsible". It says

Q. "Nothing in allegation, no payment to Michael Lowry.

Allegation very destructive, spreading it damaging to all especially company - starting fire in cinema. Not responsible to inform board. Not necessary."

A. Well, if you hold a special board meeting of a company and you don't have all the inquiries made, normally boards only meet when there is material to be looked at and a decision to be made.

Q. Now the Prospectus had been issued, the red herring was out at this stage, wasn't it?

A. That's right.

Q. And it had made reference to this Tribunal, isn't that correct? The disclaimer had been published in the red herring?

A. And as I pointed out, that was before the Tribunal had been set up.

Q. It was after the resolution was passed in Dail Eireann and Seanad Eireann but I am not arguing with you about that, Mr. O'Brien?

A. But we weren't putting it in after the Barry Moloney

Q. a disclaimer appeared in the red herring. A disclaimer appeared in the red herring, isn't that

correct?

A. It was there all along, yes.

Q. And you had taken a view that it was not responsible to inform the board of ESAT Telecom about this matter?

A. Without having the facts, yes.

Q. What facts?

A. Well, I, if I had have called a board meeting of ESAT Telecom Group, or ESAT Holdings as it was known at the time, without having the facts, okay, and a full investigation, I think the board would become upset with me because they would like to look at everything if they were going to get together and ultimately come to a view on it.

Q. Whether they were upset or not, that's a secondary issue being upset?

A. Well, no, if you bring your board together and you don't have all the information for them to take a view on, they do become upset.

Q. It wasn't necessary, in your view, isn't that right?

A. Not at the time. I knew it is going to be necessary, ultimately, when ESAT Digifone had gone through their investigation and the interviewing on the 4th November. Now that had not been mooted on the 22nd.

Q. That's the point, yes.

A. But all of that would have to take place before you'd bring it to the ESAT Telecom board.

Q. But the facts as you understood them at this time was

that Mr. Moloney was saying something which you disagreed with, isn't that right?

A. My board, Mr. Coughlan, would have known the history of Mr. Moloney's behaviour one year previously, which I think is a very important aspect to a view that they might ultimately have had on the 6th November when they signed off the IPO.

Q. Well, I'll give you an opportunity to bring that to the attention of the Tribunal in a moment, Mr. O'Brien, but the facts, as you knew them, were that Mr. Moloney was asserting something. You disagreed or you had an explanation for it, isn't that correct?

A. No, no. I wouldn't I'd say I disagreed.

Q. You disagreed.

A. Because he was saying one thing. I was saying something different.

Q. Mm-hmm. No you weren't. You both agreed that a conversation took place.

A. Yes, but he said that I mentioned Michael Lowry. I said I didn't. That's a very important point.

Q. You disagreed on that. You knew that Michael Lowry was on Mr. Moloney's mind, isn't that correct, by this time?

A. Well, obviously it's been a feature of my evidence.

Q. And you knew that Michael Lowry was on your own mind at the time you had a conversation with Mr. Moloney, isn't that correct?

A. In around the 17th November, yes.

Q. So you had a fair number of facts, didn't you?

A. Well, not alone did I, but everybody concerned had the facts.

Q. And you took the view that it would be irresponsible to inform the board of ESAT Telecom of these matters at that time, is that right?

A. Well, I took the view that until we had made some investigations that the right thing to do was to wait until they had been completed and then go to my board and at that stage, as I mentioned, I didn't participate in any of the meetings of the board because it wouldn't have been appropriate.

Q. Is the first paragraph of the attendance not the one which gives you the key to the view you were taking at the time. What you were attempting to do was to assess the likelihood of Barry Moloney repeating what is described as 'allegations' to the board, that is to the board of ESAT Digifone, and they are being assessed there as being 50/50 or perhaps 90/10. Isn't that what was going on there? You were wondering whether Barry Moloney would repeat the conversation with you to the board of ESAT Digifone?

A. Well, I don't know what the context of that is but we knew there was a meeting on the 23rd of the board that would be taking place so and we knew the purpose of that meeting in IIU at 9.15 the next morning or

night was to discuss this whole issue so I am not sure what the context of that note that Mr. O'Connell made was.

Q. And then if you continue the second paragraph where "Denis O'Brien not relevant, nothing in allegation, no payment to Michael Lowry. Allegations very destructive. Spreading it damaging to all, especially company. Starting fire in cinema. Not responsible to inform board. Not necessary. No board meeting of ESAT Telecom imminent. Calling one would create crisis air."

A. Go back to the first point. Sorry. "Likelihood of Barry Moloney being called and repeating allegation 50/50: 90/10-Owen O'Connell. That was Mr. O'Connell's view, not mine.

Q. I see. So Mr. O'Connell, who had had no involvement with Mr. Moloney, was making this particular assessment himself?

A. He was making an assessment himself but and then I think there was a full stop and it says "Possible consequence DOB to refute." So then the second part

Q. had Mr. O'Connell had any discussions with Barry Moloney before this?

A. I think he was making an assessment of whether Barry would continue on with this and I think what he was really saying is, 'at best it's 50/50' I am paraphrasing and but he thinks that it was 90/10

that he would probably continue on and raise the matter. But I don't know whether Mr. O'Connell knew about the meeting on the 23rd at that stage.

Q. And was the significant reason why it was considered that the board of ESAT Telecom should not be informed is that it would cause would create a crisis air, is that right?

A. Well, it was a crisis.

Q. Mmm?

A. We had a crisis from the start of the allegation.

Q. Then wouldn't it a been responsible, so, if you had a crisis to call the board together as early as possible and deal with this matter as expeditiously as possible?

A. You have got to look at this in the background. We had been together most of the board had been together since 1991, right? I knew my board particularly well. I knew how they would react. Unless we had all the information for them to consider calling a board meeting I think they would have been most unhappy, given that some of them lived outside the State.

Q. And what information do you think became available after this?

A. The information then started, I think well Barry had got his draft advices, which we didn't realise were there, somewhere around the 13th. Then we had a meeting of the 23rd where Mr. Fergus Armstrong advised the board, and I think that is privileged. Then there

was the letter, and I don't have all the letters now because they are all privileged, but there was a letter of the 29th October which I had to deal with in advance of the 4th. Then there was the meeting of the 4th, the inquisition with Mr. Kealey. Then there was further meetings on the 5th, the 6th and the 7th. So, I didn't participate in them but, like, we got into a hell of a lot of detail with everybody. We informed our underwriters of what was going on and everybody shared the information so that when the board sat to make the decision they could make the decision with everything in front of them.

Q. And when did the board of ESAT Telecom eventually meet?

A. I wasn't at the meeting but it was either the 6th or the 7th. I think it was the 6th.

Q. Of November?

A. The 6th, I think it was, yeah.

Q. And this was after the meeting of the board of ESAT

Digifone which was, I think, described as 'not being a

board meeting'. I can never understand, to be honest

with you, Mr. O'Brien, never understand the

machinations going on. People say that 'when

directors come together it's not a board meeting

because there are solicitors present' and matters like

that. It's probably not me understanding matters. I

don't know what was going on other than there seemed to

have been a huge attempt to keep all of this under

wraps at all time, isn't that correct?

A. I don't agree with you there, Mr. Coughlan.

Q. Can I ask you this Mr. O'Brien: Even up to the commencement of this Tribunal and the life of this Tribunal and matters coming to the attention of this Tribunal in the first instance, the donation to Fine Gael and an Opening Statement made by this Tribunal concerning the donation to Fine Gael, the loan made by Mr. Austin to Mr. Lowry, the fact that the money came from the proceeds of a purchase of a house by you from him and the property deals in the United Kingdom involving Mr. Aidan Phelan and Mr. Lowry; that Opening Statement was made to this Tribunal and not one single person involved in these discussions surrounding the conversation you had with Mr. Moloney was brought brought anything to the attention of the Tribunal, isn't that correct?

A. Well, you have thrown a number of different you have given a history

Q. I'll take it slowly, Mr. O'Brien, because this is a serious matter for the Tribunal, considering the circumstances surrounding all of this?

A. And it's a serious matter for my reputation as well, Mr. Coughlan.

Q. It is indeed, Mr. Brian. This Tribunal made an Opening Statement some weeks ago. In that Opening Statement the Tribunal informed the public and those

people, including yourself who were participating in the inquiries being made by the Tribunal, that it considered looking at four items.

One was the donation, if I can describe it as that.

Two was the fact that there was a purported loan from Mr. David Austin to Mr. Michael Lowry of $\frac{1}{2}$ 147,000 odd out of an offshore account into an offshore account of Mr. Lowry's. You had, as a result of Mr. Charlie Bird dealing with a story when the Tribunal was engaged in delicate inquiries, then informed the Tribunal that you had bought a house from Mr. Austin. The Tribunal also identified that it would be looking at a property transaction two property transactions in England involving Mr. Aidan Phelan and Mr. Michael Lowry and the Tribunal also indicated in that Opening Statement that it would be dealing with the evidence taken on Commission from Mr. Charles Haughey.

Now, at that time, you had not informed the Tribunal about this major issue which exercised everyone involved in ESAT Digifone and ESAT Telecom around the time of the IPO, did you?

A. Let's be very clear here. Nothing happened. There was an allegation, okay, that I paid money to Michael Lowry. You have seen from my evidence that I never paid that money to Michael Lowry. So I am not sure where we are going on that, Mr. Coughlan.

Q. I am asking you a question, Mr. O'Brien. The Tribunal indicated in its Opening Statement that it was concerned that the circumstances surrounding these matters had not been brought to the attention of the Tribunal. You did not inform the Tribunal when it made that Opening Statement that a bigger issue had existed at the time than the donation, had you?

A. Well, at the time I mean, okay, this is a number of weeks ago.

Q. Yes.

A. But if when this became an issue straight away, we didn't claim privilege. And you know that, Mr. Coughlan. We went straight in and gave you everything and we didn't start stamping out stuff. We didn't hide under privilege. We didn't have an a la carte approach to privilege. We gave you everything.

Q. Could you answer the question first, Mr. O'Brien?

A. So all the evidence is there.

Q. Could you answer the question first. And this is a question I'll be taking up with all of the people who were involved in these matters Mr.

MR. McGONIGAL: I have no objection to him taking up this issue if it is relevant to the Terms of Reference.

What I'd like Mr. Coughlan to explain, and maybe he should explain, is the legal responsibility or duty on a person to bring something to the attention of the Tribunal or to volunteer information. It's not clear

to me it has never been clear to me and I am not sure that there is such a duty. If there isn't such a duty then I am not quite sure of the relevance of this question

CHAIRMAN: Well, I am not embarking on a period of legal argument now. I think we should conclude matters for lunch. It is, whatever be the legal applications of it, the situation, Mr. O'Brien, as Mr. Coughlan asks you, for good or for ill, it wasn't information that you conveyed to the Tribunal in advance of the Opening Statement dealing with the four matters summarised, isn't that a statement of fact?

A. Well, when the Tribunal became interested in this in their work

CHAIRMAN: I take your point

A. I gave everything. I am here for eight days and I will spend as much time to, obviously, handle any of the inquiries, Chairman.

CHAIRMAN: But as of that date, not before it?

A. Yes.

CHAIRMAN: Very good. Two o'clock. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

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

CONTINUATION OF EXAMINATION OF DENIS O'BRIEN BY MR.

COUGHLAN:

Q. Mr. O'Brien, if I could just deal with the matter we were dealing with just before lunch, in this context, when the Tribunal contacted you about the donation in the first instance, I think that was the context, that and the English property matters which are we are not dealing with in this phase of the Tribunal's inquiry at the moment, I think a meeting was arranged which couldn't go ahead and there was a subsequent meeting on the 16th May.

A. Yes.

Q. There intervened a television broadcast by Mr. Charlie Bird, I think that was on the 3rd of the month?

A. In or around

Q. You can take it from me I think that's right.

A. Sure.

Q. And he reported the transaction between Mr. Austin and Mr. Lowry. I think that was the

A. he said it was a loan.

Q. Now, I think when you furnished information to the Tribunal about the donation and other matters you were informing the Tribunal of information or documents that you may have or may be able to get, you also informed the Tribunal at that time that you had bought a house from David Austin because you took the view, as a result of this broadcast of this matter in the public

domain, that this is something which may be relevant to the Tribunal's considerations at least, isn't that right?

A. Well, I saw the loan and then I knew I had bought the house, but that's the earlier part of the summer and I said to myself, or I said to my lawyers, 'we should tell them that I bought a house off David Austin'.

Q. Because you considered it relevant for the Tribunal to at least consider the matter, to take it into its consideration?

A. No, no. It was just that when I saw that Michael Lowry had borrowed money, when I had discovered after the Charlie Bird thing, I felt that the amount of money was similar to what I bought the house for earlier that summer and what I wanted to do was immediately go and tell the Tribunal that I had bought the house.

Q. So the Tribunal could consider it. It was relevant for its consideration. Like if it wasn't relevant

A. it was just a piece of information.

Q. Maybe we are arguing about something silly here. You considered it something that the Tribunal should know about, I'll put it that way?

A. I thought it would be helpful that they'd know about it, yes.

Q. The Tribunal then made an Opening Statement and it identified four matters, leave aside Mr. Haughey's aspect of it

A. Yes.

Q. And the four matters the Tribunal identified it was inquiring into then at that time was the loan from Mr. Austin to Mr. Lowry and in that context, there was a mention made of you purchasing a house from Mr. Austin in its Opening Statement. It also the Tribunal said it was looking at the \$50,000 donation

A. Sorry, I am not sure whether there was a mention of the house. The money could have come from me but there wasn't a mention of the house, which obviously I wasn't that happy about.

Q. Well, I'll check that but leave that out of it. That was mentioned the 50,000 it was identified to the public that the Tribunal was inquiring into the \$50,000 donation.

A. Yes.

Q. And then the two other matters which we will return to at some other time. Now, at that time you had not informed the Tribunal of the conversation with Mr. Moloney and all that transpired subsequent to that, isn't that right?

A. That would be right.

Q. That's all I am trying to establish?

A. That's right, Mr. Coughlan, yes.

Q. And it was as a result of the Tribunal sending a letter to your solicitors asking a specific question that you then set about, in the context of discussions with your

lawyers, and I know there were difficulties about legal professional privilege in relation to matters, that you set about informing the Tribunal at that stage, isn't that correct?

A. Well, as quickly as we could. There was a number of days where there was this debate amongst both sides of lawyers 'what was privileged' and ultimately we gave everything that we had.

Q. Now, I don't wish to go into the correspondence at this stage between the Tribunal and your lawyers. It's something we may take up at another time. But when the Tribunal wrote to you about this, I think it came in the form of a very short letter requesting if you had had such a conversation, a conversation with Barry Moloney where you had said that you had paid $\frac{1}{2}$ 100,000 to Michael Lowry; and the second question then was did you ever make such a payment? I think that's the way the letter went?

A. It was a brief letter.

Q. And I think a number of letters then were exchanged between the Tribunal solicitor and your solicitors. There may have been the Tribunal sending a reminder and I think a letter was received from your solicitors, and I am not making any big play on this at the moment, whereby the Tribunal was informed that any such a suggestion or reference by the Tribunal was defamatory but then the letter went on to say you were taking the

matter up and there were matters of legal professional privilege and matters of that nature. Do you remember that letter?

A. I think the concern was this; is that if it got into the media I would be tried in the media and that has been a major concern.

Q. I am not making a big issue, I am just saying that is the way it was dealt with in correspondence?

A. Probably, yes.

Q. And matters moved along and Mr. O'Connell was dealing with the present solicitors then, I think, for British Telecom

A. were McCann Fitzgerald.

Q. McCann Fitzgerald and attempting to get documents to the Tribunal, isn't that right?

A. Yeah, we wanted to get the documents to you.

Q. And I think the reason I am asking about this is because it's a circumstance which the Tribunal will have to take into account at least in the context of understanding whether the payment was made to Mr. Michael Lowry, whether an intention was formed to make a payment to Mr. Michael Lowry, whether an attempt was made to make a payment to Mr. Michael Lowry or whether an attempt was made to pay Mr. Michael Lowry and it got stuck with an intermediary. These are the matters which are being considered at the moment

A. I think you know my views, Mr. Coughlan, on those

issues.

MR. McGONIGAL: I am not sure all that necessarily follows, that it is a circumstance which assists in relation to that, but I am not making

CHAIRMAN: I'll certainly hear you at the appropriate time about that, Mr. McGonigal.

Q. MR. COUGHLAN: I understand My Friend in relation to that. That's why the question is being put, so that everybody at least can understand why it's being put and make the necessary submissions on it. I think before lunch your solicitors furnished us with a letter from ESAT Digifone dated 11th February, 1998, I think, isn't that correct? (Document handed to witness) I think if we just it's a letter to Mr. Arve Johansen from the Company Secretary of ESAT Digifone, is that correct, Mr. John O'Rourke?

A. It's from the Secretary, yes.

Q. And I think it's probably faxed then to the directors, is it, or a copy of it is sent to the directors?

A. Probably, yes.

Q. And it reads,

"Dear Arve,

At the board meeting on the 28th January 1998, Knut Digerud informed the board that the talks between Telia and Telenor which were now in the public domain could

take up to six months to conclude. The issues of potential conflict were discussed and an undertaking was given to keep the Board informed of developments.

I am writing to you on behalf of the Board to request you, on behalf of Telenor, to keep the board of ESAT Digifone informed on a regular basis as to developments of this proposed merger.

The Board expressed a concern that there may be potential disruptions in the future, following the almost inevitable requirement for one of the proposed parties to shift to one side if the merger proceeds.

This concern is primarily around the sensitive aspects of the future plan for ESAT Digifone. In the event that there is fall out from the merger if it proceeds, which requires the disposal of the Telenor investment in ESAT Digifone and the retention of the investment by Telenor/Telia merged company in Telecom Eireann - a serious conflict of interest could arise.

I have been requested to arrange to have this item on the agenda for the next Board meeting of the company."

Now, I take it that the final paragraph is not a matter of great significance. I think you wished to draw the Tribunal's attention to the fact that Mr. Knut Digerud had informed the board of talks between Telia and Telenor, is that correct?

A. I think this relates to Fine Gael and the meeting of the same date, that the attendances that we spoke about this morning, that whether it incorrectly or correctly what our view, when you read all this stuff, is that they were trying to confirm and close a loop, as such, in their own minds from their due diligence between Telia and Telenor.

CHAIRMAN: Just give me that again, Mr. O'Brien, so that I have it, because my computer is a little on the blink here.

A. Chairman, what is meant is that there is a reference there, somewhere high up in Telenor they wanted this matter looked at. That's why they wanted to go to Fine Gael to check that the donation had actually found its way to Fine Gael and this is all happening in February/March of 1998.

Q. MR. COUGHLAN: Just to be clear about that. Is your point that it wasn't just Telenor's desire to clarify matters, but that it was part of a due diligence or a potential due diligence in this matter?

A. That's what we believe.

Q. That's your understanding?

A. Yes.

MR. MCGONIGAL: It has a relationship to one of the supplemental statements put in by Mr. Johansen but it can be dealt with.

Q. MR. COUGHLAN: Now, do you know if there are any other documents which you think the Tribunal should have concerning this matter, to the best of your knowledge?

A. Well, this arose when I read it and I said to Mr. O'Connell, 'wasn't there something at the time?' and he went looking.

Q. If there are, we can get them. I wouldn't expect you to know or remember and you wouldn't have them, of course, now?

A. No, I wouldn't because obviously I am not an officer of the company any more.

Q. Now, I think before lunch you wanted to make a point to the Tribunal as to your belief that Mr. Moloney did not wish the IPO of ESAT Telecom proceed, isn't that right?

A. I mentioned in the context of December 1996, where Mr. Moloney resigned at a very sensitive time. We were in the middle of a bond issue which was taking place, planned for the first week of January, 1997 and Mr. Moloney resigned at that time. And the context of that was that when Mr. Moloney joined the company as Chief Executive he negotiated share options over close to 2% and they were non-voting shares. In 1996, he resigned in December 1996 in the middle of the planning for the bond issue and the reasons he gave was management independence and some other areas as well, and he made a number of demands of the board which

covered I think three or four issues, but the main one being management independence and an increase in his options, relaxation of the terms under which those options would come into place, in other words, they were performance-related prior to this, and then dismissal of certain advisers. And the last one was a put a demand from the board that the board or the shareholders would have to buy his shares at a certain period into the future.

Mr. Desmond and I then, and I think this is somewhere in the documentation in the evidence, had to obviously go to Mr. Moloney and meet all of his demands, most of his demands, except for the put option because we knew that we couldn't do the bond issue without him being in his position because you couldn't do a bond issue if a major affiliate

Q. if you just lost your Chief Executive Officer.

A. Yes. So eventually he returned in January and we conceded most of the points. But nevertheless, what Mr. Moloney did was he persisted with the shareholders about, you know, having them that he had a right to get them to buy his shares and this was all in the context, I believe, that he was concerned that he owned 2% of an affiliate company in ESAT Digifone and that really, there was no real market for his shares unless there were two things; one was a trade sale where somebody came in from somewhere and said, 'can we buy

the whole of ESAT Digifone?' or secondly, if there was an IPO of ESAT Digifone. And in the case of a trade sale Telenor weren't interesting in selling because we were trying to buy them at the time, and certainly we were not interested in selling. So the other alternative was an IPO of ESAT Digifone. So it was our view that when this whole issue of the IPO of ESAT Telecom arose he felt that, basically, his opportunity of floating or the opportunity of floating ESAT Digifone and ultimately getting liquidity that way for his shareholding was completely closed off. So that was the background. That was on our minds in the very important period of September, October, November, at the time of our IPO. So it was like a rehearsal of what had happened before but without the allegations.

Q. So could I just summarise it like this, if I may, and you can correct me if I am wrong. An IPO of ESAT Telecom was not as financially beneficial for Mr. Moloney as an IPO of ESAT Digifone?

A. Yes. Because you couldn't float ESAT Telecom and then float ESAT Digifone

Q. I'll take that issue up with you as well. Am I correct that it is your belief that once ESAT Telecom floated, that the market would not have been interested in pledging funds to ESAT Digifone if it subsequently floated, the market already having taken up shareholding in ESAT Telecom and the major asset of

Telecom being its 45% shareholding interest in ESAT

Digifone?

A. That would be right, yes, and the market if ESAT

Telecom was floated the market had an each-way bet,

because we had a strong interest in ESAT Digifone

Mobile and a growing fixed business as well.

Q. Well, the way I summarised it, is the Tribunal correct

in summarising your view in this as I have summarised

it?

A. Yes.

Q. I just want to put one final matter to you I know

you'll be coming back to give evidence in relation to

other matters so if there is anything else that you

need to refer to, they can be dealt with at some future

date.

A. Okay.

Q. But just in relation to the matters which have been

under consideration at the moment, that is the donation

and the matters surrounding the conversation, and I put

this to you for your comment.

If I put a question to you on behalf of the public,

that any member of the public looking at matters which

have transpired so far, and if it were to be accepted

(a) that the conversation took place; (b) that the

question of 'intermediary', 'third party' or 'middle

man' or 'got stuck with the third party' were to be

accepted by them and then on the other hand we are to look at the purchase of a house by you from Mr. David Austin; that money going to Mr. My Michael Lowry by way of a loan and that money coming back to Mr. David Austin when the McCracken Tribunal was established; that's when it came back, it came back to Mr. Austin at that time; that it would not be unreasonable now I am asking you to accept all of those as matters which the public, a member of the public accepts that it would not be unreasonable for that member of the public to be of the view that Mr. David Austin was the middle man and that the money got stuck in the manner as I have described it?

A. Absolutely not. I would have hoped that given the amount of evidence I have given and that I would have persuaded you

Q. I am not saying that you haven't. It's not me that has to be persuaded. I am putting a question for your consideration and to allow you to comment on it.

MR. McGONIGAL: There is just one thing I want to add to that. It's an important thing because that obviously was a lead up a final question in relation to a whole series of things. But there is one aspect of the house that absolutely deeply concerns me, and I mentioned it to Mr. Coughlan, and that is that the Tribunal has information and has documentation since the 13th June in relation to expenses on the house in

Spain which would tend to support or show that Mr. O'Brien's interests had been paying those outgoings on the house since in or about 10/97, October '97. Now, I am not making a big issue of it but I am making the point that that material is with the Tribunal. They put the house to him. They did not put that material to Mr. O'Brien and therefore, the conclusion which Mr. Coughlan has tried to draw just there, is not a correct conclusion to leave in the mind of the public because the public have not, even at this stage, been given all the information; and had they been given all that information, then they would have come to the same conclusion, but a much stronger conclusion, in relation to the validity of the sale of the house.

Q. MR. COUGHLAN: Perhaps I should just deal with that because the information which is available to the Tribunal shows that whilst the expenses were paid on your behalf?

A. I paid them out of my

Q. yes, paid through someone else that the documents before the Tribunal showed that those payments occurred towards the end of '97, the beginning of '98, consistent with the documentation which was being put in place in relation to declarations of trust at that time. I have no difficulty with that and I put that and there is no difficulty or, in fact,

difference of view between the Tribunal and Mr.

McGonigal in relation to that.

MR. MCGONIGAL: The difference of view is it hasn't gone into the public domain. Therefore I feel the way in which the final question was planted was misleading because of that material fact, and that's the only point I am making. I understand that at a later stage he is going to lead that evidence but, therefore, it would have been, in my view, after that evidence had been led, the proper time to finish with his big question.

MR. COUGHLAN: With respect now to My Friend, and I have to be very careful, I am trying to deal with this in a very, very detailed way in the Tribunal, I have no difficulty, and you can take it from me, Mr.

O'Brien, that my question, the form of question I put to you on behalf of the member of the public, is in no way materially altered or changed by this matter which I am now putting to you, the documentation which shows that the expenses in respect of the property were paid in late 1997/early 1998 and probably 1998 at the same time as the documentation was being put in place to execute the various trusts in relation to the property for which the money had been paid for in 1996. That's the position. You needn't say anything, Mr. O'Brien. I just wanted Mr. McGonigal to perfectly understand the

question I was putting to you.

A. I hope I would have explained to you to the best of my ability yesterday the backgrounds in relation to Mr. Austin, his illness, the fact that, you know, I bought the house from him and that he was trying to get the documentation, but I think you understand that he was ill and you can see the papers on that.

Q. Yes. Thank you, Mr. O'Brien, for the moment.

A. Thank you.

CHAIRMAN: Well, effectively, Mr. O'Brien, what you are saying in relation to that possible view that a member of the public might say, you are saying it would be an unfounded, an incorrect view and that the evidence that you have given over the past several days supports the view that you urge on the Tribunal.

A. Quite definitely, Chairman.

CHAIRMAN: Well, Mr. Fitzsimons, I am conscious Mr. Fitzsimons, you obviously were inhibited from cross-examining on the last occasion and obviously I don't want to curtail you and I am anxious that as much as possible for this afternoon, taking if needs be, a fifteen minutes break from the stenographers and everybody else's point of view, if at all possible we seek to conclude that this afternoon.

MR. FITZSIMONS: Of course, Mr. Chairman, as of course is the case. My cross-examination will be confined to

the issue between Telenor and Mr. O'Brien on the \$50,000 donation. Mr. Coughlan has covered a lot of the ground. I am not going to put, as one would do in the courts, every issue that is in dispute.

CHAIRMAN: Of course.

MR. FITZSIMONS: The issue between the parties is a credibility one so I will be honing in on various matters in the hope that the questions and answers will be of assistance to you, Chairman, in due course in making up your mind as between the but I would certainly hope to be able to complete matters, depending on how the witness cooperates, of course

CHAIRMAN: We will see.

MR. MCGONIGAL: The witness has been cooperating for five days, Mr. Chairman. I am not quite sure whether that was

CHAIRMAN: now, let's use the time, gentlemen.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS.

MR. FITZSIMONS: The remark well, I don't wish to be heckled by Mr. McGonigal from the outset and if he thinks he is going to frighten me by behaving like this he can think again. But I am not going to be delayed by Mr. McGonigal jumping in to try and protect his

client at every opportunity as he has been doing up 'till the present time. So he should know that and if we don't finish today because of interruptions, it will be Mr. McGonigal's fault and he should know that too.

CHAIRMAN: Let's proceed and see what we can manage.

Q. MR. FITZSIMONS: Now, now Mr. O'Brien, my clients instruct me that one of the matters that impressed them most about you was your absolutely fantastic memory and, in particular, your fantastic memory for detail throughout the period of their association with you. Are you prepared to accept that compliment from them?

A. I accept all compliments.

Q. Well, your evidence in relation to this morning in relation to the date upon which Mr. O'Donoghue became the full-time CFO of ESAT Digifone, was that an example of that power of recollection? You were able to tell us out of the blue that he became CFO of ESAT Digifone on the 15th December, 1995.

A. Well, I don't have the actual papers relating to his appointment or his appointment letter but it's the best of my recollection and the power of my memory is that it was the 15th December. I think I said yesterday it was a different date. But

Q. Yesterday you said the 15th January, 1996. Now, you changed it this morning to the 15th December, 1995, obviously wishing to make a very precise correction.

I am just wondering how did this precise date stay in your mind for the past five years in view of the fact that you had no papers or documents?

A. Because I prepare myself for my evidence.

Q. Well, have you been speaking to Mr. O'Donoghue about your evidence?

A. I spoke to Mr. O'Donoghue in March/April when I asked him when this whole issue arose I asked him did he have any recollection of the donation.

Q. I see. So you had a conversation. Did you have more than one conversation with him?

A. I phoned him and had a conversation. Then he phoned me back.

Q. So you had two conversations?

A. Yes.

Q. And are you saying you have not met or spoke with him since April last?

A. It's my belief that I spoke to him around, when this issue broke.

Q. The question is a very simple one and you are the man with the fantastic memory and we are only talking about a few weeks ago. Have you spoken to him or been in contact with him at all in any way since April last?

In other words, in May or in June?

A. Certainly not in June. It could have been in the first week in May, it could have been in April.

Q. Well, now, is that a third or a fourth contact?

Which? You have told us you were in touch with him twice in March/April. Now we have another contact in May?

A. Sorry, I didn't say that. I said 'it could have been'.

Q. Well, I am looking for a pretty simple answer of matters that happened a couple of weeks ago. Could you please answer the question?

A. I am trying to help you, Mr. Fitzsimons.

Q. What's the problem about remembering this very simple fact? How many times have you spoken or been in contact

A. can I answer the question Mr. Fitzsimons?

Q. do answer it because -

A. You are making statements all the time. I said I contacted Mr. O'Donoghue to find out whether he could remember anything in regard to the Telenor payment and how that was treated at the time of the Shareholders' Agreement, when it was signed. I believe that conversation took place sometime when this broke. It could have been in April or it could have been the first week of May, but it was certainly in that timeframe. Is that helpful?

Q. Is this just one conversation now or two?

A. I just mentioned two.

Q. Two conversations?

A. I told you two. I phoned him, then he phoned me.

Q. How long did the conversations take?

A. A matter of minutes.

Q. A matter of minutes. Very well. Are you involved in joint venture or co-venture investments outside Ireland and other countries - your companies which you have shareholdings or controlling interests?

A. I am involved in a number of different business interests in Europe and in the Caribbean.

Q. And are, do these interest involve joint venture arrangements with other enterprises?

A. Not joint ventures.

Q. Co-ventures, in other words, you going into a venture with one or two or three other investors?

A. Yes, there would be investments like that, yes, in my portfolio.

Q. Well, do some of your investments involve investments in ventures with local interests?

A. Local interests? Yes, there would be, yes.

Q. Whereabouts?

A. In the Czech Republic, would be one. We don't have local shareholders in Jamaica or the Caribbean. We have applied for a licence in Trinidad with local people but it's we are now into our second year waiting to hear so we are not trading or anything like that.

Q. I take it you rely on your local partners for local information, local advice and guidance in respect of

the local scene?

A. Not totally.

Q. Not totally? But can we take it that you do rely upon them in the manners I have mentioned?

A. Well, we would always have our own person in there and they would also be feeding us the local scene.

Q. Well, I'll ask the question just once more and I'll move on from it and the Chairman can draw an inference if you don't give me a direct answer. Do you rely upon the local interests in respect of the matters I have mentioned?

A. Not all the time.

Q. I'll move on since you haven't answered the question directly.

A. Sorry, Mr. Fitzsimons. Your approach like, I am trying to help you, how can you say that I didn't answer that question? That's not nice.

Q. I want you to answer the questions, Mr. O'Brien

A. Repeat the question because I have answered the question.

Q. Do you rely upon your local partners for guidance in relation to the local scene, yes or no?

A. It's not a 'yes' or 'no' answer because 'not all the time' was my answer.

Q. Does that mean that you do part of the time?

A. Part of the time, yes.

Q. Part of the time, very well. Well, let's take

Czechoslovakia, how many years did you live in Czechoslovakia or your staff, the Irish staff, before you entered the joint venture in Czechoslovakia?

A. There is no such country as Czechoslovakia. It was broken up in 1992 under Federal decree, are you referring to the Czech Republic.

Q. The Czech Republic, yes. How many years did you and your own personal staff live there to get knowledge of the local scene before you commenced your joint venture investment in the Czech Republic?

A. We would have had people on the ground since early 1991. We went into business in late 1991 and we have our own people there ever since. So I suppose ten years.

Q. So a couple of months before you went into business?

A. I didn't say a couple of months. I said early in 1991 and then we opened the business in late 1991.

Q. Well, that's a few months, isn't it?

A. I wouldn't call it a few months. That's ten months.

Q. Ten months?

A. Ten and a half months to be precise.

Q. Very well, you don't wish to call that a few months.

Now, are you seriously suggesting that in the light of that experience of the Czech Republic, that being a country that had just attained its independence, effectively, that you were not reliant upon your local partners for guidance in relation to the local scene,

in relation to negotiating and contacting the local regulatory authorities, etc.

A. Not all the time because we had our own people on the ground.

Q. I take it you accept that in any joint venture, there is a duty of good faith as between partners?

A. It's a fundamental.

Q. Absolutely fundamental, isn't it, Mr. O'Brien?

A. I just said it's a fundamental.

Q. And trust is required as between partners, isn't that so?

A. Quite definitely.

Q. Didn't Telenor get a bit of a shock in Ireland when they suddenly discovered that IIU was an investor in the ESAT Digifone?

A. I don't see how they could ever get a shock.

Q. We'll come back to that later.

Now, Telenor was ignorant of Ireland when they came here, isn't that so?

A. I don't know whether they had been on any business or done any business in Ireland up until 1995.

Q. You had been let down by previous investors and contacted Telenor through PA Consulting, isn't that so?

A. We hadn't been let down, Mr. Fitzsimons.

Q. Contacted Telenor through PA Consulting, isn't that so, at a very late stage?

A. We hadn't been let down. We didn't go into business

with Southwest Bell because we felt that they were trying to take advantage of their financial position.

Q. You had to go around the place looking for another investor, you had to look for an investor and you found Telenor through PA Consulting, isn't that so?

A. Well, I wouldn't use the term "Go around the place" but PA were our consultants on the bid. They worked with us very closely on the bid and they knew that potentially we would need an international partner if we were going to be successful and they suggested Telenor.

Q. They found Telenor for you.

A. Well, they suggested.

Q. And that was how long before the licence was announced?

A. Six to eight weeks.

Q. Six to eight weeks. Now, how much information on Ireland and its customs, business customs, do you think Telenor managed to put together on its own account during that six to eight weeks?

A. I wouldn't know, to be honest with you.

Q. Weren't Telenor totally reliant upon you and trusted you totally all through this period?

A. I would hope that it was mutual.

Q. Well, quite clearly it was, Mr. O'Brien, in the events that happened during that period.

Now, just to move on: Mr. Austin; we have heard in your

evidence that certainly in '96 and 1997 your relationship with Mr. David Austin appears to have been an extraordinarily close one. We have heard about telephone, constant telephone calls, lunches, the sale of the house, you buying him shares, etc., etc., it seems

A. I never mentioned lunch.

Q. You did mention lunch?

A. I mentioned dinner.

Q. You mentioned lunch and it's in the transcript, Mr. O'Brien. Your relationship appears to have been extremely close during that period. Was it as close as that before December, 1995?

A. I knew David Austin, I met him socially, he was a friend of our family for many years.

Q. Describe to me, as you have described to us in detail, these constant contacts with Mr. David Austin from during 1996 and 1997, describe to me those same contacts before December 1995, just for the two years?

A. Intermittent phone calls, seeing him socially.

Q. Seeing him socially. Well, how frequently did you see him socially?

A. I don't know. I mean, I haven't done an analysis of when I meet people socially.

Q. Mr. O'Brien, it's a very simple question and the Chairman and everyone here knows there is a simple answer. Please give the answer. How frequently did

you meet him socially?

A. Reasonably frequently. Once every six weeks, whatever.

Q. Once every six weeks. And the phone calls, how often?

A. More frequently. Probably once every ten days or something, two weeks.

Q. Okay. That's pretty good to be getting on with.

Now, you have told us that he was a very pleasant, agreeable man who would talk about anything in phone conversations and, presumably, equally on social occasions. You have said in your statement to the Tribunal that you never knew that he was a fundraiser for Fine Gael, or indeed had any association whatever with Fine Gael, and it came as a surprise to you when he approached you looking for a donation. Now, are you suggesting that during just the previous two years, never mind what went before, that Mr. Austin never once, in all of your contacts, mentioned to you the fact that he was interested in Fine Gael when he probably knew that you were well I won't say any more you are saying he never mentioned that to you once?

A. No, because

Q. That's all right

A. It's quite explainable that we never talked politics.

He didn't ask me was I involved in a political party.

I never asked him. I never thought of asking him

whether he had any political leanings.

Q. And you never once discussed politics, even in 1994, for example, when a government fell and a Fine Gael government came into office? You never would have discussed politics. You would have seen him within a month of that and do you mean to say it wasn't even mentioned?

A. I only learned in 1997 or 1998 he was a cousin of John Bruton. He was that private in regard to his politics.

Q. We are really not talking about politics or people disclosing secrets. We are talking about ordinary, everyday conversation and you have told us that he spoke about everything on the phone.

A. Well, he didn't come on the phone and say 'I am' 'did you know that I am a fundraiser for Fine Gael?'

Q. We will move on. Did you attend Fine Gael or indeed other political party golf classics or golf outings before 1996?

A. Yes, I did, yeah.

Q. Well, how many per annum would you have attended, all parties, first of all?

A. All parties: In the run up to the licence and everything else I probably would have gone to maybe, 7, 8, 9 in 1995. That could be more though. I haven't gone through an analysis.

Q. And how many of those would have been Fine Gael?

A. I'd say the majority of them were Fine Gael.

Q. Now, we have heard from Mr. Frank Conroy here, who was a senior member of the fundraising branch of Fine Gael, that Mr. Austin was the golf classic organiser, that he organised golf classics. Are you telling us that whilst you attended maybe up to 7 Fine Gael golf classics, that somehow or another you didn't attend any of the ones that he organised?

A. Sorry, you asked whether I went to lunches or dinners with Fine Gael or other political parties. You mentioned golf classics.

Q. I mentioned I was asking you about golf classics.

A. No, you weren't. You were asking me about functions.

Q. No, I said golf classics. I have just checked just in case I am wrong. Golf classics?

A. You mentioned functions as well. I don't, I didn't.

Q. Mr. O'Brien. You just realise you are on dangerous territory in view of your answer, Mr. O'Brien, you are changing it to functions.

THE CHAIRMAN: We will make it 'golf classics' to clear up any ambiguity.

Q. MR. FITZSIMONS: I think my questions and the witness's answers are on the record, Chairman, and I ask you to record that passage in the transcript for future

A. can we look at the transcript?

Q. It's in the transcript.

A. Can we look at it?

Q. Ask Mr. McGonigal and I am sure he will tell you.

MR. MCGONIGAL: Does he want me to get into the witness-box too?

MR. FITZSIMONS: Just confirm the questions were asked, Mr. McGonigal and you know what they are.

CHAIRMAN: Now, gentlemen, I don't want to be intervening, let's try and make further progress in the matter.

Q. MR. FITZSIMONS: Then we'll have to start this again.

So the 7 events, shall we call them

A. They were lunches.

Q. Lunches. Well, how many golf classics did you attend?

A. I wasn't playing golf at the time. I only took up golf later.

Q. So you didn't attend a single golf classic, is that right?

A. I wasn't a golfer.

Q. You didn't attend a single golf classic, is that the answer? 'Yes' or 'no'?

A. Did I the question is did I go to a single I never played in one

Q. You see there is a lot of people who would know, who would have attended golf classics. Now, I want to straight answer from you, did you attend a single golf

classic in 1996 or 1995 or 1994 organised by Fine Gael?

Did you or did you not?

A. I went to probably a dinner. I didn't play in the tournament. There is a difference. Do you play golf? Because it's either you play in the golf or go to the dinner afterwards.

Q. The dinners are normally held in the golf clubs?

A. That's right.

Q. So you do attend the golf classic and go onto the dinner, isn't that so?

A. No. You either go you play and you go to the dinner as well or you just go to the dinner. I am not sure where we are going but I'll help you whatever I can.

Q. I know where I am going, Mr. O'Brien, you don't worry about where I am going. Just answer the questions.

So, how many dinners after golf classics did you attend?

A. One or two as far as I can remember.

Q. One or two. Now one or two

A. It's either one or two.

Q. Your memory fails you then in relation to whether it was simply one, is that it?

A. I am not sure whether it was one or two.

Q. Okay. You want to leave it like that, it's on the transcript and the Chairman can consider the answer

later.

A. Please do, yeah.

Q. And in relation to the other seven functions you attended, what dinners were they?

A. They were lunches, predominantly.

Q. Lunches. I see. Any other functions then?

A. I would have gone to the odd dinner.

Q. The odd dinner. Well then, how many lunches, dinners, golf classic dinners or other events associated with Fine Gael did you attend during the three years before December '96?

A. I would have to go through my diary and come back to you, Mr. Fitzsimons.

Q. And you can't give us an approximate figure?

A. I'd rather, because of your line of questioning, give you an accurate and fully reliable question.

Q. I'd be satisfied with an approximate figure, unless your memory is very poor, which my clients tell me it certainly is not. You should be able to help us there?

A. I am not going to give you an estimate.

Q. Very well. In any event, it came as a shock then to you to hear that Mr. Austin was a supporter of Fine Gael when he came to you in December of 1995. I mean, you must have been amazed?

A. That wouldn't be a shock.

Q. You must have been amazed. This man whom you had known

A. why would I be amazed.

Q. Sorry?

A. Why would I be amazed?

Q. Well, we have heard Mr. Frank Conroy saying he was an active supporter for Fine Gael for over 30 years, Mr. Austin, and you were very close to him, on the phone to him every couple of weeks, meeting him regularly and never once had you heard a whisper of that.

A. I have plenty of friends, Mr. Fitzsimons, that I would not know their political leanings and whether they were active or not in a particular political party.

Q. Okay. If we can just go to the transcript, day 116, page 64, I think there you deal with

A. what page are you on, sorry?

Q. I am at page 664(sic) and I am moving on to what you say was your first contact

A. Sorry, just one second.

Q. Day 116.

A. There is no 664.

Q. Page 64.

A. Oh, 64, thank you.

Q. And we are moving on to your contacts with Mr. Johansen.

A. Which part of that now?

Q. Question 225.

A. Let me read it if you don't mind.

Q. I will read it out whilst you are reading it.

"Question: Now, when you after the conversation with Mr. Austin, I think you have informed the Tribunal that you believed that you contacted Mr. Arve Johansen by phone, is that correct?

Answer: Yes.

Question: Would that have been before the dinner?

Answer: Yes, definitely.

Question: Can you remember the conversation, in general terms even?

Answer: In general, yes.

Question: And was that the conversation you had with Mr. Johansen on that occasion?

Answer: Just, I explained to him I had an approach from Fine Gael to go to a dinner. I said that it was inappropriate for ESAT Telecom to do it and that maybe if they wanted to do it, it would give them an opportunity for them to meet the Taoiseach and that's how I left it with him.

Question: Did you offer him any advice that the reason why you considered it inappropriate, that this was potentially a hot potato?

Answer: No, I didn't offer him any advice. It was up to Telenor to make up their own mind whether they wanted to make a donation or not.

Question: And I think it's your understanding you gave Mr. Johansen Mr. Austin's telephone number on that

occasion?

Answer: Yes,

Question: Do you know, to the best of your ability now, whether it was an Irish number or an an English number you gave?

Answer: I always related that he was working in the UK or in Windsor. But he could have been in headquarters at certain times."

Now, as you know, Mr. Johansen's recollection is that no such contact took place and in relation to the phone number you gave Mr. Johansen at that time, in your written statement to the Tribunal, you say that you gave Mr. Johansen

A. It was a Windsor number but it actually was in fact subsequently it was a different number.

Q. No, but I am sorry, this is your written statement furnished to the Tribunal, presumably prepared with your solicitor's assistance, given a great deal of consideration and there you state categorically you gave him your UK phone number on the 19th?

A. I gave him his UK number.

Q. Yes. You gave Mr. Johansen Mr. Austin's UK phone number. Now, how did you happen to have that number when you phoned him? Was it in your diary or what?

A. Well, as I have already said that I spoke to Mr. Austin fairly frequently, I would have had his number.

Q. But did you have it in your diary?

A. Not my diary, no, but I would have telephone books.

Q. Did you get it out specially to have it to hand when you phoned Mr. Johansen to pass on this request to him?

A. I actually don't remember.

Q. You don't remember? Very well, we'll move on.

Now, I think you published or issued or caused to be issued a press statement on the 6th March of this year and certainly a copy of it was published in the Irish Times. We have a number of copies of it here. I can give you one just for your consideration.

Now, this press statement was issued before your statement to the Tribunal was prepared.

A. And it was before we had any evidence.

Q. Now, in this press statement after you threaten all and sundry with legal action?

A. Sorry, correction, Mr. Fitzsimons, I didn't threaten all in sundry.

Q. Very well, I withdraw that. You threatened the Sunday Tribune, the Irish Times and RTE?

A. Well, it was not all in sundry.

Q. I accept the correction and I withdraw the remark.

You say in the second paragraph "In December 1995 the late Mr. David Austin approached Mr. Denis O'Brien in relation to a Fine Gael fundraising event to be held in New York city."

Now, that accords with Mr. Johansen's recollection that the approach I'll read on

A. I'll deal with that if you want.

Q. I'll just read on before I pose the question.

"At which An Taoiseach was to be in attendance. Mr. O'Brien was asked whether he would attend the event but he declined. Instead he put Mr. Austin in contact with Telenor, who had just entered the Irish market and wished to develop political contacts independently of ESAT."

Now, it appears that on the 6th March, 2001 in any event, your memory caused you to believe that your approach to Mr. Johansen occurred in December, 1995 for the first time?

A. It wasn't my memory, I was relying on the note that Mr. Austin had produced at the time of the IPO to confirm that Fine Gael had received the money and that said something to the effect that the dinner took place in December, so when that statement was put together, Mr. Fitzsimons, I was relying on that.

Q. I see. And you had no independent recollection then whatsoever of the actual events, notwithstanding your great memory?

A. I was wrong on the month because I relied when I had seen Mr. Austin's note mentioning December I thought it was December but, in fact, it was November.

Q. Yes, I see. Now, you took the view that it would not

be appropriate for your firm or for ESAT Telecom to make the contribution, isn't that so, and you say that's why

A. It's in the transcript, yes.

Q. That's why you approached Telenor. Now, when you gave evidence on this topic in the first place, I think it's back in day 116, page 65 well in the same area of the transcript, you laid emphasis on the fact that it wouldn't have been appropriate for ESAT Telecom to make the donation and it was only after some pressing on the part of Mr. Coughlan that you appear to concede that it would have been inappropriate for ESAT Digifone. And I'd just like to get it absolutely clear, is there any doubt about the fact that you, at the time, considered it inappropriate for ESAT Digifone to make the donation as well as ESAT Telecom?

A. I can't recall precisely the words but there is something in the transcript where, when Mr. Coughlan was asking me about this, the emphasis switched from ESAT Telecom to ESAT Digifone.

Q. If you could just answer the question now. Do you still or did you at the time consider it inappropriate for a contribution to be made by either company, ESAT Telecom or ESAT Digifone?

A. Yes, in hindsight, yes.

Q. In hindsight. I am sorry, just put yourself back to that point in time. What was your view then?

A. It wouldn't have been appropriate for ESAT Telecom and probably not appropriate for ESAT Digifone.

Q. And that was your view at that point in time?

A. Yes.

Q. Very well. Now, I think you said it was inappropriate for reasons of proximity, isn't that right, proximity to the licence, is how you put it?

A. We were surmising what was in the transcripts and we haven't gone through the transcript, but

Q. Can you not remember your own evidence?

A. I have been here giving eight days of evidence so I can't remember everything that I have said. But that's one of the benefits of the transcript that we get every night.

Q. I appreciate that, Mr. O'Brien, but witnesses give evidence in the courts every day of the week and have to remember what they said a few days ago.

A. I think this is different, Mr. Fitzsimons.

Q. Mr. O'Brien, you are not someone without education whose been on social welfare for 20 years and is disadvantaged in terms of answering simple questions or questions put by anyone. So is it

A. if you are asking me to recall every piece of evidence in detail that I have given, I don't think anybody could do that.

Q. Well, no, I am just asking you a very simple question, one of the main planks in your case, if I can put it

that way

A. I don't have a case. It's I am giving evidence.

Q. in relation to the donation is that it was not appropriate for Telecom or Digifone to make the contribution due to the fact of proximity in time to the mobile licence. Now

A. you are surmising

Q. That was your evidence?

A. Was it? Good.

Q. If there is a different reason now, please tell us.

A. No, I will stick to my evidence.

Q. You are sticking to your evidence?

A. Absolutely.

Q. You seem to have some

A. oh no. You are surmising what I am saying at the time, I take your word it's what I said.

Q. I take it the fact of proximity imports into it the fact that Digifone directly and, I suppose, Telecom indirectly were beneficiaries of the licence and a licence recently granted?

A. Everybody, I think, IIU, your client, ESAT Telecom, ESAT Digifone, the staff, people who worked on the bid.

Q. Absolutely. Yes. If it was inappropriate for you - or sorry - for Digifone or for Telecom due to the fact that they were beneficiaries of the licence, surely it was equally inappropriate for Telenor? You have just told us they were beneficiaries too?

A. Well, you have got to put it in the context is that they wanted to develop their own political contacts in Ireland, meet people and this was an opportunity and it was up to them to decide whether they wanted to take the opportunity.

Q. No, well, this is where we come back to the question of trust and reliance. You know perfectly well that they trusted you totally and were relying upon you for guidance in relation to Ireland. They were coming in freshly after six to eight weeks, they wouldn't have wanted to put a foot wrong and they needed guidance. Now, if it was inappropriate for your companies, surely you would have informed them that it was equally inappropriate for them, as a matter of good faith, since they trusted you totally in relation to these matters.

A. I just wonder whether there was you know, why couldn't they, if they wanted to, go to a political dinner in New York?

Q. Just why did you not tell them it was inappropriate for them to make a donation if it was inappropriate for Digifone and Telecom because of proximity to the award of the licence? Why didn't you advise them that, give them guidance?

A. But, Mr. Johansen would have asked me, I am not sure what his evidence is here, but he would ask me, 'why are you not doing it, Denis?' and I would have

explained to him the reasons for it. So he would have known what my reasons for it and then he could make up his own mind whether Telenor wanted to do it.

Q. Now, you said there that 'it would have been' are you saying then it was appropriate for Telenor? Was that your

A. It wasn't inappropriate.

Q. It wasn't inappropriate?

A. It wasn't inappropriate. If they wanted to, feel free to do it.

Q. It was appropriate even though they had just been, as you have told us, the beneficiaries of a State licence a few weeks before, you thought it was quite appropriate for them to make this contribution, is that right?

A. Well, I explained to Mr. Johansen the background and then he made ultimately his own decision.

Q. Now, you say that Telenor wanted to, I think you put it, 'develop' in your press release you said "Develop political contacts independently of ESAT".

Well, did you why didn't you say to him well, we'll start; did you have a discussion then about Irish politics and, you know, about the different parties, Fianna Fail, Progressive Democrats, Labour?

A. Telenor would have known that.

Q. Well, they were only in six to eight weeks, they were relying upon you.

A. They weren't in six to eight weeks and you know that, Mr. Fitzsimons. They were in since May of the previous year. They knew exactly what was going on in Ireland unless they were ignoring everything that was going on, everything that was said to them. They are sophisticated investors.

Q. I mean, did you not suggest that they should make a contribution to all of the parties? I mean you yourself last year made a contribution to all of the parties.

A. A very different context. You know that, Mr. Fitzsimons. We had an approach from Fine Gael and I put the person who made the approach in touch with them. It's nothing to do with me having my windfall after selling my interest in ESAT and then for the political process to make donations to the parties in this country and other organisations that were worthy at that time.

Q. Well, let me just approach this topic from just a slightly different angle and I am asking you this; it's very much a hypothetical question and may sound a little bit funny when put but it's serious in the present context.

Do you consider it would be appropriate for a State company such as Aer Lingus or Aer Rianta to make a political contribution to, say for example, the

Conservative party in Britain or the Labour Party in Britain or the Republicans or democrats in the US? Do you consider it would be appropriate for one of our State companies to make a political contribution to a political party?

A. I wouldn't have thought that there would be a problem.

Q. Sorry?

A. I wouldn't have thought there would be a problem if Aer Lingus in the UK were going to Conservative Party fundraisers or making donations, I wouldn't have thought it was an issue.

Q. You wouldn't have thought it was inappropriate?

A. It wasn't an issue. There wouldn't a problem.

Q. It wouldn't cross your mind that Telenor at that time, which was a Norwegian State entity, that there was no question of inappropriateness to having it make contributions to political parties?

A. I'd see them no different from any other company except that they had a State shareholding.

Q. It's your standards I am just trying to assess at the moment?

A. I didn't know I was going through a review of my standards, Mr. Fitzsimons.

Q. I am afraid the trouble is, Mr. O'Brien, you are the one that's brought them up when we have heard you say that you decided that it was not appropriate for your company to make this political contribution?

A. And then the record went on, which obviously we'll all have the benefit of, Mr. Fitzsimons.

Q. Now, move onto the meeting of the 8th December. Why was it necessary to raise the matter again, for you to raise the matter again with Mr. Johansen? I mean, you weren't you weren't a party political fundraiser for Fine Gael, I take it?

A. No, I am not involved in any political party Mr. Fitzsimons.

Q. Well, if you had contacted Mr. Johansen a month before, and of course he says he wasn't, why was it necessary for you to come again with this topic?

A. To come again?

Q. Yes. After the meeting in the offices when Barry Moloney had gone?

A. Well,

Q. Why was it necessary for you to raise the matter again?

A. Well, I am not sure whether I raised it or he raised it.

Q. You raised it. I think I don't think you even dispute that yourself?

A. I don't know what the transcript says but we discussed it again whether after, following, at a previous - I had a conversation with him which I think was before the dinner of the 9th.

Q. Why was it necessary? I mean, just if the previous contact had been a throwaway remark by you, why did you

have to pursue it?

A. Well, you see I am not sure how it was raised, Mr. Fitzsimons. I don't remember.

Q. Why did you have to pursue it?

A. Well, I am not sure whether I pursued it or it was raised by Mr. Johansen so I actually don't remember.

Q. Well, I mean, you did pursue it and then on your return page 3 of your statement to Dublin, phoned Mr. Johansen to give him Mr. Austin's phone number in the UK again.

A. That was after the conversation the conversation was on the Friday and part of that conversation was that I would ring him on Monday with the number.

Q. But why on that second conversation you gave him the UK number for a second time why was it necessary?

A. Maybe it was because he didn't keep the number the first time. I don't know. You don't ask your client that.

Q. Well, if he didn't keep the number the first time that means he wasn't terribly interested in contacting Mr. Austin or in making a contribution so it's consistent with your pursuing him and pressing him to make it?

A. I wouldn't surmise that at all.

Q. You wouldn't?

A. No.

Q. I see. Are you telling us he had lost the number and

that's why you gave it to him a second time?

A. I don't remember. It's five years ago, Mr. Fitzsimons.

Q. Okay. But you could have phoned Dublin from the offices that day and got the number, couldn't you?

A. Well, as you can see that everybody was in a hurry that day. I was rushing to the airport so we ran out the door.

Q. Yes, but a phone call takes about 30 seconds, doesn't it?

A. It depends on how late we were for the flight.

Q. But you had to contact Mr. Austin in the meantime, hadn't you?

A. I don't know if I contacted Mr. Austin or not. All I did was ring Mr. Johansen on the 11th.

Q. Anyhow, the reason you give for saying that you gave Mr. Johansen you had to give him Mr. Austin's UK number twice is because Mr. Johansen lost the number that he had been given a month before, is that what you are saying?

A. No. I think we'd have to get the transcript back again but I said I couldn't remember whether he'd lost it, I gave you that as an example.

Q. You see, if he hadn't the other explanation is, of course, that there was no previous conversation, that you have invented that to put it back

A. that's a very serious allegation in this Tribunal,

to say that.

Q. Mr. O'Brien, be perfectly clear what's at stake here

A. my reputation, thank you.

Q. And Telenor's reputation

A. Both.

Q. Both?

A. Thank you.

Q. Either you are telling the truth or my clients are
telling the truth

A. Well, we are all under oath.

Q. And the Chairman is going to have to decide that issue?

A. yes, he will.

Q. in a black and white manner, so be very clear that
this is very serious for you and for my clients?

A. I am reminding you how serious it is, Mr. Fitzsimons.

Q. Ohm I don't need reminding, Mr. O'Brien.

A. Thank you.

Q. Now, if we can go now anyhow let's just stay with
that for a moment. You see, I suggest to you, Mr.

O'Brien, that there was no earlier meeting or no
earlier call of the 19th November and that you have had
to invent that in order to bring it back to nearer the
dinner.

A. You are absolutely wrong, Mr. Fitzsimons.

Q. Very well. Now, on your return to Dublin, this was
the third contact in relation to the \$50,000
contribution. You phoned on the Monday to give him

Mr. Austin's number. So this is three times you have now been in contact with Mr. Johansen to help him to make this contribution to Fine Gael. Why

A. sorry, I wasn't helping him.

Q. You were giving him the number?

A. It was simply giving him the numbers.

Q. But you had given him the number six weeks before.

A. But I wasn't pushing him in any way.

Q. Why did you have to keep contacting him? This is the third time?

A. I didn't. He asked me to give him the number on Monday and I did.

Q. Now, I wonder if we could go to the, just briefly to the Killroys memo of the 4th?

A. What page?

Q. Page 24. Now, I know I am not going to spend much time on this because Mr. Coughlan has brought you through it. Just item 3 there, which I think you have agreed with "The Fine Gael Party was in financial difficulty and needed payments." I think you have accepted that you could have said that.

A. Yeah, I think it was widely known that Fine Gael and the other parties were all trying to raise money.

Q. And who had you got that information from?

A. Well, I wouldn't have been invited to so many functions if they weren't looking to raise money.

Q. Who had you got the information from?

A. Well, I deduced that from the number of fundraisers that Fine Gael were having at the time.

Q. You see this introduces an element of you involving yourself in fundraising for Fine Gael. You were aware that they were in financial difficulties. You have told us you were aware of that from the number of functions you attended and does this explain your pursuit of Mr. Johansen to make the donation?

A. I wasn't saying that but if you get a lot of letters with fundraisers and inviting you to take a table or buy a seat at a dinner or whatever or go to a golf outing, you have to question why so many letters are coming in and I think it would be a logical explanation to think that they had to raise finance.

Q. But you offer this as one of the reasons to Mr. Lang when he questioned you as to your attitude towards this request for money?

A. Well, let's look at this very precisely. It started "Mr. Lang asked a number of questions in connection with the payment made by Telenor."

Q. Now, we'll move on anyhow.

A. okay.

Q. to the next page. Again, I don't want to waste time here. I think you have accepted that to Mr. Coughlan, it's dealt with twice already. "DOB acknowledged that he wanted the payment to be paid "Outside the country". "

A. I said to Mr. Coughlan

Q. you accept that you could have said that?

A. I said to Mr. Coughlan that I don't remember saying it.

But I could have said it.

Q. Yes, you accept that you could have said it?

A. I could have said it, I don't remember saying it.

Q. Well, let's try and put some sense, in case you did say it, and you say you could have said it.

A. I don't think we should deal in hypothesis, should we?

Q. I am afraid you are the one who has made it hypothesis

A. you have, by this line of questioning.

Q. by having this poor memory of these matters?

A. But you complimented me on my good memory at the outset. So thank you for that.

Q. Indeed, that's it's for the Chairman to make the assessments.

A. Continue, Mr. Fitzsimons.

Q. This is totally consistent with Mr. Johansen's version of events, that you wanted Telenor to assist the company to make this payment and to keep it under wraps, so to speak. And he went along with it, very foolishly, as he now accepts.

A. What's the question, sorry?

Q. The question is that this phrase that you wanted it "Paid outside the country" which you accept you could have said, is totally consistent

A. But I don't remember saying it, so but I could have said it so I don't know.

Q. Very well. I think you disagree with the rest of the detail of the meeting but I'll pass from that.

Now, the invoices and the question of payment by ESAT Digifone, just to keep things in terms of time in a logical sequence. I think you would accept that the legend in manuscript in Norwegian on the invoice dated 14th December, 1995, that's document 3, Mr. Johansen's statement, assuming it was placed on that document on the day of its date, namely, the 20th December?

A. Sorry to interrupt you. I just want to find this because

Q. come on, you can remember this, Mr. O'Brien.

A. As I mentioned before, these invoices, I wasn't handling them, they were handled by the company or Telenor people.

Q. As you say yourself you have been here eight days and you should be pretty familiar with them now?

A. If you don't mind, if I could have a look at them

CHAIRMAN: I think we are having it up on the screen anyway, Mr. O'Brien.

A. Thank you, Chairman.

Q. MR. Fitzsimons: Document 3, Mr. Johansen's statement.

Now, just the translation of that document. "Per, this must be paid by us and further to be invoiced as

management cost to Digifone, KD" and the date, you can see, 20th December?

A. That's Knut Digerud.

Q. Yes, indeed. Now, assuming, and of course it's an issue for the Chairman, that the date, the 20th

December, is correct and that this legend was placed on this invoice on that date, isn't the only conclusion

to draw that certainly Telenor assumed that this, on

that date, 20th December, that this was to be an ESAT

Digifone expense?

A. I think, Mr. Fitzsimons, you'd have to look at all the invoices because

Q. Just making that assumption?

A. I wouldn't have looked at all the invoices in coming to this Tribunal because there is elements of shredding of

invoices, changing them, credit notes, a lot of

confusion, so you have got to look at the whole picture

before you can selectively come to a conclusion.

Q. I don't think there is any confusion at all once you go through them, Mr. O'Brien. But we'll go to the

shredding now straight away. What motive could

Telenor have had for shredding invoices? I mean, they were, on your story, delighted to make this

contribution, they wanted to develop political contacts

in Ireland. This was going to be a payment that was

going to advance their cause in Ireland. Wouldn't

they have been proud of it and pleased to keep, as they

did, every piece of paper that

A. I think you are being a bit dramatic in saying that

it's going to 'advance their cause in Ireland'. I

don't think anybody could think that.

Q. This is, this is what you are saying?

A. I never said that. You are saying 'to advance their cause in Ireland'. Did I use that word now?

Q. Common sense, Mr. O'Brien. It's the same thing.

A. So why would they shred?

Q. What possible motive would they have had for shredding anything?

A. Are you telling me they have shredded them?

Q. No. On the contrary. I am going to suggest to you that these invoices were shredded on Dublin instructions and that Telenor could have had no motive whatsoever for shredding them?

A. They were all handled by your people in Dublin.

Q. No, they were not handled by our people in Dublin and that will be the evidence, as you know?

A. All the invoices are written in handwriting in Norwegian. I know Irish people are fast learners linguistically but they are not going to learn Norwegian in the space of three months.

Q. But the legend in Norwegian is on the copies that were in Norway, not the Dublin copies?

A. How would I know anything about shredding when I have already said in my evidence with Mr. Coughlan that I

knew nothing about these invoices.

Q. You suggested at the outset and you repeated it sorry, I'll start again on this topic, when you first gave evidence, you said that you suspected that Mr. Thygesen had given the instruction to shred the invoice?

A. Well, he was the Chief Executive and then he was followed by another Telenor representative, Mr. Knut Digerud and he has disappeared mysteriously and we want to hear of his evidence, I certainly do. Then Mr. Moloney came along, was appointed jointly with Mr. Knut Digerud. So your representatives were the Chief Executive of the company.

Q. Exactly. So when you gave evidence first, I think it's day 116 or 117, you only mention Mr. Thygesen?

A. Thygesen, yes.

Q. And you said he was the one who you were placing blame on on that day?

A. I don't, no, blame anyone.

Q. Well, suspicion?

A. I suggested that somebody should ask him.

Q. Your phrase was 'suspicion'. Your suspicion was that Mr. Thygesen was involved. That's as far as you put it?

A. I don't remember using the word 'suspicion'.

Q. It's in the transcript.

A. But Mr. Thygesen was the Chief Executive at the time.

Q. But Mr. Thygesen has now made a statement and today we have

A. where is it?

Q. Hmm?

A. Where is it?

Q. It's not filed yet. You will get it in due course?

A. Okay.

MR. MCGONIGAL: If there is a statement, I thought it would have been furnished.

Q. MR. FITZSIMONS: It hasn't been lodged yet.

A. I have given my statement, Mr. Fitzsimons, and my evidence.

Q. Your statement is a statement of four pages in

A. why is your client

Q. the third person dealing with a very minor portion of the matters that you have given evidence of.

Please don't call it a statement, Mr. O'Brien.

A. Why then are you delaying Mr. Thygesen giving a statement when it's going to be helpful to the Tribunal?

Q. It will be

A. We are looking forward then.

Q. Today you mention not just Mr. Thygesen but you mention Mr. Digerud. He is brought into the equation because you think he is not around, isn't that so?

A. Well, we haven't seen a statement from him. The

central people on the Telenor side are very silent in giving evidence.

Q. But you know that he is not employed by Telenor. But today we have Mr. Digerud and Mr. Thygesen whereas the last day

A. I am not aware that he has left Telenor.

Q. whereas the last day we only had Mr. Thygesen?

A. I didn't know Mr. Digerud was not working for Telenor but I wouldn't see that as a problem, given the close relationship

Q. How is it today that you suspect that two Norwegians might have been involved whereas the last day you only suspected one?

A. Because in your homework, Mr. Fitzsimons, you would have read the minutes of board meetings and you would have seen that Mr. Thygesen resigned, I think in February, and Mr. Digerud took over.

Q. Now, Mr. Thygesen was the Chief Executive Officer from early 1995 to the 19th February, 1996.

A. That's right.

Q. And you'll accept he was a technical expert and had nothing to do with accounts or the processing of invoices whatsoever?

A. I think you are very incorrect in making that assumption. He was the Chief Executive. A Chief Executive of any company is responsible for all departments and all functions.

Q. Neither he nor any Telenor employee was involved in relation to

A. are you reading his statement and you can share it?

Q. No, I am reading my own notes. Neither he nor any Telenor executive were involved in relation to these invoices, I put it to you?

A. I think you are wrong but how can you say that all these invoices with Norwegian written across them, that Mr. Thygesen was not involved or Mr. Digerud? We have just seen evidence there. Mr. Digerud is on the invoice there.

Q. Contrary to your evidence today, I am instructed that Peter O'Donoghue reported to you?

A. May I just go back here? This is a really interesting point because Mr. Digerud here is writing across that there, Mr. Fitzsimons. But anyway, we might come back to you.

Q. I suggest to you that you visited the accounts regularly and involved yourself, even though Chairman, in the day to day detail of the running of the company, much to Mr. Thygesen's surprise, you being the Chairman?

A. As I explained, Mr. Coughlan, that is not true.

Q. That he was involved with the technical matters, setting up the network for Digifone and didn't worry unduly about it?

A. I was a non-executive chairman and that was the

agreement at the outset with Telenor. So I had no hand, act or part in the day to day management of the company. The only time that I helped was actually in sites for a brief period of maybe two weeks in 1995 after we won the licence within a couple of weeks.

That was the end of my role on an executive basis, if you could call it that. It was a weekly meeting.

Q. Now, we looked at a document today which was an extract from a draft pro forma balance sheet showing intercompany liabilities as of the 31st December, 1995.

I think you said that this was a document prepared by Mr. Moloney, isn't that so?

A. Colm Moloney, we think now.

Q. You think?

A. Well, again I wasn't running the company and the evidence has been provided to the Tribunal by somebody else.

Q. Who is 'we think? Who is 'we'?

A. Sorry, myself and my advisers, in discussion, we were trying to work out.

Q. What about Mr. O'Donoghue, what does he think?

A. I have no idea.

Q. You have no idea?

A. I have no idea.

Q. He hadn't been asked?

A. I explained to you I spoke to him soon after the donation came out and had two brief conversations, so I

don't know what

Q. who provided this document?

A. It's the Tribunal has handed it to us.

Q. Okay, I see. I won't query that. It's dated the 31st December, 1995 and refers, amongst the items, to a Telenor mobile re David Austin, i£1,600." Since yours sincerely a pro forma balance sheet as at the 31st December, 1995, it must have been prepared after the 31st December, 1995, isn't that so?

A. I wouldn't know.

Q. Well, mustn't it have been if it's if it is what it says?

A. It could have been produced on the 31st or the 1st or the 2nd or six months later, I don't know.

Q. Well, in other words, 'yes' is the answer to my question.

A. No, the answer to the question is 'I don't know'.

Thank you.

Q. You don't know. I see. Because since it was prepared on the 31st December, 1995 it would mean either that the person who prepared it well it could mean a number of things but it could mean that if the original invoice was shredded at that time, that somebody knew about its content and recorded it here, isn't that so?

A. Again I wasn't involved in the invoices. Remember I wasn't involved in this, so how would I know?

Q. But it might mean that it wasn't shredded?

A. You'd have to ask your clients whether they shredded that one or not.

Q. Now, was Mr. Moloney a competent member of the accounts department?

A. He was one of many very competent people working in the company.

Q. Was Mr. O'Donoghue competent?

A. Very competent, yes.

Q. Well, if either of them shredded this invoice without instructions would they have been in dereliction of duty?

A. I don't know anything about invoicing

Q. just answer the question?

A. and shredding.

Q. You are the Chairman of this company. If you had heard that members of your accounts department were shredding significant documents

A. that's a very serious allegation that you are making against the good names of the accounts department, the people working in that department at that time.

Q. I am not making any allegations

A. You are saying they shredded things. Where is the evidence for that now, Mr. Fitzsimons? Where? You have got to be fair to people. You can't say that.

Q. Mr. O'Brien you are not here to make speeches. Just answer the question. And I will repeat the question;

if anyone in the accounts department had shredded this document without instructions would he or she be in dereliction of duty?

A. I don't I don't know. To be I mean, people throw things into the shredder if they are of a confidential nature that, you know, they have no use to file any more. I mean there is different contexts of people shredding things. But the first I knew about shredding was when I came into this Tribunal.

Q. Right. And is that your answer to my question?

A. That's the answer.

Q. Well, I won't even ask it another time.

A. Okay. Thank you for that.

Q. On your story, Telenor wanted to make the political contribution?

A. I don't have a story Mr. Fitzsimons, I have evidence.

CHAIRMAN: We'll say 'version'.

Q. MR. FITZSIMONS: I take it you'd accept if that was the case they would have no reason to hide it.

A. Telenor?

Q. Yes, if they wanted to make this contribution to develop political contacts in Ireland, well surely they would have had no reason to hide it?

A. Well, that's entirely for them but I wouldn't have thought so, no.

Q. You wouldn't have thought so? Indeed. But so you

would find it inexplicable why they, if they did shred

it, you must find this amazing?

A. I was questioning

Q. and inexplicable?

A. Well, I questioned why that why apparently, allegedly, somebody was shredding, I don't know who was shredding, but certainly Telenor seem to be changing an awful lot of invoices backwards and forward, credit notes, new invoices, more handwriting across them in Norwegian, so I wasn't involved in it, Mr. Fitzsimons.

Q. I have to suggest to you you are the one who wanted it invisible and you were responsible for the contribution.

A. I absolutely don't accept that.

Q. Now let's go onto the press statement again, just for one small item in it. It's the final paragraph. It says "At the time in question, December 1995, January 1996, ESAT Telecom did not have a funding difficulty and would have been fully capable of making any political donation it wished on its own account."

A. Yes, I see that.

Q. Now that, in fact, was not in accordance with the facts at the time, isn't that so?

A. No, that's not true either.

Q. Wasn't there a judgement entered against the company for $\frac{1}{2}$ 10,000 or so some months previously?

A. I don't remember that.

Q. Catherine Butler?

A. That was not a judgement, no.

Q. Was it not?

A. I think that is appalling that you raise that. That matter she was suing our company and in the end she gave up her action and if you are trying to damage our company's good name and my good name, I take offence to that now, Mr. Fitzsimons.

Q. Well,

A. Now, you know that's not true.

Q. Let me go to the source for it then is probably the simplest. A newspaper article by Mr. Sam Smith

A. Do you believe everything you read? Do you really believe everything you read? You couldn't be that naive.

Q. I am putting it to you now. If it's wrong, just say so?

A. You'd raise that publicly in a Tribunal today on the basis of a newspaper article by Sam Smith. It's shocking.

Q. Are you saying

CHAIRMAN: I think it's preferable you deal with it.

You may be entirely right. Perhaps you'd just address yourself to the question.

Q. MR. FITZSIMONS: Are you saying there was no judgement?

A. No judgement.

Q. Very well?

A. Would you withdraw the remarks then just, please, for the record.

Q. If you say there was no judgement, I will withdraw them, yes.

A. Thank you.

Q. I think the newspaper article, just for the record, was the 18th June, 1996, Irish Independent

A. It was probably a libellous article but we'll find out anyway.

Q. Very well. But of course you weren't in funds at that time?

A. You are wrong again, Mr. Fitzsimons, sadly.

Q. I see. Well, how was it then that by the time it came around to settling accounts that Telenor paid in, was it, \$9 million?

A. There was a bridged loan, yes, but also had funding from our main bank, was it Allied Irish Banks, and I believe we raised $\text{€}1\frac{1}{2}$ million sometime after winning the licence. And then we had a bridge loan from IIU and yourselves as part of the underwriting agreement that was entered into, originally in September, I believe, the 28th, 1995.

Q. But this funding was for, I take it, setting up the network, not for making political contributions?

A. It was actually, to be very clear, it was actually to fund the equity. But our company had funding from AIB

that if we wanted to make a political donation we would have been in a position to do so.

Q. Yes, very well. I move on to another matter.

Mr. David Austin, now we have heard a lot about him, we have a partial picture of him. Was he a good I want to ask you a number of questions about him; was he a good businessman?

A. Yes, he had a very good reputation.

Q. I think you have told us he was a very pleasant, agreeable, nice man, by all accounts?

A. He was one of the nicest men I have had the pleasure of meeting.

Q. I take it you would say he was a very honest man?

A. Yes.

Q. And he was well-off financially himself?

A. I wouldn't have known his financial position, Mr. Fitzsimons.

Q. He was an intelligent man, would you say that?

A. Yes, he was bright.

Q. I am asking you I don't know so I am asking you these questions he was bright. And would you say that he was a person who had who was accurate in his recollection?

A. Well, he was going through very serious treatment and he would have been on heavy medication at particular times. And normally when you take medication sometimes your memory would lapse for a while.

Q. Are you saying he had a poor memory?

A. No, I didn't say that now. I said that when you go through chemotherapy you actually get drugs to kill the pain, normally morphine. Morphine has the effect that immediately after the treatment you, certainly your memory would not be the best, having received such a severe dose of chemotherapy that he had.

Q. Well, was he undergoing those heavy doses of chemotherapy in November/December 1995 when he was organising the Fine Gael dinner in New York?

A. I think he would have been under treatment well for a long period of time, I don't know precisely.

Q. And these memory losses, would they mean

A. I am not saying he had a memory loss. I am just saying that he potentially could have I don't know if you have ever had heavy surgery but when you come out of surgery or getting heavy treatment you are not the best after it for two or three days.

Q. I can well understand how that might well be the case.

But you are not trying to paint a picture of a man who had lost his memory or

A. I am trying to be, without embarrassing the memory of Mr. Austin, I am trying to be as helpful as possible.

Q. Thank you very much indeed, Mr. O'Brien. Now, was he a man who would forget things within a week?

A. I am saying to you I am not saying that he would

forget things in a week. I am just making a general point.

Q. Would he forget things in three days?

A. I don't know.

Q. You don't know?

A. I don't know.

Q. Well, if we can go to the letter of the 14th December of 1995, that's Mr. Johansen's statement, document 3?

A. Is this a letter of the 12th June?

Q. No, it's a letter to Mr. Johansen from Mr. David Austin. A receipt. "Please find invoice for consultancy work for the duration of 1995 as agreed with Mr. Denis O'Brien. I hope that you will find this in order." Are you telling us Mr. Austin wrote this letter just after he emerged from a bout of the chemotherapy?

A. I wouldn't, obviously, know that, Mr. Fitzsimons.

Q. If he did it means he had the chemotherapy between the 11th and the 14th December.

A. Well, first of all, I am not sure where you are going on that but I explained to Mr. Coughlan that I believe that this was an exaggeration of my role. I said this on day 116.

Q. Well, do you agree then that I will rephrase that question; you are not then suggesting that Mr. Austin made a mistake in

A. I think he made a mistake in the context of "As

agreed with Mr. O'Brien". That would have been an exaggeration of my role.

Q. So he got it wrong?

A. Well, certainly it's an exaggeration of my role, as I said.

Q. So here is this good businessman, intelligent, good friend, is writing a letter which misrepresents his good friend's role in this transaction?

A. It is an error. That's all I am saying.

Q. An error, I see, very well. Now, Mr. Austin wrote again on the 19th February, 1996, document 5, Mr.

Johansen's statement. I'll call it 'the strange letter'. We heard from Mr. John Bruton that he was to have lunch with Mr. Austin that week, on the 23rd February, 1996 and that he postponed that but he got the phone call from Mr. Austin the following day. You recall all that, I am quite sure.

A. I wasn't here for his evidence but I'll take it for granted, yes.

Q. Now, presumably it's a reasonable inference that Mr. Austin might have been intending to give the same information to Mr. Bruton at the lunch as he gave on the phone the following day but Mr. Bruton told us that the only thing he said to him was that there was money available from ESAT Digifone interests. Now, have you any idea why he should have been so circumspect when speaking with Mr. Bruton on the 24th?

A. I wasn't present so I don't know.

Q. Okay. And have you any idea why he should have been so circumspect in this letter?

A. Well, which letter?

Q. This 19th February, 1996 when he talks about "It was certainly not something that was taken lightly on my part and not from those who have received payment. Please be assured of their appreciation and thanks."

Very circumspect letter.

A. I wasn't copied this letter and I wasn't involved in this letter. I know Mr. Johansen or somebody says that I was involved in getting this letter but I wasn't. So it is a circumspect letter but I have no idea why it is.

Q. Well, does the phrasing of the letter, could I suggest the phrasing of the letter and the way the news was passed on to Mr. Bruton indicate that Mr. Austin had, by this point in time, had developed his own concerns regarding the appropriateness of the contribution?

A. I actually don't know.

Q. You don't know. And are you going to say to the Tribunal that you had no discussion whatsoever with Mr. Austin regarding the contribution from the 11th December, 1996?

A. Well, it's interesting because

Q. are you?

A. Whether I am or not?

Q. Are you going to say that you did not have a single discussion in which the contribution was mentioned between the 11th December, 1996 and the date of Mr. Bruton's telephone call the 24th February, 1997

A. I could have, I actually don't remember Mr. Fitzsimons.

Q. You could have?

A. I don't remember.

Q. Why don't you remember? Why don't you remember?

A. Because can you remember everything when you were Attorney General of this country?

Q. How many times

A. Could you remember every serious case that you handled? Every detail?

Q. How many times at this point in time had you procured a \$50,000 contribution to Fine Gael?

A. I explained already that I was not a 'procurer', to use your words.

Q. I'll put the question a different way: What was the biggest political contribution you had made, you or your companies up to point?

A. i;½5,000.

Q. i;½5,000. So here is a political contribution of \$50,000

A. but I wasn't working for Fine Gael.

Q. that you knew you had got for Fine Gael and you say you could have are you saying that you did not have a single conversation with Mr. Austin

A. no, I said I can't remember if I did have a conversation. That's what I have said.

Q. In other words, you may have had conversations

A. I may have but I don't remember.

Q. Well, are those conversations responsible for Mr. Austin's the content of Mr. Austin's letter, the careful phrasing?

A. I think I would have explained already that I was not involved in getting a letter from Mr. Austin. I think your client is incorrect in some parts of his statement.

Q. Well, you have told us Mr. Austin is a decent, honest man. Why should he not tell Mr. Bruton that he had, in his bank account \$50,000 that had come to Fine Gael? Mr. Austin is a nice, decent, honest man?

A. A fantastic man.

Q. Well, why would he not tell Mr. Bruton that he had \$50,000 in his bank account when he phoned him on the 24th December sorry, of February, 1996?

A. 'I don't know', Mr. Fitzsimons, is my answer.

Q. You don't?

A. No.

Q. And are you saying that in your discussions, if you had discussions, you did not discuss the appropriateness of the contribution or decide between yourselves that it should be shelved for the time being?

A. I said I don't remember having conversations about it,

specifically the donation.

Q. Now, Mr. Bruton accepts that when he spoke to Mr. Austin he said 'he didn't want to know, leave it where it is'. It may be Mr. Austin took that as a suggestion that, just a literal suggestion that it be left where it is, though Mr. Bruton was not told that the contribution had been made. Now, as I say, you have told us Mr. Austin is a was a decent, honest person. What do you think Telenor would have said, this company that was anxious to develop its political contacts in Ireland, and that it paid \$50,000 for your purpose

A. not for my purpose. Withdraw that, please.

Q. on your evidence it was a slip of the tongue.

A. No, I didn't say in evidence 'for my purpose'.

Q. I'll start again.

A. Thank you.

Q. What would Telenor say what do you think they would have said if they discovered that the \$50,000 contribution, which on your evidence was one made by them to develop political contacts, had never got to Fine Gael or didn't get to Fine Gael for another fifteen months.

A. Nobody knew that.

Q. No, but what would Telenor have said if they had discovered? I mean, these were strict Norwegians, a State company, what do you think they would have said

if they discovered that?

A. I don't know. You are posing a hypothetical question.

I think you'd have to ask them.

Q. You know them, you worked with them for a long time.

Well, I'll put it to you wouldn't they have been very

upset indeed? This is on your evidence.

A. Nobody was to know that the donation did not go to Fine

Gael until just before the election in 1997.

Q. I suggest to you it would have been very damaging to

you if Telenor found out

A. I think we both would have been concerned.

Q. But Telenor would have been very annoyed with you if

this was found out?

A. I think we both would have been concerned.

Q. Don't you accept they would have been very annoyed with

you if they found out?

A. Not me personally.

Q. But you are the one, on your evidence, who was

responsible for pushing them towards

A. no, nobody pushed them and I never used those words,

Mr. Fitzsimons. You have got to read the transcript

before you use words like that, Mr. Fitzsimons.

Q. Well, now you have told us that David Austin is a

decent was a decent honest, nice man and a very good

friend of yours, on what we have heard. He would

hardly do anything to create a situation of business

risk for you, isn't that so?

A. I don't understand the question. Maybe I am missing something.

Q. Well, let's say Telenor found out before the share agreement was signed, before the funding was put in place and decided, took an adverse decision vis-a-vis you, that would have been catastrophic, wouldn't it?

A. No.

Q. It wouldn't have been catastrophic?

A. No. We would have got somebody else in. The licence was granted to the company, you know, so it would have been a great pity and Telenor wouldn't have made the 1.2 billion they made but we would have got another partner.

Q. But David Austin I mean, I take it you would say he was honourable also?

A. You keep on saying that.

Q. I take it you would say that?

A. Mr. Austin was a most honourable man and, Mr. Fitzsimons, I am not sure where you are going. You keep on repeating that Mr. Austin is a very honest man. If we could expand the vocabulary a little bit.

Q. Let's come to the point. No more beating about the bush. Honourable, honest, intelligent, well-off men are not going to steal the money for themselves, don't keep large sums of money like this hidden unless they have been told to do so, isn't that so?

A. I don't know what Mr. Austin was thinking of at the

time because we only learned when you learnt, or your client learnt, that the money hadn't gone to Fine Gael sometime after, a good period afterwards.

Q. You see, I have to suggest to you that Mr. Austin must have been quite happy and comfortable to proceed in the way that he did proceed.

A. I don't know what was on his mind, Mr. Fitzsimons.

Q. But isn't it inconceivable that he would not have mentioned it to you, his good friend who, according to his own letter, had agreed had donation? Isn't it inconceivable that he wouldn't have mentioned it to you?

A. At the outset I explained to you at the very outset of my cross-examining by you today, I said I never really discussed politics or, you know, heavy what his financial position or anything in relation to this donation, whether he had kept it and then only in a later period of time passed it on.

Q. Yes, but we are satisfied that he is now, on your evidence, what you said, that he is not the sort of person who would do that sort of thing. He, after all, was

A. What do you mean by 'that sort of thing'?

Q. Keeping somebody else's money in his own bank account on interest earning deposit without telling the donor or the owner of that money?

A. But you are asking me questions that I am not in

position to answer. How would I know?

Q. I have to suggest to you that it's inconceivable that you wouldn't know.

A. I couldn't agree with you less.

Q. Very well, we will past on.

A. I don't like the inference either. Okay?

Q. You can like whatever you like, Mr. O'Brien. You have given your evidence. It's for the Chairman to assess it.

A. Keep going. If I can help you in any way, I will.

Q. Let's move on. The share agreement negotiations.

Now, in the press release, let's go back to that again, 6th March, 2001 you said in the middle paragraph "Mr. O'Brien understands that Telenor subsequently made a \$50,000 donation to the Fine Gael Party via Mr. Austin, who was at the time living in Jersey. Telenor subsequently sought reimbursement for the donation from ESAT. The reimbursement was initially refused but after some months of discussion it was finally paid to Telenor in or about April 1996."

That was your version on the 6th March. Now

A. Sorry now, 'that was your version'. What do you mean by 'your version.'?

Q. Mr. O'Brien, that was your press release to the public

A. But you are saying are you making an insinuation

that I changed my version?

CHAIRMAN: 'a version' isn't a pejorative word as such.

A. Sorry, Chairman.

Q. MR. FITZSIMONS: You did change it, Mr. O'Brien, because you told us in your direct evidence that you were made, in other words, forced to

A. yes, that's correct.

Q. to reimburse it.

A. Whereabouts is it? In the middle paragraph this has just come to hand. I have "The reimbursement was initially refused ... months finally paid."

Q. Did you attend any of the meetings relating to the share agreement negotiations?

A. Yes, I would have, yes.

Q. Or was Mr. O'Connell there for you?

A. He was there were fourteen different versions, I am led to believe, of the Shareholders' Agreement, so I would have attended maybe some of the sessions.

Q. Well, I think you accept that at the meeting of the 4th November, 1997, that it was not alleged by you that you were made to pay it. Do you accept that?

A. Well, there is different accounts of the 4th November.

Q. Well, you accept you were not made to pay it?

A. I don't think anybody brought it up in that context, who was made to do what at the time.

Q. The point is that you didn't make the allegation in

November, 1997.

A. Well, as I explained this morning, that that was a call to deal with the run and the allegations at that time and then it came onto the Telenor payment and I was asked in cross-examination, and I had no notes and I hadn't realised that I was going to be asked those questions, so I had nothing to rely on.

Q. But you don't make notes, so

A. I do

Q. so that's that non sequitur.

A. Why do you say that? How can you say that now when I have shared my notes with the Tribunal, my statements?

You are wrong again. There is one, there is two, there is the 23rd and there are other notes. Don't say that now, Mr. Fitzsimons. Come on, we are dealing with the real world.

Q. How many notes have you given us?

A. Pardon?

Q. How many notes have you given?

A. You have just said I gave no notes. I have given plenty of notes.

Q. You have held up three sets of documents there?

A. 1, 2, the 23rd, my notes of the 23rd, which Mr. Coughlan has. So I have given notes, so you are wrong in your evidence.

Q. Are they all the notes you made during relating to this entire venture, personal notes?

A. Unlike your clients who are delivering notes on a piecemeal basis and more and more statements, I have given everything in a timely way, Mr. Fitzsimons.

Q. It's just that you made the point a few minutes ago that you hadn't got notes and you were at a disadvantage. The point I am making in reply is it is not your habit to make notes so your complaint really has no basis?

A. No, when you are being interviewed by Mr. Kealey from McCann Fitzgerald how can you answer the question and write notes, all the questions of a detailed nature and write notes? I don't think anybody could do that.

Q. Very well, we'll move on. You never made the point to Mr. Miley, I think you'll accept that, that you were made

A. we didn't discuss it in that context.

Q. you never made the point to Mr. Barry Moloney or to Mr. Michael Walsh, according to the memos we have seen from them, isn't that so?

A. About what?

Q. That you were made that ESAT Digifone was made or forced to make this payment?

A. I don't know how it would have arisen.

Q. Well, I have to suggest to you that the first time

A. because there is no statement from Mr. Moloney saying what I said about Fine Gael, as far as I am aware.

Q. The first time it arose was here when you were in the witness-box, isn't that so?

A. Not from Mr. Moloney.

Q. No, the first time you made an allegation that you were made or forced to make this

A. was in the witness-box, yes, of course it was.

Q. Okay. And was this something you remembered just when you were in the witness-box?

A. We were under pressure to agree to it.

Q. Was this something you just remembered when you were in the witness-box, because as I say, this is the first time you have ever said it?

A. I would have prepared and read as much information as was available to me and this is before your more recent evidence and then I would have given my evidence to Mr. Coughlan in cross-examination.

Q. Now, nor did you make it the draft letter that was introduced in evidence. This is a draft letter prepared for your signature. There is a fax cover note of the 7th April, 1998, Sally-Ann McEvoy to Owen O'Connell. There is two pages. It's the second page that I wish to go to if the document can be traced.

Just the text of Sally Ann McEvoy's letter.

"Hi Owen.

Further draft of letter discussed with Denis.

Best regards." So it's a further draft?

A. Yeah, we have spoken about this.

Q. Second draft?

A. Well, we don't know whether it was a second or third.

Q. Sorry, I should have brought copies of this. I apologise. I'll read the original typescript of only the second paragraph, that's the only one that's relevant. It's to "Dear Arve, 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 it would be a good idea if Telenor participated. You agreed and did so. I subsequently learned that you had sought and obtained reimbursement of your contribution from ESAT Digifone and chose to make no objection in the interests of shareholder relations."

Now, on that text, you are suggesting it would be a good idea to Arve to make the contribution

A. I haven't got the letter in front of me but I think there was some handwritten notes in on it as well.

Have you dealt with them?

Q. I am going to come to them in a moment. I am just dealing with the first version, which is the second version, of course?

A. Why don't you give us a copy of it and let's see if we can deal with it.

Q. This is the first copy and the handwritten notes are on the second version?

A. You are surmising again, Mr. Fitzsimons.

Q. I am. Now, the handwritten alterations to that paragraph makes it read as follows: "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 that you might want to participate. I subsequently learnt" the next sentence deleted

A. What does it say?

Q. The next sentence "You agreed and did so". So you deleted that in this draft. And then you say "I subsequently learned that you had sought and obtained reimbursement of your contribution from ESAT Digifone and chose to make no objections in the interests of shareholder relations." So the two versions are really quite different, isn't that so?

A. Well, yes, they are. I mean, what's the point?

Q. Hmm?

A. What's the point?

Q. The point is the search of this Tribunal for truth, Mr. O'Brien, and the question is; why should you prepare two contradictory or two inconsistent drafts of the same letter, drafts which are inconsistent with your evidence on the point in the witness-box?

A. How can you say that when Mr. Coughlan asked me a number of questions about that letter, because we made available the letter to show the Tribunal what our view was at that time to back up my evidence? So I don't

know where you are coming from.

Q. Okay. I'll move on.

In relation to the Telia/Telenor merger, I have to suggest to you that the actual talks started in the early autumn of 1998, collapsed in the late autumn and that they recommenced on the 20th January, 1999.

A. What's the point? Is it just for information?

Q. No, you kept saying in the course of your evidence that the reason why Telenor went to Fine Gael was in relation to due diligence for the Telia/Telenor merger.

A. So your point is what?

Q. My point is that there was no question of due diligence until either late autumn or early late autumn 1998 or early 1999. Whatever rumours may have circulated earlier

A. There was no rumours because we have a letter from the Company Secretary telling us about, giving details.

Q. We have a letter from the ESAT Company Secretary to Telenor?

A. After a conversation with Mr. Digerud or Mr. Johansen, one or the other, and I think Telenor were doing a bit of spring cleaning.

Q. I am yes, I think the Tribunal lawyers wish to know whether it would be a convenient time for a short break.

CHAIRMAN: I was going to propose that in ease of the

witness and the stenographer. I think we'll take fifteen minutes and resume at half past four.

THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS FOLLOWS:

MR. FITZSIMONS: I won't be very long. Just before I do so, Mr. O'Connell has given me information regarding my question re the judgement and there was no judgement against ESAT as suggested by me this is back in 1995, of course to the witness, so I withdraw and apologise to the witness for putting it to him. We did have a documentary source but I accept also we should have I should have checked that information before putting it so I apologise for that also.

Now, to continue, have you attended, Mr. O'Brien, any golf classics since 1996/ '97, '98, '99.

A. Yes, I would have.

Q. Have you attended lunches, dinners?

A. Both.

Q. Functions? Have there been any representatives of Telenor at those golf classics, lunches or dinners?

A. There may have been in 1995/96.

Q. Well, I suggest to you that there haven't been, Mr. O'Brien?

A. Well, I have no reason to doubt what you are saying then. I was just saying there may have been.

Q. Have you heard of any steps being taken maybe I better put the facts to you. You haven't heard of Telenor sponsoring events or teams or scholarships or any of the other matters, steps that a company might take to increase its contacts in Ireland and its profile?

A. I don't know.

Q. You heard Mr. Johansen saying that he hadn't met any Government ministers, or indeed Mr. Bruton, save when Mr. Lowry was present at the licence grant. I think Mr. Coughlan put that?

A. I am aware of Mr. Johansen's visit to the minister on a number of occasions. You know, there's been three or four ministers.

Q. I thought it is your suggestion that Telenor were making the contribution because they wished to enter the Irish market and develop political contacts independently of ESAT. Now, if they haven't taken any steps to do that, it hardly seems likely that they ever had that wish, doesn't it?

A. I wouldn't necessarily agree with that.

Q. I have to suggest to you that your evidence that Telenor made a contribution themselves because they wished to enter the Irish market and wished to develop political contacts independently of ESAT is an act of the imagination?

A. I would disagree with you there, given Telenor's other

investments in this country.

Q. Very well. Now, just two more small short matters.

In relation to the \$50,000 that was in Mr. Austin's bank account for the 18 months or so, you said, the phrase you used here "Nobody knew about it". How did you know that nobody knew about it?

A. Well, Telenor didn't know about it. I didn't know about it. So that's the

Q. Well, what about the decent, honourable, straight-up Mr. Austin? Is that the sort of conduct that you would expect him to engage in keep somebody else's money?

A. I don't know what was on Mr. Austin's mind so I wouldn't surmise that at all, Mr. Fitzsimons.

Q. And during the entire of that period with your bi-weekly phone calls, lunches, etc., the matter was never once discussed? Not raised even once?

A. Absolutely never.

Q. Even though Mr. Austin would talk about anything?

A. Well, he would talk about anything but things of a private nature that he was doing he didn't want to discuss with me, I wouldn't know what they would be.

Q. And he wasn't in the least bit worried that you might be damaged if it ever came out that the monies were not passed on, not in the least bit concerned?

A. I didn't know that he hasn't passed the money to Fine Gael.

Q. I know you didn't know but we are talking about him

A. You'd have to direct the question, unfortunately he is not here, but I think he is the best person to answer that.

Q. But it would fly in the face of your description of him that he would have proceeded in that manner without believing that it was perfectly all right for him to do so, isn't that so?

A. Look, I think I don't think we should judge Mr. Austin because he held money and delayed giving it to Fine Gael. There could be a reason. I don't know.

Q. You know the man and you have given us a very good description of him and I am putting it to you in favour of Mr. Austin that it flies in the face of reason that he would take such action unless he had agreed or felt that it was perfectly in order for him to do so?

A. Well, he would have had to agree that with Fine Gael.

Q. Now, he didn't know Telenor people at all, sure he didn't?

A. Of course he did. He knew Mr. Johansen he had spoken to Mr. Johansen.

Q. Spoke on the phone once to Mr. Johansen, isn't that right?

A. And he was the person that he had spoken to about it, so...

Q. He spoke to him once on the phone, never saw him, met

him in the flesh?

A. I think he spoke to him more than once, did he not?

Q. Maybe it was twice on one day?

A. Okay. Well, we don't know if it was one day.

Q. His sole contact was Mr. Johansen. Now, it's hardly likely that he could have had a confab with Mr.

Johansen and they would have agreed that the money would stay in his account, isn't that so?

A. You see, I don't know. I mean, we can only speculate as to what happened. And we only know from other people's evidence, but ultimately it did happen.

Q. But isn't it far more likely that you, his good friend, and since he believed you were the person who had agreed the donation, that he had agreed it with you that the money should stay in his account?

A. no, he didn't.

Q. until

A. not at all.

Q. an appropriate occasion arose to pay it into Fine Gael?

A. Absolutely not, Mr. Fitzsimons.

Q. And again isn't it the measure of the man that when he did pay it into the Fine Gael, he paid it with interest and with the currency change that had taken place, that is entirely consistent with the picture you have painted of him

A. I actually don't know. All I know is that Fine Gael

received the donation.

Q. Well, just finally, I'll put it to you that he would not have done that unless he was assured by someone whom he trusted that it was perfectly in order for him to do so and you are the only candidate for that position?

A. I can't agree with you again, because didn't he make a payment to Mr. Conroy and then Mr. Conroy then /EPB endorsed it to Fine Gael? Again, I had nothing to do with that.

Q. Now, one final question. I think Mr. Coughlan has asked, and forgive me for repeating it; why would Telenor shred the invoices and keep copies of what was shredded in Dublin?

A. I actually don't know.

Q. Thank you.

A. It's a mystery.

Q. Thank you.

CHAIRMAN: Thanks Mr. Fitzsimons. Mr. McGonigal?

MR. MCGONIGAL: The position is, Mr. Chairman, Mr. O'Brien is coming back in relation to matters arising from some of the matters which have already been discussed and I had intended to reserve the re-examination until a later stage. I discussed this with Mr. Coughlan. I think it's the best approach at this time.

CHAIRMAN: All right, Mr. McGonigal.

MR. COUGHLAN: I just have one or two short questions for the moment, Sir.

THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS BY

MR. COUGHLAN:

Q. MR. COUGHLAN: Just arising from the last matter which Mr. Fitzsimons dealt with, Mr. O'Brien; did Mr. Austin inform anyone, to your knowledge, in November of 1997 when the note was obtained from him that the money had, in the first instance, been retained by him in a bank account and, secondly, that it had been paid into Fine Gael as a contribution by him?

A. I don't believe so, Mr. Coughlan.

Q. Or did he inform anyone that the contribution had not been passed on to Fine Gael as a Telenor contribution?

A. I think we were only relying on that faxed letter that we received.

Q. Of course that concealed from those participating in the meeting at that time the true nature of what actually happened, isn't that correct?

A. I think we all found out subsequently how the whole thing was handled.

Q. Mr. Austin concealed the true nature from everybody

A. It looks as if he did, yes.

Q. I take it that surprises you?

A. Well, it has surprised me when I heard about it in subsequent times.

Q. Now, one other sorry, two other matters. The first one is Mr. Fitzsimons asked you that in the period of time between the payment being made by Telenor to Mr. Austin and the Shareholders' Agreement, that if it had become known to Telenor that the donation had not gone through, that that could have affected everything; and your response, I think, was that it wouldn't have; if Telenor had walked away you would have got another partner because the licence had been granted. In fact, the licence wasn't granted until the 16th May, 1996, isn't that correct?

A. Yeah. I think what I meant was we would have had to go back to the Department and say 'one of our partners is changing'.

Q. So it would have been for the department, and ultimately for the government, to approve if a new partner was being introduced?

A. Probably the Department.

Q. Well, the approval of the licence, I suppose, was a government decision?

A. Yes.

Q. And of course, it would have become known if Telenor had walked, the reason would have to have been disclosed to the Department in the first instance?

A. Yes.

Q. Now, if I might just come to the final matter then.

In answer to Mr. O'Brien or Mr. Fitzsimons I think you said that you had spoken to Mr. Peter O'Donoghue?

A. Yes, earlier this year.

Q. Can you assist the Tribunal when you first spoke to him?

A. Sometime, I think, in April, March/April, it could have been May, but I rang him to find out what was puzzling our side was, you know, how the donation was treated ultimately in the accounts? And I rang him and asked him a couple of questions. But he, I think, obviously didn't have the answers either at that time.

Q. Did he know anything about the matter when you spoke to him?

A. Vaguely. Vaguely I think it was I was just asking him who paid for it. It's my recollection that the company had to pick it up in the end and as far as I remember he couldn't remember or he was trying to grapple with his memory at the time as to how it was treated.

Q. And I think at the time that you had this discussion with Mr. O'Donoghue he was no longer with ESAT of course?

A. Oh, no, no.

Q. And how many times would you have spoken to him?

A. Twice probably. I think twice.

Q. Was that by telephone?

A. Yes.

Q. Mobile phone or land-line?

A. I would have rung his mobile maybe.

Q. And were you from your mobile or from your land-line?

A. I might have been in my office or else my home in Portugal.

Q. Was it after the story appeared in the was it after the statement you made to the newspapers that you spoke to Peter O'Donoghue?

A. I actually don't know. It was around the time of the Sunday newspaper carrying the story about the Telenor donation.

Q. Now, why would Peter O'Donoghue have been wrong if you believed that this was an intershareholders issue and it would have been handled by a Chief Executive?

A. He would have been the CFO in charge of the finance side, so that would be the reason.

Q. Thank you.

A. Thank you.

CHAIRMAN: Well it's been a long haul for you, Mr. O'Brien, and I am sure you'll be relieved to be spared from Tribunal hearings for a period. In asking you a final matter, I am not trying to lend any undue emphasis to any particular aspect or indicate any doubts or any other matters in my own mind, but can I

briefly return to the ongoing contact that you did have with Mr. Austin during his latter years and months when his health was very poor and I think you indicated he remained in good spirits, he was a good mimic, he was a funny person. Was the general theme of your conversation, overall, gossip of people you knew and perhaps business matters?

A. Gossip

CHAIRMAN: But you did take up issues referable to the issue when you discussed the friends and family allowance that you told us about yesterday?

A. Yeah I would have spoken about that prior to the IPO.

CHAIRMAN: Are you absolutely categoric in your own mind or could there be any possible doubt in your view on stating that, to your certain knowledge, that the issue of the Fine Gael donation was not raised either by you or by him?

A. No, no. I mean, we never discussed it and that's when we learned subsequently that the donation had not been forwarded, it was then a complete surprise.

CHAIRMAN: Was it something that just didn't arise or do you feel it was deliberately shelved or?

A. maybe he was circumspect in not telling me.

CHAIRMAN: All right. Thank you, Mr. O'Brien, for your attendance this week. Mr. Coughlan, I understand

the plan is that we will resume on Monday and I think another witness who has some time constraints will be in attendance. Eleven o'clock then.

THE TRIBUNAL THEN ADJOURNED UNTIL MONDAY, 2ND JULY, 2001 AT 11 A.M.