

A P P E A R A N C E S

THE SOLE MEMBER: Mr. Justice Michael Moriarty

FOR TRIBUNAL: Mr. John Coughlan, SC

Mr. Jerry Healy, SC

Ms. Jacqueline O'Brien, BL

Instructed by: John Davis

Solicitor

FOR THE DEPARTMENT OF

COMMUNICATIONS, MARINE &

NATURAL RESOURCES:

Mr. John O'Donnell, SC

Mr. Conleth Bradley, BL

Mr. Diarmuid Rossa Phelan, BL

Instructed by Matthew Shaw

Chief State Solicitors Office

FOR DENIS O'BRIEN: Mr. Eoin McGonigal, SC

Mr. Gerry Kelly, BL

Instructed by: Eoin O'Connell

William Fry Solicitors

FOR TELENOR: Mr. Eoghan Fitzsimons, SC

Ms. Blathna Ruane, BL

Instructed by: Kilroy Solicitors

FOR MICHAEL LOWRY: Mr. Roderick O'Hanlon, SC

Mr. Rossa Fanning, BL

Kelly Noone & Co.,

Solicitors

FOR FINE GAEL: Mr. Tony O'Connor, BL

Instructed by: Kevin O'Higgins

Solicitor

Kevin O'Higgins & Co.

FOR MARK FitzGerald: David Clarke

Solicitor

McCann FitzGerald

Solicitors

OFFICIAL REPORTER: Mary McKeon SCOPIST: Anna Papa Murphy

I N D E X

Witness: Examination: Question No.:

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THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 16TH
JULY, 2003 AT 11AM:

MR. HEALY: Mr. Mark FitzGerald, please.

MR. MCGONIGAL: Before, you take up that,

Mr. Chairman, I indicated last night that there was a matter that I wanted to mention to you in relation to Michael Andersen and AMI. And it has occurred to me that the Tribunal, in a sense, appears to have reached a position where the Department witnesses, and effectively, all of the witnesses relating to the process in the conduct of the evaluation have now been dealt with, except for Michael Andersen and AMI. And you'll recollect, Mr. Chairman, that in day 160, when Mr. Coughlan was outlining the process that AMI were

causing the Tribunal, in a portion of the transcript at page 85, what he said: "Following this exchange of correspondence the Tribunal informed the solicitors for Mr. Andersen and the solicitors for Ementor Merkantil Data, that it viewed the stance being adopted with concern that the Tribunal intended to refer to its dealings in correspondence with both parties in the course of the Opening Statements; that both parties should be aware of the potential for the drawing of negative conclusions arising from the unavailability of Mr. Andersen, particularly, bearing in mind the importance of his role in the evaluation process."

What concerns me is this: There is absolutely no doubt that Michael Andersen and his team were and are very important to the process. Equally, it seems clear to me and it would be a submission that, in a sense, the process is incomplete without them giving their evidence. And we need to discuss at some stage the effect of that in relation to the evidence which has been given.

Now, in that context, we have also been furnished with a substantial amount of documentation which was furnished to the Tribunal in different ways from Mr. Andersen, and it seems to me that if the position is that Mr. Andersen will not be coming, and none of his team are coming, that that raises certain legal

implications which seem to me should be discussed.

Now, there are two aspects to this. One is effectively the availability or the unavailability and the second is the result of that.

My concern is, and I think you indicated at some stage that you would put some time aside to debate this issue, and it seems to me that now is the time to do that, because particularly in relation to the issue of availability, it seems to me that we should focus in on that at this time, effectively, before the summer break, so as that, whatever issues might arise from that can subsequently, if necessary, if not discussed now, can be discussed in the light of decisions that may be taken in relation to that availability or steps which may or may not be taken or be able to be taken.

And it's for that reason, Mr. Chairman, that I am anxious, if at all possible, to set aside some time towards the end of next week or towards the end of the term, sometime to discuss aspects of this, because I think it would be helpful in relation to the future of the Tribunal and the ability of the Tribunal to complete its work, having regard to its terms of reference, and I am raising it in this way at this time, because I would hopefully the Tribunal could see its way to giving us that time towards the end of next week.

CHAIRMAN: I accept, Mr. McGonigal, that these are

matters that do need to be considered and argued and discussed and ruled on, and that it is important that this be done expeditiously. Perhaps rather than give any initial remarks or views of my own, I'll leave it until a convenient and proximate vantage point that the matters can be addressed. I am obviously anxious to proceed, in the first instance, with the evidence listed for today and the number of succeeding witnesses who have been alerted to be on call for the remaining days of term. But I am, in general terms, likewise of a mind that these are aspects that need to be considered. I know it hasn't always been your preference to make a written submission,

Mr. McGonigal, and I certainly do accept that matters in the ultimate must be conveyed to the public, but it might be a help if perhaps even in a comparatively shorthand form, if a few pages indicating the views and those of your team were to be forwarded over the next week or so, and in the context of that and the general run of the witnesses over the next few days, I'll do my best, if not before the end of term, at a very proximate date thereafter, to take up the particular aspect that you mention before proceeding; as I accept, it's probably the main thrust of your argument, before proceeding onto the evidence of the protagonists, to refer to them colloquially, as the persons involved in seeking the licence and those

other witnesses who would appear likely to be called in the course of the Michaelmas term as the concluding phase of the GSM evidence.

So I'll do my best to see if there is some limited time available in the remaining days of this term. I would welcome a written submission, perhaps, to help speed the process and if by any chance it doesn't get on because of the pressure of witnesses before the end of this term, I'll give it the very best priority I can in accordance with your own availability and commitments as soon as term closes.

MR. MCGONIGAL: I appreciate that. I am keen though, if possible, that it will be dealt with this term.

But I will do the submission in some form as you have indicated.

MR. FANNING: Before this witness begins his evidence, I do wish to make a brief oral submission to you in connection with the intended scope of his evidence.

It's a matter that wasn't competent for me to make by way of written submission because it only crystallised at a quarter to five as an issue yesterday evening.

What I want to say to you, Sir, is Mr. Fitzgerald, as I understand matters, has provided the Tribunal with two memoranda of evidence, dated 11th and 16th, November 2002 respectively. Collectively they contain a range of different allegations about my client, Mr. Lowry.

First off, the memoranda deal in part at least with the current GSM investigation that the Tribunal has been hearing evidence on for the past 78 days of public hearings, holding effectively continuous public hearings on that one issue since Tuesday, the 3rd December, 2002.

My understanding of the current position is that, to use your words, Chairman, the GSM investigation is of such enormous length and complexity, that it could be fairly said to constitute, to use your own words, a tribunal within a tribunal.

Now, it appeared at the beginning of December at the time of Mr. Coughlan's Opening Statement for this module, that certain other allegations entirely unrelated to the issue of the GSM licence were emanating from Mr. Fitzgerald against my client. To be more precise, I learnt of those highly damaging allegations not on day 4 of Mr. Coughlan's Opening Statement, but in a newspaper article that preceded it had five days previously. And Mr. Coughlan, at the time, on day 159, or day 4 of his Opening Statement for this module, indicated that the leak of the information that was highly damaging and highly prejudicial to my client was something that the Tribunal might indeed have to inquire into itself, if there were thought to be calculated to interfere with the working of the Tribunal.

However, what I want to say for present purposes, Chairman, is that the leak was the only reason ever tendered in the course of the Opening Statement by Mr. Coughlan as to why he chose that time to air all of the non-GSM allegations that were made against my client in the course of the delivery of the Opening Statement. And if I can quote Mr. Coughlan in his Opening Statement on day 159, and I want to quote him exactly, at page 70 of that transcript. He said:

"The publication of this information could represent an attempt to undermine the integrity of the private investigative work of the Tribunal; whether it was calculated to do so is a matter which the Tribunal may have to inquire into. Because there is a risk that the integrity of the private investigative work of the Tribunal could be undermined, the Tribunal considers it necessary to make public at this stage the information which Mr. Fitzgerald has made available to the Tribunal in a statement of the 26th November, 2002."

So it's quite clear that at the time of the Opening Statement, the reason for the airing of the non-GSM issues in respect of my client related exclusively to the leak that had appeared in the Sunday Independent. Mr. Coughlan ultimately concluded in dealing with these issues in his Opening Statement by saying, at page 85 of the transcript, that the Marlborough House

issue, if I can call it that, was germane to the terms of reference, and I am not for present purposes taking issue with that. But what I am saying is that there was no explanation offered at any stage as to why it was appropriate that these issues should be heard together; nor was it ever stated in Mr. Coughlan's Opening Statement that they would be heard together.

At a quarter to five yesterday evening, after the conclusion of yesterday's evidence, I spoke to Ms. O'Brien and Mr. Healy informally to seek confirmation that there would be no attempt to lead evidence on matters entirely unrelated to the current GSM investigation, and to my very great surprise, I was told that this was precisely what was contemplated. At no stage prior to this were I or my solicitor notified that it was proposed to hold hearings at this point in time in relation to entirely unrelated issues in the middle of a completely different investigation.

My submission to you, Sir, is that it would be grossly unfair on Mr. Lowry for the Tribunal to embark on the hearing of any evidence at this stage on matters unrelated to the GSM licence issue. The Tribunal has, by its own admission and by its own public statement, quite clearly embarked on a Tribunal within a Tribunal that to date has involved 78 consecutive days of public hearings, exclusively dedicated to the issue of

the award of the second GSM licence.

In my respectful submission, it would be grossly unfair and a breach of fair procedures to expect Mr. Lowry to begin defending a completely different and alternative set of allegations when such a vast expanse of evidence is left hanging in limbo, as it were, entirely unfinished.

CHAIRMAN: He has already done so. He has given statements to the Tribunal dealing with the Marlborough House matters in considerable detail and these matters were conveyed to you in December or at least to your predecessors. You may well, indeed, you do have a point in saying that the acceleration of the matter in the course of Mr. Coughlan's opening, had relevance to the question of leaking, but it was conveyed plainly in an early December extended opening notifying chapter and verse of all the GSM matters and all the other matters in Mr. Fitzgerald's various statements.

MR. FANNING: With respect, Sir, I am not taking issue with any of what you say. What I am not saying is we weren't on notice from December of this issue. What I am saying, it is grossly unfair to intermingle this evidence with the GSM issue. My submission to you this morning is that the fair procedures of this Tribunal should require the GSM evidence to be concluded first before any external evidence

concerning entirely unrelated issues is heard. It is simply, in my respectful submission, not fair play to leave 78 days of evidence that is exclusively concerning GSM issues, left hanging in mid-air before Mr. Lowry has a chance to come back and respond on that and to expose him and to expose the public and the media to an entirely unrelated set of issues. I am not saying we weren't on notice in December. I fully accept what you say. I am saying it is not fair play to leave 78 days of evidence on one side and to begin another issue. That is my respectful submission.

In my respectful submission, Mr. Fitzgerald should certainly give evidence this morning. I am ready and prepared and willing and able to meet the aspects of his evidence that touch on the GSM issue. But in my respectful submission, it is not fair play to open up a new range of avenues of inquiry against Mr. Lowry without completing the GSM licence, which this Tribunal has on repeated occasion stated is in itself a Tribunal within a Tribunal.

MR. McGONIGAL: I am, in fact, Mr. Chairman supporting My Friend in relation to this from Mr. O'Brien's point of view. It seems to me that the two statements that we have, the 11th November and the 26th November, can be separated. The statement of the 26th November deals with matters totally unrelated to Mr. O'Brien,

and I would be concerned that there is a prejudicial effect which can appear as a result of going into matters at this stage totally unconnected with the GSM process and matters which are related to Mr. O'Brien and Mr. Fitzgerald et al, and it seems to me that this should be taken separately from the Marlborough House issue because it is a discrete thing which can be dealt with separately and without too much difficulty. So I support the application that this matter should only go forward on the first statement.

CHAIRMAN: Well, the submission of Mr. Fanning's on behalf of Mr. Lowry in which he is supported by Mr. McGonigal on behalf of Mr. O'Brien is to the effect that it would be an unfair procedure to join the various aspects of Mr. Fitzgerald's statements to the Tribunal. It is undoubtedly true that whilst much of the content of Mr. Fitzgerald's various statements relates, or at least potentially relates, to aspects of the GSM competition, that which relates to the Marlborough House matter is separate.

However, it is the case that this is equally a matter in the context of the Terms of Reference, as construed by the Tribunal on a number of occasions which pertains to the actions or conduct or contended actions or conduct of Mr. Lowry whilst exercising the portfolio of what is colloquially known as the DTEC Department. It is equally the case that whilst,

indeed, as I acknowledge to Mr. Fanning, the question of press leaks, to which I will return in due course, may have prompted or accelerated the incorporation in Mr. Coughlan's detailed opening last December, of the Marlborough House matters in those other matters contained in Mr. Fitzgerald's statements, that nonetheless, they were opened in detail together; responses in accordance with the usual Tribunal procedures were sought and in virtually all instances, obtained, from interested persons. Witnesses have been asked to attend on a basis of intended dealing with Mr. Fitzgerald's evidence on the several aspects deposed to in his various statements.

Of course, if I were to be satisfied that it was an unfair or prejudicial procedure to combine the evidence of these various aspects, the convenience of witnesses or the orderly arrangement of Tribunal hearings would be a subsidiary and secondary matter.

But I am not so satisfied. I believe that these matters were conveyed to interested persons in the course of an extended opening over seven months ago.

I believe that all the procedures of seeking responses from interested persons, including Mr. Lowry, have been satisfied, and I feel that it will be possible for Mr. Lowry to deal with this relatively limited aspect as regards the duration or documentary scope of evidence in comparison with GSM matters, when he gives

evidence in the conclusion of this extended phase of the Tribunal hearings.

I am not persuaded that there is potential unfairness.

I will seek to be scrupulous in seeking to evaluate separately the different matters that are given in evidence by Mr. Lowry or any other persons dealing with these aspects and in all these circumstances, I am of a view that it is not unfair and not prejudicial to proceed to take the evidence of Mr. Fitzgerald on the various aspects he has dealt with in his statements.

It would be, indeed, a considerable intrusion and inconvenience on Mr. Fitzgerald, if I had to ask him to come back sometime next October or November, but if I felt that the procedures were intrinsically unfair in proceeding as I now propose to, I would do so.

However, I am not so persuaded. I feel that the issues, the various matters related to, do admit of being fairly evaluated, heard, made the subject matter of submissions and in due course reported on on the basis that I have intended indicated that I propose to adopt.

I might, Mr. Fanning, without in any way seeking to be cavilling, I might take issue, perhaps, with your description of the content of Mr. Fitzgerald's statements as being allegations. I do, in the case of any Tribunal witness, take the matters contained in

witnesses' statements to be matters of potential evidence. Allegations are not matters that the Tribunal seeks to traffic in, but that is perhaps, I fully accept a question, as you have couched it, of nomenclature.

In all the circumstances, I am satisfied we should proceed to hear Mr. Fitzgerald's evidence in full and I believe that no unfairness will result in consequence of that course.

MR. CLARKE: I apply for representation and your last comment, Sir, obviated the need for me to make any comment on the reference to allegations that Mr. Fanning made.

CHAIRMAN: Yes, very good. Well Mr. Clarke, I accept in the context of the statements advanced by Mr. Fitzgerald, it is proper that on the usual basis, there be an order for limited representation as regards yourself and your firm

MR. HEALY: Mr. Fitzgerald please.

MARK FITZGERALD, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. HEALY:

Q. MR. HEALY: Thank you, Mr. FitzGerald. Before going into the information you have provided to the Tribunal, I should say, and it may be of assistance to Mr. Fanning, that the circumstances in which these matters are being pursued and the inquiries that are being pursued was referred to by Mr. Coughlan at page

85 of his Opening Statement, on day 159 of the Tribunal's hearings. Now, Mr. FitzGerald, you have provided the Tribunal with three statements. I think Mr. Fanning may have mentioned two, but there are only two referred to in the Tribunal's opening statement, because the third statement you provided to the Tribunal hasn't come to hand at that time, and I think that was the reason, and I think that was related to the reason referred to by Mr. Coughlan in his Opening Statement when he mentioned that because of leaks, he felt he should put what material there was in the public domain. Inquiries continued with you after the Opening Statement, isn't that right, and you produced a further statement in March of 2003?

A. That is correct, yes.

Q. The first of your statements is dated the 11th November, 2002; the second is dated the 26th November, 2002; and the third is dated the 11th March, 2003.

Before I take you through these statements I just want to clarify with you my understanding of how these statements came to be brought to the attention of the Tribunal or how this information came to be brought to the attention of the Tribunal. I don't want to bring you through all of the various letters to and fro, but you can correct me if I am wrong in anything I am saying about this when I say that my understanding is that the Tribunal was examining documents furnished to

it by, I think, Esat Digifone, or BT/Esat Digifone or it then was in connection with political payments payments to political parties and what not. In the course of that, a payment which was ultimately characterised as a contribution by Esat Digifone to the Golf Classic organised by Fine Gael in the K-Club in October of 1995, that payment came to hand, or came to the notice of the Tribunal and the Tribunal raised queries about it with Fine Gael. Fine Gael were, in the course, at that time, of providing the Tribunal with an amount of material concerning fundraising campaigns. And in the course of examining that material, the Tribunal learned that there was a reference to you in a letter from one of the TDs involved in organising or lending his name to the organising of the Golf Classic, Mr. Phil Hogan, in which Mr. Hogan, in thanking Mr. O'Brien for a payment of 4,000, indicated that he understood that that payment arose from discussions with you, and it was on foot of that information that the Tribunal then took up the matter with you, isn't that right?

A. That's correct, I received a letter from you.

Q. And you then provided the Tribunal with your first statement of November, 2002.

There was then was a further course of correspondence which I think I can truncate by saying that the Tribunal, after receiving that statement, asked you

about your other dealings with Mr. Michael Lowry unrelated to the matters or in addition to or further to any of the matters referred to in your first statement, and that elicited your second statement, is that right?

A. That's correct.

Q. And the third statement then referred to further inquiries arising out of the second statement, but it's not of huge significance at this point?

A. Yeah, that is correct.

Q. Now, what I propose to do is very briefly take you through the statements in the order in which you provided them and then to go through the events referred to in the statements in the chronological order in which they arose. Are you satisfied with that?

A. Absolutely.

Q. In your first statement, of the 11th November, 2002, you say: "I was a member of the organising committee for the Fine Gael Golf Classic which was held at the K-Club on the 16th October, 1995. At the time of these events, Mr. Denis O'Brien and I knew one another, though we were not particularly friendly. I remember having previously had two earlier business contacts with him.

"Sometime in August 1995, Mr. O'Brien telephoned me at my then office at Merrion Row and asked me to meet him

for a cup of coffee in the Shelbourne Hotel. I assumed that Mr. O'Brien wanted to discuss some business matter. Mr. O'Brien told me that he was applying for the second mobile phone licence; that he was facing an uphill struggle against Motorola and that it was rumoured that Mr. Albert Reynolds was in line for a pay off if Motorola was granted the licence. (I should say that there was no discussion as to whether this rumour was in any way credit-worthy.)

"Mr. O'Brien also told me that he (Mr. O'Brien) wanted to keep up his profile with Fine Gael and that he had heard that Fine Gael was having a golf outing. I told Mr. O'Brien that I thought it might be unwise for him to be involved in the event in the circumstances in which he was applying for a licence, but I said that Mr. David Austin was running the golf event if Mr. O'Brien really wanted to become involved."

You go on: "Shortly afterwards I spoke to Mr. Jim Miley, the then Secretary General of Fine Gael, and told him that I had been approached by Mr. O'Brien and that I did not think that Fine Gael should accept a corporate donation from him. I was aware that Mr. O'Brien had previously supported other Fine Gael functions. At a subsequent meeting of the organising committee, Mr. Austin thanked me for the introduction of Mr. O'Brien, whose company, Esat, was offering to

assist in sponsoring the event. I was a little uncomfortable about the sponsorship, but having already spoken to Mr. Miley, did not think it necessary to involve the fundraising committee in the question.

"Either then, or at a later meeting I became aware that there was to be no signage associated with Esat at the event. I did not regard that as especially noteworthy because that was to be the arrangement in respect of a number of the sponsors."

You go on in paragraph 6: "I received a further telephone call from Mr. O'Brien around the middle of October of 1995. My recollection is that this was after the Golf Classic which was held on Monday, 16th October, 1995, but it must have been before the end of that week because during much of the following week, I was in the UK. Mr. O'Brien asked me to meet him for coffee at a restaurant close to my office. I assumed that this might relate to a business matter about which I had shortly before spoken to Mr. O'Brien. I was surprised when I arrived to find Mr. O'Brien sitting at a table with Mr. Phil Hogan and the late Mr. Jim Mitchell. As I sat down, Mr. O'Brien asked me if I had heard any news on the licence. Mr. O'Brien had never previously asked me anything about the licence. I told him that I had bumped into Mr. Michael Lowry at the Golf Classic at the K-Club, and

that Mr. Lowry had said to me that Denis O'Brien had made a good impression on the Department; that he had good sites and good marketing. I may also have said that Mr. Lowry had said that there would anyway be a third licence, because I recall that Mr. Lowry said this to me. I do not recall any other significant matter arising in that brief conversation with Mr. Lowry. I was annoyed with myself at having passed on the comments made to me by Mr. Lowry even though they had been gratuitous, and I believed them, unimportant. I had understood that Andersen Consulting were responsible for evaluating the bids in the competition and shortly after that coffee meeting, I checked with Colin McCrea and Sean Donlon, respectively Mr. Lowry and the Taoiseach's programme managers, who confirmed that the award itself would be a decision for the Government rather than for the Minister alone.

"When the outcome of the licence was announced on what I now understand to be Wednesday, 25th October, 1995, I was in the UK on business. On the Thursday afternoon, 26th October, 1995, being the day I was coming back to Dublin, I received a phone call from my secretary on my mobile in the UK to say that someone on behalf of Mr. O'Brien had phoned to say he had won the mobile phone licence and he was asking me to drop in to a celebration party that evening. On my way home from the airport, I called into the Party at

about 11 p.m. for a short while before going home."

I want to come to your second statement, dated 26th November, 2002.

You say: "This statement is a second statement by me to the Tribunal. My first statement being dated 11th November, 2002.

"I was appointed a trustee of the Fine Gael Party in 1991 and I remained a trustee continual up to June 2002. Mr. Michael Lowry was appointed Chairman of the Trustees in, I think, 1993. I do not recall having any individual contact with Mr. Lowry before he became a trustee. Prior to the Fine Gael/Labour Government taking office in December 1994, I recall only two individual meetings with him.

"In 1993 or 1994, while I was walking on Upper Mount Street, Mr. Lowry stopped his car and got out and greeted me. He told me he had an apartment near the KCR in Kimmage which he wished to have valued. I said I would arrange for someone from the Sherry FitzGerald Terenure office to contact him and took his telephone number. I did arrange that, but Sherry FitzGerald were never subsequently instructed to sell the apartment.

"In the autumn of 1994 I attended a dinner at Luttrellstown Golf Club following a Fine Gael golf outing there. While at the bar I joined in a brief casual conversation with Mr. Lowry and Mr. Phil Hogan.

After the Fine Gael/Labour Government took office in December 1994, the first meeting I recollect with Mr. Lowry was a meeting of Trustees in February of 1995. In a brief one-to-one conversation before the meeting began, Mr. Lowry said to me that the Chairmanship of the ESB was coming up, and asked me did I know of any businessmen who might make a good Chairman and who would be acceptable to Dick Spring and the Labour Party. I suggested two names to him in that context, including Mr. William McCann of Price Waterhouse who was at the time already a member of the ESB board. Much later, in or about January of 1996, Mr. McCann was appointed as ESB Chairman.

"In late March or early April 1995, Mr. Lowry telephoned me on my mobile phone. It was the first occasion I ever recall him telephoning me and I do not recall him ever asking for my mobile phone number, but that number would have been known by a number of my Co. Trustees. Mr. Lowry asked me whether there was" and you have this in quotation marks "'A man called Gill' working in Sherry FitzGerald who was involved with a building off O'Connell treat where Telecom Eireann was the tenant. I confirmed that Gordon Gill was a member of our firm, but that I did not know anything about what he was referring to, but that I would inquire. Mr. Lowry said he would be in touch again. I then telephoned Gordon Gill at home

about this call from Mr. Lowry and he informed me that the property in question was Marlborough House which I now know was also called Telephone House in Marlborough Street and that he had just been appointed arbitrator in relation to a rent review. In the circumstances of that, he being an arbitrator, I did not consider it appropriate to discuss the matter any further with Mr. Gill during the arbitration process.

"Some very short time later Mr. Lowry telephoned me again, this time to my office, and asked me to meet him at what was formerly Powers Hotel Kildare Street.

I agreed to do so within an hour or two of his call, and we had coffee together. Mr. Lowry then told me that Marlborough House, of which Telecom Eireann was the tenant, had recently been bought by Mr. Ben Dunne; that Mr. Dunne had been in touch with him, Mr. Lowry, and wanted to get the rent up from $\text{€}1/25$ that's Irish pounds per square foot, to $\text{€}1/210$ per square foot.

That 'your man Gill' was involved and could I organise it. I told Mr. Lowry emphatically that I could not and would not, and I referred to Mr. Gill's independent role as an arbitrator. Mr. Lowry then asked what 'we' were going to do as Ben Dunne had contributed 170,000 punts to Fine Gael. I told Mr. Lowry that that was the first I had heard of this contribution and that he should not pursue this matter further.

"A very short time after that Powers Hotel meeting, Mr. Lowry telephoned me at my office and said he wished to buy a house but wanted to keep a low profile. He referred to a muse house for sale by Sherry FitzGerald in Palmerstown close off Palmerstown Road and asked could he view it the following day. I said I would arrange this and get back to his office with a suggested time and the identity of the member of staff who would show him the property. He said he did not want anyone to show him the property but me, as he did not want anyone to know his business. I indicated that that was not the way we operated, but I agreed to turn up myself with the person who was actually handling the sale of that property who I said was likely to be Ms. Geraldine Byrne. Either then or in a short subsequent call, Mr. Lowry asked me to pick him up in advance at the Orwell Lodge Hotel in Rathgar. I arrived first at the Orwell Lodge Hotel at the agreed time and Mr. Lowry arrived a short time later in a State car and got out and walked over to where I was parked and we drove together the short distance to meet Ms. Byrne at the Palmerstown Close property.

"We arrived at the property before Ms. Byrne and while waiting, Mr. Lowry mentioned in the course of casual conversation that the granting of a new mobile licence was likely to generate strong interest. I recall

responding that I imagined that a company like Motorola, given their presence in Ireland, was likely to be a strong contender. Mr. Lowry did not comment further on the subject and Ms. Byrne then arrived.

"According to Ms. Byrne's diary, this inspection of the muse at Palmerstown close, took place on the 6th April 1995. Mr. Lowry looked at the property but neither at the time nor subsequently expressed further interest in it. At his request, I then drove Mr.

Lowry back to his Department. As we drove back, Mr. Lowry again mentioned Marlborough House and I was again emphatic in my response that I could not and would not intervene with Mr. Gill in his function as arbitrator.

"A month or so later in May or June 1995, I was informed by a colleague in the Sherry FitzGerald commercial property Department, that Mr. Gill had fixed a rent at about 6 punts per square foot for Marlborough House. My next contact with Mr. Lowry, as I recall, was later in April or early May of 1995, when he once more telephoned me to my office. He said he wanted to talk to me about CIE. I recollect at that time CIE was having its problems at board and senior executive level. Mr. Lowry said that his Department was keen to get the then Assistant Secretary in the Department, Michael McDonnell, on the short list for the position of CIE Chief Executive.

Even though I recalled meeting Mr. McDonnell only once previously, I told Mr. Lowry that I was aware that Mr. McDonnell had worked with my brother, John Fitzgerald, in the Department of Finance, and that both John and my father Garrett Fitzgerald, shortly before that, in the context of a discussion between the three of us about Aer Lingus, had spoken highly of the job Mr. McDonnell had been doing there as a State director and what a fine public servant he was. Mr. Lowry's own perception of Mr. McDonnell as expressed in that telephone call seemed to be very clearly the same as mine. He said he was calling me because the CIE board would be making the appointment from the short list that would be presented by PriceWaterhouse and was being handled there by Mr. Tom O'Higgins, whom Mr. Lowry knew I knew. In fact, Mr. O'Higgins is a relative of my wife, and at that time, I was, myself, directly involved with him in my capacity as a trustee in relation to the possible recruitment of a Fine Gael General Secretary.

"Mr. Lowry asked me would I mind having a word with Mr. O'Higgins about the qualities of Mr. McDonnell, and tell him that the Department was keen to see him short-listed. I did speak to Mr. O'Higgins in those terms. My recollection is that Mr. O'Higgins did not say whether or not Mr. McDonnell would be short-listed, but did acknowledge that his perception

of him as a public servant of high repute was the same as I had conveyed as that being of my brother, my father and myself. In fact, Mr. McDonnell was short-listed and was the short-listed candidate subsequently selected by the CIE board as Chief Executive.

"The only other contacts I recall having with Mr. Lowry were in October 1995 at the Fine Gael golf outing at the K-Club, as already referred to in my first statement to the Tribunal, and in what I think were during January and February, 1996, in relation to Mr. Lowry's decision to hold a fundraising dinner in Dublin for his Tipperary North constituency. The fact that Mr. Lowry had decided to hold such a dinner in Dublin had given rise to some angst among the Dublin constituency Fine Gael TDs who saw it as an intrusion into their "patch". The then Fine Gael General Secretary, Mr. Jim Miley, and the Taoiseach's special adviser, Mr. Ray Dooney, asked me to sit in on the organising committee for that event to monitor what was going on and to seek to dissipate that angst. I attended at least two meetings held at Mr. Lowry's Department at which I successfully proposed that a significant proportion of the funds raised by the dinner would go to Dublin constituencies that were in need of funds. The meetings at Mr. Lowry's Department in relation to this Tipperary North constituency

dinner were the only meetings I ever had there with Mr. Lowry. That dinner, I think, took place on Monday, 26th February, 1996."

And your third statement, dated 11th March, 2003 you say: "This statement is the third statement by me to the Tribunal and is further to my second statement to the Tribunal of the 26th November, 2002. The Tribunal has requested me to give details of my discussion with Mr. Killian O'Higgins with whom I discussed the approach made by Mr. Lowry to me in relation to the review of the rent of Telephone House, Marlborough Street, Dublin, in respect of which Mr. Gordon Gill was the arbitrator.

"On what I recollect was the same day as, and shortly following my meeting with Mr. Lowry in early April 1995 at what was formerly Powers Hotel, Kildare Street, as referred to in paragraph 8 of my statement of the 26th November, 2002, I discussed the approach to me made by Mr. Lowry with my colleague, Mr. Killian O'Higgins, at the then Sherry FitzGerald commercial offices at 11 Hume Street, Dublin. I was looking for his endorsement of my view that it was inappropriate to make Mr. Gill aware of that approach while Mr. Gill was engaged in the arbitration process. Mr. O'Higgins and I debated the alternatives of telling Mr. Gill of the approach which would have resulted in Mr. Gill having to resign as arbitrator, or of not telling him

until he had completed his functions as arbitrator.

At the end of our discussion, it was my decision that Mr. Gill should not be told of the approach until the arbitration process was completed; a decision agreed with by Mr. O'Higgins. During our discussion, Mr. O'Higgins expressed his general awareness of the Telephone House premises and that in his opinion, the prevailing office rent would have been in the order of 5 punts to 6 punts per square foot. Apart from Mr. O'Higgins and subsequently Mr. Gill himself after his functions as arbitrator had concluded, I did not, at the time, discuss Mr. Lowry's approach to me with anyone else within Sherry FitzGerald. I did, however, discuss the matter at the time with a number of people with whom I was closely connected personally."

Now, could we just go back to your second statement, Mr. FitzGerald, the statement of the 26th November, 2002; I just want to clarify one or two matters.

From the time that you were appointed one of the Trustees of Fine Gael, and from the time that both you and Mr. Lowry were both Trustees, I presume that while you mightn't have had regular meetings, you would have had some occasion to be in contact with one another and you would have been familiar with, in a general way at least, with Fine Gael fundraising activities?

A. Yes, I was appointed a trustee in, I think, November 1991, so, in effect, it was really 1992 where I took

up the position. And Mr. Lowry, I think, became a trustee the following year, so I would have been aware.

Q. And I think that the fundraising accounts of Fine Gael are held in the name of the Trustees, is that right?

A. Well, yes, the Trustees, the Fine Gael constitution is quite lengthy, but the remit of the Trustees is reasonably limited but basically the Trustees are responsible for the finance of the Party.

Q. They are responsible, presumably, nominally for holding all the funds, isn't that correct?

A. They are, centrally.

Q. Centrally. I don't mean individual

A. One must remember that a national party like Fine Gael has close on 20,000 members. It has a presence, or certainly did at that time, you know, in 41, 42 constituencies, so there is probably more Fine Gael bank accounts, and indeed, other parties' bank accounts, than there are AIB or bank branches in the country, but in terms of the central fundraising related to Head Office, that's what the Trustees dealt with. They didn't involve themselves beyond that.

Q. If you could go to paragraph 5 of your statement of the 26th November, 2002. You say that "After the Fine Gael/Labour Government took office, the first meeting you recollect with Mr. Lowry was a meeting of the Trustees in February of 1995 and in a brief one-to-one

conversation before the meeting began, Mr. Lowry mentioned the Chairmanship of the ESB."

A. Yes, that's correct.

Q. Would I be right in saying that what he was doing there was taking some soundings from you as to who might be an appropriate person for a position that was in the gift of the Government: the Chairmanship of the ESB?

A. I don't know what was in Mr. Lowry's mind. I mean, really what was happening was there was a conversation gap being filled and he asked me a question and I tried to respond as politely and as appropriately as I thought possible.

Q. Well, would you agree with me that you could characterise it as taking a sounding or asking somebody who was in the business world, what impression they had of somebody?

A. Yes, I possibly would agree.

Q. Now, then you say that you had a telephone call from Mr. Lowry in late March/early April of 1995, when you were asked whether there was a man called Gill working in Sherry FitzGerald who was involved with a building off O'Connell Street. And the way you put it in your statement, it would appear, correct me if I am wrong, that when Mr. Lowry asked you about that, all he asked you to do initially was to confirm that there was a man working with you, either an associate, a partner,

an employee, or what, was connected with a building off O'Connell Street where Telecom Eireann was the tenant?

A. Yes, that's correct.

Q. And then you said you'd inquire and he'd be in touch with you again?

A. Yes.

Q. So he didn't tell you, in the course of that conversation, what the purpose of his raising this matter with you was?

A. No.

Q. Did you have any idea, at that point in the conversation, or did you have any impression or did you form any impression as to what the purpose of the inquiry was?

A. No, I was completely mystified. I mean, I have a clear memory of being very mystified, so I regarded it as an unusual phone call.

Q. Did you not think at the time of asking Mr. Lowry, "why are you asking me this question? It's a mystifying question to ask me" as you put it yourself?

A. It was a short conversation. It was on a mobile phone. There was somebody else in my company at the time, and I was just really digesting what he was saying, and I wasn't drawing any conclusions. I was saying to myself, well I better contact Mr. Gill and

find out what all this is about.

Q. Right. You telephoned Mr. Gill, and you learned that he had been appointed an arbitrator in relation to a rent review of Marlborough House, which you knew from your conversation with Mr. Lowry I don't know whether you knew this in any case was tenanted by

A. No, Mr. Lowry had told me that Telecom Eireann were the tenant.

Q. And at that time, Telecom Eireann was within the remit of his Department and within his personal remit as the Minister responsible for certain aspects of semi-state bodies?

A. That's as I understood it, yes.

Q. And the other two discussions that you have mentioned: the one about the ESB and CIE related to semi-state bodies within his remit?

A. That is correct.

Q. Now, I am sure you're familiar with this but for the benefit of members of public who may not be fully familiar with it, disputes about rent reviews arise frequently in ordinary every day commercial relations between landlords and tenants, isn't that right?

A. That is correct.

Q. Most leases provide mechanisms for reviewing rent after five, ten years or so, and so on, isn't that right?

A. That is correct.

Q. In the ordinary way, where you have a dispute between two people involved in a commercial relationship, that dispute, if it's going to be resolved, will have to go to court if the parties can't agree as to how it's to be resolved. But in many commercial relationships, people arrange in advance that they won't have to go to court and that their disputes will instead be resolved privately by arbitrators?

A. Or by independent experts, yes.

Q. Or by independent experts, frequently in a landlord and tenant context?

A. Yes.

Q. But what happens is, for reasons of convenience, expedition and so on, including privacy, the judicial process is the public judicial process is replaced by, if you like, a private semi-judicial process, isn't that right?

A. That's my understanding of it, yes.

Q. And arbitrators, whether they're appointed in a rent review context or anywhere else, are performing a role that, in the public arena, would be performed by a judge?

A. Yes, my understanding would be, yes, under statute.

Q. Would I be right in thinking that it's your impression that anyone in the commercial world would know that an arbitrator is performing a function like that?

A. Well, I can't speak for anyone in the commercial world. I would think that anybody in the property world, in the business I was involved in, would understand that.

Q. Arbitrators are appointed in other commercial contexts as well. Frequently litigation doesn't proceed in the High Court because the parties agree it's quicker to refer it to an arbitrator, isn't that right?

A. That is as I understand it, yes.

Q. Now, when you telephoned Mr. Gill, at first the only, if you like, thought you had in your mind, was that you were somewhat mystified by what you had been asked. Did you relay to Mr. Gill what led or what was what it was that had prompted your inquiry of him?

A. I did, yes.

Q. Did you tell him that Michael Lowry had been on to you?

A. I did, yes.

Q. When Mr. Gill told you that, "well I am" or words to the this effect, "I am an arbitrator, I am arbitrating a rent review on this", you didn't say "it's not appropriate to discuss the matter further"?

A. Yes, an alarm bell went off in my mind, so to speak. Again I was ringing from my mobile phone, I was ringing to his land-line at home, so I decided I better get off the telephone because my, obviously my

curiosity had been aroused and I didn't want Mr.

Gill's curiosity aroused.

Q. And to go further, would I be right in thinking that to go further you felt you might be trespassing into an area which could lead to impropriety or whatever, interfering with the arbitration?

A. I wouldn't say that. I wouldn't just discuss an arbitration with an arbitrator.

Q. But the reason for that is presumably because of, because it would be, or could give the impression that you were interfering with the independent role of the arbitrator?

A. I suppose you could say that. I would regard he had a quasi-judicial role and I'd respect that.

Q. Now, you didn't get back to Mr. Lowry at that point. It was he contacted you?

A. That's correct.

CHAIRMAN: If I could just clarify, Mr. Healy, was it after you had made that initial contact with Mr. Gill, he had indicated that he was doing the arbitration on the Telecom premises in O'Connell Street, you say the alarm bell went off in your head and it was then very shortly afterwards that you discussed it with your colleague, Mr. O'Higgins and you decided to say no more to Mr. Gill.

A. No. What actually happened, Sir, was I made the phone call to Mr. Gill. Then I received a phone call from

Mr. Lowry asking me to meet on a non-specific basis.

Then after meeting Mr. Lowry, which is covered in my statement, I then spoke to Mr. O'Higgins

MR. HEALY: That's the Powers Hotel meeting, in other words.

A. Yes.

Q. So in the narrative or in the chronology then, you had the conversation with Mr. Gill. You did no more about this and the next time it came up was as a result of a question by Mr. Lowry to you to meet him in Powers Hotel in Kildare Street?

A. That is correct.

Q. I think his offices at the time were in Kildare Street, were they not?

A. That's my understanding of it, yes.

Q. You had a meeting an hour or two later and you had coffee. Now, again, was it Mr. Lowry brought up the Marlborough House matter or did you bring it up with him?

A. No, he brought it up.

Q. He had asked you to clarify something for him. You had made an inquiry. You cut yourself short, as it were, once you realised that this involved an arbitration, but you didn't bring the information you had obtained back to him or volunteer it to him at that meeting?

A. Well no, I didn't. I did subsequently at the meeting

inform him that Mr. Gill was an arbitrator.

Q. You say that Mr. Lowry then told that you Marlborough House, of which Telecom Eireann was the tenant as you say, had recently been bought by Mr. Ben Dunne and that Mr. Dunne had been in touch with him and wanted to get the rent up from $\text{€}1/25$ per square foot to $\text{€}1/210$ per square foot. Now, I don't know whether you were aware at the time you may be aware now that the square footage of Marlborough House is in or about 85,000 square feet?

A. I hadn't an iota at the time.

Q. And there is a bit of parking as well. So at in or about 85,000 square feet, a rent of $\text{€}1/25$ per square foot is about 425,000, maybe 450 when you add in the parking, and at a rent of $\text{€}1/210$ per Square foot, that would increase to in or about 900,000, isn't that right?

A. I haven't done the calculation, Mr. Healy.

Q. That's what it would amount to?

A. If you say so, I haven't

Q. And in euros, that would be from about, in or about 540 or 550,000 euro to in or about 1,800,000 euro. It would be a very substantial increase in rent, wouldn't it?

A. Well, on the basis of the figures you are saying, yes.

Q. Over the term of the lease, it would be quite a substantial sum of money, isn't that right?

A. It would seem to be, yes, but...

Q. You would know more about this than I do; it would be an extra half a million or so a year, 400,000 a year, over the rent that was actually fixed, so it would involve a huge increase in a stream of income from a rent, but it would also increase the capital value of the property, wouldn't that be right?

A. I think what you're saying is generally correct. I would point out, Mr. Healy, that, you know, I haven't professionally engaged in the issue of this building personally and it's not my particular area of professional expertise; I am more an expert in residential property. You know, that sort of detail you're looking for, whilst you say seems to be generally correct, somebody like Mr. Gill or indeed Mr. O'Higgins would be the expert.

Q. I am just really doing an arithmetical exercise, and assuming the arithmetic is correct, over usually the term is five years to the next review, over a five year term, this would produce a stream of income of about 2.5 million extra in euros, and would, I presume, I think anyone would assume, markedly increase the capital value of a property?

A. Well, from what you say, there would appear to be an increase in capital value. The quantum is something I wouldn't comment on.

Q. I appreciate that and I wasn't going to ask you that,

because that is a very expert area, isn't it?

And we know that ultimately the rent was increased by
€1 per square foot?

A. Well, my understanding of it, I mean again I haven't
studied it, that Mr. O'Higgins told me that after Mr.

Gill had settled the arbitration, that the rent he
had settled it at something over €6 a foot,
approximately €6 a foot or a little bit more.

Q. Which was the figures Mr. O'Higgins himself felt it
would or should go to?

A. When I raised the issue with Mr. O'Higgins after the
Powers Hotel meeting, he informed me I mean, he was
actually an expert in the office market he informed
me that the rental value, he couldn't see any
arbitrator settling it for more than €5 or €6 a foot,
in the market that prevailed at the time.

Q. I understand.

In your statement you say that Mr. Lowry told you that
Mr. Dunne had been in touch with him and wanted to get
the rent up from €5 per square foot to €10 per square
foot and that and you have put it in quotation
marks "your man Gill" was involved, and could you
organise it.

A. Yes, well that's what that's an accurate account of
my recollection of the conversation.

Q. Well, you were being asked to

A. To respond

Q. Well, you were being asked, at that stage, am I right in saying

A. At that stage, I explained to Mr. Lowry that Mr. Gill was an arbitrator and that my understanding was that an arbitrator had a quasi-judicial function and that he was appointed under an Arbitration Act, I think of 1954, I think I said, I am not quite sure which year the Act is, and that "not to go there, Michael" is what I said.

Q. But you were being asked to interfere or to make representations to Mr. Gill to make him put the rent up to $\frac{1}{2}$ 10?

A. I was, but I mean, I am not sure what the case is from Mr. Lowry's perspective, but the first time an arbitration was mentioned was when I mentioned it to Mr. Lowry. Mr. Lowry may not have been aware there was an arbitration.

Q. Yes, I appreciate that. When you told Mr. Lowry emphatically that you wouldn't get involved, and when you explained that there was an arbitration and that the arbitrator had certain obligations and duties, both in general and indeed in virtue of the Arbitration Act, and that you I think you say you mentioned Mr. Gill's independent role as an arbitrator, Mr. Lowry then asked, and I am quoting from your statement "what "we" were going to do as Ben Dunne had contributed 170,000 to Fine Gael."

Now, this was sorry, I beg your pardon

A. Well I told him I was going to do absolutely nothing and I advised him that he shouldn't pursue the matter.

Q. What did you understand "we" to mean?

A. I understood "we" to mean as in Fine Gael.

Q. So that when Mr. Lowry asked you what "we" or what Fine Gael were going to do, he was asking you what Fine Gael were going to do in a context in which Mr.

Dunne had, as he put it, given $\text{€}170,000$ to the Party?

A. That was my understanding of what he was saying.

Q. "What are we going to do for Mr. Dunne in return for $\text{€}170,000$ "; isn't that it in plain language?

A. That was the inference I deduced from the conversation.

Q. That was after you had had the discussion about the role of the arbitrator?

A. It was.

Q. You said that you told Mr. Lowry that that was the first you had heard of this contribution and that he should not pursue the matter further.

A. That is correct.

Q. I just want to deal with two aspects of that. You have already said you told him leave this, stop it now.

Would you have been aware that Mr. Dunne had made contributions to Fine Gael in your role as trustee or is that something the Trustees are aware of in general?

A. No, I wasn't aware. In general, Trustees weren't made aware of individual contributions.

Q. Do you mean that you would only have become aware of the total size of the fund at any one particular time?

A. No, we would have been aware of the financial figures.

I mean, what we were looking at was really the bank borrowing, where the bank borrowing stood, was really how the cash inflows were coming, so you'd see general sums, but you wouldn't be briefed on any specific sums or any specific amounts. There was a particular political reason for that practice.

Q. You weren't, in other words, a fundraising committee.

You were holding monies on behalf of the Party and, to some extent, making yourself responsible for the Party's banking arrangements?

A. Yeah, the Trustees, as such, didn't raise funds, no.

Q. Just to clarify that, because we are going to touch on it later on. When you say the "Trustees as such didn't raise funds"

A. The Trustees, as a body, didn't raise funds. So there were other organs of the Party that would have raised funds. The Trustees in a central basis had the responsibility to manage that and to account for the finances and deal with the bank in relationships.

Q. But you are not suggesting that individual Trustees themselves might not have been involved in any fundraising?

A. Absolutely, individual Trustees would be, but as a group it wasn't the role of the Trustees.

Q. You say "A very short time after that Powers Hotel meeting, Mr. Lowry telephoned me at my office and said that he wished to buy a house but wanted to keep a low profile."

Can I just clarify one thing here. It's a matter of not huge significance I think in any case: Can you recall whether you spoke to Mr. Killian O'Higgins before that further contact from Mr. Lowry?

A. I did. My recollection is clearly that I spoke to Mr. O'Higgins before the next contact with Mr. Lowry.

Q. Right. A very short time after that meeting, you say, you met Mr. Lowry, and it was with a view to facilitating him in viewing a property he was interested in on Palmerstown Road?

A. Yes.

Q. And that seems to have been a perfectly reasonable request by him. He was a government minister. He had a high profile. He didn't want to draw attention to his affairs in examining this property, is that right?

A. That's what he said to me, yes.

Q. And while you weren't prepared to deviate from your procedure by yourself taking over the role by selling the property or showing the property, you indicated that you would arrange for him to meet the negotiator in your firm who was dealing with that property?

A. That's correct.

Q. You met Mr. Lowry. He came in his car, in his State car. He then went with you to the property in your car?

A. Yes. From the Orwell Lodge Hotel to Palmerstown Close, which would be, I suppose, about a mile.

Q. Then, because he had, presumably, sent his driver away, you brought him back into

A. Into his Department.

Q. into his Department. And he again mentioned Marlborough House?

A. He did.

Q. And you say you were again emphatic in your response?

A. I was.

Q. Can you recall how you responded or what your demeanour was in responding to this, I suppose, third reference to Marlborough House?

A. Well, I recall he raised it as we turned into Dawson Street, and I was exceptionally emphatic in telling him not to pursue the matter.

Q. So do I understand you were indicating that you yourself were not going to pursue it, but you were also cautioning or counselling him not to pursue it?

A. Just the matter wasn't going to be pursued, per se. That was it. Period. I mean that's not what I said, but that's the thrust of...

Q. Just to put try to put these approaches in some

kind of context. You say your first approach, if you look at paragraph 6 of your statement, was in late March or early April?

A. Yes.

Q. That was the somewhat mystifying phone call. You then telephoned Gordon Gill. Mr. Lowry then telephoned you to meet you in Powers Hotel. Now, I think from other documentation the Tribunal is aware that Mr. Gill accepted his appointment on the 7th April, so, presumably, the correspondence with him the correspondence which normally precedes the appointment of anyone as an arbitrator would have taken place shortly before that?

A. I presume so.

Q. I think Mr. Gill has informed the Tribunal that he was nominated on the 31st March as an arbitrator?

A. I see.

Q. So it would have been sometime then, around that time that you received your first approach?

A. Yes.

Q. And if your meeting at Palmerstown Close was on the 6th April, the intervening meeting in Powers Hotel must have been sometime in the six or seven days between the end of March and that day?

A. That's my understanding of when it took place.

Q. So in total, there would have been three contacts with you over a period of about a week. Do you remember it

as being that intensive?

A. That's my understanding. I do remember it; it was rather intensive. The precise days, I rely on

Q. I now want to go on to what's contained in your second statement of November of 1992. Have you got a copy of that there?

A. I don't, but

Q. You have no copy of your own statement. I am sorry.

A. I am perfectly happy; you keep asking the questions.

Q. I think before I pass on from that to deal with the rest of the narrative, Mr. FitzGerald, it perhaps would be only fair to Mr. Dunne and Mr. Lowry if I were to put to you what they say in relation to that episode, the episode that we have just dealt with.

Mr. Lowry has provided a response to this matter and to the other material contained in your statement of November of 1992, in a statement of his of the 2nd December, 2002. I am going to give you the book as well, so it will make it easier for you to follow it.

If you go to Divider 2, Leaf E. Have you got that?

A. Yes.

Q. It should be headed "Memorandum of Information Provided by Mr. Michael Lowry, 2nd December, 2002".

Do you have that?

A. Yes, I do.

Q. In the first paragraph, Mr. Lowry says, or has informed the Tribunal that he does not recall how many

times he would have met with Mr. Mark FitzGerald during the times that he refers to in his statement dated and there is a typographical error there 26th November, 2002.

I think then Mr. Lowry is referring to paragraph 2 then of your statement, and he says "Mr. Lowry has no precise recall of this but is prepared to accept what is stated in this paragraph."

I think that's a reference to meeting you while you were walking on Upper Mount Street. He goes on to say that he recalls being at the function at Luttrellstown Golf Club, but he has no recall of the conversation referred to.

The next item mentioned in your statement concerns Mr. McCann, and Mr. Lowry says that he has some recall of a chat with Mr. Mark FitzGerald in relation to the vacancy of Chairman for ESB. It is his recollection that he intimated to Mr. FitzGerald that Dick Spring, Tanaiste, had suggested at an earlier date that William McCann would be a suitable choice for the position. He believes that he simply asked Mark FitzGerald as to his knowledge of Mr. McCann and his ability. He does not recall any other name being offered for consideration by Mr. FitzGerald.

That would seem to more or less accord with your recollection of that conversation, isn't it?

A. There is a difference in recollection. But whether you

regard it as substantive, it's not a matter for me to decide.

Q. There are very few differences, if any, of substance.

He then refers to paragraphs 6 to 12 of your statement. Paragraph 6 begins with the first telephone call you received from Mr. Lowry, the one that you felt somewhat mystified by, and paragraph 12 is the paragraph in which you learn sometime in May or June of 1995, having been informed by a colleague in Sherry FitzGerald, that the property in question had been reviewed by Mr. Gill with a rent of $\$1/26$ of about $\$1/26$ per square foot. So he is dealing effectively with that episode and the events that we have just been through.

And he says: "After dealing with the matter, Mr. Lowry's recall is that Mr. Dunne did inform him as to the level of rent which he was seeking and that this was being arbitrated. Mr. Dunne's request was that Mr. Lowry might ask Mr. FitzGerald if the matter could be hurried up as a member of his staff was acting as arbitrator."

Now, I don't want to second guess the detail of Mr. Lowry's evidence when he comes to give it, but that seems to be referring to perhaps an initial contact.

Do you recall, in the course of that initial contact or any contact, being asked to facilitate Mr. Dunne by having Mr. Gill hurry up the arbitration?

A. No, not as such. That was not my recall. I mean, the tenor of Mr. Lowry's remarks would be that he would be keen, and I assume that Mr. Dunne would be keen to see that the matter was sorted out reasonably quickly, and the telephone calls the telephone call followed by the subsequent meeting would indicate that there was a degree of alacrity, but there was nothing specifically requested in terms of a speed of decision or speed of process.

Q. If that was the only thing you had been asked, do you think that can you recall, or can you say whether you'd have taken any steps to draw it to Mr. Gill's attention, bearing in mind he had only just been appointed?

A. If I had simply been asked about the speed issue, no, I wouldn't have brought it to Mr. Gill's attention. I would regard it as an unorthodox approach, and particularly in view of the fact that Mr. Lowry was Minister in charge of the Department.

Q. Mr. Lowry goes on. He says: "Mr. Lowry's recall is that he followed up on the matter and had a fairly brief general discussion with Mark FitzGerald. He accepts that he related to Mark FitzGerald the information which had been given to him by Mr. Dunne. He would have had a general understanding of the process but for Mr. FitzGerald to suggest that Mr. Lowry was in any way attempting to influence the level

of rent review is neither fair nor correct and Mr.

Lowry rejects this suggestion absolutely.

" As to the content of Mr. Lowry's statement as to contributions by Ben Dunne to Fine Gael, Mr. Lowry's view is that Mark FitzGerald would have been well aware that Mr. Dunne was a contributor to Fine Gael and the statement which Mr. FitzGerald attributes to Mr. Lowry was not made."

I think just, at the moment, so that I don't have to read it out again, I'll just read the rest of that statement.

"In relation to paragraph 13" this is the conversation concerning Mr. McDonnell "Mr. Lowry states that he has some recall of a conversation with Mark FitzGerald about Michael McDonnell, deceased. He cannot recall the conversation precisely, but it is his recall that, in general terms, they were both in agreement that Michael McDonnell was a capable, efficient public servant who deserved to be on the short list of candidates for the position of Chief Executive. Mr. Lowry's understanding is that Mr. McDonnell had expressed interest in the position and was placed on the short list on his own merits. He believes that it is totally incorrect for Mr. FitzGerald to infer that he was responsible for short listing Mr. McDonnell."

He goes on then to dealing with the Burlington event,

which was the fundraising event being organised by Mr. Lowry in 1996 in Dublin for his Tipperary North constituency, according to your account, and where, as you recall, and as you have informed the Tribunal, Jim Miley and the Taoiseach's special adviser asked you to sit on the organising committee to monitor what was going on and to seek to dissipate some angst or unhappiness on the part of Dublin TDs, that their patch was being trespassed on.

Mr. Lowry says: "The Burlington event was initiated and run within a very short space of time. The event had the approval of Fine Gael Headquarters. At the outset, Mr. Lowry's concept was that the event was primarily for funding the weaker Dublin constituencies. Mr. Lowry organised the grouping which ran the event. There was never any requirement for Mr. FitzGerald to propose anything as it was known from the outset that the function had a dual purpose supporting Dublin constituencies and the Tipperary North constituency."

If we could just go back for a moment to paragraph 6 of Mr. Lowry's memorandum where he says that he accepts that he related to you the information which had been given to him by Mr. Dunne. He says he would have had a general understanding of the process. I think that must refer to the arbitration process. And then he says that for you to suggest that he was in

any way attempting to influence the level of rent review is neither fair nor correct. And he rejects the suggestion absolutely.

Now, from the way you described the events that took, or the exchanges that took place in your first meeting in Powers Hotel, you say that you explained the arbitration process, as you understood it, to Mr.

Lowry?

A. That is correct.

Q. He asserts that he had a general understanding of it in any case, and I think it's only fair to say that in his statement he seems to acknowledge that to interfere with it would have been improper. And he says that you are suggesting that Mr. Lowry was seeking to influence the level of rent. What do you say to that?

A. Well, I have said what I have said already. What Mr. Lowry is saying there is not my recollection, at all, of the conversation that took place between us.

Q. Mr. Lowry, it seems clear from this, acknowledges that to seek to attempt to influence the rent review would have been improper; isn't that clear from what he is saying here?

A. That seems to be what he is saying in his statement, yes.

Q. Was it your impression, at that time, that you were being asked to influence the rent review?

A. It was my impression, yes.

Q. Now, Mr. Lowry says that you would have been well aware that Mr. Dunne was a contributor to Fine Gael.

You may or may not have been aware of that, were you?

A. I wasn't aware that Mr. Dunne was a contributor to Fine Gael. I might have had a suspicion that he might have been, but I was not aware that he was a contributor of even a small sum to Fine Gael; I had no awareness of it.

Q. I see. If I could just ask you now to go to Leaf 18.

What I am drawing to your attention at this stage is the statement of Mr. Dunne. Now, you haven't indicated that you had any contact with Mr. Dunne and I take it that you had no contact, had you, at this time, with Mr. Dunne?

A. None whatsoever.

Q. But he was, nevertheless, on your account, involved in this in light of what Mr. Lowry had relayed to you and it's for that reason that I just want to a) mention it at this point in the course of your evidence, and also because there may be one or two matters that I can draw to your attention.

Mr. Dunne made a statement on the 23rd December, 2002, as follows: "I am making this statement in reply to the statement made to the Tribunal by Mr. Mark FitzGerald on the 26th November, 2002, material parts of which were furnished to my solicitor by the

Moriarty Tribunal under cover of letter dated 27th November, 2002, and to the memorandum of information provided by Mr. Michael Lowry, dated 2nd December, 2002, a copy extract of which was furnished to my solicitors under cover of letter dated 2nd December, 2002.

"Bark Island Limited of which I am a director acquired Marlborough House at 43/47 Marlborough Street, Dublin 1 in 1995."

He then goes on to call Bark Island 'the company', and he calls Marlborough House 'the property'.

"When the company acquired the property, it did so subject to, and with the benefit of, a lease dated 31 December, 1978, in favour of the Minister for Post and Telegraphs. The rent payable under the lease was due for review on the 23rd July, 1994. To deal with this review, Shannon & Company were retained by the tenant, that is Telecom, and Harrington Bannon were retained by the company. As the parties were unable to agree the rent on that review, an arbitrator was appointed in accordance with provisions of the lease as agreement could not be reached between the respective parties.

I note from a letter dated 7th April, 1995, from Mr. Gordon Gill of Sherry FitzGerald to Mr. Joe Bannon of Harrington Bannon and Mr. Peter Shannon and Shannon & Company, that Mr. Gill was appointed by the president

of the Society of Chartered Surveyors by letter dated 31st March, 1995, to act as arbitrator. I think he would have been nominated and therefore subsequently accepted the nomination by letter of the 7th April.

"In preparation for the arbitration, I note from correspondence dated 24th April, 1995, that Harrington Bannon, on behalf of the company, prepared certain figures, which figures detailed a projected rental analysis based on office rent levels ranging from IRi₆¹/₂8 to 8.75 per square foot. I beg to refer to a copy of the statement that Mr. Joe Bannon of Harrington Bannon in this regard. This is effectively a submission made by Harrington Bannon organising for that particular rent review."

He goes on: "Details of various schedules of rental comparisons were submitted to the arbitrator on the 4th May, 1995, by Harrington Bannon on behalf of the company and Shannon & Company on behalf of the tenant."

This is where, as I am sure you are probably aware, each side to a rent review arbitration submits a number of comparative rents reviewed in the area usually adjacent to the property under review.

"These schedules of rental comparisons were submitted in contemplation of the arbitration hearing which was heard at the offices of Sherry FitzGerald on Monday, 15th May, 1995," and he refers to a copy of the

attendance in his possession, referring to the arbitration hearing. He says: "Following the arbitration hearing, the arbitrator directed that a rent of 640,000 punts per annum be paid in respect of the property. This rent related to an area comprising approximately 82,000 square feet, and included car parking and stores.

"I now refer to the particular matters raised by Mark FitzGerald in his statement to the Tribunal on the 26th November, 2002, and in relation to the same, I would comment as follows:

A) The rent on the property was due for review on the 23rd July, 1994, and negotiations between the previous owner and the tenant had been ongoing from sometime in or around that review date. Discussions between the vendor and the company in relation to the disposal by the vendor of the property to the company were ongoing and a price for the property was eventually agreed between the company and the vendor. It was also agreed that the company would take over negotiations with the tenant on that rent review from the date of the contract. Accordingly, when the contract was signed in or about autumn of 1994, the company took over the negotiations with the tenant on the rent review. The sale to the company closed in late February or early March of 1995, and as agreement could not be reached between the company and the

tenant on the rent review, the matter was referred to arbitration. Mr. Harry Whitaker was appointed as arbitrator by the president of the Society of Chartered Surveyors on the 15th February, 1995.

Sometime later Mr. Whitaker stood down as arbitrator.

I am not aware of the reasons why Mr. Whitaker stood down but when he did stand down, the president of the Society of Chartered Surveyors, by letter dated 31st March, 1995, appointed Mr. Gordon Gill of Sherry FitzGerald to act as arbitrator.

"As of the 31st March, 1995, matters had only progressed to the appointment of a second arbitrator.

However, I felt quicker progress on the rent review needed to be made. Accordingly, in an effort to progress matters quickly, when I heard that Mr. Gordon Gill of Sherry FitzGerald was appointed as arbitrator

in respect of the rent review of the property, I telephoned Mr. Michael Lowry and asked him if he knew

Mark FitzGerald. Mr. Lowry told me he did know Mark FitzGerald. I asked Mr. Lowry if he would speak with

Mr. FitzGerald and ask him if the rent review, which was ongoing in relation to the property, could be progressed quickly. I did not know anybody in Sherry

FitzGerald and wanted matters moved quickly and the name 'Michael Lowry' was the name that came to mind

when I thought about ringing somebody who may know Mark FitzGerald well enough to contact him. I thought

of Michael Lowry because I felt that both Mark FitzGerald and Mr. Lowry were Fine Gaelers. I never mentioned to Mr. Lowry that I wanted the rent to increase from $\text{€}1/25$ per square foot to $\text{€}1/210$ per square foot, but I can not be sure that I did not say to him during the course the telephone conversation that there was approximately 50,000 between the parties in respect of the rent review.

"A number of days later Mr. Lowry telephoned me and told me that Mark FitzGerald was not in a position to do anything about my request. Once Mr. Lowry reverted to me, I never pursued the matter further. As I was not a party to the direct discussions between Mr. Lowry and Mr. FitzGerald, I am not in a position to comment in any way on any direct conversation between them and I do not believe that I was contacted by Mr. Lowry in relation to any of the matters set out in the numbers 2, 3, 4 and 5 of Mr. FitzGerald's statement.

"I have set out above details of the company's submission to the arbitrator in respect of review and details of the arbitrator's determination. I have never requested any political favour from Mr. Lowry. The only other matters I did request from Mr. Lowry were GAA tickets for All Ireland Finals and other games. Mr. Lowry would not have been the only person that I would have contacted in this regard."

Now, I don't think I can ask you to comment on that

unless you think there is any aspect of it that you think you can comment on?

A. I don't think there is really.

CHAIRMAN: Five past two, if that suits you Mr. FitzGerald. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH.

CONTINUATION OF EXAMINATION OF MARK FitzGerald BY MR. HEALY:

MR. HEALY: I now want to go to your statement of the 11th November, 2002. You say that you were a member of the organising committee for the Fine Gael Golf Classic, which was held in the K-Club on the 16th October 1995. Now, this was distinct from your separate role as a member of the Trustees, isn't that right?

A. Yes, that's correct.

Q. This was a strict fundraising activity?

A. It was a strict fundraising activity, yeah, centred on a golf outing.

Q. You say that at the time of that event, yourself and Mr. O'Brien knew one another, though you weren't particularly friendly and you remember having previously had two earlier business contacts with him.

A. With Mr. O'Brien?

Q. With Mr. O'Brien.

A. Yes, that's correct.

Q. Had you had any earlier I'll put it in this sense political contacts with him?

A. No, none earlier.

Q. Had you ever sought, as indeed many political parties did, political contributions from him in the guise of any of his various enterprises?

A. No.

Q. You say that sometime in August 1995, Mr. O'Brien telephoned you at your office in Merrion Row and asked you to meet him for a cup of coffee in the Shelbourne. You assumed he wanted to discuss business and you met him. He told you that he was applying for the second mobile licence.

Can you date that meeting any more accurately than by reference to the month of August, if you think of your own holidays for instance?

A. I can't unfortunately, but I think it was probably the latter part of August, but...

Q. I see. Mr. O'Brien told you that he was facing an uphill struggle and that it was rumoured that Mr. Albert Reynolds was in line for a pay-off if Motorola was granted the licence. What did you understand that reference to mean? I suppose bearing in mind that Mr. Reynolds was no longer in power.

A. Well, I was somewhat puzzled, but I mean, we didn't discuss it. It just put me slightly on my guard for the rest of the conversation.

Q. Mr. O'Brien also told you that he wanted to keep up his profile with Fine Gael, and that he had heard Fine Gael was having a golf outing. I take it that what your intending to communicate there is that he wanted to get involved in the golf outing and keep up his profile by becoming involved in it?

A. That's what I understood from him, yes.

Q. You said you thought it would be unwise in circumstances in which he was applying for a licence as he had just told you?

A. That's correct.

Q. But you didn't put it any more strongly than that?

A. No, I didn't think it was my role. I was voluntary party worker and I found myself talking to him and in a sense he was giving me his view of where he was in the world and possibly looking to me for guidance and I advised him that I didn't think it was the way to go about things.

Q. Right.

A. And you know, I told him, in any event, the Golf Classic was full, hoping, in fact, it might sort of shake off his enthusiasm slightly. I said we were just looking for sponsorship for golf and wine at this stage.

Q. By that, did you mean all the I don't I am not guilty of golf, I don't know enough about how golf classics are organised.

A. That makes two of us, Mr. Healy. I don't play it myself.

Q. What do you mean it was full up? Do you mean the players or the teams?

A. The teams were full up. I think we had 38 teams and we were, in effect, full up. We hadn't everything completely buttoned down, but we were pretty confident we were full.

Q. You know that, from what you have said in your statement later on, that ultimately Mr. O'Brien did become involved but didn't want any signage referring to him at the outing, at the golf outing, isn't that right?

A. That's correct.

Q. When he spoke with you about it first, was there any reference to whether there would be a signage or whether there would be other references to Mr. O'Brien's company, Digifone, or any of his other companies?

A. No. I mean, after we explained to him the golf outing was full up and we were dealing with the sponsorship, he asked what were you looking for, and I answered the question that I think it was, we were looking for, the holes were to sponsor the holes were 1,000 a hole and the wine was 3,000. I was advising him, you know, not to get involved, but at the same time, the sum of money, to support a golf outing in itself isn't a huge

sum of money.

Q. You mean in terms of the team or in terms of

A. In terms of either, you know.

Q. Right. What did you understand by Mr. O'Brien's use of the expression that he wanted to keep up his profile?

A. Well, I suppose, like myself he was reasonably young at the time, and he was facing international competition, and I suppose, credibility was an issue that, you know, that, you know, he had already been awarded a radio licence, as I recollect, before, but this was obviously his modus operandi, that he wanted a good PR profile.

Q. PR profile in terms of a Fine Gael golf outing, is presumably something else. Would I be right in thinking that to keep up your profile with a political party involves making your own face, your own business brand known, or to more widely known to members of the Party?

A. That could be part of it. You'd have to ask Mr. O'Brien that. There is also the wider business community at the a golf outing or a Golf Classic like that, so...

Q. But if you were to keep up your profile at a Golf Classic, obviously signage would be a part of it, wouldn't it?

A. Well, possibly so, but I mean, I haven't been ever in

a position I have supported a Golf Classic and not, if I sponsored a hole, not to ask for the signage, so I couldn't really put myself in that position.

Q. But if your signage wasn't there and if there were no references to you in the course of the Golf Classic, you know, the usual thank you references to so-and-so for providing the wine or sponsoring this, that or other aspect of the catering, you wouldn't be impressing or raising your profile with the members of the Party at the golf outing or with the wider business community. You'd only be raising your profile with the people who knew that you were paying the £4,000, wouldn't that be right?

A. Well, if you came to the golf outing yourself or your company came to the golf outing yourself, you'd be seen there, but there wouldn't be any sort of memento in terms of a menu with accreditation that people could read who weren't in the golf outing.

What we did discover on things like this Golf Classic, that some businesses didn't want to support the political process at all.

Q. I beg your pardon?

A. Some businesses didn't want to support the political process by supporting a political party at all. Other businesses did want to support the political process, and didn't mind having their name mentioned in print, so to speak, and then there were other businesses that

didn't mind supporting the Golf Classic, but didn't want their name printed in terms of being associated with it. And that is the case. I mean, you have got access to the minutes of the Golf Classic, Mr. Healy, you will find that a number of people required requested no signage, no profile.

Q. And I suppose if you were applying for a licence, and known to be involved in a licence process being run by a Government of which this particular party was the senior partner, and there was signage and other references to you at the golf outing, then it would be clear and obvious to everybody what you were doing, isn't that right?

A. Well, of which I wasn't aware at the time but I am obviously aware in retrospect. Mr. O'Brien obviously attended a number of functions, so I don't think he was afraid of being seen and associated. They are questions you need to address to Mr. O'Brien, not to myself. I was just present for that meeting.

Q. You say that you were aware that there were other companies involved who didn't have any who insisted that there should be no signage or other references to them. I don't think any of those companies were involved in applying for a licence, is that right?

A. Not that I am aware.

Q. In any case, after speaking to Mr. O'Brien, and I think would I be fair in saying that you discouraged

him in some way from becoming involved without expressly rejecting his overtures, would that be right?

A. I didn't think it was I didn't think it was a significantly serious issue given the quantum of money that might be involved, to repudiate Mr. O'Brien. I just advised him I didn't think it was the appropriate thing to do and I would have felt I left that meeting clear in my own mind that I'd left him with the perception that it was not something to be pursued. I mean, he was anxious to he was anxious to pursue it and he asked me about the golf outing. I explained to him, Mr. Austin, even though he wasn't the Chairman, he was in fact really de facto the organiser for the golf outing.

Q. Do you know whether Mr. O'Brien indicated that he knew Mr. Austin?

A. He seemed to, I think as I recollect, he mentioned a relative of his that we would have both known, yes, you know

Q. But did he say that he knew Mr. Austin?

A. My recollection is no, that he didn't say that he particularly knew Mr. Austin, no.

Q. I see. You say you then spoke to Mr. Jim Miley, then General Secretary of Fine Gael, and informed him of the approach and told him you didn't think Fine Gael should accept a corporate donation. But you learnt

that at a subsequent meeting, he had, in fact, pursued the matter and had

A. Yes

Q. I agreed with Fine Gael to sponsor an aspect of the event, isn't that right?

A. That's correct. Mr. Miley was new to the job, so I was, in a sense, I was he was a month or so, I think, in the job. I was briefing him not just on the particular issue, which given the quantum of money, wasn't it was just an example of some of the issues that we faced as a party, and that you know, that a new General Secretary should be aware not only this particular issue, but you know, the wider significance of it was so that he, as a chief operating officer, would, as he grew into the job, would understand how he wanted to manage on behalf of the Party, the fundraising operations to the Party, and the distance that should be maintained between business and politics.

Q. Right. I just want to be clear about your state of mind, as it were, and your communications with him. Were you saying to Mr. Miley, this should not happen, or were you saying it's my opinion that it shouldn't happen, but I am not going to go beyond that?

A. I was a voluntary party worker. I wasn't a shaper of party policy. I was marking Mr. Miley's card as the Chief Operating Officer of the Party that in my

opinion, it wasn't a well-advised thing to do,
particularly probably from Mr. O'Brien's point of view
but also from the Party's point of view. But I was
looking, really, to make a point of more general
significance the way the Party, if it's going to
operate under Mr. Miley's stewardship

Q. Did you attend the Golf Classic yourself by that I
mean the whole thing or just the dinner afterwards?

A. I came down towards the end of the Golf Classic and
attended the dinner.

Q. Was Mr. O'Brien at the Golf Classic or the dinner?

A. Not to my recollection, no, but I have

Q. Now, you then go on in your statement to say that you
received a telephone call from Mr. O'Brien around the
middle of October, 1985, after the Golf Classic. Golf
Classic was held on Monday the 16th October. You
think that you were in the UK in the following week.

So you feel that this conversation took place sometime
later on in the week commencing Monday, 16th October?

A. I can't place the precise date, but I think that's not
so much the issue, I think it's whether the
conversation took place. What I do know is that the
conversation I had with Minister Lowry was at the Golf
Classic, and as I alluded earlier on, I am not a
golfer, as yet anyway, and it's the first time I was
ever in the K-Club, so I have a clear memory of the
conversation with Minister Lowry and where it took

place and the fact that it was my first time in the K-Club. And what I also know is that I was in Britain from, I think it was Monday the 23rd October, to Thursday, 26th October the following week, so by so much a process elimination, that's where I placed the meeting.

Q. Mr. O'Brien asked you to meet him for coffee in a restaurant. You assumed that this would relate to some business matter and you went to meet him?

A. That's correct.

Q. And when you arrived at the restaurant, you say that you were surprised to find Mr. O'Brien sitting at a table with Mr. Hogan and the late Mr. Phil Hogan and the late Mr. Jim Mitchell?

A. I was surprised because I was just expecting to meet Mr. O'Brien. Now, having said that the restaurant was on Upper Merrion Street opposite Government Buildings, so it was in the close proximity to the Dail. But I was still surprised you know, when you go to a meeting where you expect to meet somebody that's the person you expect to meet, so I was just expecting to meet Mr. O'Brien.

Q. Then you say as you sat down Mr. O'Brien asked you if you had heard any news on the licence. I am just going to read out the rest of your statement in a moment and come back to a few details in it.

You said: "Mr. O'Brien had never previously asked me

anything about the licence. I told him I had bumped into Michael Lowry at the Golf Classic at the K-Club and that Mr. Lowry had said to me that Denis O'Brien had made a good impression on the Department; that he had good sites and good marketing. I may also have said that Mr. Lowry had said that there would, anyway, be a third licence because I recall Mr. Lowry said this to me. I do not recall any other significant matter arising in that brief conversation with Mr. Lowry." And so on.

Can you recall whether anything else was discussed at that meeting with Mr. Mitchell and the late Mr. Mitchell, Mr. Hogan and Mr. O'Brien?

A. No, I don't have a specific recall. I think it was general banter. There were three outgoing individuals who were well capable of talking in a humorous fashion about a variety of subjects. There was nothing of any great significance. My recollection is that the conversation was really more a bilateral conversation between myself and Mr. O'Brien rather than involving all four of us.

Q. And your bilateral conversation with Mr. O'Brien

A. Well, Mr. O'Brien addressed me and I responded to him.

We were kind of sitting around a reasonably big table.

Q. But when you say "bilateral", everybody else was present and heard all the conversation?

A. They were present but they weren't engaged in the

conversation.

Q. And when the conversation finished and the exchange of banter, whatever, took place afterwards, did you all split up and go your separate ways?

A. No. We left together and my recollection was I was one of the group in the restaurant at the time and we left together; that's my recollection.

Q. Would it be reasonable to assume that the meeting was hardly suggested on a purely speculative basis, that you might have some information on the telephone process, on the mobile telephone process?

A. I am not here to speculate, Mr. Healy. I have already given you an account of what actually happened.

Q. Had you said anything to Mr. O'Brien or to Mr. Hogan or to Mr. Mitchell to lead any of them to believe, or do you think you said anything which could have led any of them to believe that you had some special insight into the process or some special access to information about the process?

A. This is just prior to the meeting you mean?

Q. At any time.

A. Well, obviously prior to the meeting I had no conversation with any of them about the licence, good, bad or indifferent. At the meeting, obviously, what happened at the meeting is in my statement, so obviously I did comment on the licence at the meeting.

Q. I am aware of that.

A. In that sense.

Q. I am talking about whether you had said anything which had or could, in your opinion have had that effect

A. Of?

Q. Of leading them to believe, any of them to believe that you might have had some access to information about the process at the Golf Classic or at any other time which would have prompted this meeting?

A. No, absolutely not.

Q. Just to query you on one thing. You said you had no previous discussion with Mr. O'Brien about it. You had, I suppose, those few remarks he made when he asked you about the Golf Classic; was that the height of it?

A. Well, that was the height of it and it wasn't actually a discussion, because Mr. O'Brien said something and I didn't respond, so there wasn't a discussion in my view.

Q. Okay. In that sense, therefore, would you agree with me that, or do you now think it somewhat strange that somebody would ask you to a meeting and expect you to have knowledge or news about this process when you had never given any indication that you had some special access to knowledge about it?

A. I don't know. My only I can tell you what my impression was at the time. My impression at the time was that Mr. O'Brien was somebody who was anxious for

news and was somewhat had the demeanour like a post-graduate student waiting for exam results and had time to fill, that was my impression.

Q. But why ask you? He might as well have asked you what the exam results of somebody were.

A. I can't answer you that question. You will have to address that to Mr. O'Brien, Mr. Healy.

Q. Was there any other purpose to the meeting then?

A. Not that I was aware of, beyond the conversation that took place.

Q. Can you remember what Mr. O'Brien's response was to the information that you gave him?

A. Well, he seemed to be he seemed to be upbeat and his response basically was, we'll give it a good shot.

Q. And that was it?

A. That was it.

Q. Just to go back to what actually happened at the Golf Classic. You say that you bumped into Michael Lowry; does that mean you weren't sitting together at the Golf Classic?

A. No, we weren't sitting together.

Q. Did the exchange you had with him occur in a quiet corner or a private place or was it in full view of everybody else?

A. It wasn't in full view of everyone else, but my recollection is that at the sort of coffee stage at dinner, I went to the gents and I came across

Mr. Lowry at the top of the stairs on the way down to the gents. That's

Q. Just the two of you together?

A. Well, yes, but then as the conversation was drawing to a close, there were other people approached the Minister, so I moved on to my original purpose which was to go to the gents.

Q. You say that you were annoyed with yourself, "at having passed on the comments made to me by Mr. Lowry even though they had been gratuitous and I believed them unimportant." By using the word "gratuitous," do you mean they came out of the blue?

A. I felt that Mr. Lowry liked being the centre of events and what he said to me that night, he could have said to four other people. I mean, in the property business I was used to meeting people who were kind of who created a familiarity, let's say. It's an extraordinary thing about humans, and Mr. Lowry was that sort of person.

Q. But by gratuitous, do you mean that he brought it up, not you?

A. He brought it up, yes.

Q. And the only person he discussed with you was Mr. Denis O'Brien's consortium?

A. Yes, his opening line was "your friend, Mr. O'Brien" I was puzzled as to how he even knew that I knew Denis O'Brien, let alone think that I

might be a friend of his.

Q. And go on

A. He said it's in my statement "Your friend, Mr. O'Brien, has done well, he has good sites in marketing but there will be a third licence." It was a very quick exchange that sort of came out of nowhere.

Q. When you say you were annoyed with yourself at having passed on those comments. Why were you annoyed?

A. Well, I regarded the comments as innocuous, and I really had a reflection, as I said, that Mr. Lowry liked being the centre of things. Because I was a voluntary party worker and I was also a businessman and I was trying to, to the best of my endeavours as a voluntary party worker, be of assistance to the Party, but I recognised there not only had to be in reality, but there needed to be seen perception well, a distance between business and politics and I felt it was getting a little bit fuzzy.

CHAIRMAN: Just insofar as, Mr. FitzGerald, that it might have been left slightly up in the air as regards the original meeting at the Shelbourne, I am correct in thinking that although Mr. O'Brien, through correspondence afterwards, declined to have signage on the hole that he sponsored, he didn't say anything about seeking no signage or seeking to, in any way, make his involvement

A. That's correct, Sir.

CHAIRMAN: I just wanted to be sure of that.

Q. MR. HEALY: Can you think of anything that might have prompted the Minister to think that you'd be interested in how Denis O'Brien was doing?

A. No.

Q. Nothing you ever said to him?

A. No.

Q. You have described earlier your earlier exchange of a few words about it in the car, do you remember, at the time of the

A. On Windsor Road just beside Palmerstown Close, yeah, that was the only conversation we had.

Q. You hadn't mentioned Mr. O'Brien in the course of that conversation?

A. No.

Q. You said that you had understood that Andersen Consulting were responsible for evaluating the bids, and shortly after the coffee meeting, you checked with Colin McCrea and Sean Donlon who confirmed that the award itself would be a decision for the Government rather than the Minister alone.

A. That's correct, yes.

Q. Why would you have contacted Colin McCrea about this?

A. Well, I was a little uncomfortable that I felt I was being drawn into something that I didn't want to be drawn into, and I wanted to reassure myself that it

was there was a process in place and that it was going to be a Government decision and that's why I telephoned Mr. McCrea, because he is Mr. Lowry's programme manager and I had known Mr. McCrea before he became Mr. Lowry's programme manager, not particularly well, but I established a reasonable rapport with him when he was, in his previous life, when he was Deputy Chief Executive of Bord Treachtala.

Q. And what from what Mr. McCrea told you, were you satisfied that this was a Government decision?

A. I prefaced my remarks to Mr. McCrea that I said that while I know Denis O'Brien, I don't hold a candle for him, and I just because I wanted to make quite clear that I wasn't making any representation. I just wanted to check what the process was, was it a Government decision, he said it was, and that was the conversation.

Q. Did you tell Mr. McCrea what had prompted your

A. No.

Q. question?

A. No, I didn't.

Q. Why would you have mentioned Mr. O'Brien in the conversation with Mr. McCrea at all then?

A. Because obviously I wanted to Mr. McCrea would be probably slightly puzzled as to why I was ringing him out of the blue. I wanted to make quite clear that I was, you know, making no representations or lobbying

or anything like that for anybody. And that's why I prefaced my remarks like that.

Q. By saying "I know Denis O'Brien, but I am not holding a candle for him"

A. Yes.

Q. Is that because Mr. O'Brien was the only competitor or candidate, if you like, or applicant for the licence, with whom you had any association?

A. No. I knew the as it happened I knew one of the people in Motorola as well, but not connected with the not connected with the licence. I think Sigma were dealing with somebody more on the International Division of Motorola.

Q. But why wouldn't you have said "I don't hold a candle for them" either?

A. I am sure there are other candidates; I probably knew other people, if you know what I mean. Well, I was conscious of the conversation that had taken place in the restaurant.

Q. But do you think you see, Mr. McCrea doesn't remember the conversation. I don't think he is saying it never took place, but he doesn't remember it. But what reason would you have for mentioning Mr. O'Brien's name in the conversation that wouldn't have left somebody with a degree of puzzlement, why are you mentioning Mr. O'Brien at all?

A. Well, I wasn't so much wondering what Mr. McCrea would

think. That wasn't what was part of my thought process. My thought process, I wanted to make clear where I stood, because I had actually been present at a meeting that, you know, reasonably within a short time before that that I was uncomfortable with and I wanted to make sure that I distance myself in case it could be interpreted that I was actually making a representation. The purpose of the call was to satisfy myself about the process. That was the beginning and end of it.

Q. But having satisfied yourself, why did you then go to Mr. Donlon?

A. I didn't go to Mr. Donlon. My recollection is I happened to be speaking to Mr. Donlon about another matter, and again I would have known Mr. Donlon quite well because he was a senior diplomat in the Department of Foreign Affairs when my father was Foreign Minister, so I would have known him for quite a long time and would have had, you know, a relaxed relationship with him, and it was just one of those things I happened to be having a conversation about something else and I asked him the same question I asked Colin McCrea and he also assured me, I didn't actually preface anything about it, on that occasion, because I had already covered myself in that respect with Mr. McCrea, but I just asked him, was it a Government decision? He told me it was.

Q. You, as you say in your statement, and as I think you said a moment ago, regarded these remarks as unimportant?

A. That's correct.

Q. But you also felt concerned that you were possibly being drawn into something?

A. I mean, I have been going into a territory I had never been before in life. And when that happens to you, you tend to be cautious.

Q. When you say you had never been in that territory before, had any of the events of March/April of that year fuelled your concern?

A. Well, this was a licence process, and in that sense, I had never been

Q. I see that, yes. Had any of the events that happened in March and April, in any case, in terms of your relationship with Mr. Lowry, fuelled your concern?

A. They had to a degree, yes. You know, I had somebody you know, at that stage, given my experience of Mr. Lowry, I was sceptical of Mr. Lowry.

Q. Are you now aware that the decision was one that was ultimately going to be made by the Government, but on the basis of a recommendation brought to Government by the Minister?

A. Well, I haven't, to be honest with you there are a lot of tribunals and a lot to follow so I don't follow it in detail in relation to the detail, but I mean, in

general terms, I am aware that the Government made the decision. I understand the Minister brought a recommendation. I understand the civil servants and the consultants who weren't actually and consulting as it happened, I think they were a different company

Q. Well, maybe I should it's Michael Andersen

A. Were involved in a process, so I mean, I learned about that in all that detail in retrospect.

Q. I am not suggesting that Mr. Donlon would have been aware of all of these things, but or maybe even

Mr. McCrea, but the process was, as we know from the evidence given here, one which the Minister was at the apex of, are you now aware of that?

A. I am aware generally, like any other citizens, what I see in the newspapers about it, but I am not more aware than any other citizen.

Q. You say that Mr. Lowry told you that Mr. O'Brien had made a good impression on the Department and that he had good sites and marketing. And you say you may also have said that he told you there would anyway be a third licence. But you have a clear recollection that Mr. Lowry said that to you?

A. Absolutely, yes.

Q. So would it be fair to say that the interpretation or a reasonable interpretation to put on what he was saying to you was, your friend Denis O'Brien has made

a good impression on the Department, but there is another licence anyway, and that that would be open, perhaps, to only one reasonable interpretation, that while they were doing well, maybe they weren't going to win, would that be right?

A. You could put that interpretation on it, but given my previous experience with Mr. Lowry, I was sceptical.

I just thought it was characteristic of him to sort of enter a conversation, so to speak, mid-stream and to take you into your confidence, so to speak. I mean, I didn't go home that night and lie awake and sort of parse and analyse what was behind Mr. Lowry's what he said. I just recorded in my mind what he said.

Q. But somebody else seemed to think that you would know something about the licence the following day or the day after that?

A. Well, you are suggesting that, Mr. Healy.

Q. Isn't that what your evidence is? Somebody met you, Mr. O'Brien met you, and said have you any news?

A. Mr. O'Brien called me and asked me had I heard anything. Mr. O'Brien didn't, for an instance, suggest that he knew I had any conversation with Mr. Lowry.

Q. Would you have had coffee with Mr. O'Brien on any sort of basis at any time prior to that which was not connected with a specific business purpose?

A. Not to my recollection. I did have a conversation

about another business matter with him during

September, as I recollect.

Q. But a business matter?

A. A business matter, yeah.

Q. He never rang you up and simply asked you out for a coffee for the sake of it?

A. No, beyond those two occasions, no.

Q. Well, on the first occasion he called you to the Shelbourne, there was a specific purpose to ask you about the Golf Classic.

A. When he rang me there was on both occasions, there was no specific purpose for the phone call.

Q. I appreciate that. But he wasn't ringing you simply to, you know, chew the cud or pass the time over a cup of coffee. There was a specific purpose at the time of the Shelbourne meeting?

A. Well, there was, as it turned out, but I didn't know that when he called me.

Q. I appreciate you didn't know.

A. Yeah.

Q. And on the occasion in the other restaurant when he met you with Mr. Mitchell and Mr. Hogan, you didn't know what the purpose was, but when you came to meet him, that was the issue that he drew up with you when you arrived?

A. Yeah. I was quite taken aback, as I said.

Q. But apart from those two occasions and the other

business meeting that you had, right, were you in the habit of meeting Mr. O'Brien or had you ever met him to have coffee?

A. Well, I met him once in another restaurant sometime before it about another business issue with another party. But that was a good time before. It had nothing to do with licence applications.

Q. I am not talking about it. What I am trying to

A. You asked me the question had I ever met him for coffee. I had met him for coffee with another gentleman before in a restaurant called Patrick Kavanagh's, but nothing to do with had.

Q. What I'm trying to find out is if you ever met him for coffee with no purpose in mind other than to have a cup of coffee and a chat about the news, football, whatever you like?

A. No. What's in my statement and what I am telling you now about Patrick Kavanagh's is the extent of plus the telephone conversation that I recollect that we had in September. We actually, I think, maybe had two telephone conversations in September, but...

Q. Mr. Lowry has provided the Tribunal with a response dealing with some of these matters, and I just want to if you go to section 2, subsection E of the book of documents. Have you got that document memorandum of intended evidence of Michael Lowry in response to letter of John Davis, Solicitor, of the

5th November, 2002. Mr. Lowry says that he is making this supplemental statement in response to a request by the Tribunal contained in letter of Mr. John Davis, Solicitor, of the 5th November 2002." That deals with a whole load of other matters that we'll deal with in the statements of other people.

A. Sorry, Mr. Healy, which document is it?

Q. Do you have section 2

A. I am at section 2.

Q. Go to subsection E. Have you got that?

A. Third memorandum of intended evidence of Mr. Michael Lowry in response to Tribunal's request of the 8th November.

Q. We seem to have slightly different books.

A. Then I am on to the 2nd December, the next page. You can ask me the question.

Q. It's easier if you have the document, I think. If you bear with me for one minute, Mr. FitzGerald, we are working off slightly different documents but we can get ourselves on the same wavelength.

If you look at B in your book.

A. B in my book or B in the statement?

Q. B in your Book 2, Leaf 2, Divider B. I have the same statement but it's not broken down into the question and answer

A. Second memorandum of intended evidence of Mr. Michael Lowry dated 5th November, 2002.

Q. Well, second memorandum of intended evidence in response to a letter of John Davis of the 5th November, 2002. Do you see that?

A. Yeah.

Q. Right. Now, I don't want to go into all of this because it deals with matters that haven't arisen in the course of your evidence, but if you go to query number 6, or in fact query number 5, do you see that?

A. A5, is that what you're talking about?

Q. Q5.

A. Yeah, details of all Mr. Lowry's that part?

Q. Yeah.

A. I have that.

Q. This is a query addressed to Mr. Lowry seeking details of all his dealings with the late Mr. David Austin, Mr. Phil Hogan, Mr. Mark FitzGerald, Mr. Jim Miley, or any other person in connection with the funding of the Golf Classic, and in particular in connection with the provision of sponsorship by Mr. Denis O'Brien/Esat Telecom.

And Mr. Lowry responds: "I had no involvement in the organisation of funding for the Golf Classic. I was simply never aware that Mr. Denis O'Brien and/or Esat Telecom may have had a sponsorship role. I, therefore, have no relevant dealings with Mr. David Austin, Mr. Mark FitzGerald or Mr. Jim Miley. Mr. Phil Hogan had contacted me to request my

attendance at the presentation dinner following the event. This was the extent of my dealings with him."

Then Mr. Lowry was asked for details of his discussion with Mr. Mark FitzGerald at the K-Club on the 16th October in relation to the Esat Digifone application for the second GSM licence.

And Mr. Lowry responded: "Mr. Mark FitzGerald had raised, in a general way, the issue of the competition for the second GSM licence and the prospects of Esat Digifone. I provided him with a minimal amount of noncommittal information which was effectively already in the public domain. I mentioned that the Department were impressed with their commitment to the process, which was underlined in their public declaration that they had already identified numerous sites for masts and equipment.

"Secondly, I suggested that even if they were unsuccessful, there would be a subsequent opportunity to apply for a third GSM licence."

If you just go onto the next question, which queried Mr. Lowry with respect to the details of his knowledge, direct or indirect, of the connection or association between Mr. Mark FitzGerald and Mr. Denis O'Brien and the source or sources of knowledge.

And he said: "I had then and have now no knowledge as to the relationship, connection or association between Mr. Denis O'Brien and Mr. Mark FitzGerald."

Query number 8 he was asked for details of all other discussions or conversations which he may have had with Mr. Mark FitzGerald, the late Mr. David Austin, Mr. Phil Hogan, Mr. Jim Mitchell or any other person connected with Denis O'Brien in relation to the Esat Digifone application at any time prior to the announcement of the result of the evaluation process on the evening of the 25th October, 1995.

And he says: "I had no relevant conversations or discussions with Mr. Phil Hogan, Mr. David Austin or Mr. Denis O'Brien or any person connected to him in connection with the Esat Digifone application for the second GSM licence at any time prior to the announcement of the result of the evaluation process on the 25th October, 1995. I had a conversation with Mr. Mark FitzGerald as outlined above at the Golf Classic on the 16th October, 1995. I had, a long time previously, been informed by Mr. Jim Mitchell that he was acting as a consultant/advisor to Esat Digifone and that he thought it proper that I should be aware of his involvement. Apart from that I recollect that he may have inquired on one occasion in general terms as to the progress of the competition. I believe that I would have replied in general terms. I am entirely unaware of any association or connection between Mr. Denis O'Brien and Mr. Phil Hogan, Mr. Mark FitzGerald and Mr. David Austin in the context of Esat

Digifone's application for the consortium, although I knew each individually."

What Mr. Lowry is saying is that you raised, in a general way, the issue of the GSM2 competition, and the prospects of Esat Digifone. That's the first thing he says.

A. I see that's what he is saying, but that's not recollection at all. I am quite clear in my recollection.

Q. You are quite clear that he mentioned it to you, not the other way around?

A. Absolutely.

Q. He says that he provided you with a minimal amount of noncommittal information which was effectively already in the public domain. He says the Department were impressed with the Esat Digifone commitment to the process, which was underlined by their public declaration that they had already identified numerous sites for masts and equipment. I think you're ad idem with Mr. Lowry that he mentioned that the Department were impressed and that this alluded to their sites, but you went on to say, I think, that your recollection is that he also mentioned their marketing, isn't that right?

A. Yes.

Q. Mr. Lowry says that secondly, he suggested that even if they were unsuccessful, there would be a subsequent

opportunity to apply for a third GSM licence. And again, I think you are more or less ad idem with him on that?

A. That's not my recollection when said he just said there would be a third licence. He didn't get involved that there would be an opportunity to apply. He just said there would be a third licence.

Q. He didn't say if they were unsuccessful?

A. No.

Q. I see.

If Mr. Lowry's recollection is correct, then he is effectively putting you in the position of somebody inquiring after Esat Digifone's performance in the process, isn't that right?

A. Well, you know, you're making an assumption there.

All I can do

Q. I am not making an assumption. I am putting his position to you.

A. All I can speak for is my recollection. Mr. Lowry will have to speak for his recollection.

Q. I think it's only fair to Mr. Lowry that I just put to you that it seems to me that the effect of what he is saying is that you identified yourself with Esat Digifone in asking how Esat Digifone were getting on.

A. Well, as I said to you before, I answered it in so many different ways; that's incorrect. That's not the case. I didn't.

Q. Do you think you would have been conscious of avoiding creating an impression that you were identified with anybody involved in this process?

A. Absolutely.

Q. I now want to refer you to another section of the book, and to Mr. Phil Hogan's comments. I think you will find them in Divider 5, Leaf A, I hope.

A. Which part of 5?

Q. Do you have a document headed "Statement of Phil Hogan, TD re Moriarty Tribunal"?

A. Yeah. I am just seeing what the date is.

Q. The one I have is undated.

A. The bottom it says, "Document of Fine Gael statement of Phil Hogan TD.final doc."

Q. It's a computer legend.

A. Yeah.

Q. The opening paragraph is: "I am a Fine Gael TD for the constituency Carlow/Kilkenny having been first elected in 1989.

A. That's correct, yeah.

Q. The next paragraph: "In John Bruton's Rainbow Government, I was appointed Junior Minister in Department of Finance but resigned my position following the budget of early 1995. I am satisfied that the meeting referred to by Mark FitzGerald which is said to have taken place on or around the 17th October, 1995, did, in fact, not take place or

certainly if it did, I have no recollection whatsoever of being present."

I think Mr. Hogan is probably saying two things there:

firstly, he is saying that he is satisfied that the meeting didn't take place. You don't agree with that obviously?

A. No. Well, I have already given my evidence on that.

I have a clear recollection the meeting did take place and who was at it and I have given my evidence on that.

Q. After that meeting, it was after that meeting that you had the misgivings that prompted you to go to Mr. McCrea and Mr. Donlon?

A. Mr. McCrea, yes.

Q. Mr. O'Brien has also provided the Tribunal with some information concerning his dealings with Fine Gael including his dealings with you. And if you go to Divider 1, Leaf B, the first document you'll find there should be headed: "Memorandum of Information sought from Mr. O'Brien" is that right?

A. Yeah, undated, yeah.

Q. And the next document is headed: "Memorandum of Information Provided by Mr. Denis O'Brien, 2nd December, 2002", is that right?

A. Yeah.

Q. If you go to paragraph 8 of that memorandum.

A. Of the second one?

Q. Yes. Mr. O'Brien says: "With reference to the information regarding meetings/conversations that allegedly took place with Mr. Mark FitzGerald, Mr. O'Brien acknowledges that Mr. FitzGerald is an acquaintance of his and indeed that his firm would have acted for Esat and Mr. O'Brien, on a number of occasions in connection with property transactions in his capacity as Chief Executive of the Sherry FitzGerald group. However, although Mr. O'Brien has spoken to Mr. FitzGerald on a number of occasions during 1995, Mr. O'Brien's recollections differ significantly to those of Mr. FitzGerald. In particular, Mr. O'Brien has no recollection of ever speaking to Mr. FitzGerald in reference to Mr. Albert Reynolds or the Motorola consortium. He also has no recollection of ever meeting Mr. FitzGerald in the company of Mr. Jim Mitchell or Mr. Phil Hogan and having reviewed his diaries has found nothing to dispute this. In any event, Mr. O'Brien is at a loss as to a reason why any such meeting would have taken place.

I'll just deal with one aspect of that, Mr. O'Brien, says that your firm, Sherry FitzGerald, would have acted for Esat, I think perhaps what Mr. O'Brien may mean there is Esat Telecom. Do you understand the distinction between Esat Telecom and Esat Digifone?

A. Yes. My firm acted for a number of firms in the

telecommunications industry, and I think we acted both for Esat Telecom and Esat Digifone.

Q. I see. Would you have dealings with Mr. O'Brien in the course of those transactions?

A. No.

Q. And it's still your evidence that the only dealings you had with Mr. O'Brien are the ones that you have mentioned in the course of your evidence here today?

A. In the period in question?

Q. In relation to the period in question?

A. Yes.

Q. Now, in your statement of evidence, you mentioned that you drew to the attention of Mr. Jim Miley the fact that you had received an approach from Mr. O'Brien and that you had, I suppose you indicated that you didn't think, as you have mentioned to me, marking Mr. Miley's card, that the Party should accept a corporate donation from Mr. O'Brien. And Mr. Miley refers to this in his statement which deals with a number of other matters. You'll find it at Divider 7, Leaf A. Do you have a document headed "Memorandum of intended evidence of Mr. Jim Miley," in which Mr. Miley says "I was General Secretary of the Fine Gael Party from July '95 to April '99 and so on, do you have that?

A. I do, yes.

Q. If you go to the second page of that document. Just

look at query number 4, in which details were sought of Mr. Miley's recollection of a meeting, conversation with Mr. Mark FitzGerald at the end of August 1995, at which the Tribunal understands that Mr. FitzGerald informed Mr. Miley that Mr. O'Brien/Esat wished to sponsor the Golf Classic. That may be overstating it and further indicated that he did not consider it was appropriate for Fine Gael to accept a donation from Mr. O'Brien/Esat Telecom at that time.

And the response is: "I recall a meeting with Mr. Mark FitzGerald not long after I had taken up my new position. Mr. FitzGerald was at that time a trustee of Fine Gael and I would have reported to the Trustees in relation to the management and financial affairs of the Party. Mr. FitzGerald had been one of those involved in interviewing me as part of the selection process for the position of General Secretary, and I would have had very regular contact with him as, in addition to being a trustee of the Party, Mark was also involved in a number of Fine Gael committees with which I would also have had an involvement. The meeting was, as I recall it, suggested by Mr. FitzGerald as part of the briefing process by me as my new role as General Secretary. I do not recall Mr. FitzGerald either at this meeting or any other occasions raising the issue of a proposed donation/sponsorship for the 1995 golf classic from

Mr. O'Brien/Esat. Neither do I have a recollection of Mr. FitzGerald discussing the appropriateness or otherwise of such a donation. While I cannot recall precisely the full extent of the conversation or the topics discussed, I do have a specific recollection of a matter of some importance which I raised with Mr. FitzGerald in relation to the financial affairs and responsibilities of the Party. I do have a general recollection of Mr. FitzGerald being a strong advocate of the need to ensure that the highest possible standards of ethics and propriety be observed in relation to fundraising. And I strove at all times to maintain those standards to the full."

Is there anything about all do you want to respond to that in any way first?

A. No, no. Ask me a question you like.

Q. Is there anything about all of these events that you think I am just reminded that obviously I can't I don't have a response from the late Mr. Mitchell, but I may have something to say about that later on, and I'll leave it for a moment till I get another letter.

But you are quite certain in your recollection of all these events in your evidence today, notwithstanding the statements that I have read out to you from a number of other people who don't either have the same recollection or who have completely different

recollections from you, isn't that right?

A. Absolutely. One doesn't lightly make statements to a Tribunal like this.

Q. Is there anything about all of these events that you feel makes them stand out in your memory?

A. Well, I am not a psychoanalyst to understand why one remembers things and one doesn't remember other things. But all I can do is to the best of my ability recall things that happened and give you an accurate account of my memory of them. But I am quite clear on my recall of them.

Q. Some of this information, I am sure you can see, might have been relevant to some of the work of not only an earlier part of the proceedings of this Tribunal, but also the McCracken Tribunal, would you agree with that?

A. Well, obviously, I mean, the thought crossed my mind. I did consider it. I did take advice at the time, and I was advised that there wasn't such a requirement.

Q. Was that legal advice?

A. Yes.

Q. I am sorry for delaying you for a minute. Mr. Davis is bringing me a letter. Rather than delay you in the witness-box, Mr. FitzGerald, I can tell you that sometime shortly before he died, Mr. Mitchell's solicitor, Mr. O'Higgins, spoke to Mr. O'Higgins concerning inquiries spoke to Mr. Mitchell

concerning inquiries from the Tribunal regarding these matters, and at that time was he was instructed by Mr. Mitchell and he so informed the Tribunal, subsequently, that Mr. Mitchell had no recollection of being at the meeting with Mr. O'Brien and Mr. Hogan.

A. I think I read that in the newspaper at the time, yeah.

Q. And that doesn't in any way, or does it, affect your recollection?

A. No.

Q. Thank you.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. MR. FITZSIMONS: Just one brief question, Mr. FitzGerald. In paragraph 5 of your first statement of the 11th November, 2002, you stated as follows, and I am quoting: "At a subsequent meeting of the organising committee, Mr. Austin thanked me for the introduction of Mr. O'Brien whose company Esat was offering to assist in sponsoring the event," that's the Golf Classic. Now, in terms of time, the subsequent meeting was after August 1995, and there appeared to have been two subsequent meetings before the Golf Classic: One on the 6th September 1995, and one on the 9th October, 1995. Can you recall by any chance at which meeting Mr. Austin thanked you for being introduced to Mr. O'Brien?

A. I can't precisely recall, but I would be of the

distinct impression it was the 6th September meeting.

Q. 6th September. And did Mr. Austin give you any details of the contact that had taken place between

A. The only conversation I had with David Austin about this particular it was an open discussion at a committee meeting. My recollection is Mr. Austin was sitting up at the end of the table, I was sitting at the other, and he thanked me for the introduction.

Mr. Austin, I had only got to know through the Golf Classic committee, I didn't know he had been involved in I don't know whether he was involved in Fine Gael beforehand, it was his style to sort of pour out praise, was the way of leading the committee. It was difficult at the best of times to get people to do voluntary things in a political party. I had already made my views known to Mr. Miley, who was the chief operating officer, and I didn't think the Golf Committee was the place to what it was was just organising a Golf Classic, I didn't think it was the time or the place to say anything.

MR. FITZSIMONS: Thank you, Mr. FitzGerald.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MCGONIGAL:

Q. MR. MCGONIGAL: Mr. FitzGerald, as you probably know, I appear for Mr. Denis O'Brien in his personal capacity, and there are a couple of things that I'd like your assistance in relation to.

First of all, just so that we know where we're coming

from, in relation to paragraph 3 of your statement of the 11th November, which I think you have in front of you

A. I don't just have it here at the moment. Read it out anyway.

Q. No, no, I'll wait until you get it.

A. The only statement I have here of mine is the statement of 11th March, for some reason, under 6B.

Okay, I have one now in my hand.

Q. Do you have your statement?

A. I do, Mr. McGonigal, yes.

Q. It's paragraph 3. This is where you're talking about the meeting in August of '95, when you say that Mr. O'Brien telephoned you at your then office at Merrion Row and asked you to meet him for a cup of coffee in the Shelbourne Hotel.

Now, can I say to you that Mr. O'Brien disagrees with this; that he did not phone you in your office at the Merrion, and did not ask you for a cup of coffee to the Shelbourne Hotel.

A. You can say it, but obviously I have a different recollection, Mr. McGonigal.

Q. In relation to the rest of the conversation, that clearly didn't take place either, if there was no meeting in the Shelbourne Hotel?

A. As far as I am concerned, there was a meeting in the Shelbourne Hotel and I was there.

Q. And that there was particularly no discussion between you and Mr. O'Brien at any stage, either in the Shelbourne or any other place, in relation to Albert Reynolds and Motorola and the granting of a licence?

A. If that's Mr. O'Brien's position, that's Mr. O'Brien's position. But it's as I have already given my evidence, it's not what my recollection is of what happened at the meeting.

Q. And that at no stage did you ever suggest to Mr. O'Brien that it would be unwise for him to be involved in a Golf Classic or other event in connection with Fine Gael?

A. Well, again, I have to reiterate, that I did advise him, and I advised him at that meeting.

Q. Mr. O'Brien is saying, in effect, Mr. FitzGerald, that insofar as your recollection is concerned, it is untrue, made up and lies.

A. Well, if that's what he is saying, that's what he is saying. But I can assure you, Mr. McGonigal, I am not sitting here in this witness-box lightly and what I am saying is my clear recollection of what happened.

Q. Going to paragraph 6 you say that: "Mr. O'Brien asked you to meet him for coffee at a restaurant close to my office." Do you have that?

A. I do.

Q. That never happened, and that equally, there was no meeting between himself, Mr. Mitchell, Mr. Hogan and

yourself?

A. Well, again, Mr. McGonigal, I gave my evidence already earlier this afternoon to the Tribunal where I quite clearly said that my recollection is the meeting did take place. It took place in a restaurant called Loyds Brasserie in Upper Merrion Street and those are the people who attended the meeting.

Q. And again in relation to that meeting, so that there is no doubt about it, this is made up by you, untrue and lies?

A. Well, that is incorrect, Mr. McGonigal.

Q. Are you surprised, Mr. FitzGerald, that neither Mr. Hogan nor Mr. Mitchell, the late Mr. Mitchell when he was first asked, have any recollection of this meeting in the restaurant?

A. I don't stop to reflect on these things. I received a letter from the Tribunal. They asked me questions. I answered the questions truthfully. And that, as I see it, is my role. It's not for me to comment. It's for other people to comment on their evidence.

Q. Mr. FitzGerald, that's a load of poppycock. Let's get realistic here. This is a Tribunal where your credibility is at stake. Mr. O'Brien is putting it in issue. Mr. Hogan is putting it in issue, and the late Mr. Mitchell put it in issue. I am asking you a straight question: Are you surprised that Mr. Hogan and the late Mr. Mitchell have no recollection of this

meeting?

A. Well, I am surprised considering I was at the meeting, yes, Mr. McGonigal, and certainly it's not poppycock.

Q. So that is a quick change from a moment ago saying you hadn't considered it. Now that you have considered it, you are surprised and why are you surprised Mr. FitzGerald?

A. I said what I am concerned about is I am not into the business of studying human behaviour. I am just doing my best to give the evidence that I clearly recollect that I was at a meeting with three other people. I have told you, Mr. McGonigal, where the meeting was and I told Mr. Healy earlier who was at the meeting.

Q. And it would appear that three other men, equally as eminent within business circles as you, two of them eminent in Fine Gael circles as you, have no recollection of this meeting, at all?

A. Well, I don't think Mr. Mitchell Mr. Mitchell and Mr. Hogan are politicians; they are not businessmen. But regardless of that, I can't help it if they don't have a recollection of it. All I can do is tell you what my recollection is.

Q. Why would they deny something as having happened

A. Well, you'd have to ask them that, not me, Mr. McGonigal.

Q. In relation to the first meeting in August '95, when did that take place?

A. As I said to Mr. Healy earlier on, I think it took place in the latter part of August.

Q. What do you mean by that?

A. Well, I mean, I can't place a date on it. It's not the date that I think is the issue, it's whether the meeting took place. I would think that it took place in the second half of August because I was on holidays in Mayo in the first part of August.

Q. Okay, when were you on holidays?

A. I don't have the specific dates when I was on holidays. But that's

Q. When did you come back from your holidays?

A. I don't have a diary entry when I came back because I don't have my diaries for that period, Mr. McGonigal.

Q. You don't have them at all or you don't have them here?

A. I don't have them here and I don't have them at all either.

Q. So the best you can do is go on your recollection?

A. Yes, but my recollection

Q. In relation to the date?

A. My recollection is quite clear, because I have a house in Mayo and I go on holidays there the same time every year. I am sorry to say I am a creature of routine.

Q. No harm in being a creature of routine, Mr. FitzGerald, but it certainly might help us to establish when you might have been on holidays. What

is your routine habit of going on holidays in August?

A. It's not precise, Mr. McGonigal, but it's usually in the latter part of July and the first part of August, it could be into the third week of August, but what shall do it just be clear what my precise holidays that year is, I am being quite up front with you, I can't tell what you my precise holiday dates are. I can give you the rough dates. I don't know the dates are the issue. The issue is the I was at a meeting. That's the evidence I have given.

Q. You said you had a clear recollection of this. You have an unclear recollection as to the date of this meeting?

A. Well, I don't have a recollection of the precise date. But I do have a recollection of the meeting. Now, I think the fact that what's at issue is not so much the date is whether the meeting took place, and I am giving evidence that the meeting took place.

Q. You see, sometimes, Mr. FitzGerald, if you're able to particular in relation to a date, someone else may have a diary where he can say I wasn't there on that date, I was out of the country?

A. That may be the case, Mr. McGonigal.

Q. So it's important to try and be precise in relation to the date.

A. Well, I can't offer you any more help than I have already given you, Mr. McGonigal.

Q. So you have no recollection, except so say the latter part of August?

A. I don't have any diaries and I have just a general recollection. What I said was, I was a creature of routine.

Q. So that is the best you can do and all we can take, the latter part of August is when you think it was?

A. That's when I think it was, yes.

Q. Before or after the 20th?

A. I couldn't tell you, Mr. McGonigal.

Q. Before or after the 10th?

A. Again, I can't be precise, so

Q. Are you trying at all, Mr. FitzGerald?

A. Of course I am trying, Mr. McGonigal, but if I don't have my diaries, I can't help you.

Q. Well, you haven't got your diaries and you haven't told anyone about this before 2002, as far as I can make out. So let's try and tie it down. You can't say whether it was before or after the 20th or before or after the 10th?

A. No, I can't.

Q. Could you turn and have a look at the minutes of the golf meeting of the 21st July of 1995.

A. If you could give me enlighten me as to where they are I have found them, thanks.

Q. They are found at number 12, Tab 6

A. I have them.

Q. of the index of documents: Now, this was the Golf Classic 1995 minutes of the meeting held Friday, 21st July of 1995. Do you remember that meeting?

A. I don't remember the precise meeting, no, Mr. McGonigal. There were a number of Golf Classic meetings.

Q. This seems to have been one on Friday the 21st, and you seem to have been present along with a number of others.

A. That's correct, according to the minutes, yes.

Q. David Austin was present the late David Austin was present, Enda Marren, the late Sean Murray, Jim Miley, Mark FitzGerald, Frank Conroy, Phil Hogan and Owen Killian, and absent were John Quirke, Pat Dineen and Pat Heneghan. They were all the members of the committee, all of those persons, were they?

A. That's correct.

Q. And in the case of three of them, I think they were co-opted at the first meeting, that is the 29th May of 1995. I think that Pat Dineen, John Quirke and Owen Killian were asked to join the committee, isn't that right?

A. If that's what the minutes say, yes.

Q. Do you recollect that?

A. I have a recollection that the committee was enlarged, yes.

Q. Now, the first part of that minute sets out a number

of matters which were dealt with, and most of them are unimportant, but we might as well allude to them.

The first was the minutes of the last meeting were briefly discussed.

Secondly, a list of team commitments was circulated for discussion. "At present the Classic is slightly oversubscribed at 39 teams. No further teams should be sought. Sponsorship should now be obtained at \$1,000 per role (to include the tee box) and all committee members were being asked to assist in relation to that.

"Thirdly, brochures and reply cards have been printed and have been distributed to those teams who have agreed to participate. Additional brochures are available from headquarters. As a sponsor there is some name there has been taken out who designed and printed the brochure should be invited to the Classic dinner.

"The outing should remain a one-day event.

"Sponsorship of holes and tees.

"Sponsorships of holes/tees is available at \$1,000.

This fee would include a dinner place.

"Suggested sponsors were discussed in order that companies could be delegated to committee members."

There then is a list of names. You're heading the list and then presumably between your name and the late Sean Murray is a list of companies or person,

then there is Sean Murray, Enda Marren, David Austin, over the page is Phil Hogan and there is a name left in there, Denis O'Brien of Esat Telecom, and then it goes on to deal with the dinner places.

It would appear from that, Mr. FitzGerald, that at that meeting of the Golf Classic, that Phil Hogan was being deputed to approach Mr. O'Brien of Esat Telecom with a view to seeing whether or not he would be a sponsor of the event, is that right?

A. Well, I have no recollection of Mr. O'Brien or Esat Telecom being mentioned at that meeting or being a target, and I think the way the modus operandi of the meeting wasn't so much that people were deputed but that people volunteered.

Q. Well, I just want to be clear about this. Am I right in understanding, or wrong in understanding from that entry there, that the probability is that during the course of the meeting on the 21st July, that it was decided, directly or indirectly, that Phil Hogan would target or approach Denis O'Brien of Esat Telecom with a view to seeing if he would sponsor something in relation to the Golf Classic?

A. That's what's in the minute, yes.

Q. Well are you disputing it?

A. No.

Q. So

A. I am not disputing it's in the minute.

Q. So are you accepting that you as one of the members, one of the committee members who were present, agreed that the person who would contact Denis O'Brien would be Phil Hogan?

A. I am not agreeing with that because I have no recollection of Mr. O'Brien's name being mentioned or his company's name being mentioned at the meeting. It might possibly well be the case that Mr. Hogan mentioned it to Mr. Miley who I think was keeping minutes of the meeting and might have done so on a bilateral basis quietly at the meeting or in the margin of the meeting. I mean, I can only speculate but I just don't have any recollection of it.

Q. Are you actually saying, Mr. FitzGerald, that you have no recollection of his name or the company being mentioned, but you are articulating a view, an opinion, that it might have been quietly mentioned, sotto voce, by Mr. Hogan, to Mr. Miley who was taking the minutes, and that might be an explanation as to why you weren't aware of it?

A. I am trying to be helpful to you, Mr. McGonigal.

Q. I appreciate that. And I do

A. I am not, for instance, suggesting in such a scenario, that it might necessarily have been mentioned quietly.

Another scenario could be, I had left the meeting at that stage or I had arrived late to the meeting. I mean, it is a minute, you know, if you think back, it

is a minute of a Golf Classic committee.

Q. So you think you might have left this early?

A. I don't think that. I am saying it's a possibility.

Q. So we're now speculating?

A. Well, I am just trying to be helpful, Mr. McGonigal,

to you. I am just saying the key thing I am saying

is I have no recollection

Q. I am just interested, Mr. FitzGerald, because I had

thought you had indicated to Mr. Healy that you didn't

want to speculate, but I have to say I am delighted to

see that you are not speculating. Are you suggesting

to me that the accuracy of these minutes may not be

fully correct?

A. I am not for an instance suggesting that, Mr.

McGonigal.

MR. McGONIGAL: It may be possible overnight,

Mr. Chairman, to see the original of these minutes

with the names attached, to see if that helps to jog

Mr. FitzGerald's memory in relation to the conduct of

these meetings.

CHAIRMAN: Let's proceed.

MR. McGONIGAL: Sorry?

CHAIRMAN: I am just saying let's proceed. By all

means look at that matter overnight.

Q. MR. McGONIGAL: Thank you. Certainly if Mr. O'Brien's

name was mentioned at that meeting, Mr. FitzGerald,

one thing is clear: That you certainly didn't have

occasion to mention to the committee at that time that you thought it inappropriate for Mr. O'Brien to be approached as a sponsor by reason of his involvement in the licensing application?

A. Well, as I said already, I don't have any recollection of his name being mentioned. I have also said that I didn't see a Golf Classic committee meeting necessarily as the appropriate forum for guidelines to be decided by a political party as to what's appropriate and what's inappropriate to take as a political donation. This Golf Classic committee consisted of voluntary members, and as I said earlier, it's difficult enough to get people to engage in voluntary work for political parties. So the rights and wrongs of things, one you wouldn't tend to discuss. One would tend to deal with that in a separate issue in a separate way.

Q. Quite clearly if his name was mentioned and the other committee members were to remember it being mentioned and it was agreed it would be done in this particular way, although the opportunity might have presented itself, you did not, at that time, suggest in any way that it would be inappropriate for this committee to take on board someone like Mr. O'Brien who was applying for a licence?

A. As I said already, Mr. McGonigal, I have no recollection of his name or his company's name being

mentioned, therefore, I couldn't be expected to contribute to the meeting on the issue if I have no recollection of it.

Q. At any stage, during the course of those committees, did you ever have occasion to raise the issue of the licence and the appropriateness or otherwise of persons who might be involved to be involved in the competition?

A. As I said already, I raised the specific issue, but in the context of a broader general issue going forward with the General Secretary of the Party who was appointed in July.

Q. That was Mr. Miley?

A. Yes.

Q. And he has no recollection of that conversation?

A. He has no recollection of the precise conversation, no.

Q. Another unusual fact?

A. Well, all I can do is explain to you what my recollection is, Mr. McGonigal.

Q. You see, my solicitor rightly points out to me, Mr. FitzGerald, and perhaps you should like to comment on it, if you follow down below the 8, particularly 7, what appears to have happened during the course of this committee meeting, each item was discussed and certain people were designated to look after certain events or certain aspects of the event. Do you see

that?

A. What number are you at? You are just going this is chronologically.

Q. Mr. Hogan has been deputed to ensure that as many Ministers as possible attend during the evening of the Classic. And that a list of the teams attending the Classic should be circulated to all Ministers at their September meeting. And then sponsorship is dealt with at number 7, and the last one on that is a blank, will be sponsoring the signage required for the event, and your name is beside that. And that may well be your firm as well, which has been crossed out. But that appears to have taken place after the assignment or the appointment of persons to look after various companies, which might suggest that you were still at the meeting when item 8 was being discussed?

A. Obviously you're speculating. I can't be of any more assistance than I already have been about

Q. Well, am I right in assuming that the course of these meetings, the conduct of these meetings was probably in the order in which they appear in the minutes?

A. Well, probably. I have no reason to doubt that, Mr. McGonigal.

Q. And can I take it that the probability is that where your name is featured, particularly in relation to the signage, that you would probably have been there

A. Well, I wouldn't necessarily deduce that

Mr. McGonigal. I think you could be getting two and two and getting a different getting five, because actually it was my company, if I recollect, that sponsored the signage and I would imagine something that I think I committed to Mr. Austin early on, so it would have been known. I wouldn't necessarily have to be there for that to be covered.

Q. So that if you left, you think there is a possibility that you would have left well before that?

A. I don't I am not I can't be any more help than I have been to you on it, Mr. McGonigal. But I am just saying, the added assistance I have been to you is that I did commit to Mr. Austin early on to sponsor the signage, is my recollection.

Q. As a matter of interest, Mr. FitzGerald, and I'll be coming back to sponsorship generally, but in relation to the Golf Classic, had it occurred to you at any stage in your thinking processes in relation to who might or mightn't sponsor this, had Mr. O'Brien or his company occurred to you at any time?

A. Had they occurred to me? No.

Q. At this time?

A. No.

Q. So that in reality, the first time he appears in the Golf Classic documents is at this meeting of the 21st July, whether where he may or may not have been mentioned in your presence and possibly sotto voce?

A. Well, if you say so.

Q. Does that help you in relation to when the meeting in August might have taken place?

A. It doesn't really, no.

Q. There is a letter of the 30th August, which I think was drawn to your attention?

A. That's correct, from Mr. Hogan?

Q. Yes. To Mr. O'Brien. Do you have that letter?

A. I don't have it in front of me, but...

Is it in the golf minutes? I presume it is.

Q. It's the first letter in the index.

A. I have it now, yes.

Q. And it says: "I am delighted to hear of your response in becoming a sponsor of the Fine Gael Golf Classic.

I gather this arose through discussions with Mark FitzGerald, your generous sponsorship of $\text{€}4,000$ will be used two-fold, with $\text{€}1,000$ sponsoring a hole and the remaining balance sponsoring the wine for the gala dinner. As I am sure, Mark already discussed with you, appropriate advertising will be utilised."

Does that help you in relation to recollecting when the meeting might have taken place?

A. No.

Q. Sorry, when the communication might have taken place?

A. I only assume that the communication would have taken place if Mr. Hogan, if there was a commitment that Mr. O'Brien had obviously probably given to

Mr. Austin, that he did so before the 30th August.

Q. You see, Mr. O'Brien's recollection, and his evidence will be in relation to this, that you contacted him in relation to it on the phone. There was a discussion about the cost, and he agreed to sponsor what he sponsored.

A. That is not my recollection. As I said already, I did, as I said already, I did give him the information as to what the costs were. But I wasn't on the phone. It was at a meeting in the Shelbourne.

Q. I am trying to understand, Mr. FitzGerald, and perhaps you could help me. You said in paragraph 3 that you told Mr. O'Brien that you thought it would be unwise for him to be involved in the event in the circumstances. Can you explain what you meant by that for me.

A. I meant that he was applying for a licence, and that I felt that if I were in his shoes, it wouldn't be the way I'd go about it. I'd put my best case forward and I'd steer clear of the political process, so to speak.

Q. But what was the problem in Esat Telecom or Denis O'Brien or Esat Digifone sponsoring something for this Golf Classic?

A. Well, I was mindful of past experiences in the Fine Gael Party and what past precedents were, and while I was aware at the time that Esat had taken a table at the Dublin Central lunch at the Carlow/Kilkenny lunch,

so what was in my mind was that while it's one thing to go to a golf outing in itself, I don't think would be necessarily material that if one was doing it on a systematic basis, that the effect of it could build up to quite a sizable corporate donation, and it was the experience that some advice I had been given previously as to the relationship with that a political party should have with a possible future or indeed past beneficiary of a Government decision, as to what was guiding me in my thoughts at the time.

Q. So that in a sense it was an important issue so far as you were concerned?

A. Not so much the donation itself, but the principle was, as a volunteer in the party, was an issue which I was conscious of what past practices in Fine Gael were which I thought were correct.

Q. And the principle which you wanted to advocate was what?

A. Was a piece of advice that my father gave me on a previous occasion; that when he took over the leadership of Fine Gael from Liam Cosgrave, that Liam Cosgrave gave him a piece of advice that during the period when the National Coalition were in Government, they'd received a donation of $\text{€}10,000$ from a company that had benefited from a State decision, and at the time the Government Minister's salary, just to put it in its context, was $\text{€}6,500$, and I think Mr. Cosgrave's

advice to my father was: "If in doubt, Garret, send it back".

Q. And excellent advice it was too, Mr. FitzGerald.

Just in relation to that, is it probable that what Mr. Miley records you as saying to him about being a strong advocate of the need to ensure that the highest possible standards of ethics and propriety be observed in relation to fundraising, that you probably did say that to him?

A. Well, I don't think I necessarily said it in those words, but I would have imparted my views on the matter, yes.

Q. And is it right or wrong to take from that that in any instance where what you might consider to be something improper was happening, that you would see it as your duty to bring it to the attention of those who were involved?

A. Well, if it was improper, I didn't think it was improper, I thought it was ill-advised and I thought it was an opportunity, given that Mr. Miley was new to the job, to make him aware of my views. Obviously, I was a trustee of the Party, but I was a voluntary member, one of the 20,000 people, but obviously I had some experience and was willing to impart that to the person who had, you know, who was involved in executive responsibility.

Q. I am curious about this, Mr. FitzGerald, for this

reason: That listed in the supporters of the Fine

Gael Golf Classic, which is document 4

A. I think I might have a list here, yes.

Q. Do you have that?

A. I have a list with no names.

Q. Yeah, it's a list of names, companies, supporters of the Fine Gael Golf Classic. Look down to C for me.

A. I have a list of blanks.

Q. No, no

A. Just bear with me a second, Mr. McGonigal. I have a list of names here.

Q. Do you have it? You wouldn't go down to C for me.

A. Yes.

Q. Do you see Cellstar?

A. Yes.

Q. Were you aware that Cellstar was the consortium involved in the licensing application?

A. Until now, I didn't even know who Cellstar were.

Q. Well then, the answer to my question is no?

A. No.

Q. Do you see Heneghan Public Relations?

A. I do.

Q. Were you aware that they had an involvement with one of the consortia applicants?

A. No, I wasn't.

Q. And Pat Dineen, were you aware that he was also involved in one of the consortia?

A. I have a vague recollection of reading something in the newspapers at the time.

Q. And the late Sean Murray?

A. Yeah, I had a I have a recollection of he having some involvement, reading something in the newspapers again.

Q. So here we have the late Sean Murray, Pat Dineen, and Pat Heneghan, all involved in consortia in relation to the GSM2 licence on the committee running this Government classic, where you were saying that it would be inappropriate for Mr. O'Brien/Esat Telecom to be a sponsor?

A. Well, I don't know if they were participating. I mean, Mr. Heneghan and Mr. Murray presumably were advisers, were they? I mean, you obviously are well briefed my knowledge, as you probably gather from the licence process, is reasonably limited to what I have given evidence on.

Q. I appreciate I have been up here longer than you, Mr. FitzGerald, but I understood that this was a problem for you in October '95 when the Golf Classic was happening, and I am just drawing to your attention what appears to be an interesting contradiction between the position of some of the committee members and the position which you were adopting but never brought to the committee's attention.

A. I brought it to the Chief Operating Officer's

attention. I said that whether somebody was going to turn up at a golf outing itself wasn't necessarily indicative, it's the systematic support was the point I was making, and we needed to lay the ground for the future, because there was an organisation with 20,000 members and there wasn't a huge discipline in terms of the way things were pulled together.

Q. I will be going on to something new. I will be some further time, Mr. Chairman, and if possible, it might be a good time

CHAIRMAN: We did start about 2.15. I think we should try and utilise the time to perhaps at least another ten minutes.

MR. McGONIGAL: I see.

Q. What I want to ask you about now, Mr. FitzGerald, is going back to Mr. Miley's statement being a strong advocate of the need to ensure that the highest possible standards of ethics and propriety be observed in relation to fundraising, I just want to ask you about something that appears in your statement of the 26th November.

A. Can somebody give me the statement of the 26th November? I have the 11th November and the one of March, but I don't have I don't appear to have it.

Q. Mr. Kelly reminds me, Mr. FitzGerald, I am puzzled as to why you brought your concern about the rightness or wrongness of Mr. O'Brien being involved in the Golf

Classic as a sponsor to Mr. Miley and not to the committee? Surely the committee was the appropriate place to bring a matter of this kind if you held a view or a strong view on the subject?

A. I was, as I said the phrase I used was it would be ill-advised, and as I said before, I went to Mr. Miley because he is the Chief Operating Officer, he is the person with executive responsibility. Everybody else in the committee was a voluntary worker. And I would regard it incumbent upon the executive to look at the guidelines and principles and for us, the foot soldiers, so to speak, to then implement them. I didn't regard the Golf Committee forum as the appropriate forum to discuss it and I had raised it already.

Q. But I actually now, Mr. FitzGerald

A. That's my judgement, Mr. McGonigal. And it may differ from my judgement that's the judgement I used at the time.

Q. I understand Mr. FitzGerald, but it becomes all the more striking when you look at the minutes of the 6th September which was shortly after the letter of the 30th August.

A. I am just trying to find them at the moment.

Q. That's okay. Take your time.

A. Yes, I have them, Mr. McGonigal.

Q. Do you see that that meeting was a reduced attendance

at the committee meeting, and I presume the fact that you're marked as present meant that you were present?

A. I assume so, yes, Mr. McGonigal.

Q. And the late David Austin was there, Jim Miley was there, Phil Hogan and Frank Conroy. They are all people that you knew and got on with very well?

A. That's not actually true, Mr. McGonigal. I just got to know Mr. Austin. I only met him through the Golf Classic committee. So I probably would have only have met him on three occasions before that in my life.

Q. What was the difficulty about bringing the matter to the attention of the committee at that time?

A. As I said already, I thought it was I thought the participation of Mr. O'Brien was ill-advised, but I didn't think it was that the participation of this event on its own, if you take this event on its own, was that a significant issue, it was more the fact if there was, which I wasn't aware of the fact that he was actually going I was only aware of two other functions, that if the donations were becoming systematic, then this would turn into what I would call a more sizable corporate donation and they would fit into the category I alluded to earlier explaining what was in the back of my mind. So this sponsorship in itself wasn't something that was giving me sleepless nights.

Q. That may well

A. I didn't want to I didn't think it was a serious issue that I should in any way repudiate Mr. O'Brien or indeed in any way pass judgement on him at all to other people. I just thought the best way to deal with it was to deal with the executive of the Party .

Q. You see, what I am trying to work out in my own mind, now that I look at it, Mr. FitzGerald, is this: That the sequence of events, from your point of view, and even from Mr. O'Brien's point of view, is that your conversation with Mr. Miley would appear to have taken place possibly before the meeting of the 6th September of '95. But after the meeting the communication between yourself and Mr. O'Brien in August?

A. I think that's what appears likely, yes.

Q. Which makes it slightly strange in a sense that neither you nor Mr. Miley of course he says it never happened but it certainly makes it strange that it wouldn't have been mentioned at the meeting of the 6th September.

A. Well, as I said, I said before, I regarded the donation as ill-advised, but the support for the Golf Classic in itself, I didn't think was a substantive issue. I was more conscious of trying to advise from the perspective I was coming from as a volunteer in the party as to what I felt the general policy should be.

Q. But

A. So somebody turning up to a golf outing or supporting a golf outing to me, you know, isn't a significant issue in itself and this Golf Classic committee wasn't a committee dealing with a whole series of events. It was just dealing with one event, which is a Golf Classic committee.

Q. That's why I, in a sense, I am so puzzled as to why you're making this suggestion, that this was inadvisable if you are having regard to the committee that was involved in putting the Golf Classic together.

A. Well, I mean, I am not quite sure what you mean by that, Mr. McGonigal.

Q. Well, I don't understand what your concern was.

A. My concern was that, shall we say, there were a number of events, socially related events that Fine Gael were organising that people appear, or seen and appear publicly at them and the donations in themselves aren't that significant that you could ever suggest that it could influence policy. But the point about it is, if somebody was supporting them on a systematic basis, then the quantum of the money begins to rise and that fits into the category of the kind of guideline that I had at the back of my mind, which I described earlier to you.

Q. Do you regret, looking back on it in hindsight, that you didn't bring this to the attention of the

committee?

A. No.

CHAIRMAN: All right, it's ten past, Mr. McGonigal.

It's plainly going to go into tomorrow. We'll resume

at eleven o'clock in the morning. I think of

remaining questions, Mr. O'Donnell, it's probably

procedurally fairer, for fairly obvious reasons, that

I take you next and leave Mr. O'Hanlon the final

questions then.

Very good. Eleven o'clock in the morning, Mr.

FitzGerald, please.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

THURSDAY, 17TH JULY, 2003 AT 11AM.