

A P P E A R A N C E S

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THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY, 28TH JULY,

2003 AT 11AM:

MR. COUGHLAN: Mr. Killian O'Higgins, please.

CHAIRMAN: Perhaps before Mr. O'Higgins takes the stand, I might mention two small housekeeping matters.

The first is I am advised that there is a major youth theatrical pageant taking place in the premises today and it is possible we may have to compete with a certain amount of limited background noise.

Obviously, if this does reach a level that it interferes with proceedings, steps may have to be taken, but it's a very big day for the young people involved and I think we ought to try and see if we can co-exist.

The only other, and appreciable sadder, matter has regard to the very tragic death of Mr. Eamonn Leahy yesterday. It is possible, whilst I will be anticipating adhering to ordinary sitting hours next week, since the obsequies the funeral arrangements have not yet been finalised. I am sure that, like myself, a number of people will be anxious to attend any mass, and if this were in fact to be fixed for Tuesday, of course, I would be very anxious to make such piecemeal adjustment in our sitting hours that would accommodate the persons attending to commemorate that extremely tragic event. Thanks, Mr. O'Higgins.

KILLIAN O'HIGGINS, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. COUGHLAN:

MR. COUGHLAN: Thank you, Mr. O'Higgins.

Q. If I might just commence, Mr. O'Higgins. Whilst your name is O'Higgins, I think you are not related to the O'Higginses referred to by Mr. FitzGerald or to Mr. FitzGerald?

A. That's correct, coincidental.

Q. Now, I think you furnished the Tribunal with a statement, isn't that correct?

A. Yes.

Q. And what I intend doing is just taking you through the statement.

A. Thank you.

Q. Now, I think you informed the Tribunal that you worked with Sherry FitzGerald Auctioneers between 1983 and 2001. And since 2001, have been working from London with an associated company of the Sherry FitzGerald group, called DTZ International. Your area of specialty has been and is principally in commercial property.

In what you now know to have been in early 1995, your work colleague, Mr. Mark FitzGerald, told you that he had been approached by the then Government Minister, Mr. Michael Lowry, seeking to influence the outcome of a rent review arbitration, where another office colleague, Mr. Gordon Gill, was the arbitrator. As you recollect, Mr. FitzGerald spoke to you in your offices which were then in Merrion Row, Dublin.

Mr. FitzGerald identified the property concerned as being the premises in Marlborough Street, where Bord Telecom was the sole occupying tenant and Mr. Ben Dunne was the landlord. Mr. FitzGerald told you that Mr. Lowry had said to him, Mr. FitzGerald, that Mr. Dunne wanted a new rent of  $\text{€}10$  per square foot.

Because of your working in the commercial property area at the time, you were generally aware of the

premises in question, and you recall commenting to Mr. FitzGerald that a rent of  $\frac{1}{2}\$10$  per square foot would represent at least double the existing rent.

You also recall expressing to Mr. FitzGerald surprise at such an approach by Mr. Lowry to intercede with Mr. Gill acting as an arbitrator.

Mr. FitzGerald and you discussed together whether or not you should say anything to Mr. Gill about this approach. You both knew that if you did tell Mr. Gill at that time of the approach, that Mr. Gill would immediately discharge himself as arbitrator. You both decided together not to say anything at all to Mr. Gill whilst he was acting as arbitrator and that neither of you would say anything to anyone else in the firm about the approach.

In what you now believe to have been June 1995, shortly after he had completed his functions as arbitrator, Mr. Gill told you that Mr. FitzGerald had told him about Mr. Lowry's approach and that he, Mr. FitzGerald, had then discussed the matter with you and that you together decided not to say anything to Mr. Gill sorry, that's a misprint.

I think after Mr. Gill told you about Mr. FitzGerald's what Mr. FitzGerald informed him, you confirmed to Mr. Gill that Mr. FitzGerald and you had had such discussion and together made a decision not to inform Mr. Gill prior to the arbitration. Your

recollection is that Mr. Gill and you then had a short general discussion about the inappropriateness of such an approach by Mr. Lowry.

I think that's the statement you furnished?

A. That's correct.

MR. COUGHLAN: Thank you, Mr. O'Higgins.

CHAIRMAN: Anything Mr. O'Hanlon? Very good. Thank you very much for your attendance, Mr. O'Higgins.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Mr. Jim Miley.

JIM MILEY, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS

BY MR. COUGHLAN:

CHAIRMAN: Thank you very much for attending again, Mr. Miley. Of course from some considerable time ago, you are already sworn.

Q. MR. COUGHLAN: I think, Mr. Miley, you have furnished a statement to the Tribunal or a memorandum of intended evidence.

A. That's right.

Q. And I think you know the procedure that I'll take you through it and maybe return to ask one or two questions.

A. Okay.

Q. Now, again, you have informed the Tribunal that you were General Secretary of the Fine Gael Party from July 1995 to April 1999. The following is your recollection of the seven matters raised by the

Tribunal in its letter to Kevin O'Higgins, solicitor for Fine Gael, and dated 4th November 2002. And I think the first query raised was:

Details of your role in the organisation of the 1995 Fine Gael Golf Classic and including your role, if any, in identifying potential sponsors or seeking sponsorship or donations.

And I think you have informed the Tribunal, the 1995 Fine Gael Golf Classic was organised by a voluntary committee. Records of the Golf Classic committee which had been supplied to the Tribunal by Fine Gael indicates that the committee first met on the 29th May and again on the 28th June. As you commenced your employment with Fine Gael in early July, you did not attend these meetings. You attended your first meeting of the Golf Classic committee on the 21st July and subsequent meetings on the 6th September and the 9th October, 1995. You took somewhat of a back seat role in relation to the committee, given that you were new to your position. The majority of potential sponsors for the Golf Classic had already been identified prior to your involvement.

I think you are then asked for your recollection of the committee meeting on the 21st July, 1995 at which it appears that Mr. Denis O'Brien/Esat Telecom were identified as potential sponsors and were assigned to Mr. Phil Hogan for further action, including the

person and circumstances in which Mr. O'Brien/Esat Telecom were identified as potential sponsors, and all matters or considerations which resulted in Mr. Phil Hogan being assigned the task of following up Mr. O'Brien/Esat Telecom.

And you informed the Tribunal that you have no specific recollection of the committee meeting of the 21st July, 1995. You have read the file records in relation to this meeting that have been supplied to you in the context of this request for information from the Tribunal, and your general recollection would accord with the notes of the meeting. The allocation of responsibility to particular people to follow-up potential contributions would have come about from the meeting itself with particular persons volunteering to the meeting to follow-up on named individuals from a list that you expect would have been put together before you joined the Party. You have a very general recollection of the issue of the appropriateness or otherwise of bidders for State contracts or also being raised at one time or another, but you cannot specifically recall any discussion in relation to the 1995 Golf Classic on such matters.

You were asked for your knowledge, direct or indirect, of all actions taken by Mr. Phil Hogan or any other person or contact with Mr. O'Brien/Esat Telecom subsequent to the 21st July, 1995, including details



of all such action or contact, the persons involved and the source or sources of your knowledge.

And you have informed the Tribunal that you have no specific knowledge, direct or indirect, of actions taken in relation to the contact made with Mr. Denis O'Brien/Esat Telecom, other than that noted in the files which have been supplied to the Tribunal. You would have been aware of the potential participants, including Denis O'Brien, would be written to under the named Chairman, Phil Hogan. As indicated previously, you were only new into the position and the organisation of the event was already underway and was operating to a prearranged system.

I think you were then asked for details of your recollection of a meeting or conversation with Mr. Mark FitzGerald at the end of August 1995 at which the Tribunal understands that Mr. FitzGerald informed you that Mr. O'Brien/Esat wished to sponsor the Golf Classic and further indicated that he did not consider that it was appropriate for Fine Gael to accept a donation from Mr. O'Brien/Esat Telecom at that time.

And I think you have informed the Tribunal that you recall a meeting with Mr. Mark FitzGerald, not long after you had taken up your new position.

Mr. FitzGerald was, at the time, a trustee of Fine Gael and you 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 you as part of the selection process for the position of General Secretary, and you 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 you would also have had an involvement. The meeting was, as you recall it, suggested by Mr. FitzGerald as part of the debriefing process for you in your new role as General Secretary. You do not recall Mr. FitzGerald, either at this meeting or at any other occasion, raising the issue of a proposed donation/sponsorship for the 1995 Golf Classic from Mr. O'Brien/Esat. Neither do you have a recollection of Mr. FitzGerald discussing the appropriateness or otherwise of such a donation.

While you cannot recall precisely the full extent of the conversation or the topics discussed, you do have a specific recollection of a matter of some importance which you raised with Mr. FitzGerald in relation to the financial affairs and responsibilities of the Party. You do have a general recollection of Mr. FitzGerald of 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 you strove at all times to maintain those standards to the full.

I think you were then asked the circumstances in which and person by whom a letter dated the 30th August, 1995 from Mr. Phil Hogan to Mr. Denis O'Brien was prepared and the manner in which such a letter was retained on the Fine Gael files.

And you've informed the Tribunal that you have no specific recollection as to who may have drafted the letter which the Tribunal has drawn to your attention, dated 30th August, 1995 from Mr. Hogan to Mr. O'Brien, or of the contents therein. To the best of your recollection, you did not draft the letter in question or, it having been presented to you for approval prior to issue. You would expect that the letters were drafted to a particular prepared format and in accordance with a system which had been put in place before you joined the Party.

Well, I think we can pause briefly there. We have statements from, I think, Ms. Deirdre Fennell, which throws further light on this particular letter, so

A. Yes.

Q. Now, I think you were then asked by the Tribunal for your knowledge, direct or indirect, of the dealings between Mr. O'Brien and Fine Gael in relation to the Golf Classic in September/October 1995, and in particular, the request by Mr. O'Brien that his sponsorship of the event should not be disclosed publicly together with the source or sources of your

knowledge.

I think you have informed the Tribunal that you have no specific recollection, direct or indirect, of the dealings between Mr. O'Brien and Fine Gael in relation to the 1995 Golf Classic. You had not recalled the fact that Mr. O'Brien had requested that a sponsorship of the event should not be disclosed publicly until presented with the file information that had been made available to this Tribunal. Indeed, your recollection is that a representative or representatives of Esat attended the dinner prize-giving ceremony following the Golf Classic at the K-Club. However, you can not be certain if your recollection is accurate as you may well be confusing the attendance at Golf Classics in 1995, 1996 or even 1997. You have been advised that Esat, in their dealings with the party as regards this event, subsequently reconsidered the manner of the promotion of their participation as co-sponsors of the Golf Classic and expressed a wish that their involvement would not be promoted in the normal way.

You have no recollection of this matter raising itself and do not believe you were directly involved.

Again, we have statements, both from, I think, Ms. Fennell and Ms. Regan in relation to this matter.

There would not have been anything particularly unusual about a contributor to a fundraising event that requesting that his contribution be kept

confidential between him and the Party, and the fact that you have no recollection of this particular issue suggests to you that whoever was handling the matter, from an administrative position, must likewise have considered it a matter of routine.

I think you were then asked for details of all your dealings with Mr. Phil Hogan, the late Mr. David Austin, Mr. Mark FitzGerald, Mr. Denis O'Brien or any other person in connection with the sponsorship of the Golf Classic by Mr. O'Brien/Esat Telecom.

And you have informed the Tribunal that you do not recall having any dealings with Mr. Phil Hogan, Mr. Mark FitzGerald, or the late Mr. David Austin in connection with the sponsorship of the 1995 Golf Classic by Mr. O'Brien/Esat Telecom. Likewise, you had no dealings with Mr. Denis O'Brien in relation to this matter.

You do recall meeting with Mr. Denis O'Brien in or around this time at a fundraising lunch known as the Garret FitzGerald Luncheon organised by the Dublin South East constituency at which he, that is Mr. O'Brien, attended. You remember having a very brief conversation with him similar to that which you may have had with many other attendees at that time. Finally, you should note that Esat Telecom supported a number of fundraising functions during your years with the Fine Gael Party at both national and constituency

level. Esat Telecom also made a donation to the 1997 General Election campaign fund in response to a general appeal that was organised in the spring of that year.

Now, if I could just ask you for a moment, because we can deal with the letter of the 30th August 1995 that's the letter from Mr. Phil Hogan to Mr. Denis O'Brien.

CHAIRMAN: There was one I am being pedantic, probably, Mr. Coughlan, I think whether on the real time transcript, I think there was reference to August 1959; it's obviously '95.

Q. MR. COUGHLAN: I'll leave you had no involvement in it, and we now know how it came about from statements of other witnesses so we will deal with that in Mr. Hogan's evidence.

A. Okay.

Q. Likewise, the letter of the 8th September, we now know that the writing on this particular letter is the handwriting of Ms. Rita O'Regan who was employed in the office at the time and she may have had some communication with Mr. Deirdre Fennell, and it was dealt with by them, so you had no involvement

A. That's correct.

Q. I think the next document then, is a letter from Ms. Sarah Carey of Esat Telecom to Mr. Hogan enclosing the contribution. You had no involvement in that

either?

A. No, that's correct.

Q. Now, the next document is just a list of the supporters of the Fine Gael Golf Classic, and the next document then is the bank draft made payable to Fine Gael. We'll deal with that in the evidence of Ms. Carey and how that came about.

A. Okay.

Q. Now, you were not at the meeting of the committee, which was held on the 29th May, 1995, which was the inaugural meeting, I think, and then you were not at the meeting on the 28th June, 1995, isn't that correct?

A. Correct, yeah.

Q. I think you were present at the meeting on the 21st July, 1995, isn't that correct?

A. That's right.

Q. And we know that under the name of Phil Hogan, Denis O'Brien/Esat Telecom is one of the entities identified, I suppose, as a target, would that be the way to describe it?

A. That's correct, yes.

Q. And I think you have no specific recollection, but that from your statement, it would appear that this arose in the form of people indicating who they might go after, would that be

A. Yeah, that's correct. I have no precise recollection

of it, but the routine would have been that in most cases, people would volunteer to follow through with a particular they may already have a connection or a contact, and I suppose in cases where they didn't, they were encouraged to volunteer or whatever, but the ambition was to get a name beside every target.

Q. I think we now know from other statements from Mr. Hogan and Ms. Carey and some other people, that this Golf Classic was subsequent to the Wicklow by-election, isn't that correct?

A. Correct.

Q. And it was also, I think, subsequent to a fundraising lunch in the Carlow/Kilkenny constituency, which we now know that Mr. O'Brien/Esat had an involvement with Mr. Hogan in relation to it, isn't that right?

A. Correct, yeah.

Q. Now, I think apart from Esat Mr. O'Brien/Esat, there was a request, I think, from just to be clear about it, what Mr. O'Brien/Esat Telecom's contribution was for two purposes: One was for sponsorship of the 17th hole, which was  $\frac{1}{2}$ 1,000, I think?

A. Mm-hmm.

Q. And it was  $\frac{1}{2}$ 3,000 in relation to the catering, that is for the dinner or wine?

A. Wine reception, yeah.

Q. The wine reception?

A. That's correct.



Q. And in relation to the 17th hole, we know now from the documents, and we will hear from the other witnesses, that a request was made to return the lot that they requested that there would be no signage on the hole. In other words, you wouldn't have your flag or you wouldn't have some sort of a sign under the hole, would you?

A. Yeah.

Q. I think that in relation to a sponsorship of holes, three other sponsors requested no signage as well, isn't that correct?

A. I see that from the records, yes.

Q. Two of them were individuals and one was a company?

A. A company, yes.

Q. I think it's clear from the records that neither individual nor the company were involved in any process at that stage as regards the GSM licensing?

A. No, not to my knowledge, no.

Q. Now, you attended you obviously did, as part of your job, I suppose, you attended the Golf Classic and the dinner that night?

A. I did, indeed.

Q. Do you think that you have a recollection that some Esat people may have been present but you're unsure and may be confusing it with subsequent years?

A. Yeah. When asked about this issue originally, my initial instincts were, you know, yes, they supported

it and they were there on the night. No documentation seems to be available on the actual dinner attendees, because much of it was probably only confirmed on the day as to precisely who was going to be there. But yeah, if I were and I am under oath and if I am asked to say to the best of my recollection, was there somebody there, I would have said yes, I think there was. But I could well it could well have been the '96 I certainly specifically recall meeting with Esat representatives at a Fine Gael Golf Classic in the K-Club, but as I say, it could be the '96 as opposed to the '95.

Q. Now, I suppose, the one matter I just want to finally take up with you is: You know that Mr. FitzGerald furnished a statement and has given evidence that he remembers having a conversation with you around the end of August or beginning of September of 1995, wherein he discussed you have a recollection of Mr. FitzGerald discussing in general terms the whole question of fundraising and the high standards and the appropriateness of certain types of fundraising, isn't that correct?

A. Absolutely. Not just on one occasion, but you know, that would have been something we discussed on a number of occasions over the years.

Q. But you have no recollection of Mr. FitzGerald advising or making a suggestion to you that it would

be inappropriate, at that time, for Esat or Mr. O'Brien to make a contribution to the Golf Classic?

A. I don't have a specific recollection. I did I mean, just looking back on the dates of meetings and of various events, I would have met Mark FitzGerald routinely in those months. He was involved in a number of committees, but also as a trustee, apart from occasions like the Golf Classic itself where he would have attended, so I probably, at least every fortnight, would have been involved in a meeting with him. But there was one specific meeting which we had over lunch, and I remember he picked me up from the office, we went to lunch, and it was, I would be pretty sure it was around the end of August. I was, you know, settled in, or getting settled into the job and it was sort of a root and branch look at all aspects of the job. I was meeting a number of people around that time to mark my cards and get myself read into the brief. So I remember that meeting very specifically, but I don't remember the issue in question being raised, but if Mr. you know, Mr. FitzGerald seems to have a clear recollection, and I can only go on my recollection.

I should also say, probably, much later in, I would say the end of '96/'97, I do specifically remember Mr. FitzGerald talking about Esat at that point, and

that was he was appointed director of elections for the General Election in 1997, and there had been quite a bit, I suppose, of media publicity about the awarding of the licence and so on and so forth, and he certainly had expressed unease about accepting any further donations from Esat, but, you know, that

Q. That was much later?

A. That was 18 months after this particular event and I specifically remember a conversation or two then. But I can't recall anything specific at that particular time we're talking about.

MR. COUGHLAN: Very good. Thank you, Mr. Miley.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. MR. FITZSIMONS: Just a couple of short questions.

Mr. Miley, in your statement in answer to question 7,

you refer to the fact that you recall meeting

Mr. Denis O'Brien at a fundraising lunch known as the

Garret FitzGerald luncheon and organised by the Dublin

South East constituency at which he attended, and in

that answer you say that this took place I am

quoting "in or around this time" and this time

appears to be referable to the 1995 Golf Classic, and

we know that occurred on the 16th October 1995. You

don't by any chance can you be more specific on the

dates with regard to this luncheon?

A. Yeah, well, in the documentation supplied to me since

then, I see that event seems to have taken place on

the 2nd October. So that would seem to be the date.

Q. Now, I take it, this sounds like a big luncheon; the Garret FitzGerald luncheon. It wasn't just an ordinary Fine Gael luncheon; it was a big luncheon.

A. It would be a Dublin South East constituency luncheon, so organised by the constituency, but you know, typically those lunches would have anything from 100 to 300 people in attendance depending on how successful they were, and I imagine that that one might have been closer to the upper end of that scale.

Q. And I take it supporters, including fundraisers, who attend these luncheons probably would have attended on that day, in all likelihood?

A. You mean

Q. Fundraisers the usual culprits, I suppose, one could say.

A. That's your term.

Q. Can we include in that category, an apparently very enthusiastic fundraiser at that time, Mr. David Austin?

A. I don't know, quite frankly. I don't know if he was there.

Q. It's difficult at this remove I suppose.

A. I wouldn't be able to say.

Q. But can you confirm Mr. Austin was very enthusiastic, certainly, in organising the Golf Classic and in helping at this time?

A. He was. But I think his particular role was in the Golf Classic and in the subsequent event in New York.

Q. Thank you very much.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. O'CONNOR:

Q. MR. O'CONNOR: One point of clarification, Mr. Miley.

Mr. Coughlan, when he asked you about a contribution to the event in New Park Hotel of  $\text{€}1,000$ , and you referred to it as a contribution to Mr. Phil Hogan.

For the purpose of the record, am I correct in saying that that was actually the Carlow/Kilkenny constituency as opposed to an event organised by Mr. Hogan?

A. Yeah, I wasn't actually in the job at that time, but yes, typically those events would be organised by the constituency for the constituency election or campaigning funds, yes.

Q. Thank you.

THE WITNESS OF EXAMINED AS FOLLOWS BY MR. O'HANLON:

Q. MR. O'HANLON: I think it's correct Mr. Lowry had no involvement in the Golf Classic or in organising the funding of the Golf Classic?

A. No, he had no specific involvement. He attended on the night.

Q. He was requested as a Minister to attend?

A. As a number of Ministers, yes.

Q. And so there is no reason why he would have had any knowledge of the funding of it, of who contributed how

much?

A. No. He wouldn't have been briefed of that. We wouldn't have even as a Chairman of the Trustees, the brief to the Trustees afterwards would have been on the total amount raised. There would not have been details of specific contributors circulated at trustee level.

Q. Approximately how often would the Trustees meet?

A. Probably well, the target was monthly in the sort of off-holiday season. Probably met eight to ten times a year.

Q. So as Trustees, Mr. FitzGerald, Mark FitzGerald and Mr. Lowry would have met approximately that often from the time Mr. Lowry took over as Chairman of the Trustees?

A. Yes, assuming both of them were in attendance, yes, yeah.

MR. O'HANLON: Thank you.

THE WITNESS WAS EXAMINED FURTHER AS FOLLOWS BY

MR. COUGHLAN:

Q. MR. COUGHLAN: Just clarification. You came into the job in July of 1995, isn't that correct?

A. Correct, 1st July.

Q. In fact, whilst Mr. Phil Hogan, he will be giving evidence in a moment, was Chairman of this fundraising committee, this Golf Classic fundraising committee, in fact was being driven by Mr. David Austin in effect,

wasn't it, he was the main driving force?

A. Absolutely. He was the main I mean, he was encouraged, I suppose, as were a lot of people, to take on the role. The Party at that time had a full-time staff, I think, of seven or eight people, for all aspects of his activities, it expanded somewhat later. So on events like that, one tried to make the best use possible of people who would contribute on a voluntary basis.

Q. But he was he was the

A. He was the driver in the fullest sense, I mean, not just in a titular sense, but in an operational sense.

Q. I am not detracting from Mr. Phil Hogan and I am being fair to him; while he was the Chairman, Mr. Austin was

A. Mr. Austin would, in terms of the day-to-day running of the Classic, he certainly had a closer involvement, yes.

Q. And he was also the driving force behind the New York fundraiser, isn't that right?

A. Correct.

Q. And to your knowledge, apart from those two events, had Mr. Austin had you even heard that Mr. Austin had ever been known in Fine Gael circles as a Fine Gael fundraiser before these

A. I don't know. To be honest, I didn't know any of the Fine Gael fundraisers before I got involved. So they



were all new to me in that sense. I actually didn't know probably until the last occasion I appeared here. In the back of my mind I actually thought he may have had a previous involvement, but I think it was established that he probably didn't before that. He had I think he was subsequently involved in at least one or possibly two more Golf Classics in the years that followed, but you're correct in saying that that seemed to have been his first major involvement.

MR. COUGHLAN: Thank you.

CHAIRMAN: Thank you very much for coming back and for your further assistance, Mr. Miley.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Mr. Hogan is on his way from Kilkenny. Things have moved a little faster than we thought this morning.

CHAIRMAN: It's not unreasonable, and of course we'll accommodate him and sit with once he has had an opportunity to arrive and perhaps converse briefly with Mr. O'Higgins, we'll take up the matter.

MR. COUGHLAN: He probably won't take that long. So I don't think

CHAIRMAN: Very good. Thank you.

AFTER A SHORT ADJOURNMENT, THE TRIBUNAL RESUMED AS FOLLOWS:

MR. COUGHLAN: Mr. Hogan.

PHIL HOGAN, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS

BY MR. COUGHLAN:

CHAIRMAN: Good morning, Mr. Hogan. Thank you very much for attending, particularly when you have had to leave your constituency in Dail recess.

Q. MR. COUGHLAN: Mr. Hogan, I think you furnished the Tribunal with a statement of your intended evidence?

A. That's right.

Q. I think you have it there in the witness-box, do you?

A. I haven't it here with me.

Q. What I intend doing is just taking you through your statement and then returning to clarify one or two matters, if that's all right.

Now, I think in your statement you have informed the Tribunal that you are a Fine Gael TD for the constituency Carlow/Kilkenny, having been first elected in 1989. In John Bruton's Rainbow Government, you were appointed Junior Minister in Department of Finance, but resigned your position following the budget of early 1995.

You then say that you were satisfied that the meeting referred to by Mr. 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, you have no recollection whatsoever of being present.

And just to be clear about this: This is a meeting which Mr. FitzGerald says that he was sorry, Mr. FitzGerald has informed the Tribunal and has given

evidence that he received a telephone call from Mr. Denis O'Brien to meet him for coffee or some refreshment, that as he went to Loyds Brasserie, which is close to Dail Eireann, and that when he arrived there, Mr. O'Brien was present with you and the late Mr. Jim Mitchell. That's the meeting you are referring to in that paragraph, isn't that correct?

A. Mm-hmm.

Q. Now, I think you have informed the Tribunal that Mr. O'Brien, the Esat organisation were contributors to a fundraising event in your constituency which took place in March, 1995. To the best of your recollection, a table of 10 was reserved and a contribution of  $\text{€}1,000$  made. Again, you cannot recollect whether or not Mr. O'Brien was in attendance at the event. You would have written to Denis O'Brien/Esat from a list of possible attendees which you would have accumulated from your time as Chairman of the golf fundraising committees. You would not, at that stage, have known Denis O'Brien personally and do not believe that you ever met that that you had ever met him.

The matter of pursuing sponsorship for the national Fine Gael Golf Classic, which was held on the 16th October 1995, was delegated to committee members. Sponsorship from Mr. Denis O'Brien/Esat was secured by Mr. Mark FitzGerald. In your capacity as Chairman of

that organising committee, you would have written to sponsors. Such correspondence would have been prepared by the Fine Gael Secretariat and signed by you. Apart from such correspondence, you made no contact with Mr. Denis O'Brien/Esat. Such contact, in your view, was not necessary as its sponsorship had already been secured. You would have attended the meeting of the Golf Committee Golf Committee from the 21st July, and you note that the Tribunal have all the records of those meetings. Other than writing to Mr. O'Brien/Esat as a matter of course in late August and early September of 1995, as you would have had to any other sponsor who had indicated his willingness to get involved in the event, you would have had no other dealings whatsoever with either him or his organisation in that connection.

The first occasion on which you can recollect having met Mr. O'Brien was at the fundraising event at the Wicklow by-election in June of 1995. As has been recounted in the legal correspondence, contact was made between you and Ms. Sarah Carey on behalf of Mr. Denis O'Brien in your capacity as Director of Elections during the by-election. You can't be sure who contacted whom, and it may have been a combination of both. You have known Sarah for many years and she was, at that stage, working with Denis O'Brien. The nature of the inquiry from her, as you recollect, was

to whether or not there was any assistance which O'Brien/Esat might be in a position to give the Party, and you would have mentioned the forthcoming fundraising lunch which took place in late May in the Glenview Hotel. Mr. O'Brien attended the lunch and as has been recounted elsewhere, a contribution of  $\text{€}5,000$  was made and paid over to the local organisation.

With regard to any representations which may have been made by you on behalf of Esat in connection with the award of the second GSM licence, you can categorically state never having made any representation to any Minister, civil servant or otherwise, and you can categorically state that you never discussed the award of the second mobile licence with Mr. Denis O'Brien.

You quite frankly were not engaged in the licence process and knew very little about it apart from what you might have read in the newspapers.

You were Chairman of the golf fundraising committee which organised the event in October of 1995. In that context, having written to Mr. O'Brien on a couple of occasions arising out of his agreement to become a sponsor, you weren't particularly aware of his subsequent wish for no publicity. His agreement to become a sponsor appears to have come from a contact he had made through Mark FitzGerald and this would seem to be so from the reference in your correspondence.

The only other occasion on which you can recollect having a dealing with Mr. O'Brien was sometime during the spring of 1996 when you met him for a prearranged lunch in the Unicorn restaurant to discuss the possibility of him favouring a constituent of yours for an employment position within Esat. You understand that that applicant was unsuccessful.

You had been referred by the Party solicitor, Kevin O'Higgins, to a an inquiry from the Tribunal arising from a suggestion from Mr. Dan Egan that you may have discussed Esat affairs with him and assisted him in the arranging of a meeting between Mr. Denis O'Brien and Mr. Enda Kenny. You believe Mr. Egan must be mistaken on both grounds. Firstly, you never knew until recently that Mr. Egan had been a consultant with Esat. You did not discuss Esat business with Mr. Egan. Likewise, you did not facilitate or arrange a meeting between Mr. Egan, Denis O'Brien or Enda Kenny, which you were advised appears to have taken place on the 17th May, 1995. The suggestion that you would have been asked to arrange such a meeting by Dan Egan, who would have been well-known to Enda Kenny, being both from the same county, and Dan having a previously high been a previously high-ranking paid official in the party, strikes you as somewhat unlikely.

Now, if I might just take up that point, that last point first, if I may, Mr. Hogan. Just to clear up a

few matters. In fact, that query which arose of you about the arranging or assisting in the arranging of a meeting with Mr. Enda Kenny, that arose, first of all, from information received by Mr. Egan as to that this may have happened.

I think Mr. Egan, in due course, furnished a statement to the Tribunal in which he states:

"At my meeting with Mr. Davis and other members of the Tribunal legal team on November 18th in response to a specific line of questioning, I very tentatively suggested that Mr. Phil Hogan may have assisted in arranging the meeting between Mr. O'Brien and Mr. Kenny. I am now satisfied that this is not so."

So I just wanted to clarify that in the first place.

Likewise, on the question of the letter of the 30th August of 1995, which is signed by you, it's the letter to Mr. Denis O'Brien thanking him for agreeing to sponsor we'll just put it up.

And it reads it's addressed to Mr. O'Brien, it reads:

"Dear Denis,

"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 very generous sponsorship of  $\text{€}24,000$  will be used twofold, 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 would be utilised.

"I am looking forward to your attending the dinner on the night, which I think will be an excellent evening.

"Again, many thanks for your kind support.

"Yours sincerely."

And it's signed by you as Chairman of the Parliamentary party. And you have informed the Tribunal and given evidence that this would have been prepared by the Secretariat and presented to you for signing, isn't that correct?

A. That's right.

Q. And I think in that regard, the Tribunal has been informed by Ms. Deirdre Fennell, and I think Ms. Deirdre Fennell was a member of the permanent staff in Fine Gael headquarters?

A. That's right.

Q. And would have been a member of the Secretariat serving the Golf Classic as well?

A. Mr. Austin would have been, I suppose, mainly dealing with the correspondence and Ms. Fennell would be typing up the correspondence for my signature.

Q. And just, if I think she has informed the Tribunal that that Mr. Austin was the driving force behind the Golf Classic and was determined that the event would be professionally run and would raise



significant funds. The organisation started in the spring of 1995. While the administration of the event centred in the Fine Gael Head Office, Mr. Austin was actively involved at every level of the fundraising and organisation." Would that be your recollection as well?

A. Yeah.

Q. She says that it was Mr. Austin who directed correspondence from Fine Gael to potential sponsors and to sponsors and you believe that it was likely she believes that it's likely that the letter of the 30th August 1995 from Mr. Phil Hogan to Mr. Denis O'Brien would have been dictated over the telephone by Mr. Austin to Ms. Fennell and would have been generated in Fine Gael Head Office. In all probability, Mr. Hogan would simply have signed the letter. Similarly, the letter of the 8th September 1985 from Mr. Hogan to Mr. O'Brien is likely to have been dictated by Mr. Austin, again to Ms. Fennell and again Mr. Hogan would probably have simply signed the letter?

A. That's correct.

Q. Is it your recollection you were whilst you were Chairman, all this work was being done and you put your name to it?

A. Read the letter and sign it, yeah.

Q. Now, just two other matters before I deal with the

question of the meeting which Mr. FitzGerald referred to around October of 1995.

First of all, the Carlow/Kilkenny fundraising lunch.

It took place in March of 1995, isn't that correct?

A. 9th March.

Q. The 9th March. And Esat made a contribution of  $\text{€}1,000$ , and I think they attended, people attended the luncheon?

A. People attended.

Q. Did Mr. O'Brien attend that lunch?

A. I don't think he did, but I remember meeting other people from Esat, but not him.

Q. And Ms. Sarah Carey worked for Mr. O'Brien at the time?

A. Yes.

Q. And she was well-known to you?

A. Yeah, the Carey family would be very well-known to me. Her father is a Fine Gael councillor in Meath.

Q. And the next occasion that you had any involvement or contact arose during the course of the Wicklow by-election, isn't that correct?

A. That's right.

Q. And there was a fundraiser in the Glenview Hotel for that particular by-election, isn't that correct?

A. Mmm.

Q. And you had contact with Sarah Carey, you're unsure as to who initiated the contact, isn't that correct?

A. Well, as Director of Elections I was fundraising for the by-election and I either contacted her or she contacted me about how she could be helpful. We were having a fundraising lunch in the Glenview Hotel and that is recorded there in my statement.

Q. I think Ms. Carey has informed the Tribunal, I think, that what Ms. Carey says, that she sets out a background which I needn't go into now for the moment. She said that it was against a certain background that an offer of financial assistance was made to Phil Hogan at the time of the Wicklow by-election in June of 1995. So whilst you don't know whether you contacted her or she contacted you, it seems to be that there was an offer of financial assistance anyway, coming from Esat through Ms. Carey, is that correct?

A. Yeah.

Q. Now, I think Mr. O'Brien did attend the lunch in the Glenview Hotel?

A. That's my recollection. I met Mr. O'Brien, I think for the first time, at this particular lunch and thanked him for coming.

Q. I think at that lunch, he handed over the contribution, I think, to you?

A. That's correct, he gave it to me.

Q. And you gave it to

A. The Wicklow constituency.

Q. To the Wicklow constituency.

Now, turning then to the meeting not the meeting, the event which Mr. FitzGerald described as occurring in the restaurant in October of 1995, that he received a phone call from Mr. O'Brien and then when he went along you were there with Mr. O'Brien and the late Mr. Jim Mitchell. You say that that didn't happen, but that if it did happen you have no recollection of it?

A. That's correct. I certainly don't remember anything associated with

Q. That's what I just want to you have no recollection?

A. None whatsoever. And I would have remembered, I think, meeting Mr. O'Brien, and I certainly wouldn't be in the habit of having coffee with Jim Mitchell.

MR. COUGHLAN: Thank you, Mr. Hogan.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MCGONIGAL:

Q. MR. MCGONIGAL: Just one small question, Mr. Hogan. In relation to the golf meeting of the 21st July, 1995.

I am not sure if you have it in front of you. But it's one of the documents appended to your statement.

I don't know if you have a clear recollection of these meetings in connection with the Golf Classic, but you'll see there that this was one of the ones which you were at, and I just want to draw your attention to the second page, and under your name appears the name Denis O'Brien and Esat Telecom and what appears to

have been happening at this stage at the meeting was various persons and companies were being identified as persons or companies to be contacted in connection with sponsorship for the Golf Classic. Do you have a recollection of this meeting?

A. That was the procedure where you would actually assign certain companies and individuals to members of the committee to contact these people if they wished to participate in the classic.

Q. Do you recollect anything about his name or company being assigned to you?

A. No, no, I wouldn't know Mr. O'Brien. I doubt if I was contacting him coldly to assist with the fundraising event.

MR. MCGONIGAL: Thanks very much, Mr. Hogan.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. O'HANLON:

Q. MR. O'HANLON: Mr. Hogan, were you aware that Mr. FitzGerald appears to have had reservations about the appropriateness of Esat and Mr. O'Brien making a contribution at the time of the Golf Classic?

A. No, that wouldn't have been mentioned to me, no.

Q. And in relation to your to the letter which was signed by you, it appears clear that it was prepared by somebody else, but you would have read it and satisfied yourself that it appeared to be in order before you signed it?

A. That's correct.

Q. So it would appear in August 1995, you would have had very little contact with Mr. O'Brien. You met him once before, I think you said?

A. That's correct.

Q. And you're satisfied and were satisfied at the time that that letter, which would appear to contradict what Mr. FitzGerald's memory of the event is, is accurate?

A. Yes.

MR. O'HANLON: Thank you.

CHAIRMAN: Thank you very much for your attendance indeed, Mr. Hogan.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Those are the available witnesses today, Sir.

CHAIRMAN: I understand there is one possible witness also in attendance, but the procedure does necessitate it be deferred; I am sorry if there was any inconvenience for that gentleman. So subject to the caveat that I made in relation to yesterday's sad event, it would be the usual resumption on Tuesday at eleven. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL TUESDAY, 22ND JULY, 2003 AT 11AM.