

**THE TRIBUNAL RESUMED AS FOLLOWS ON**

**TUESDAY 25TH JULY 2006 AT 10.30 AM:**

CHAIRMAN: Morning Ms. Dillon.

MS. DILLON: Morning sir. The first matter I want to open to you this morning, sir, is some correspondence that has passed between the Tribunal and Fine Gael arising out of an article that was published in the Irish Times on 15 July 2006 and on the 19 July 2006 the Tribunal wrote to Mr. Kevin O'Higgins, solicitor for Fine Gael in the following terms.

"Dear Mr. O'Higgins, I have been instructed by the Tribunal to write to you in connection with an article published in the Irish Times on 15 July 2006 under the heading "Fine Gael contends Barrett Tribunal" outraged. In this article the political correspondent to the Irish Times, Stephen Collins, quotes from a statement attributed to a spokesman for Fine Gael which describes the conduct of the Tribunal as an outrage and disgrace. The Tribunal is concerned to establish whether or not the statement quoted was made by a Fine Gael spokesman and if so wishes to address it's content. Accordingly, I am instructed to request to you ascertain from your client whether such statement was made by a Fine Gael spokesman, if so the Tribunal request your client to provide the Tribunal with a factual basis for such statement so the matter can be addressed by the Tribunal.

The Tribunal requests your client give this matter immediate attention."

The Tribunal received on the 21st July 2006 a letter from Mr. Kevin O'Higgins, solicitor for Fine Gael, which was, in fairness to Mr. Higgins, not a letter in reply to the Tribunal's letter but one which had been prepared by him on his return from holidays on him being appraised of the contents of the article.

10:41:38 1  
2 At the outset I should say it's clear from Mr. O'Higgins letter that there is  
3 an unreserved apology in the letter to the Tribunal for the remarks attributed  
4 to the Fine Gael spokesman as carried in the Irish Times.

10:41:54 5  
6 In fairness to Mr. O'Higgins I will read the letter in it's entirety into the  
7 record. The letter is dated 21st July 2006.

8  
9 "Dear sir, I refer to media reports of comments made by a Fine Gael party  
10 official following the recent evidence before the Tribunal of Mr. Michael  
11 Smith. The comments reported purported to criticise the Tribunal for the  
12 manner in which it conducted the taking of evidence of Mr. Smyth. As  
13 solicitors having representation on behalf of Fine Gael it would be  
14 inappropriate for us to make any comment in relation to a third party matter.  
10:42:06 15 However, we regret the comments made. Such comments were inappropriate and  
16 ought not to have been made.

17  
18 As solicitor to the Fine Gael party I have full responsibility for the party's  
19 interaction with the Tribunal and report directly to the general secretary of  
10:42:40 20 the party for instructions. Other than taking instructions from the party  
21 leader, the general secretary and he alone has exclusive authority in the  
22 matter.

23  
24 The remarks as reported were not made in the form of a formal press release or  
10:42:55 25 statement from the party. The comments were made by way of a telephone  
26 briefing conversation with the journalist and arose in the context of  
27 significant media reports of serious third party allegations against a serious  
28 party member.

29  
10:43:08 30 The comments made arose out of a sense of annoyance as that person concerned

10:43:13 1 perceived it that these matters had not been put to him when he had earlier  
2 been a witness before the Tribunal.

3  
4 At the time the comments were made, the general secretary of the on leave and  
10:43:24 5 although attempts were made to contact him these efforts proved unsuccessful.  
6 Furthermore, neither I nor counsel instructed in the matter were consulted. As  
7 it happened I was in the South Africa last week and there may have been a view  
8 that I too would have been uncontactable.

9  
10:43:40 10 Having caught up with matters since my return on Monday evening last I was most  
11 unhappy to read the comments as reported. On speaking to senior officials  
12 within the party leadership there was an appreciation that if any issue arose  
13 concerning the evidence heard by the Tribunal it ought to have been aired  
14 before the Tribunal itself through the good offices of counsel for the party  
10:43:59 15 concerned.

16  
17 Fine Gael accordingly regrets the comments made and unreservedly apologises to  
18 the Tribunal for any impression created that the party is critical of the work  
19 carried on by the Tribunal.

10:44:10 20  
21 While there is no attempt to deny the accuracy of the report by the journalist,  
22 the comments made emphatically do not represent the views of Fine Gael. This  
23 letter has been sanctioned with the full authority of the party leadership as  
24 conveyed to us by the general secretary and was settled and approved on the  
10:44:27 25 afternoon of Wednesday July 19 before receiving your letter of the same date by  
26 courier at 5.25 that evening. We make this point in order to emphasise the  
27 importance attributed by us and by the Fine Gael party to the necessity of  
28 disassociation from the comments made since the article appeared and in  
29 particular since the writer's return to the country on Monday evening last.

10:44:47 30

10:44:47 1 Subject to any views the Tribunal may have in the matter my instructions are to  
2 relay it's contents in the Tribunal's public session. Fine Gael has the  
3 highest regard for the Tribunal and values the productive and cooperative  
4 relationship that has developed with the Tribunal over the past years.

10:45:02 5  
6 Fine Gael will continue to assist the Tribunal in it's difficult and important  
7 tax in anyway it can in the future.

8  
9 Yours faithfully, Kevin O'Higgins solicitors"

10:45:13 10  
11 I think that clarifies the matter arising from the publication of that article.

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13 CHAIRMAN: All right, thank you very much.

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15 MS. DILLON: Mr. John Bruton please.

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**JOHN BRUTON, HAVING BEEN SWORN, WAS QUESTIONED AS FOLLOWS BY MS. DILLON**

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4

CHAIRMAN: Morning Mr. Bruton.

10:46:00 5

Q. 1 Good morning Mr. Bruton. There are really two matters that I want to deal with this morning, one is the question of any payments that may have been made to the Fine Gael party by Monarch Properties and the second relates to a meeting that took place in Conway's on or around the 21st of September 1993.

9

10:46:19 10

I think that you were leader of Fine Gael for a long period of time and Taoiseach from 1994 to 1997, is that correct?

11

12

A. That's correct.

13

Q. 2 You are presently EU Ambassador to Washington, is that correct?

14

A. I am Ambassador heading the European Commission Delegation in Washington.

10:46:37 15

Q. 3 And I think the Tribunal wrote to you on the 1st of February 2006 and asked you to provide information by way of a statement in relation to any information that you have in relation to certain people identified in that correspondence, these are people in connection with Monarch Properties and any payments that may have been made to Fine Gael, page 127 please.

19

10:47:01 20

21

Now, you were asked for details of any contacts or meetings you would have had with Monarch Properties Limited or Monarch properties services limited or any company in the Monarch Group and at paragraph two you were asked for any contacts or meetings you would have had with the late Mr. Phil Monahan, Mr. Richard Lynn, Mr. Eddie Sweeney, Mr. Dominic Glennane, Mr. Phillip Reilly and Mr. Frank Dunlop or any individual or company -- can I ask you first and foremost Mr. Bruton whether you ever met the late Phillip Monahan?

26

27

28

A. I think I may have seen him anyway. I think I remember seeing him at a funeral in Castletown, County Meath on one occasion, and maybe on other occasions. I

29

10:47:43 30

am not sure that I ever spoke to him, but he was someone whom I could recognise

10:47:49 1 anyway.

2 Q. 4 Did you ever ask Mr. Monahan, to your recollection, for any political donation

3 or support for the Fine Gael party?

4 A. Not to my recollection. Obviously, I can't say that the party didn't issue

10:48:01 5 circulars, one of which or letters one of which he might have received

6 requesting a donation, I don't know anything about that.

7 Q. 5 Did you ever meet a Mr. Richard Lynn?

8 A. I don't believe so, not to my knowledge. That name doesn't mean anything to me

9 at all.

10:48:18 10 Q. 6 Mr. Eddie Sweeney?

11 A. Nor does that name mean anything to me.

12 Q. 7 Mr. Dominic Glennane?

13 A. Likewise.

14 Q. 8 Mr. Phillip Reilly?

10:48:27 15 A. Yes, I think I probably did meet Phillip Reilly and spoke to him. I think

16 Phillip Reilly originates in County Meath. I think his family are from County

17 Meath or somewhere in that part of the country with which I am most familiar,

18 and I might have met him in that context or at events of some kind or other,

19 but I don't remember having any substantial conversation with him about any

10:48:58 20 matter effecting the business with which he is associated.

21 Q. 9 Did -- you would have known, would you not, that the late Mr. Phillip Monahan

22 was the General Manager or founding director of the Monarch Group?

23 A. Well, I don't know that I would necessarily. I knew he was in that, in the

24 business of development and probably knew he was associated with Monarch. I

10:49:21 25 don't really know, it's very difficult to exactly fix what one's state of

26 knowledge would have been back in the early 1990s, but I knew he was in this

27 business. I think I -- I think he may have associated in my mind with the

28 shopping centre in Tallaght.

29 Q. 10 I was about to ask you that. Would you not have known that Monarch Properties

10:49:46 30 were the company that were developing the shopping centre in Tallaght.

- 10:49:49 1 A. I think so. Well, I would have known Mr. Monahan was involved with it, I am  
2 not sure how much the word Monarch Properties would necessarily have meant to  
3 me at the time.
- 4 Q. 11 But you would have known that Mr. Monahan had an involvement with the  
10:50:01 5 development of the Tallaght Town Centre?
- 6 A. Yes, yes.
- 7 Q. 12 Can I ask you -- first of all can I show you a cheque at page 3905 please?
- 8 A. Yes.
- 9 Q. 13 This is a cheque made out to you as leader of Fine Gael on the 18th November  
10:50:20 10 1992, that was in the course of a then general election, isn't that right?
- 11 A. I believe that general election, polling day took place some days later.
- 12 Q. 14 Can you assist the Tribunal as to the circumstances in which that cheque came  
13 to be made out to you.
- 14 A. No, not really. I imagine it was a donation received by the party, as the  
10:50:40 15 party would tend to receive donations during an election campaign, whether it  
16 was solicited or unsolicited I don't know.
- 17 Q. 15 And I think from inquiries that have been made within Fine Gael according to  
18 your solicitor, Mr. O'Higgins, that payment was lodged to the Fine Gael account  
19 with Bank of Ireland?
- 10:50:58 20 A. So I am advised.
- 21 Q. 16 Right. But that is a matter that would have been attended to by somebody other  
22 than yourself, Mr. Bruton?
- 23 A. Most certainly yes. I wouldn't have had any involvement with that sort of  
24 thing during an election campaign.
- 10:51:10 25 Q. 17 I think again in 1997 at 6333 please there is a cheque for three thousand  
26 pounds also made out to Fine Gael and I think that again your solicitor has  
27 advised that this sum was also, together with another sum of 1,000 pounds, was  
28 paid into the Fine Gael account of Bank of Ireland?
- 29 A. So I am advised, I don't think I ever saw this cheque at any time until  
10:51:39 30 recently.

10:51:40 1 Q. 18 Did you ever seek or solicit any financial support from Monarch Properties that  
2 you can recollect?

3 A. No. Well -- it's possible that letters were issued in which my name was  
4 mentioned on behalf, by the Fine Gael party, either locally in the constituency  
10:52:00 5 where he was active or otherwise. I am not aware of ever soliciting any money  
6 from him.

7 Q. 19 Now, I think in September of 1993 Mr. Bruton, you had a meeting or you  
8 organised a meeting in Conway's pub of the Fine Gael members of Dublin County  
9 Council as it then was, is that right?

10 A. That's right. I was approached -- sorry. There had been, as I think is  
11 outlined in a statement which the Fine Gael party furnished to the Tribunal in  
12 2001, there had been a considerable amount of controversy during the summer of  
13 1993 about the way in which the Development Plan for Dublin County was being  
14 processed, and in particular there was a concern that in the case of the Fine  
10:52:58 15 Gael party the members seemed to be voting against one another rather than  
16 attempting to reach a group position on development issues. And while the  
17 party was of the view, I believe it remains of the view that in exercising  
18 their function as members of a County Council in drawing up or revising a  
19 Development Plan, that at the end of the day members act quasi judicially and  
10:53:31 20 therefore must make their own independent judgement. There was, I think quite  
21 a concern, that the Fine Gael group in Dublin County Council wasn't making any  
22 effort at all to try to come to a common position on matters of this nature,  
23 sorry on this matter, on these matters and I understand from my reading of the  
24 statement that has been furnished to this Tribunal by the Fine Gael party that  
10:54:05 25 the then spokesperson on the environment, Mrs. Avril Doyle had intervened with  
26 the leader of the group of the time, Fine Gael group, Donal Marren,  
27 unsuccessfully in an attempt to get more coherence.

28  
29 I should also just by way of political background say that in 1993 Fine Gael at  
10:54:30 30 the time was in the aftermath of the 1992 general election which had not been a



10:54:36 1 successful election for Fine Gael and particularly had not been a successful  
2 election for Fine Gael in Dublin, and there was a concern that we should, in  
3 every way we could reasonably do so, present a coherent image as a party to the  
4 electorate of Dublin on matters of importance to the electorate of Dublin and  
10:54:57 5 that included the way in which the Fine Gael members in the local authorities  
6 serving Dublin would present themselves and present the party.

7  
8 So it was in that, against that background that I believe I myself initiated a  
9 contact with councillor Donal Marren and he suggested to me that I would come  
10:55:24 10 to a group meeting which he convened in Conway's public house which is around  
11 the corner from the offices of Dublin County Council, in order to convey, to  
12 give me an opportunity to convey my concerns to the members of the council and  
13 to give the members, Fine Gael members of the council an opportunity to convey  
14 their viewpoints to me.

10:55:54 15 Q. 20 One of the matters that I think you have just told the Tribunal that was of  
16 concern to you was the lack of unity or disparity of approach of the Fine Gael  
17 members that was drawn to your attention as a problem, is that right?

18 A. Well I was of the view myself, I think many in the party were, that this was  
19 not good, not good from any point of view in the sense that it presented the  
10:56:16 20 party as an incoherent group that couldn't work together as a group, and by  
21 definition a political party is an entity, it ought to operate or seek to  
22 operate cohesively, that's the justification of the very existence of political  
23 parties.

24  
10:56:34 25 But also I think there was a concern that the decisions that were being taken  
26 might not be the best decisions and that other parties by virtue of the fact  
27 that they acted in a more disciplined fashion were having more of an impact on  
28 the future shape of County Dublin than the Fine Gael party, and that had  
29 implications which I wanted to address.

10:57:05 30 Q. 21 Well, was the concern that was identified to you and which you wished to

10:57:09 1 address the fact, that it appeared or there was a perception that the members  
2 of Fianna Fail were more unified in the approach they took to voting in  
3 relation to the Development Plan?

4 A. Yes. My understanding is that that the members of Fianna Fail actually imposed  
10:57:23 5 a whip, that Fianna Fail imposed a whip on itself in these issues.

6 Q. 22 These are Development Plan issues?

7 A. That's my understanding. Obviously I can't speak for Fianna Fail, that was the  
8 information that I had at the time.

9 Q. 23 But this wouldn't have been information that you would have had of your own  
10:57:39 10 knowledge Mr. Bruton because you weren't a member of Dublin County Council?

11 A. That's right. No, it would have been I suppose common knowledge, and probably  
12 may even have been touched upon in some of the articles in the media that were  
13 being, that were written as far as, around that time, as far as I know. It has  
14 been called to my attention in preparation for this evidence, that Mr. Frank  
10:58:06 15 McDonald I think had a series of articles in the Irish Times, it may well have  
16 been that that fact was adduced in those articles. I can't identify exactly  
17 where I would have got that information.

18 Q. 24 And at this time in September 1993 the final phase of the review of the 1983  
19 Development Plan for County Dublin was drawing to a close, in other words the  
10:58:28 20 final consideration that, the lands were up for their final consideration  
21 before the councillors in this period leading up to December 1993, isn't that  
22 right?

23 A. Of the 1993 Development Plan, yes.

24 Q. 25 And this therefore at the time this meeting took place this was taking place at  
10:58:43 25 a time when it was going to be the last chance for any councillor to influence  
26 how the county was going to be shaped, isn't that right?

27 A. Well that would appear to be the case. I can't say whether that particular  
28 fact was in my mind at the time. I was more concerned I think as the overall  
29 party leader, with a general image of the party, rather than with the specific  
10:59:10 30 content of the Dublin Development Plan which was not a concern of mine. So

10:59:14 1 whether I would have been aware at the time I phoned Donal Marren that we were  
2 at the last possible point in the revision and production of a particular  
3 Development Plan, I can't say for sure.

4 Q. 26 But you would have -- but whether you were aware of how close it was to  
10:59:29 5 conclusion, leaving that aside, you would have been aware Mr. Bruton that what  
6 the council was dealing with in 1993 was primarily the making of the 1993  
7 County Development Plan for Dublin?

8 A. I think so, but I don't know for sure. I mean whether I was actually conscious  
9 of the deadlines and the processes applying to Dublin County Council in terms  
10:59:55 10 of the Development Plan, I don't know. What I do know I would have been aware  
11 of was the public concern about the way in which, and concern within the party  
12 as well I should say, with the way in which members of the Fine Gael group were  
13 going in different directions. I understand that within the party, the Dublin  
14 Regional Council had also held a meeting at which one of the councillors was  
11:00:25 15 debating with Mr. Frank Mac Donald about the right approach to development in  
16 Dublin. I have learned that had recently and I think that probably would have  
17 -- that indicates to me that there would have been concern in the party,  
18 amongst grass roots members of the party that the councillors were not acting  
19 in as coherent a fashion as one would expect them to seek to act, as members of  
11:00:51 20 a political party, taking due account of the fact that ultimately they did act  
21 in a quasi judicial capacity.

22 Q. 27 But the question I asked you Mr. Bruton was whether you would have been aware  
23 at the time you went to the meeting that the Development Plan was nearing  
24 conclusion or if you weren't aware that it was nearing conclusion that what was  
11:01:09 25 being considered at that stage by the councillors of Dublin County Council was  
26 the Development Plan and I am suggesting to you that you must have known that  
27 the primary business that was being conducted by Dublin County Council at that  
28 time had to be the Development Plan?

29 A. Sorry, I don't want to categorically state that probably that is the case -- I  
11:01:31 30 cannot remember whether the issue of the, the time limits for that particular

- 11:01:39 1 Development Plan was in my mind at that time. It probably was, but my concern  
2 was more political really.
- 3 Q. 28 Yes. If I could just show you the notes that you made in relation to that  
4 meeting that you furnished to the Tribunal Mr. Bruton at page 9066 please? I  
11:01:58 5 think this is a copy of your notes, isn't that right?
- 6 A. That's correct, yes.
- 7 Q. 29 I just want you to see -- if you look first of all it says "people adopt" then  
8 it says "something councillors decision", do you see that at the very top?
- 9 A. Yes.
- 11:02:10 10 Q. 30 And then you have done the political break down of Dublin County Council to the  
11 side, do you see that?
- 12 A. Yes, I see that.
- 13 Q. 31 Then it goes down Dublin County Councillors party image divided, I think?
- 14 A. Yes.
- 11:02:21 15 Q. 32 Then do you see beneath that "Fianna Fail apply a whip on Development Plan"  
16 under lined?
- 17 A. Yes, I wrote that.
- 18 Q. 33 Yes, well I would suggest to you that because you have written Fianna Fail  
19 apply a whip at the Development Plan at the commencement of this meeting you  
11:02:34 20 must have been aware that the matters that were being considered by the Dublin  
21 County Councillors at the time was the Development Plan?
- 22 A. Yes I suppose so yes.
- 23 Q. 34 You then go on to identify certain matters such as one divided party, is that a  
24 reference to Fianna Fail, Fine Gael?
- 11:02:49 25 A. Yes.
- 26 Q. 35 And then absolutonist's position, doesn't solve problems or don't solve  
27 problems forever. Then number 3, will issues be forgotten. 4 says leave. 5  
28 try to maximise unity and does that say brand image?
- 29 A. Yes.
- 11:03:05 30 Q. 36 So were you trying to convey the necessity of a unified position?

- 11:03:09 1 A. Yes, I think that section of my notes with the six points was possibly what I  
2 intended to say.
- 3 Q. 37 Your agenda as it were?
- 4 A. Yes, at the beginning of the meeting and I think then the points that I circled  
11:03:34 5 would have been the points that I would have used in my concluding remarks  
6 when I was drawing from either things I had said myself originally or points  
7 that had been made by members of the County Council upon which I wanted to make  
8 a remark.
- 9 Q. 38 And number 6 under the heading of your agenda, if I can call it that, refers to  
11:04:05 10 group statement, group activities, extremely negative and seriously affected,  
11 is that right?
- 12 A. Yes, that would have been the absence of a group approach would have been  
13 extremely negative and that it would seriously affect our standing as a party.  
14 Then I think communications to party to understand would have referred to  
11:04:31 15 communicating within the party organisation, that members would have or  
16 endeavour to have a group position which they could communicate, which would be  
17 capable of being communicated by them or by others, within the party  
18 organisation in Dublin so that they would know what was the Fine Gael approach  
19 in general terms.
- 11:04:52 20 Q. 39 And did you advise the party or indicate to that party meeting in Conway's that  
21 what was desired or what was wanted was that Fine Gael would present a more  
22 united front in the course of the County Council meetings, that there would be  
23 a Fine Gael position as it were?
- 24 A. Well, that they would endeavour to find a Fine Gael position, that they would  
11:05:13 25 meet previous to meeting, or previous to voting on particular issues that they  
26 would meet and try to find a common position.
- 27 Q. 40 And was it also indicated to the meeting that that common position if it could  
28 be found should be indicated to the Council at the start of each meeting?
- 29 A. I believe that would be so, yes.
- 11:05:34 30 Q. 41 If that were to be the position Mr. Bruton, it would mean that the, what was

11:05:38 1 desired at that time in September 1993 was that a decision in relation to a  
2 party position would be taken by the Fine Gael members at a Fine Gael meeting  
3 in advance of the council meeting itself?

4 A. Yes. Obviously the only feasible way of reaching a common position would be to  
11:06:00 5 do so before the voting took place.

6 Q. 42 And that that common position would then be announced or would be told to  
7 Dublin County Council at the council meeting?

8 A. Yes, yes.

9 Q. 43 That would mean that the Fine Gael members were committing themselves to a  
11:06:13 10 stated position in advance of hearing any arguments from any of their  
11 colleagues from any other party on the floor of the chamber?

12 A. It would mean that, it would mean that, yes.

13 Q. 44 And it would in effect mean --

14 A. On the other hand, I think at the end of the day one accepts that members in  
11:06:32 15 the County Council ultimately and this was the Fine Gael view and I know it's a  
16 view that was minuted in a Fine Gael front bench decision earlier that year,  
17 that at the end of the day members are acting in a quasi judicial capacity and  
18 therefore have an individual obligation to follow their own individual  
19 consciences but that does not preclude them, I think, from seeking to find a  
11:06:59 20 common decision in the same fashion where judges are working they will seek to  
21 find common positions without prejudice to the fact that they have an  
22 individual responsibility at the end of the day as well.

23 Q. 45 But effectively what you appear to, and feel free to disagree with me if you  
24 wish, what you appear to have been attempting to introduce in the meeting in  
11:07:21 25 September of 1993 was the introduction of a whip?

26 A. No, I don't think --

27 Q. 46 If you let me finish?

28 A. Excuse me, sorry.

29 Q. 47 An introduction of a whip on the Fine Gael members but a whip without sanction,  
11:07:34 30 if I can put it like that, insofar as if one didn't follow the stated or agreed

- 11:07:38 1 position no sanction would follow, would you agree with that?
- 2 A. I think what I was attempting to do, as is indicated there in the portion of
- 3 the comments by Nora Owen, that I think I referred to subsequently in my
- 4 closing remarks, that they should endeavour to get a party line even on some
- 11:08:01 5 issues and get some coherence on some issues. That did not mean that in every
- 6 case there would be an automatic whip backed up by a sanction. I would make
- 7 the point that in general while the Fine Gael party applies a whip quite
- 8 strictly in the Dail and in the Seanad, it hasn't been the practice of the
- 9 party to apply a strict whip at local authority level other than in cases where
- 11:08:28 10 the vote is taking place at the annual meeting for various offices where if the
- 11 party has decided that a particular member should be its' candidate for
- 12 Chairman everyone is obliged to vote for that candidate. So, to have
- 13 introduced a very strict whip on other business wouldn't have been usual, but I
- 14 think the -- what I was attempting to do was to get the members of the council
- 11:08:56 15 to apply the maximum moral persuasion to themselves in favour of a coherent
- 16 position.
- 17 Q. 48 And certain it would appear to be the position that insofar as Mr. Cathal
- 18 Boland is concerned, and Mr. Cathal Boland has furnished a statement to the
- 19 Tribunal, outlining his recollection of the Conway's meeting and indicating
- 11:09:18 20 that thereafter because he was not happy to vote in accordance with the Fine
- 21 Gael position, he resigned because he felt he had breached what he describes as
- 22 your order of the previous evening?
- 23 A. Yes.
- 24 Q. 49 Isn't that, you will have seen that in Mr. Boland's statement?
- 11:09:35 25 A. I have read Mr. Boland's statement. I don't think that I would characterise
- 26 anything that I said as an order, but as a strong advice, as a strong request.
- 27 Q. 50 Right. But you would accept would you not Mr. Bruton that if the leader of a
- 28 political party and particularly a significant political party like Fine Gael
- 29 goes to the trouble of organising a meeting with local councillors who are in
- 11:09:59 30 the main local politicians and not national politicians that while you may not

- 11:10:03 1 describe it as an order, your instructions or your request could be perceived  
2 certainly by your local authority members as a direction?
- 3 A. Yes, I think that's possible that members could have interpreted it in that way  
4 quite legitimately, but it was not my intention to impose a whip with automatic  
11:10:23 5 sanctions or heavy sanctions of any kind, but rather to push members to,  
6 towards attempting to meet, to attempt to achieve a coherent position. If  
7 conceivably members had refused to attend such meetings, that could have  
8 constituted a breach of discipline upon which sanctions might flow, but if  
9 members were merely attending the meetings, conscientiously attempting to reach  
11:11:05 10 a common position but then finding themselves at the end of the day not  
11 agreeing with the common position, I don't think the same sanctions would flow  
12 from that, that's the distinction I think I would have been drawing.
- 13 Q. 51 But insofar as the meeting took place Mr. Bruton, what your local authority  
14 councillors were being told by you was that the Fine Gael party wanted a  
11:11:23 15 unified position, it wanted the party to meet in advance, it wanted it to  
16 agree a unified position and to present that unified position to Dublin County  
17 Council and to do so in the context of the Development Plan?
- 18 A. Yes.
- 19 Q. 52 And you would agree and I think you have agreed that because you were the  
11:11:40 20 leader of the party and you had come to this meeting with this brief for them,  
21 that that could have been interpreted by the Fine Gael members as an  
22 instruction or a direction from you and from the party?
- 23 A. Yes. The party leader giving that sort of request to people could be so  
24 interpreted but that doesn't --
- 11:12:03 25 Q. 53 There isn't much point having a meeting, with the greatest of respect to you  
26 Mr. Bruton. If they are not going to listen to what you say and they are not  
27 going to do what you want?
- 28 A. That I wouldn't necessarily agree with. I take the view that the members of  
29 the local authority have their own electoral mandate. Each one is elected  
11:12:20 30 individually and while they ought to listen to what their party leader has to



11:12:25 1 say and ought to take that on board, in the interests both of the party to  
2 which they belong, that at the end of the day in matters of this nature people  
3 do have margin of their own individually as on the basis of their own electoral  
4 mandate.

11:12:42 5 Q. 54 But you wouldn't have any difficulty with accepting that they would have  
6 treated this meeting as a direction from you as party leader?  
7 A. I would have difficulty with the term direction, yes.

8 Q. 55 What were you doing if it wasn't giving them a direction on how they should  
9 conduct their business?  
11:12:57 10 A. I was giving them very strong, conveying to them a very strong request on  
11 behalf of the party that they should seek to act in a more coherent fashion  
12 than they had been previously acting and endeavour to get their act together,  
13 so to speak, on planning matters. I don't know how more, how much further I  
14 can go on that semantic discussion.

11:13:18 15 Q. 56 Right. Leaving semantics aside, the reality appears to be that when Mr. Cathal  
16 Boland felt he could not adopt or following the line as suggested by you he  
17 voted in a different fashion to his colleagues and then resigned from Fine  
18 Gael, isn't that right?  
19 A. So, I have subsequently learned. I am not sure whether I was aware at the time  
11:13:38 20 that Mr. Boland took that decision that that was his reason for doing so.

21 Q. 57 Certainly according to Mr. Boland that's what he did following --  
22 A. I am not disputing that.

23 Q. 58 And it would appear also that in, that Ms. Mary Muldoon when she previously  
24 gave evidence to the Tribunal on day 611 in a previous Module also described  
11:13:56 25 the meeting in the following terms at page 18 of bay 611, "I do recall one  
26 particular meeting with Mr. John Bruton who was then Fine Gael leader. It was  
27 in September of 1993 and we were all called to the up stairs room in Conway's  
28 pub. And the thrust of what Mr. Bruton was saying to us was that we were a  
29 disgrace in our voting patterns --  
11:14:21 30

- 11:14:21 1 MR CREEGAN: I have nothing on my screen.
- 2 Q. 59 There is a delay always on the transcript. Day 611, page 18 and 19. Yes I
- 3 think, I will start again She says "I do recall one particular meeting with
- 4 Mr. John Bruton who was then Fine Gael leader. It was in September of 1993 and
- 11:15:08 5 when we were all called up to the up stairs room in Conway's pub and the trust
- 6 of what Mr. Bruton was saying to us was that we were a disgrace in our voting
- 7 patterns. That we were going which way and what and he indicated that he would
- 8 like to us meet on each particular rezoning issue and make up our minds,
- 9 discuss the matter fully and then reach a consensus and vote all of us in the
- 11:15:27 10 same direction.
- 11
- 12 And at that meeting I said to Mr. Bruton, but then all of County Dublin is
- 13 going to be rezoned for housing and he said to me, how can you possibly say
- 14 that? I said well you surely know that there is a rezoning majority in this
- 11:15:40 15 party and combined with Fine Gael they are getting all the rezoning motions
- 16 through and he dismissed what I had to say at the time."
- 17
- 18 Now, Ms. Muldoon appears to suggest there, that what she took from the meeting
- 19 was that there was to be a consensus and everyone in Fine Gael was to vote in
- 11:15:58 20 the one direction?
- 21 A. That was the desirable objective, yes. I don't think I would have used the
- 22 term disgrace. I don't believe that -- I don't remember Mary Muldoon saying
- 23 what she is purported as saying here that she said to me that there was a
- 24 rezoning majority and that I then dismissed what she had to say. I have some
- 11:16:34 25 notes of the meeting which I have furnished to you and while I have no doubt
- 26 that Mary Muldoon was at the meeting I haven't any note of her making any
- 27 comment of that nature.
- 28 Q. 60 You don't appear to have recorded anything attributed to Ms. Muldoon in your
- 29 notes, is that right?
- 11:16:50 30 A. That's right.

- 11:16:50 1 Q. 61 And I think the balance of the notes record comments that were made by the  
2 other councillors in discussion with you arising from this?
- 3 A. Yes I think -- of course one can't be sure, these were notes that I was writing  
4 so to speak in the heat of the meeting, it's possible that something as strong  
11:17:08 5 as that would be said and I wouldn't have noted it, but I think I would. But I  
6 don't know.
- 7 Q. 62 What was the end result of the meeting Mr. Bruton?
- 8 A. Well I had conveyed my views to the members of the council and I did what I  
9 considered was, I discharged what I considered was my responsibility to convey  
11:17:32 10 to them the need to act more coherently.
- 11 Q. 63 And Mr. Boland in his statement says after the initial discussion it was  
12 accepted that we, and by we I think he means the Fine Gael members of Dublin  
13 County Council, should see how we could reach agreement as Deputy Bruton  
14 instructed. Do you agree what you gave was an instruction or not?
- 11:17:54 15 A. I think you could use that term. I have difficulty with these terms  
16 instruction and direction when one is talking about discussions between  
17 politicians who are each one of them elected. I think one -- it has not been  
18 the practice in Fine Gael to issue instructions or directions on ordinary  
19 business to local authorities and I don't think I would have been issuing an  
11:18:22 20 instruction or a direction, but I would have been issuing a strong request with  
21 all the authority that goes with the office I held at that time, namely party  
22 leader.
- 23 Q. 64 That was the, I was quoting from Mr. Cathal Boland's statement Mr. Bruton and I  
24 am giving you an opportunity to comment on whether or not you agree with his  
11:18:43 25 use of the word instruction, that's his use not mine?
- 26 A. Yes, I see.
- 27 Q. 65 Thank you very much Mr. Bruton if you answer any questions that anybody else  
28 might have for you.  
29
- 11:18:53 30

**WITNESS CROSS EXAMINED BY MR. CREEGAN:**

- 11:18:53 1  
2
- 3 Q. 66 Conor Creegan counsel for Mr. Boland, good morning Mr. Bruton. Now Mr. Bruton  
4 can I take you to your notes if we can have, I think it's page 9066, back?
- 11:19:14 5 A. Yes. I have them in front of me.
- 6 Q. 67 Can I take you to point number four there, what's that word?  
7 A. I don't know.
- 8 Q. 68 I suggest to you it's 'leave'?  
9 A. Oh sorry the word, I don't know what it means. I think it is 'leave'.
- 11:19:29 10 Q. 69 Okay, so I will try and help you there. I quote from Mr. Boland's statement  
11 and I will just kick into it, that he, he is referring to you, "He did not care  
12 what we zoned or did not zone, but that he wanted his councillors to block  
13 vote or agree positions reached among themselves in private session, that those  
14 who could not vote with the majority" this is the key "That those who could not  
11:19:59 15 vote with the majority should leave the group", I suggest that that's what  
16 number four means?  
17 A. Yeah, I don't think that that's the -- I don't think I would have expected  
18 people to depart from the party.
- 19 Q. 70 Well Mr. Boland remembers it like that, you have got a note that says leave?  
11:20:16 20 A. Yes. I see the word.
- 21 Q. 71 It walks like a duck and quacks like a duck Mr. Bruton?  
22 A. Well leave could have meant -- look I don't want to speculate beyond --
- 23 Q. 72 Can I put it to you that that's what you did mean?  
24 A. I don't think that that would have been consistent with the view that I held,  
11:20:37 25 which was ultimately if members were acting conscientiously in making decisions  
26 about zoning issues, they were acting in a quasi judicial capacity and that  
27 therefore it wouldn't be possible to impose that sort of sanction or  
28 requirement upon them. It possibly could have meant that they would not vote  
29 in that particular vote if they couldn't agree with the party position, but I  
11:21:04 30 can't be more helpful than that.

- 11:21:07 1 Q. 73 Can I just put it to you Mr. Bruton, at that stage other than being their party  
2 leader you were essentially a civilian if I can put it like that, they were  
3 councillors you were a civilian?  
4 A. What do you mean by the term civilian?
- 11:21:21 5 Q. 74 You had no function in Dublin County Council?  
6 A. I was the party leader.  
7 Q. 75 As far as Dublin County Council goes you were a civilian, I am just using that  
8 as a term. You had no function in that council?  
9 A. That's right, yes.
- 11:21:34 10 Q. 76 Okay. So you come do them as their party leader, okay, as an outsider, and  
11 according to Mr. Boland you give, according to yourself you give an instruction  
12 that is something of a request, bordering on a perhaps, you know, almost a  
13 topic for debate. My client insists it was an instruction, I will put it to  
14 you more strongly, my client took it as an instruction and he took your word  
11:22:02 15 and resigned because he couldn't go along with the group, okay? Can you  
16 comment on that. He resigned the following day?  
17 A. Yes, I believe that's the case, yes.
- 18 Q. 77 Does that not strike you as instructive of you giving an instruction?  
19 A. Well it certainly, as I agreed in the examination which I have just had from  
11:22:26 20 the Tribunal counsel, that it was, that my strong request was open to that  
21 interpretation, to the interpretation that it was an instruction.  
22 Q. 78 My colleague, Ms. Dillon, put it to you that you put a whip on the party. I  
23 put it to you again that what you essentially did was put a whip on the party?  
24 A. No. Basically the party would impose a whip on itself in individual local  
11:22:52 25 authorities. If Dublin County Council members wanted to impose a whip on  
26 themselves as members of Dublin County Council on a particular decision it  
27 would be for them to do that, it would not be for, as you elegantly describe  
28 it, a civilian to impose the whip on particular decisions.  
29 Q. 79 But what were you doing then?  
11:23:13 30 A. I was, as I have explained already, endeavouring to get them to meet in advance

11:23:21 1 of decisions and reach decisions collectively before voting. I also had the  
2 opportunity of looking at some of the testimony given by Mary Muldoon here  
3 where she, I think indicated that there were no group meetings where they  
4 discussed these matters in advance and I would think that my concern would have  
11:23:43 5 been that there should be such group meetings so they could reach common  
6 positions.

7 Q. 80 If I can put it to you, you can't partially interfere with a quasi judicial  
8 function. You either interfere with it or you don't interfere with it. I put  
9 it to you again, no matter what your interpretation of it is you put a whip on  
11:24:02 10 the party, not voting or voting is a whip, an interference with the quasi  
11 judicial process that councillors are supposed to abide by. You put a  
12 sanction, it's written down in black and white leave. My client puts it in his  
13 narrative statement that you told them if they couldn't go along with the  
14 majority they had to leave?

11:24:22 15 A. I don't believe I said that. I believe I did convey to them my strong wish  
16 that they should act collectively. I think that there may have -- obviously  
17 that would require them to be present at meetings where they would endeavour to  
18 reach a consensus position. If people just refused to vote as such meetings  
19 that could well have been a matter that could cause concern to the party of a  
11:24:46 20 disciplinary nature, but I don't think it would have been consistent with the  
21 view that we had as a party that they were acting quasi judicially to require  
22 them to vote in a particular way if that ran completely contrary to their  
23 conscious, after they had listened to the views of others as we would have  
24 wished them to do within the party group.

11:25:12 25 Q. 81 My -- my instructions are that that's not the way you put it to the meeting.  
26 As Mr. Boland puts it in his statement and your notes record, you were very,  
27 you went along a very strict line of argument. And I put it to you again, even  
28 the suggestion as I say, you can't partially interfere with a quasi judicial  
29 process. Even the suggestion that they whip themselves is an interference with  
11:25:40 30 the quasi judicial process?

- 11:25:41 1 A. No, I don't accept that at all. As I said already, I think it is possible for  
2 judges who are meeting in a court whether there is more than one judge, to  
3 consult with one another and maybe to have procedures which require them to  
4 consult with one another and listen to one another before coming to a decision  
11:26:02 5 and then having done so, they would have discharged their collective function  
6 so to speak and after that it would be for the individual to make a decision  
7 different from the majority view if that was their conscientious view, that's  
8 the way my understanding of the way in which for example the Supreme Court of  
9 the United States works.
- 11:26:26 10 Q. 82 I would suggest to you there aren't 19 judges on the Supreme Court of the  
11 United States?
- 12 A. There are nine, I think.
- 13 Q. 83 Not 19. To get 19 people to quietly argue together and reach a consensus  
14 without some form of, I'll use the word pressure?
- 11:26:44 15 A. I think the pressure that I would have been wishing to apply would be the  
16 pressure to get them to actually meet because it would appear from, it would  
17 appear they didn't meet collectively to discuss these matters.
- 18 Q. 84 You wished for some kind of pressure?
- 19 A. Yes, pressure to attempt to reach a coherent view.
- 11:27:02 20 Q. 85 Okay Mr. Bruton. Can I move on now, we have established that you agree you  
21 wished for some kind of pressure. Can I move on to who initiated this meeting,  
22 there is some inconsistency I think, I can be corrected on this, in what you  
23 say, initially you said you were approached by Councillor Marren, is that  
24 correct?
- 11:27:27 25 A. I think the sequence of events ...
- 26 Q. 86 If you could just say to me --  
27  
28 CHAIRMAN: Wait now, Mr. Bruton should be allowed finish or at least answer  
29 the question.
- 11:27:43 30 Q. 87 I apologise, Chairman.

- 11:27:44 1 A. Yes, I think I approached Councillor Donal Marren.
- 2 Q. 88 That's not what you said initially. You said Marren, Mr. Marren approached  
3 you, but subsequent to that you said I phoned Councillor Marren, can we take it  
4 it was on your initiative this meeting?
- 11:28:02 5 A. I think so, yes.
- 6 Q. 89 Thank you. Now if I can move on just a little bit more. Now Mr. Boland  
7 resigned the following day from the Fine Gael group. He says because he  
8 perceived that he could not go along with it and you had asked anybody that  
9 could not go along with the group to leave, do you accept that, you were aware  
11:28:32 10 that he had resigned, one of your councillors had resigned?
- 11 A. I not sure that I was aware of it immediately. And as far as I recall I was  
12 puzzled as to why he had resigned.
- 13 Q. 90 Did you ask him?
- 14 A. No. I hadn't at that time much contact with Councillor Boland.
- 11:28:47 15 Q. 91 But you had just taken the trouble to go to a special meeting of the Fine Gael  
16 councillors the night before, to go through all this with them and the next day  
17 one of them resigns, would that not strike you as worthy of interrogation?
- 18 A. Well maybe it was, but I didn't pursue it with him.
- 19 Q. 92 Can we just discuss the meeting itself, this was a one off was it, this  
11:29:11 20 meeting?
- 21 A. Yes.
- 22 Q. 93 You had never done this before with Dublin County Council?
- 23 A. No.
- 24 Q. 94 Or any of the other local authorities around the Dublin area?
- 11:29:19 25 A. Not to discuss a matter of this nature. I would have had meetings with local  
26 authority, Fine Gael groups and local authorities throughout the country, as  
27 part of my tour of the country as party leader, but not on a substantive matter  
28 of this nature.
- 29 Q. 95 So it's September of 1993, the Development Plan is coming to a head, the Dail  
11:29:42 30 is probably in recess at that stage, it's usually in recess, what possessed you



11:29:49 1 other than the, what you say is the tittle tattle of newspapers, was it solely  
2 that, that possessed you to initiate this meeting in September?  
3 A. No, there had been, as I think, the Fine Gael statement to the Tribunal which  
4 was supplied on 10th May 2001 indicates, there had been contacts between the  
11:30:13 5 spokesperson on the environment of the party and members of the group  
6 attempting to get the group to vote in a more coherent fashion to work in a  
7 more coherent fashion, and also there were as you have said some media reports  
8 and there was as I have already said myself in evidence here, some concerns  
9 within the grass-roots, amongst the grass root members of the party about a  
11:30:46 10 lack of coherence in the way these issues were being handled. I also would  
11 imagine that there were many residents groups meeting and they were asking what  
12 the Fine Gael party view was on these matters and it was very difficult to  
13 answer that question in the absence of the Fine Gael members on the County  
14 Council seeking to form a party view and I don't think they did make the  
11:31:16 15 necessary effort to form a party view.  
16 Q. 96 Okay. Did you discuss this matter with anybody else prior to, I mean formally  
17 discuss the matter with anyone else prior to the party meeting or it was quick  
18 off the bat?  
19 A. I can't remember.  
11:31:30 20 Q. 97 Were you interested in any particular proposals in Dublin County counselling?  
21 A. No.  
22 Q. 98 In any motions on the 21 or 22nd of September '93?  
23 A. No.  
24 Q. 99 Nothing brought to your attention?  
11:31:41 25 A. No. I gather that your client says that I sat through the rest of the meeting  
26 where motions were discussed, I don't believe I did.  
27 Q. 100 You are saying you had no particular interest in any particular motions?  
28 A. I had no interest in any motions, no.  
29 Q. 101 Did you ever hold any such meetings with any other Fine Gael local authority  
11:32:00 30 groups around the country?

11:32:02 1 A. Not of the nature of this meeting, in the sense that I was seeking to persuade  
2 them to adopt a more coherent approach. I would have met Fine Gael groups  
3 councillors throughout the country to discuss general issues as I toured the  
4 country.

11:32:20 5 Q. 102 Did you make any representations or anything to any of these councils?

6 A. No, I don't think so.

7 Q. 103 Not even your own Meath constituency?

8 A. No. I think they felt I didn't meet them often enough.

9 Q. 104 I am going to move on. Mr. Bruton, I want to bring you to the Nugent inquiry  
11:32:45 10 Mr. Bruton, this was your party's inquiry --

11  
12 MR. BIRMINGHAM: Chairman I wonder could I intervene at this stage -- George  
13 Birmingham, counsel for Fine Gael, it isn't out of any desire to close down any  
14 line of inquiry but it is on the basis that this Tribunal obviously is  
11:33:08 15 concerned that public time and public money shouldn't be wasted. It seems to  
16 me, as I understand it, that the so-called Nugent inquiry was an internal Fine  
17 Gael inquiry established by Mr. Bruton in his role as leader, and any grievance  
18 that Mr. Boland has, real or imagined with the procedures followed by the  
19 Nugent inquiry and the decision to establish it, would seem to be more properly  
11:33:31 20 a matter that should be addressed through Fine Gael channels and not before  
21 this Tribunal.

22  
23 Now I do appreciate that the Tribunal has a certain interest in the Nugent  
24 inquiry and the comparable inquiries set up by other parties insofar as when  
11:33:50 25 individual people who appeared before it gave an account of their stewardship  
26 obviously it's of interest to this Tribunal what that account was and whether  
27 it's consistent with what is now emerging or otherwise, but subject to that  
28 limited exception, I really don't see how the decision to establish a Tribunal  
29 and how that Tribunal interacted with Mr. Boland is a matter that is proper for  
11:34:14 30 this Tribunal.

11:34:15 1  
2 CHAIRMAN: Who --  
3  
4 MR. CREEGAN: Could I answer that Chairman? The first thing is that the Nugent  
11:34:24 5 inquiry is in the brief. The second --  
6  
7 CHAIRMAN: Is what, sorry?  
8  
9 MR. CREEGAN: In the brief, it's findings are in the brief. The second thing  
11:34:32 10 is the central issue between Mr. Boland and the Nugent inquiry was an amount of  
11 money, four thousand pounds, he received from Frank Dunlop and this has been  
12 put to the Tribunal in this Module, and Frank Dunlop has said he can't  
13 recollect it, but the issue between Mr. Boland and the Nugent inquiry that  
14 Mr. Boland would not reveal this issue to the Nugent inquiry at the time  
11:34:57 15 because he felt he was under a confidentiality agreement with this Tribunal.  
16 Subsequent to that the Nugent inquiry made a very unfavourable finding and I  
17 think given the circumstances, and given that Mr. Bruton was the initiator of  
18 this Nugent inquiry, I think this is relevant. I think we should follow it.  
19  
20 CHAIRMAN: But if for the moment what you say is correct, to what extent would  
21 you propose probing that with Mr. Bruton?  
22  
23 MR. CREEGAN: I should like some latitude, the extent of the contradictions in  
24 the Nugent inquiry and Mr. Dunlop's evidence vis-a-vis my client.  
11:35:42 25  
26 CHAIRMAN: No, but if what you say is correct and that Mr. Boland didn't  
27 reveal the payment of four thousand because of his understanding that it would  
28 breach the confidentiality of the Tribunal, I mean to what extent can that be  
29 probed with Mr. Bruton?  
11:36:03 30

11:36:03 1 MR. CREEGAN: Mr. Bruton was the initiator of this Tribunal, the Nugent  
2 inquiry. I might point out.

3  
4 CHAIRMAN: But wait now, he didn't, as far as I recall, as far as I know  
11:36:14 5 Mr. Bruton didn't conduct the inquiry. He set it up.

6  
7 MR. CREEGAN: He set it up and it reported to him and he made comment on my  
8 client's character I am instructed afterwards based on the inquiry,  
9 particularly with reference to my client's passability for election as a Fine  
11:36:35 10 Gael candidate.

11  
12 CHAIRMAN: Based on the results of the inquiry.

13  
14 MR. CREEGAN: I think it's germane, Chairman. I also think it's germane in  
11:36:44 15 that Mr. Boland's evidence vis-a-vis the four thousand and Mr. Dunlop, went  
16 some way towards helping the inquiry --

17  
18 CHAIRMAN: Well, there is no question --

19  
11:36:53 20 MR. CREEGAN: Measure Mr. Dunlop's recollection.

21  
22 CHAIRMAN: There is no question that Mr. Boland is perfectly entitled to  
23 explain his experience with the inquiry and why he said or didn't say what he  
24 said or didn't say at the time, there is -- but I mean we are, at this stage we  
11:37:16 25 are, our only concern is to what extent it is reasonable or fair that

26 Mr. Bruton should be probed as to how that inquiry was conducted given that he  
27 wasn't personally involved in it's conduct.

28  
29 MR. CREEGAN: He was shadow director, perhaps to use the company law analogy.  
11:37:40 30 Mr. Bruton would have been, to use a company law analogy, a shadow director, a

11:37:46 1 moving hand so to speak.

2

3 CHAIRMAN: Yes, but there is no issue as to the setting up of the inquiry in

4 the sense that we know it was set up and we know it took place and we have a

11:37:56 5 record of what individual witnesses said to the inquiry. But as I understand

6 you're, you are seeking leave now to probe Mr. Bruton as to the manner in which

7 the inquiry was conducted.

8

9 MR. CREEGAN: And it's findings. And perhaps why Mr. Bruton himself wasn't,

11:38:16 10 given his involvement with Dublin County Council as he has admitted here, in

11 '93 and payments from Monarch over to the party and him personally, though it

12 went to the party account, I suggest why Mr. Bruton himself wasn't the subject

13 of inquiry.

14

11:38:32 15 CHAIRMAN: Well that's a completely different issue.

16

17 MR. CREEGAN: It's part of the whole, Chairman.

18

19 CHAIRMAN: Well the inquiry as I understand it, was inquiry into, by the party

11:38:41 20 and there was a similar inquiry conducted by the Fianna Fail party, into local

21 authority elected councillors.

22

23 MS. DILLON: Confined to Dublin.

24

11:38:51 25 MR. CREEGAN: While I understand that wasn't the initial Terms of Reference, I

26 understand that it was narrowed somewhat.

27

28 CHAIRMAN: If one of the things you want to ask Mr. Bruton is why he didn't

29 submit to the inquiry himself, he wasn't a councillor.

11:39:07 30

11:39:07 1 MR. CREEGAN: That would be one of them. No, but the initial Terms of  
2 Reference I understand were wider than that. But if you can just bear with me  
3 I have it here. If I can look at Terms of Reference there, I don't know if you  
4 have this before you Chairman? 2.1, do you have it Chairman? Can I read it  
11:39:42 5 for you?  
6  
7 CHAIRMAN: Is it in the brief?  
8  
9 MS. DILLON: Give a brief page, we can put it up.  
11:39:47 10  
11 MR. CREEGAN: I have it in hard copy. I will just read it out to you Chairman.  
12 "To interview" -- Terms of Reference subparagraph 1 "To interview each public  
13 representative in Dublin city and county, who is or has been a member of Fine  
14 Gael party at any time during the period 20 June '85 to date". Okay? "For the  
11:40:10 15 purposes of enquiring whether they have been offered or have been recipient of  
16 any payment, and the circumstances and motives relative to any such payment".  
17 Now that's a much wider brief than the initial.  
18  
19 CHAIRMAN: But it's confined to elected members in the Dublin area.  
11:40:29 20  
21 MR. CREEGAN: Dublin city and county, it would do.  
22  
23 CHAIRMAN: But I thought you were going to give me, to indicate where, some  
24 basis for your belief that Mr. Bruton should himself have been --  
11:40:41 25  
26 MR. CREEGAN: I know Mr. Bruton's constituency is Meath, but his active, for  
27 want of a better word his activity took place in Dublin. I wouldn't want to be  
28 semantic in that he was elected only to Meath, he was the leader of the  
29 opposition at the time. He admits he went down to Dublin County Council and  
11:41:00 30 essentially told them how he would like them to --

11:41:03 1  
2 CHAIRMAN: Are you suggesting that the terms of reference which you have  
3 opened should have included Mr. Bruton?  
4

11:41:13 5 MR. CREEGAN: It would be an argument that Mr. Bruton himself should have been  
6 involved. Initially as I understand 19 of April was the date of the original  
7 Terms of Reference and they were amended on the 2nd of May.  
8

9 CHAIRMAN: But how can that be a matter for the Tribunal?  
10

11:41:28 10  
11 MR. CREEGAN: I think it goes to Mr. Bruton's motives. Also the reference back  
12 to the Monarch payments and to his involvement with Dublin County Council in  
13 September of '93. I'm in the Chairman's hands.  
14

11:41:45 15 CHAIRMAN: All right.  
16

17 MS. DILLON: If I could just, just in relation to the submission that my  
18 friend has made, that this Tribunal should examine this witness in relation to  
19 the establishment of what has become known as the Nugent Inquiry.  
20

11:42:00 20  
21 This was a private internal political party inquiry and the Terms of Reference  
22 were set by the party itself. It was of course open to Mr. Boland at the time  
23 that he attended, to make a request that Mr. Bruton should submit himself, I  
24 understand that was not done. However, Mr. Creegan has opened the Terms of  
11:42:18 25 Reference and paragraph 2 of the Terms of Reference clearly exclude Mr. Bruton  
26 from being a person who would have been amenable in any event, to the subject  
27 direction of the inquiry as it was constituted, because Mr. Bruton is not a  
28 qualified person within terms of paragraph 2 subparagraph 1, because he was not  
29 then or any time a member of Dublin City or County Council as a councillor.  
11:42:43 30

11:42:43 1 Therefore my friend's submission that this Tribunal should inquire of  
2 Mr. Bruton because he ought to have been amenable to the Terms of Reference of  
3 the Nugent Inquiry falls, because Mr. Bruton could not as it was then  
4 constituted, ever have been made amenable to the Nugent Inquiry.

11:43:01 5  
6 Therefore I say based on my friend's argument that that line of enquiry should  
7 not be pursued with Mr. Bruton. It's not for this Tribunal to referee a  
8 dispute, perceived or otherwise, between Mr. Boland and the Fine Gael party.  
9

11:43:14 10 CHAIRMAN: All right. Well we've reach a stage anyway where we'll take a  
11 break. We are going to take a break for about 15 minutes and we will come back  
12 and rule on this particular line of questioning.  
13

14 MR. CREEGAN: Thank you Chairman.

11:43:43 15

16 **THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS FOLLOWS:**

17

18 CHAIRMAN: Where witnesses have previously made statements or provided  
19 information to the private internal inquiries conducted by Fine Gael and Fianna  
12:02:44 20 Fail, such statements or information have been put or has been put to the  
21 witnesses for their comments in the course of their evidence to the Tribunal,  
22 in some instances witnesses have acknowledged that incorrect information was  
23 provided by them to their party inquiry and some have provided an explanation  
24 for such incorrect information being given.

12:03:12 25

26 In other instances witnesses have taken issue with the accuracy of information  
27 furnished to the inquiry or have challenged or criticised the conduct of the  
28 inquiry in question.  
29

12:03:23 30 Other than noting the response of the witnesses in question the Tribunal has



12:03:28 1 not purported to investigate in any detail the manner in which either inquiry  
2 was conducted.

3  
4 Therefore, the Tribunal will not permit a line of questioning of a witness  
12:03:37 5 which is likely to lead to what would in effect be a sub Module, charged with  
6 investigating the establishment and conduct of these private internal  
7 inquiries.

8  
9 The Tribunal will continue to permit witnesses to acknowledge or criticise  
12:03:55 10 these private internal inquiries or to qualify or explain the information  
11 recorded therein and attributed to them. Mr. Boland will be entitled, when  
12 giving evidence in due course, to explain or qualify the information or lack of  
13 information furnished by him to the Fine Gael inquiry.

14  
12:04:13 15 MR. CREEGAN: Thank you Chairman. If I could just finish up then with  
16 Mr. Bruton? I won't be long.

17  
18 CHAIRMAN: All right.

19  
12:04:23 20 MR. CREEGAN: Mr. Bruton, if I could just return you to Conway's? Your notes,  
21 I have to put it to you that if we start at the top of your notes, page 9066,  
22 you have FF apply a whip on Development Plan. Okay? Then number four you have  
23 'leave', okay? Number five 'maximising unity', do you see all that?

24 A. Yes.

12:04:57 25 Q. 105 All in your own handwriting, all made contemporaneously, and if we marry that  
26 to Mr. Boland's evidence in his statement, I have to suggest to you that  
27 essentially your desire was to put a whip on the Fine Gael councillors, that  
28 they all vote en bloc in the same way, that such a whip would interfere with  
29 their statutory duties, that as Ms. Muldoon seems to have been afraid of, that  
12:05:33 30 you might, given the predisposition of the Fine Gael group, lead to rampant

12:05:40 1 rezoning and other matters, and that essentially if you look at number four on  
2 that list of notes you made, that you wanted anybody who disagreed with this  
3 notion to get out. I put that to you, all of that?

4 A. I don't accept the statements that are being put to me as questions.

12:06:06 5  
6 I have already indicated in the response to questions from the Tribunal's  
7 counsel that while I believe that the beginning portion of the notes there that  
8 I wrote may have been used by me to remind me of certain points I needed to  
9 make, that the points that were circled were the points that I used in my  
10 concluding remarks, and I think obviously in my concluding remarks, which would  
11 be the conclusions I had reached, having listened to the members of the  
12 council, would be the relevant ones which councillors would have left the  
13 meeting with in their minds.  
14

12:07:00 15 And as you can see from the note there, one of the points I circled is a point  
16 made by Nora Owen where she said 'can we get', or at least my notes indicated  
17 she said 'can we get a party line even on some issues, some coherence on some  
18 issues'. I don't think that I was seeking to get absolute coherence on  
19 everything, nor was I seeking to require that a whip be applied in every  
12:07:32 20 instance or in any instance, but rather that there should be an attempt to  
21 reach a common position, a sincere attempt to reach a common position.  
22

23 I would like to similarly draw your attention on the next page of the notes to  
24 another circled point I made which is under the heading of remarks made by Alan  
12:07:57 25 Shatter where I put in the words 'respect position of local representatives'  
26 and further this is the only power we have. Those are points which indicate  
27 the, a view that councillors would have a power of their own, independently of  
28 anything the party might impose upon them. I circled those points as points to  
29 underline I believe, in my response.

12:08:32 30

12:08:32 1 I am quite convinced that the conclusion that I conveyed to the councillors at  
2 the meeting was, as I have been indicating in my evidence here from the  
3 beginning of these proceedings, that I was seeking to have them attempt  
4 conscientiously to reach a collective position, to meet sufficiently frequently  
12:08:58 5 and in a timely to ensure that they had the opportunity to do that. But I did  
6 not seek the imposes of a whip on matters which, as I have indicated already,  
7 ultimately are quasi judicial. Ultimately in respect of which they are acting,  
8 were acting in our view, quasi judicially.

9 Q. 106 I put it to you again Mr. Bruton, or put it one more time, I will quote  
12:09:24 10 Mr. Boland, that those who do not vote with the majority should leave the group  
11 and in your own hand number four, 'leave'. I put to you that that's what that  
12 means?

13 A. I know and that is not the impression that I conveyed to the councillors at the  
14 meeting, I have indicated to you by going through my notes which you are  
12:09:44 15 relying on, indicating other material which clearly points in the direction,  
16 that supports what I am saying and does not support the contention, the  
17 inaccurate contention that you are making or putting to me.

18 Q. 107 Thank you very much Mr. Bruton.

19  
12:09:58 20 MR. BIRMINGHAM: Just very briefly Chairman.

21  
22 **WITNESS QUESTIONED BY MR. BIRMINGHAM.**

23 Q. 108 Mr. Bruton, you were discussing with Ms. Dillon for the Tribunal whether it was  
24 appropriate to categorise what you had to say in Conway's as an order or an  
12:10:14 25 instruction or whether it was appropriate to categorise it as advice or strong  
26 advice and I think you commented at one stage that the distinction between you  
27 might turn to one of semantics, perhaps then identifying the true nature of  
28 what you had to say might be useful to look at what the outcome of the meeting  
29 was.

12:10:36 30

12:10:36 1 If this was in fact an order from the party leader, would one expect an order  
2 that could be given to be followed?

3 A. I think if I had given an order to the councillors I would have taken steps to  
4 invigilate the implementation of the order subsequently and would have  
12:10:57 5 initiated disciplinary proceedings against those who didn't comply, but I  
6 didn't issue an order, therefore there were no disciplinary procedures  
7 initiated after the Conway's meeting. My understanding is that after the  
8 Conway's meeting the then members of the Fine Gael group on Dublin County  
9 Council did not act coherently, they didn't pursue matters in a way that I had  
12:11:24 10 requested them to do and unfortunately I wasn't successful in my endeavours to  
11 get them to act coherently. I have to say historically I wasn't alone in this  
12 insofar as one of my predecessors, Dr. Garrett Fitzgerald, had also attempted  
13 to get them to vote in a particular way and he wasn't successful either, he  
14 didn't initiate any disciplinary proceedings after his meeting with them failed  
12:11:52 15 to achieve it's objective and I didn't initiate any disciplinary proceedings  
16 after my request, not an order, my request to them, did not achieve it's  
17 objective.

18 Q. 109 Thank you.

19

12:12:08 20 JUDGE KEYS: Just one question, could I have 9066 please? Mr. Bruton, if you  
21 just look at A, Fianna Fail apply a whip on Development Plan. Is that a  
22 heading or is that a statement of fact which you have on your notes emanating  
23 from information you received somewhere else?

24 A. I think the two points there, but I can't help the Tribunal as to why I put A  
12:12:41 25 in front of it because there is no B anywhere, but I think the two points there  
26 is party image that divided, that was a concern that I had that Fine Gael had a  
27 divided party image in Dublin because the councillors weren't acting coherently  
28 and then in contrast to that I drew attention to the fact that Fianna Fail were  
29 applying a whip.

12:13:08 30

12:13:08 1 JUDGE KEYS: That's what I mean. Just reading the note it seems to be a  
2 statement of fact, which you believed to be true, that Fianna Fail were apply  
3 ago whip on matters dealing with the Development Plan?

4 A. I think I did believe it to be true. I think it was true.

12:13:23 5  
6 JUDGE KEYS: Thank you very much?

7 A. That's a matter the Tribunal has better means of enquiring into it than I do.

8  
9 CHAIRMAN: All right, thank you very much.

12:13:34 10  
11 MS. DILLON: Thank you Mr. Bruton. Mr. Cathal Boland please.

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12:13:42 1

2 **CATHAL BOLAND, HAVING BEEN SWORN, WAS QUESTIONED.**

3 **AS FOLLOWS BY MS. DILLON:**

4

12:14:06 5

6

7

CHAIRMAN: Good afternoon Mr. Boland.

8

Q. 110 Good afternoon Mr. Boland. The issues I want to deal with you today are the

9

following, the first matter I want to deal with is the monies stated by you to

12:14:18 10

have been paid to you by Mr. Dunlop in November 1992 then your interaction with

11

Monarch, your contribution to the planning in relation to the Monarch lands and

12

finally the meeting in Conways public house.

13

14

If I can ask you first of all, in 1992 you were a councillor, you had initially

12:14:39 15

been co-opted on to Dublin County Council in 1984 and then you had been

16

returned in the election in 1986, isn't that right?

17

A. I was co-opted in March of 1983 and I was returned in 1985.

18

Q. 111 In 1985. And in 1992 you knew and had known for some considerable period of

19

time Mr. Frank Dunlop, isn't that right?

12:14:59 20

A. I would have known him from the start of the 80s.

21

Q. 112 Right. And you became aware I presume in the course of your currency as a

22

member of Dublin County Council that Mr. Dunlop had become a lobbyist or become

23

involved in seeking support for various clients around Dublin County Council?

24

A. I was aware of that.

12:15:16 25

Q. 113 Right. Did Mr. Dunlop, in the general now as opposed to the specific, ever

26

approach you seeking your support for any developments with which he was

27

involved?

28

A. The relationship I had with Frank Dunlop was one where he was a feature in the

29

lobby. He had been the Press Secretary to my now late brother when he was a

12:15:37 30

Minister. Frank through that connection knew the members of my family and he

12:15:46 1 would ask me how my mother was, how my sister was, so on. He might have said  
2 to me 'see what you can do about that one' or whatever, but he never discussed  
3 the detail of any proposition, and in effect the comment that he may have made  
4 was simply a throw away line rather than a -- it couldn't be treated as in any  
12:16:11 5 fashion a serious attempt to lobby for something.

6 Q. 114 So would it be fair to say that he would have indicated to you in a very genial  
7 or superficial way that he had an interest in certain developments to seek your  
8 support but didn't engage on any meaningful level with lobbying you in  
9 connection with the developments?

12:16:31 10 A. I think that would be correct.

11 Q. 115 Now in November 1992 did Mr. Dunlop make a political donation or payment to  
12 you?

13 A. In November 1992 did he.

14 Q. 116 Would you outline to the Tribunal the circumstances in which Mr. Dunlop came to  
15 make that payment to you?

16 A. My recollection is that the Dail, the government was defeated on Wednesday, I  
17 think it was the 5th November, there was a council meeting on Friday following  
18 that, which I think then would have been the 7th. On leaving the chamber I met  
19 Frank Dunlop who stopped me and asked me was it my intention to be a candidate  
12:17:12 20 or not, at that stage I told him it wasn't my intention, he said if you were  
21 going to be a candidate I would organise some funds for you. I said it doesn't  
22 arise because I have no intention of being a candidate and I departed. In fact  
23 I departed to catch up with the then deputy leader of the Fine Gael party to  
24 advise her that it was my intention not to be a candidate at the convention  
12:17:33 25 which was to be held the following Sunday. As events happened I ended up being  
26 a candidate, and I was contacted at some point in the early part as I recall  
27 it, of the following week by Frank Dunlop asking to meet me, that he wanted to  
28 make a contribution to my election fund. My recollection is that it was in the  
29 early part of the afternoon, my recollection is that it was after lunch, in the  
12:18:08 30 early part of the afternoon, that I arranged to meet him, in the offices in

12:18:16 1 Dublin County Council.  
2  
3 I was in the Fine Gael room doing some work, Frank Dunlop arrived in. He made  
4 small talk with me about the election and the likely out turn or whatever, he  
12:18:32 5 handed me a sealed envelope, told me he was making a contribution to my  
6 election fund on behalf of a group of people. I was never a hundred per cent  
7 sure whether he have said to me it was four or five people. I asked him who  
8 they were, he told me that they didn't need to be acknowledged, that they  
9 didn't wish me to know who they were, and that he was not one of the people who  
12:18:59 10 was a contributor to the contribution.  
11  
12 He wished me well, told me he was in a hurry and departed.  
13 Q. 117 Was there anybody else present Mr. Boland while this was going on?  
14 A. No.  
12:19:15 15 Q. 118 And Mr. Dunlop, when you asked him from whom the contribution was being made as  
16 it were, at that stage did you believe, before he told you it was from a number  
17 of subscribers, did you think it was from Mr. Dunlop?  
18 A. Well, on the basis of what he had already told me at the Friday meeting I just  
19 assumed that it was going to be a straight contribution from Frank Dunlop  
12:19:39 20 toward my election fund.  
21 Q. 119 And obviously you would have been expecting a cheque?  
22 A. I hadn't given it any consideration Ms. Dillon, one way or the other.  
23 Q. 120 What you got, according to your evidence, was four thousand pounds in cash?  
24 A. That's correct.  
12:19:54 25 Q. 121 So when Mr. Dunlop gave you the envelope, even though you didn't open it there  
26 and then you would have been immediately aware that it wasn't a cheque?  
27 A. Absolutely.  
28 Q. 122 And you would have been aware that it was probably cash and probably a sizable  
29 donation in cash?  
12:20:07 30 A. Well, I was aware that it would, a reasonably sizable contribution obviously



- 12:20:16 1 because of the size of the envelope.
- 2 Q. 123 So did you stop the interview or the meeting at that stage and say anything to
- 3 Mr. Dunlop, look you are giving me cash here, who is it from, what's exactly
- 4 behind this, do you normally give political donations in cash, did you have any
- 12:20:36 5 conversation of that sort with Mr. Dunlop?
- 6 A. The only conversation I had with him was to ask who the subscribers were.
- 7 Q. 124 So what Mr. Dunlop is telling you at this meeting is that he is making a
- 8 donation. It is not on his own behalf, on behalf of a number of anonymous
- 9 subscribers and it is in cash?
- 12:20:52 10 A. That's correct.
- 11 Q. 125 Though Mr. Dunlop didn't mention the word cash to you, is that correct
- 12 Mr. Boland but you were aware by virtue of receiving the envelope that it
- 13 contained cash?
- 14 A. I don't remember Frank Dunlop mentioning the word cash to me. It was quite
- 12:21:07 15 obvious that it couldn't possibly have been a cheque.
- 16 Q. 126 How long after Mr. Dunlop gave you the envelope did you open the envelope
- 17 Mr. Boland?
- 18 A. A couple of hours later.
- 19 Q. 127 Were you surprised at the size of the donation?
- 12:21:17 20 A. I was quite surprised.
- 21 Q. 128 In your experience, bearing in mind you had at that stage contested one local
- 22 election, is that right?
- 23 A. No, I believe that I would have --
- 24 Q. 129 By 1992?
- 12:21:29 25 A. I contested the local elections of 1985, I was a Senate candidate in 1987,
- 26 local elections in 1999.
- 27 Q. 130 But up to this point in time in 1992?
- 28 A. '91, sorry my apologies. '91 is what I meant to say not 1999. So '84, Senate
- 29 '87, '91.
- 12:21:53 30 Q. 131 And in that period, during any of those elections had you been given a payment

- 12:21:58 1 of or a donation of four thousand pounds in cash?
- 2 A. No, I wasn't.
- 3 Q. 132 Was that the single biggest political donation you had received?
- 4 A. Up to that point, yes.
- 12:22:06 5 Q. 133 Was it the, did you receive in the normal course many political donations in
- 6 cash?
- 7 A. If I was to try and summarise it, I have never considered the question, but my
- 8 view would be something in the region of about 20 to 25 per cent. I have
- 9 provided the Tribunal with details so the calculation can be made to establish
- 12:22:35 10 whether my guess is correct.
- 11 Q. 134 But assuming for a moment you are correct when you say 20 to 25?
- 12 A. No 25 per cent.
- 13 Q. 135 What was the greatest size of those in cash?
- 14 A. The largest contribution in terms of -- if one was to take the Frank Dunlop
- 12:23:03 15 contribution as being a single contribution it is the largest contribution, but
- 16 it was made on behalf of four or five people so you know is it a thousand or is
- 17 it 800? I know that I received a couple of contributions of 2,000 and I have
- 18 received quite a few one thousand.
- 19 Q. 136 In cash, the question was in cash?
- 12:23:32 20 A. Sorry.
- 21 Q. 137 I am trying to establish from you Mr. Boland is -- Mr. Dunlop gives you four
- 22 thousand pounds in cash. After, apart from that four thousand pounds in cash,
- 23 what is the next largest size contribution in cash you ever received, was it a
- 24 hundred pounds, was it a thousand pounds, was it 15 hundred?
- 12:23:50 25 A. 2,000 pounds.
- 26 Q. 138 2,000 pounds in cash?
- 27 A. That's correct.
- 28 Q. 139 From another source?
- 29 A. That's right.
- 12:23:56 30 Q. 140 And after that, what election was that, was that prior to 1992?

12:24:02 1 A. No, it would have been in the late 90s.

2 Q. 141 You see what I am trying to -- I am not making myself clear Mr. Boland if we  
3 just start again. In November 1992 you get four thousand pounds in cash from  
4 Mr. Dunlop, up to November 1992 and forget after November 1992, what I am  
12:24:20 5 trying to establish whether A this was the biggest political donation you had  
6 got, and B, was it the biggest political donation in cash you had got and C,  
7 what was the next biggest political donation in cash you had got up to November  
8 1992. So first of all was it the biggest political donation?

9 A. It was the biggest, the largest cash donation I had received and I think any  
10 sum, any other sum that I had received up to 1992 was less than 500 and I  
11 honestly, at this point, I can't say to you whether the 500 was a cheque or 500  
12 was cash.

13 Q. 142 So this would have been a unique event in your political life?

14 A. Absolutely.

12:25:12 15 Q. 143 Did you go back to Mr. Dunlop when you opened the envelope and realised you got  
16 four thousand pounds in cash and discuss the matter with him?

17 A. No.

18 Q. 144 Did you discuss it with any of your immediate circle of political advisers or  
19 friends at that time who were involved in the election with you that you had  
12:25:26 20 received this amount of money from Mr. Dunlop at the time?

21 A. Yes.

22 Q. 145 Who did you discuss it with?

23 A. Lou McGovern and Richard Fulham.

24 Q. 146 Were these involved in your re-election campaign as it were at that time?

12:25:42 25 A. Yes.

26 Q. 147 And did you have any concern at that time about taking that amount of money  
27 from Mr. Dunlop in view of the fact that Mr. Dunlop was a lobbyist and you were  
28 a councillor?

29 A. No, I hadn't. As I said to you I had known Frank Dunlop since the early 80s.  
12:26:03 30 I had always found him to be an upright individual. I knew him when he was an

12:26:09 1 Assistant Secretary in the department. This was somebody who I considered was  
2 a pillar of society. I had no reason to be concerned and I particularly felt  
3 in the context that he was telling me that he wasn't going to divulge to me who  
4 the subscribers were nor did they wish any acknowledgement, they weren't asking  
12:26:33 5 for anything, I didn't feel there was any --

6 Q. 148 Potential conflict?

7 A. Yes, exactly.

8  
9 MR. CREEGAN: Excuse me Chairman, could I just interrupt there to clarify  
12:26:44 10 something for the Tribunal? This Module is to do with Cherrywood and Monarch  
11 essentially, Mr. Dunlop did not come on Monarch's books until 1993, I would  
12 just like to make that clear to the Tribunal. This is 1992 we are dealing  
13 with.

14  
12:27:00 15 CHAIRMAN: I know that, it's the end of 1992.

16  
17 MS. DILLON: Yes, we are all aware of that, I don't understand it to be  
18 suggested we are unaware of that. Mr. Creegan himself made the submission to  
19 you this morning and he cross examined Mr. Dunlop, as I recollect, on this very  
12:27:16 20 issue and if there hadn't been any such cross-examination, I mean it follows  
21 from the cross-examination of Mr Dunlop this must be dealt with Mr ...

22  
23 CHAIRMAN: We are satisfied it should.

24  
12:27:26 25 MS. DILLON: Thank you sir.

26  
27 Mr. Dunlop has told the Tribunal that he doesn't think he made any such payment  
28 to you Mr. Boland, and he has no recollection of making any such payment to  
29 you, and I think you are aware of that, isn't that right?

12:27:42 30 A. I am indeed.

- 12:27:43 1 Q. 149 You are absolutely satisfied however that such a payment was in fact made by  
2 Mr. Dunlop and made in the circumstances that you have outlined to the  
3 Tribunal?
- 4 A. Absolutely. There is no question in my mind that it was Frank Dunlop walked  
12:27:55 5 into the room, he handed me an envelope, the envelope was in my possession  
6 until I opened it, no question in my mind.
- 7 Q. 150 And you say that Mr. Dunlop must be mistaken if he can't recollect making that  
8 donation to you in November of '92?
- 9 A. I can only tell you what my experience was.
- 12:28:17 10 Q. 151 And can I ask you then briefly about payments, it might be quicker if I simply  
11 take you through the documentation from Monarch to you and I think you accept  
12 that insofar as the earlier Monarch payments are concerned you accept the  
13 documentation that has been provided to the Tribunal by Monarch, you have a  
14 recollection of receiving these monies but you did have a computer system that  
12:28:37 15 crashed on which you had recorded receipt of all of these?
- 16 A. Exactly, I opened a political account in 1991 to receive any political  
17 subscriptions and if I received monies from Monarch which I am not disputing,  
18 and the suggestion is they are by way of cheque, I am quite confident you will  
19 find that.
- 12:29:02 20 Q. 152 Indeed, insofar as the monies from Mr. Dunlop are concerned I think you have  
21 identified to the Tribunal the bank account into which those funds were lodged  
22 also, isn't that right?
- 23 A. That's correct.
- 24 Q. 153 At that time I think at page 108 there is a lodgement on that account of 3,300  
12:29:23 25 on the 13th November and you are satisfied that forms a significant portion of  
26 Mr. Dunlop's donation to you, isn't that right?
- 27 A. That's right.
- 28 Q. 154 Four thousand pounds. And again I think you maintained a separate political  
29 account and did you have records until your computer system went down and you  
12:29:38 30 do have records in relation to the later political contributions isn't that

12:29:41 1 right?

2 A. That's correct.

3 Q. 155 And if I show you first of all at 3241, this relates to June of 1991, I think

4 some approximately eight or nine from the bottom that have list it says

12:29:54 5 Mr. Cathal Boland, 300 pounds?

6 A. Sorry -- yeah.

7 Q. 156 Isn't that right?

8 A. Yes.

9 Q. 157 I think that there is an extract from the cheque payments book at 3255?

12:30:08 10 A. Sorry this is Monarch payments.

11 Q. 158 Monarch payments yes. If you just look third down it records a cheque in the

12 sum of 300 pounds to Mr. Cathal Boland that was debited to the Monarch account,

13 I think you accept you would have got that in June 1991?

14 A. Yes.

12:30:24 15 Q. 159 That would have been in connection with the local elections at that time?

16 A. That's correct.

17 Q. 160 Right. I think if we turn to look then at the general election expenses in

18 November of 1992 at 3809 and approximately halfway down that page on 17th

19 November?

12:30:41 20 A. Yes I have it yes.

21 Q. 161 400 pounds. I think again at 8354 there is a copy of the cheque?

22 A. Yes.

23 Q. 162 I think you would accept that you would have received that and you would have

24 lodged it to the political account?

12:30:56 25 A. That's correct.

26 Q. 163 And I think that then in April of 1994 there is, 4943, a sum of 200 pounds

27 which was a lunch fundraiser?

28 A. That's correct.

29 Q. 164 And I think you in fact have a record of receiving that, isn't that right?

12:31:15 30 A. Yes that's correct.

- 12:31:18 1 Q. 165 Now can you, just tell the Tribunal did you know Mr. Richard Lynn?
- 2 A. I knew Richard Lynn in the context of being a feature in the council lobby,  
3 everyone said hello, nice day. I don't remember any conversation that I ever  
4 had with him.
- 12:31:38 5 Q. 166 Insofar as the two earlier political donations are concerned, the local  
6 election of 1991 and the general election of 1992, did you seek those funds  
7 from Monarch?
- 8 A. My view is that I did not. I have indicated to the Tribunal that I have been  
9 involved in various fundraising activities on behalf of Fine Gael, that I  
10 equally had attended at a walk about in Tallaght Town Shopping Centre with  
11 Peter Barry at which I met one of the, I think I met two of the Monahan  
12 children. Now I may as a result of that in Dublin South west have invited  
13 Monarch to that fundraising event in which case it's possible I did write to  
14 Monarch in '91, I think it's highly improbable that I did, in actual fact I  
15 wondered in subsequent years when I looked back and asked myself, in the  
16 context of Richard Lynn attending in '94, how I came to put Monarch name on the  
17 list which would suggest to me that the Monarch cheques in '91 and '92 were  
18 unsolicited and as a result of that they came on to my lists of potential  
19 subscribers.
- 12:32:33 20 Q. 167 So you think the earlier donations were unsolicited but having received them  
21 you would have put Monarch on a list of subscribers and that's what lead to the  
22 fundraising lunch and Mr. Lynn being invited and although while the payment was  
23 made he didn't attend, he sent a deputy, isn't that right?
- 24 A. That's correct.
- 12:33:16 25 Q. 168 Did you see Mr. Richard Lynn as performing the same function that Mr. Frank  
26 Dunlop was performing?
- 27 A. I knew he was promoting Monarch Properties in Carrickmines.
- 28 Q. 169 Did you see him around the council as a lobbyist?
- 29 A. Yes.
- 12:33:31 30 Q. 170 Was that a lobbyist only for Monarch properties?

- 12:33:34 1 A. Yes. Yes, I would have thought that it was Monarch only.
- 2 Q. 171 But you would have known that Mr. Dunlop was a lobbyist for more than one  
3 developer if I can put it like that.
- 4 A. I would have had a feeling that he was involved with two or three projects.
- 12:33:48 5 Q. 172 Mr. Dunlop that is?
- 6 A. Yes, yes.
- 7 Q. 173 But not Mr. Lynn. Mr. Lynn was working solely with Monarch?
- 8 A. That's the impression I got.
- 9 Q. 174 Right. Would you have had casual or other chats with Mr. Lynn about the  
12:34:00 10 Monarch Properties developments?
- 11 A. Not to my recollection.
- 12 Q. 175 If I can ask you insofar as your contribution to the voting record or the  
13 planning history of these lands are concerned, once the county is divided into  
14 three counties in January of 1994 you had nothing further to do with Cherrywood  
12:34:20 15 lands, isn't that right?
- 16 A. That's correct.
- 17 Q. 176 Because your ward is in an entirely different location?
- 18 A. Yes one is to the south and one is the north. Well divided.
- 19 Q. 177 Yes. I think that insofar as the earlier part of the planning history of the  
12:34:34 20 Cherrywood lands are concerned while you were present at meetings in May of  
21 1992 you are not recorded as having voted on any of the substantive motions,  
22 isn't that correct?
- 23 A. That's correct.
- 24 Q. 178 And similarly in 1990 while you were present at a meeting you are not recorded  
12:34:49 25 as voting and the first time that in fact you are recorded as voting is in  
26 November of 1993?
- 27 A. That's correct.
- 28 Q. 179 On what has become known here as the Coffey Marren motion, you voted in favour  
29 of the Coffey Marren motion and you had earlier that day voted against the  
12:35:04 30 Smith motion, isn't that right?



- 12:35:05 1 A. That's correct.
- 2 Q. 180 To keeping it at low density, so effectively what you were voting in favour of
- 3 was a motion increasing the density on the Monarch lands from one house per
- 4 acre to four houses per acre, isn't that right?
- 12:35:17 5 A. Yes, I was voting in line with the manager's original recommendations.
- 6 Q. 181 But confined to the Monarch lands according to the terms of the motion, isn't
- 7 that right?
- 8 A. Well the, I don't think it says Monarch in the motion.
- 9 Q. 182 At 7226 is the actual copy of the motion?
- 12:35:41 10 A. Yes, the lands outlined in red on the attached map, it doesn't mention Monarch
- 11 lands.
- 12 Q. 183 And I think that the attached map is on the following page at 7227?
- 13 A. Yes.
- 14 Q. 184 Would you have known that they were the Monarch lands?
- 12:36:02 15 A. I think the real question is would I have been aware of the fact that the
- 16 entire wasn't Monarch.
- 17 Q. 185 That the entire wasn't Monarch?
- 18 A. Yes. In the context -- parcels of land or motions tend to have some
- 19 descriptive title given to them and I only knew that proposal as Monarch lands,
- 12:36:32 20 the Monarch proposal and that's how it's reflected in fact in the council
- 21 minutes. Unusually so in terms of, I don't think any other instance that a
- 22 developer's name is assigned to a rezoning proposal, that hasn't been
- 23 originally connected to it. So I am not sure that I would have been
- 24 consciously aware of who owned which piece of lands. I am aware of the fact
- 12:37:00 25 that there is a difference, having read the transcripts of the Tribunal.
- 26 Q. 186 Right. But at the time you would have thought that all of the residentially
- 27 zoned lands in the Carrickmines Valley, that that was all the Monarch lands?
- 28 A. Yeah, I think I would have had that sort of general view, that that was the
- 29 Monarch project.
- 12:37:16 30 Q. 187 And at the time when you were voting for this motion, what you were voting for

- 12:37:20 1 was to change the density back up to what the manager had recommended, isn't  
2 that right?
- 3 A. That's correct yes.
- 4 Q. 188 Now you must have known by virtue of the text of the motion at 7226 that there  
12:37:32 5 were other lands that were not being?
- 6 A. That there was lands excluded from the original.
- 7 Q. 189 Isn't that right?
- 8 A. That's right, a compromise of some description had been arrived at.
- 9 Q. 190 That wasn't a compromise to which you made a contribution?
- 12:37:49 10 A. That's right.
- 11 Q. 191 But you would have known then that there were other lands that were also  
12 residentially zoned that were staying at one to the acre?
- 13 A. That's right.
- 14 Q. 192 Can you now assist the Tribunal as to why you would have been happy for these  
12:37:57 15 particular lands to be zoned at four to the acre and the balance at one to the  
16 acre?
- 17 A. Well, effectively on arriving at the meeting on the 11th November the decision  
18 was no longer mine. The only opportunity I would have had to influence whether  
19 the entire would be zoned or not would have been to have put down a motion some  
12:38:19 20 days prior, nine days I think it is, prior to the holding of the meeting. But  
21 once the motion was tabled and the order paper was issued, the issue then is  
22 outside the control of somebody such as myself arriving in, it's not my motion  
23 and standing orders precluded me from increasing the density, sorry increasing  
24 the density or increasing the land mass that would be covered by the motion.  
12:38:51 25 Standing Orders are quite clear on this, that the motion may be no more onerous  
26 than the original proposal whilst it would have been possible to propose a  
27 motion to downsize the area of land or downsize the level of density, I  
28 couldn't have up sized.
- 29 Q. 193 In any event you voted in favour of the motion?
- 12:39:12 30 A. That's correct.

- 12:39:13 1 Q. 194 On the 11th November and it was duly passed as was the town centre motion duly  
2 passed by a show of hands, isn't that right?
- 3 A. That's right.
- 4 Q. 195 And the they capped at neighbourhood size and that effectively ended your  
12:39:25 5 involvement in the Carrickmines lands?
- 6 A. That's correct.
- 7 Q. 196 Now do you remember ever being approached by Mr. Lynn who I think has told the  
8 Tribunal that he met every member of Dublin County Council seeking their  
9 support bar one and I don't think that person was you. I think he says he met  
12:39:42 10 everybody and spoke with everybody seeking their support?
- 11 A. I think Ms. Dillon, one I have no recollection of any such meeting taking place  
12 and I am quite confident it didn't. The other point, I don't know what page it  
13 is in the brief, but I think if you look at it my name is not marked by Richard  
14 Lynn as having been somebody that he met.
- 12:40:04 15 Q. 197 And I think in, indeed it's post the event but certainly it would appear in  
16 April of 1994 at 5057 this is expenses claim form by, put in by Mr. Lynn I  
17 think, yes it is by Mr. Lynn?
- 18 A. Yes, I see my name there.
- 19 Q. 198 You see your name there, do you recollect meeting Mr. Lynn in April of 1994, if  
12:40:28 20 so what it would have been in connection with?
- 21 A. No, I don't recollect meeting Mr. Lynn, as we touched earlier on, Mr. Lynn  
22 attended, sorry Mr. Lynn sent somebody to represent him at a fundraising lunch  
23 which had occurred -- it would have been the following week, it was the end --  
24 the latter part of April, I can't recall the date, perhaps that's what the 60  
12:40:55 25 pounds relates to, the expenses that he was drawing down to attend that  
26 function but he certainly didn't meet with me in April of 94.
- 27
- 28 MR. CREEGAN: Excuse me Chairman might I interrupt again? This particular  
29 evidence was never put to Mr. Lynn specifically. He was asked during his  
12:41:12 30 evidence to pass a series of dates and times all presented to him not like

12:41:18 1 this, but in sheet form with dates, dates and page numbers written on them, but  
2 he never looked at them he just said yes, multiples -- I am paraphrasing here,  
3 and let them pass through. I would just take this opportunity since the  
4 evidence is now being put to my client prior to ever being put to Mr. Lynn, to  
12:41:39 5 point out that the designation here is Cherrywood Properties Development Plan  
6 and at this stage my client was over on Fingal Council and Cherrywood was long  
7 since gone.

8  
9 CHAIRMAN: Yes, but it's just being put to him as, in that it suggests some  
12:41:59 10 contact between the two, it goes no further than that.

11  
12 MR. CREEGAN: I am not disputing that. I just want to clarify for the  
13 purposes of the evidence before the Tribunal of the circumstances of it. Thank  
14 you.

12:42:13 15 A. That's the only suggestion I can make to you, that's what it relates to. I  
16 can't see what else it could relate to.

17 Q. 199 But certainly around that time you were writing to Mr. Lynn seeking his support  
18 for your fundraising lunch?

19 A. I think in fact if I wrote I would have written to Monarch, I am not sure I  
12:42:30 20 would have written to Mr. Lynn.

21 Q. 200 Can I ask you now, the meeting of the 11th November 1993, in the month or two  
22 months prior to that, in September 1993 there was a meeting in Conways called  
23 by the then leader of Fine Gael Mr. John Bruton who gave evidence this morning,  
24 you were here for Mr. Bruton's evidence?

12:42:50 25 A. I was indeed.

26 Q. 201 Would you outline to the Tribunal, what you recollect occurring at that meeting  
27 and what your understanding was of what you were being asked to do at that  
28 meeting?

29 A. Well, the council had met on the Monday afternoon. A conclusion of the council  
12:43:11 30 meeting, that the council was advised that Mr. Bruton wished all the Fine Gael

12:43:20 1 members to attend a meeting in the upstairs function room of Conways public  
2 house.

3  
4 We arrived, this was very unusual, certainly in my nine years I had never had  
12:43:36 5 the experience of the party leader coming to talk to the elected members of  
6 Dublin County Council in this fashion.

7  
8 He told us that we were the front line troops, that the nation was watching  
9 what the Fine Gael members were doing in Dublin County Council. That we were  
10 not acting in the best interests of the party. That there was a need for us to  
11 act in a cohesive fashion. That he didn't care what we zoned or what we did  
12 not zone, but that he wanted us to vote as a party, to vote as a unit. There  
13 was some discussion. He told us that those who were not in a position to  
14 accept a majority decision of the group in Dublin County Council, that they  
15 ought to leave the group.

16  
17 There were points made by various members as to what might or might not happen  
18 and what kind of approach might be appropriate to try and find a common  
19 position. We were dealing with the Swords maps, we had worked our way through  
12:45:18 20 four or five motions, the manager had put forward a proposal that in essence  
21 saying that the amount of lands which potentially could be zoned on this Module  
22 were inappropriate because of the drainage capacity in Swords.

23 Q. 202 Sorry I don't want to cut across you, are you now moving on to what happened at  
24 the meeting the following day.

12:45:41 25  
26 CHAIRMAN: No, I think he is explaining?

27 A. I am trying to explain, sorry, yes.

28 Q. 203 What was discussed --

29 A. Maybe I am becoming too technical.

12:45:52 30 Q. 204 No, no. Are you explaining to the Tribunal what was being discussed at the

12:45:52 1 meeting where Mr. Bruton was present?

2 A. Yes.

3 Q. 205 All right I am sorry.

4

12:45:56 5 CHAIRMAN: You are -- talking about a potential problem you saw given what you  
6 perceived to be an instruction from Mr. Bruton?

7 A. Yes. Well there was a difficulty that we all were conscious of the fact that

8 we had individual responsibility, it was one of the things that Fine Gael I

9 suppose prided itself on, that it didn't follow a party line, that you had on

12:46:27 10 either side of us the Fianna Fail would appear to have been following a general

11 whipped position, although some members, some of their members didn't always

12 vote in a straight line.

13

14 Then on the other side we had the Labour Party and other, the greens and so on,

12:46:49 15 who tended to vote against every proposition. So really the ones who were the

16 floating voters as it were in Dublin County Council were the Fine Gael members.

17

18 The issue which was before the council was the Swords Development Plan. We

19 were, we had gone halfway or some portion of the way through the motions

12:47:17 20 related to Swords.

21

22 The meeting adjourned circa half five, we went to Conways and we were to resume

23 at half two the following day to discuss the remaining portions of the Swords

24 lands and as such Swords really became the talking point. There was the

12:47:42 25 academic thing in terms of what was the correct thing to do in terms

26 politically, morally or whatever, but when it came down to the point was it

27 possible to find a compromise the issue in front of us was how we were going to

28 compromise in relation to the advice the manager had given us in respect of

29 Swords. Was it possible for us to look at it in some fashion where everybody

12:48:04 30 could feel comfortable that they had exercised their duty and could vote in

12:48:12 1 accord with the logic of what the manager's report was.

2 Q. 206 You are now at the meeting the following day, is that right?

3 A. No, I am still at the Conways meeting.

4 Q. 207 You are still at the Conways meeting, is this a point that you were making at

12:48:27 5 the Conways meeting?

6 A. Yes, the primary people who spoke in terms of the Swords map would have been

7 Nora Owen, Ann Devitt and myself being the three immediate elected members for

8 the area who would have known the issues to the greatest extent.

9 Q. 208 And was it your view at the end of the meeting that there should be some

12:48:49 10 attempt to form a consensus in relation to the Swords map or the Development

11 Plan, that there should be some discussion among the Fine Gael people?

12 A. Yes, in the light of the approach by John Bruton who convened the meeting.

13 What he had said to us about the terms of the importance of trying to put the

14 best gloss of the Fine Gael position on it, it seemed not unreasonable that in

12:49:13 15 the context of having all of the reports, the motions and particularly in the

16 context of Swords, we had had a dress rehearsal of the issues because we had

17 already discussed the first half of the motions, so people would have spanned

18 across -- the first motion in fact was the manager's report and a compromise

19 which he had put, which I had proposed, that obviously meant that everybody had

12:49:41 20 aired their views as to whether or not Swords should be zoned, not zoned or

21 whatever. So the issues had been well rehearsed in respect of that. At the

22 Conways meeting a view was taken as to parcels of land which could be zoned

23 which were still within the manager's target, waste water target figures and it

24 was agreed that that should be deemed to be the common position.

12:50:10 25

26 I think we were all somewhat struck by John Bruton's instruction to us that we,

27 that we started to question our own built in system that we had had, which was

28 that everybody acted as they thought fit. Suddenly we had the party president,

29 and leader, telling us that we should work in a more cohesive fashion and we

12:50:40 30 should have a Fine Gael position.

- 12:50:44 1 Q. 209 And you are not suggesting to the Tribunal Mr. Boland, that Mr. Bruton was  
2 giving that direction in connection with what was then being discussed in the  
3 Development Plan?  
4 A. Ms. Dillon --
- 12:50:57 5 Q. 210 Just to be clear about it. I mean Mr. Boland, I am asking you, is that the  
6 position, that the direction or the suggestion that was made by Mr. Bruton was  
7 a general direction or suggestion to the Fine Gael councillors not specific?  
8 A. Well Ms. Dillon, I took it at the time that he was acting in the best interests  
9 of, as he saw it, of the Fine Gael party. I certainly took it that he was  
10 giving us an instruction, events subsequently have made me question all of  
11 Mr. Bruton's motivations.
- 12 Q. 211 Are those events the matters relating to the inquiry conducted by Mr. James  
13 Nugent?  
14 A. Yes, in essence.
- 12:51:38 15 Q. 212 I think we can leave that because that's a matter for a different forum and not  
16 for this Tribunal, the Tribunal have already ruled on it. Can I show you at  
17 9066 please, and just at the bottom of that page Mr. Boland you will see a note  
18 that's headed Cathal Boland. First duty is to get FG elected (coherence)?  
19 A. Yes.
- 12:51:58 20 Q. 213 Let's see cappings and compromises. Don't hold cards till 2.30 each day?  
21 A. Yes.
- 22 Q. 214 Now, can I just ask you first of all is it likely that that's accurate and you  
23 did say don't hold cards until 2.30 each day?  
24 A. Mr. Bruton had proposed that whatever the decision was that people should go  
12:52:24 25 into the chamber and a Fine Gael spokesperson should stand up and say we'll  
26 vote for motion 5, 7, 11 and we won't vote for anything else.
- 27 Q. 215 Sorry I didn't make myself clear. Is it likely -- this records you as saying  
28 don't hold cards until 2.30 each day?  
29 A. I honestly can't remember saying that but that's the context in which, if I  
12:52:49 30 said it, it was said.



- 12:52:49 1 Q. 216 And it would have been said in the context of, in other words let's know what  
2 our position is before we go into the meeting, isn't that right?
- 3 A. Yes.
- 4 Q. 217 Right. So what you appear to be suggesting to the meeting if that's an  
12:53:02 5 accurate note, is something not dissimilar to what Mr. Bruton was suggesting,  
6 in other words that everybody should know the Fine Gael position before you  
7 went into the meeting, isn't that right?
- 8 A. In the context of the Conways meeting I have to accept that.
- 9 Q. 218 So in fact according to Mr. Bruton's record or note of what happened in the  
12:53:19 10 meeting you are not a million miles away from what Mr. Bruton himself was  
11 suggesting as you have recounted?
- 12 A. Yes.
- 13 Q. 219 And you appear to have had a wider picture in view, isn't that right, in that  
14 your first concern was to get Fine Gael elected, isn't that right?
- 12:53:33 15 A. That's right.
- 16 Q. 220 So that you are also looking, as Mr. Bruton appears to have been looking at,  
17 the conduct of the Fine Gael councillors in the wider context, isn't that  
18 right?
- 19 A. Yes.
- 12:53:43 20 Q. 221 In other words how your behaviour as Fine Gael councillors before Dublin County  
21 Council would affect the chances of re-election or otherwise of Fine Gael,  
22 isn't that right?
- 23 A. That's correct.
- 24 Q. 222 Okay so you again are also looking at presenting a more cohesive or united  
12:53:59 25 front?
- 26 A. Yes.
- 27 Q. 223 So, and you, therefore would it be fair to say are in broad agreement with what  
28 Mr. Bruton was suggesting at the meeting?
- 29 A. Broad brush agreement, yes.
- 12:54:09 30 Q. 224 Isn't that right?

- 12:54:09 1 A. Yes.
- 2 Q. 225 In other words that it would make much better political sense if I can put it  
3 like that, that the Fine Gael party would present themselves as a cohesive and  
4 united front at local level?
- 12:54:20 5 A. Yes, I think the argument basically would be in the context of what size you  
6 intended to allow, for example Swords to grow to. The actual fields that would  
7 be zoned would be a matter for individual consideration as to the pros and cons  
8 which would be similar to the position that the manager was taking in terms of  
9 saying it was possible to zone X amount of lands because the sewerage was  
10 available and then you have an academic discussion.
- 11 Q. 226 Yes, but the meeting in Conways pub Mr. Boland is not a meeting about the level  
12 of a sewer pipe in Swords. The meeting is a policy meeting about a more  
13 unified approach by the Fine Gael councillors in general on Dublin County  
14 Council in relation to council business and in particular the Development Plan,  
15 isn't that right?
- 12:55:06 16 A. No it spanned both, both facets.
- 17 Q. 227 Yes, but according to your statement to the Tribunal the approach by Mr. Bruton  
18 was for a more united or cohesive front by the Fine Gael councillors, isn't  
19 that right?
- 12:55:22 20 A. Yes.
- 21 Q. 228 That is not a meeting that is brought about the size of a sewer pipe or a  
22 specific matter, it's a policy approach in general, isn't that right?
- 23 A. Yes, I think that's fair.
- 24 Q. 229 Because the perception abroad was of a lack of cohesion or a disparate group of  
12:55:40 25 people without a focus in Dublin County Council, that was the view apparently  
26 abroad of the Fine Gael members of the council?
- 27 A. So it's said.
- 28 Q. 230 So, be that as it may. You appear to agree with that because you are recorded  
29 as talking about the first duty is to get Fine Gael elected and not to hold the  
12:55:58 30 cards until 2.30 each day, in other words that there should be a more cohesive

12:56:03 1 approach?

2 A. Yes.

3 Q. 231 And there should be a more unified approach by the Fine Gael members?

4 A. Yes, we should have been saying what our picture of Dublin was, I accept that.

12:56:12 5 Q. 232 Yes, in other words rather than dealing on a piecemeal basis if I understand

6 you correctly, on a field by field basis one should be taking a very big

7 picture overview and have a very clear mind where Fine Gael as a party wanted

8 the development of Dublin to be?

9 A. Yes.

12:56:28 10 Q. 233 And that wasn't the position, isn't that right, there was no such clear

11 cohesive view among the Fine Gael members on the council?

12 A. That's correct.

13 Q. 234 And would it be fair to say that it was in an attempt to redress that imbalance

14 that this meeting apparently took place in September of 1993?

12:56:48 15 A. I am not a hundred per cent sure, I really am not in a position to answer the

16 question.

17 Q. 235 I think that's not quite correct because in your statement at page 8709 please,

18 this is what you state Mr. Bruton said, at the very beginning of that

19 paragraph.

12:57:09 20

21 "The leader thanked us for our attendance at short notice. He told us that we

22 were in effect the front line troops of Fine Gael. That our actions were the

23 ones which made the political head lines. That we set out what Fine Gael was

24 about. That he did not care what we zoned or did not zone but he wanted Fine

12:57:24 25 Gael members to act as a cohesive unit and that if any one of us could not vote

26 with the majority of their colleagues they should leave the Fine Gael group on

27 the council" is that right?

28 A. Yes.

29 Q. 236 Now from that what you set out Mr. Bruton set out at the beginning of the

12:57:40 30 meeting was that this was a political issue, the front line troops of Fine Gael

- 12:57:43 1 were the Fine Gael councillors and he wanted them to act in a cohesive unit  
2 isn't that right?
- 3 A. Yes.
- 4 Q. 237 And that in effect is also what you wanted, isn't that right, according to what  
12:57:54 5 you are recorded as saying?
- 6 A. Yes.
- 7 Q. 238 And then Mr. Bruton disputes that he would have said to you that anyone who  
8 couldn't effectively tow the party line would leave, and your note then goes on  
9 to record Mr. Bruton as saying that it seemed from the media we were all over  
12:58:09 10 the place and we were letting others decide the shape of the county by not being  
11 united. So you record Mr. Bruton as having a concern that due to the lack of  
12 cohesion in the Fine Gael councillors, the shape of the county was being  
13 determined by others presumably Fianna Fail, and that if there was unity in  
14 Fine Gael then they could determine equally the shape of the County, do you  
12:58:29 15 understand?
- 16 A. Absolutely. That's precisely the point.
- 17 Q. 239 Yes, so in fact what Mr. Bruton's concern was according to your statement to  
18 the Tribunal was the fact that Fianna Fail did not have full participation in  
19 deciding the shape of the county because of the lack of unity, isn't that  
12:58:44 20 right?
- 21 A. Yes.
- 22 Q. 240 And you agree with that, you have already agreed that?
- 23 A. Well the view that I have on it is that the point that Mr. Bruton was making  
24 was if Fine Gael took a position casting their 19 votes on any issue, either  
12:59:05 25 Fianna Fail acquiesced to what the 19 wanted or -- and the issue became  
26 zoned -- the 19 decided to zone something and went in and said we are going to  
27 zone plot B. Fianna Fail either then had to decide whether to vote with the 19  
28 or not vote with the 19. So effectively you were giving leverage to your 19  
29 votes because you were picking up their 27 votes for the Fine Gael position.
- 12:59:32 30 Q. 241 Yes but the point I am making to you Mr. Boland is according to the statement

12:59:37 1 you made to the Tribunal, Mr. Bruton's concern, part of his concern was that  
2 Fianna Fail were getting to determine the shape of the county due to the lack  
3 of unity within Fine Gael?

4 A. Yes.

12:59:46 5 Q. 242 Right. And you agree that that was so. And what I had put to you was that  
6 Mr. Bruton's concern was a political concern which was that the Fine Gael due  
7 to their lack of unity were not playing the role they should have played within  
8 Dublin County Council?

9 A. That would appear to be the logic.

13:00:06 10 Q. 243 Of what your statement says?

11 A. Of my recount of what he said at the meeting.

12

13 CHAIRMAN: All right Ms. Dillon it's one o'clock. So we are going to rise  
14 until two o'clock.

13:00:16 15

16 MS. DILLON: Yes sir.

17

18 **THE TRIBUNAL THEN ADJOURNED FOR LUNCH.**

19

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30

**THE TRIBUNAL RESUMED AS FOLLOWS AT 2 PM:**

13:00:31 1  
2  
3  
4 Q. 244 Thank you Mr. Boland, if you would answer any questions that anybody else might  
14:07:38 5 have for you.

6  
7 CHAIRMAN: Mr. Birmingham?  
8

9 **WITNESS QUESTIONED BY MR. BIRMINGHAM.**

14:07:44 10 Q. 245 I won't detain you more than two or three moments, can you just put in context  
11 the situation where people met in Conways? I think you were telling us this  
12 morning that prior to the meeting, that the Fine Gael group did not vote as a  
13 coherent block in the council?

14 A. That's correct.

14:08:03 15 Q. 246 And in fact I think you were saying that that distinguished them really from  
16 all the other major blocks who tended to adopt at least a broadly common  
17 position even if occasionally with some dissent?

18 A. In a broad sense, yes.

19 Q. 247 But uniquely among the major blocks Fine Gael didn't adopt coherent, cohesive  
14:08:26 20 position in the council?

21 A. Not up to the 21st.

22 Q. 248 Not up to the Conways meeting. And I suppose it was in a sense a bit more  
23 different even than that, in that not only do they not adopt a common position  
24 in the chamber but it appears no effort was made to formulate a common  
14:08:46 25 position?

26 A. I think that would be a reasonable view.

27 Q. 249 And that, would you accept, is a matter that would be of legitimate concern to  
28 people whose function it was to lead a party and who had a concern for the well  
29 being of the party?

14:09:03 30 A. I would.

- 14:09:04 1 Q. 250 And would you accept it would also have been a concern perhaps to Fine Gael  
2 activists and maybe even to Fine Gael voters?
- 3 A. Yes, I accept that.
- 4 Q. 251 And it appears from the notes that we had this morning, that insofar as there  
14:09:20 5 was that concern it was a concern that to some extent you shared in because you  
6 saw the advantage of being in a position to adopt a common position if  
7 possible?
- 8 A. I would have sought a Dublin position, yes, correct.
- 9 Q. 252 Now that was the position pre Conways, and you have told us your recollection  
14:09:41 10 of Conways and you have told us the actions that you took in the aftermath of  
11 Conways, but the position is after Conways --
- 12 A. Mr. Birmingham, I'm sorry, did I tell you what I did after Conways?
- 13 Q. 253 I understood you to say you resigned the whip or at least you departed the Fine  
14 Gael group, am I wrong?
- 14:10:01 15 A. I thought I said that in my statement, I didn't say it in evidence.
- 16 Q. 254 That is the position isn't it, that you left the group for a period and took  
17 your place on the independent benches?
- 18 A. Following Mr. Bruton's instruction that a sanction would apply that those who  
19 wouldn't vote with the majority of the Fine Gael should leave the group, I did  
14:10:26 20 the honourable thing to leave Fine Gael when I couldn't support the position.
- 21 Q. 255 You then sat as an independent for a couple of years I think?
- 22 A. I think until 95/96, I am not a hundred per cent sure.
- 23 Q. 256 Yes, your statement I think says '96?
- 24 A. I read somewhere else that suggests '95 so --
- 14:10:47 25 Q. 257 Yes. Now during that period the Fine Gael councillors continued to go their  
26 own way?
- 27 A. Yes.
- 28 Q. 258 During that period there was in fact no common position adopted and still less  
29 was there any disciplinary sanction imposed on anybody?
- 14:11:05 30 A. Mr. Birmingham --

14:11:07 1 Q. 259 Sorry just answer the question, isn't that so?  
2 A. Following my public statement of resignation and the impropriety of  
3 Mr. Bruton's instruction there was no whip applied following ...

4 Q. 260 Sorry, the question I asked emits of a yes or no answer. Is it in fact the  
14:11:24 5 case that following on the Conways meeting people continued to go their own  
6 way, just as they had heretofore and there was no disciplinary action taken  
7 against anyone.  
8

9 MR. CREEGAN: Excuse me Chairman, might I just interrupt here and say  
14:11:39 10 Mr. Boland had left Fine Gael at this stage, I don't think he is competent to  
11 comment on that.  
12

13 CHAIRMAN: Well if he is not -- this is made a very big issue by you on behalf  
14 of your client, so it has to be dealt with. If Mr. Boland says I don't know  
14:11:55 15 whether anyone left or whether there was any issue in relation to sanction he  
16 can say that, but it is perfectly correct that he be asked.

17 Q. 261 Just before you answer, given that your counsel intervened and it's suggested  
18 you may not be in a position to answer the question, you sat in the council,  
19 you were in a position to observe what way people were voting weren't you?

14:12:18 20 A. Of course.

21 Q. 262 And is it the case that people continued to vote their own way?  
22 A. My understanding is from the, my observation of the record that's correct.

23 Q. 263 Now at that stage did you not find yourself in a situation of saying what am I  
24 doing having moved my seat in the council, why am I sitting over here with the  
14:12:39 25 independents when all of the other Fine Gael councillors are continuing to  
26 exercise their own judgement and go their own way on vote after vote after  
27 vote, did that occur to you?

28 A. It occurred to me that I had acted as per the instructions of the leader. I  
29 remained a member of the Fine Gael party. I did not remain a member of the  
14:12:59 30 Fine Gael group.



- 14:13:01 1 Q. 264 And did it occur to you that you seemed to have interpreted what was expected  
2 of you differently to what all your colleagues did?  
3 A. I acted as I interpreted the instruction. I don't know whether the others also  
4 interpreted the instruction in the same way as I did, they may have just opted  
14:13:25 5 not to act on it.  
6 Q. 265 Well one of two things are possible. They either interpreted it differently  
7 than you did or alternatively they interpreted the same way as you did but  
8 decided notwithstanding that interpretation, to act in a manner contrary to it,  
9 which do you think is more likely?  
14:13:41 10 A. My understanding is that many of them understood it in the same manner in which  
11 I interpreted it and decided not to follow the instruction.  
12 Q. 266 And as time passed and you found that you were, if you were the only odd man  
13 out, did you not find that that was becoming an increasingly untenable position  
14 and did you not find yourself saying why should I be the odd man out? Why can  
14:14:10 15 everybody else remain members of the party making their own judgement vote by  
16 vote, issue by issue and I can't, did that occur to you?  
17 A. Well as you are aware --  
18 Q. 267 Did that occur to me?  
19 A. Of course it occurred to me.  
14:14:24 20 Q. 268 Did you take any action on it?  
21 A. In 95/96, I am unsure as to the date, I returned to the Fine Gael group on  
22 Fingal County Council.  
23 Q. 269 And when you returned to the group matters progressed very much as they had  
24 been before the meeting in Conways public house, in that individual councillors  
14:14:48 25 continued to make individual judgements?  
26 A. Yes.  
27 Q. 270 Thank you.  
28  
29 **WITNESS QUESTIONED BY MR. CREEGAN.**  
14:14:56 30 Q. 271 Chairman if I could just ask Mr. Boland a few questions. Mr. Boland can I just

14:15:01 1 take to you Conways and clarify your evidence for the Tribunal. Is it your  
2 evidence that Mr. Bruton imposed a whip and a sanction or attempted to impose a  
3 whip and a sanction and you disagreed with that and that you resigned on that  
4 basis?

14:15:15 5 A. It's my understanding that Mr. Bruton told the members of Fine Gael group who  
6 met in Conways with him, that they should vote with the majority decision.  
7 That they should meet prior to every council meeting which related to the  
8 Development Plan. They should find a common position and that those who  
9 couldn't vote with the majority should leave the group. That's my  
10 understanding of what Mr. Bruton told us. We discussed the matter in Conways.

11 We considered the issue, my recollection is that the issue in terms of the  
12 legitimacy of people voting with the group decision was expressed. The  
13 following day the 22nd, having a common position on leaving Conways as to our  
14 attitude to the voting on motions within the, on the 22nd. On the morning of  
14:16:25 15 the 22nd I know I was at the council until around 1 o'clock, the meeting was  
16 due to start at half two. An emergency meeting of the Fine Gael was summonsed  
17 for half two, the council meeting commenced, the then Chairman, Pat Rabbitt,  
18 adjourned the meeting to facilitate the emergency meeting of the Fine Gael  
19 group. Issues were put forward that the decision which we had taken the night  
14:16:57 20 before was impractical and that the motions that we voted for should be  
21 altered. I advised the meeting, which was so chaotic, which you might  
22 appreciate in terms of returning to a council which had adjourned to facilitate  
23 the meeting, that I was not in a position to support the decision which had  
24 been taken and that in the light of deputy Bruton's instruction the night  
14:17:22 25 before that when we came to that item that I would resign from the group.

26  
27 When we entered the chamber we went through a series of motions, we arrived at  
28 a particular motion, the proposition was put which I felt was not in the best  
29 interests of zoning, not in the best interests of the community who lived in  
14:17:45 30 Swords or those who might come to live in Swords. As such I was incapable of

14:17:50 1 voting with the majority of the group within the Fine Gael group sorry, and I  
2 publicly indicated that I believed that what was about to happen was wrong and  
3 that there was no way I could continue to be an active member of the Fine Gael  
4 group and I would withdraw to the independent benches.

14:18:10 5 Q. 272 Now Mr. Boland is it the case that in principle, let's say you agreed with the  
6 notion of Fine Gael agreeing, but what you disagreed with was the notion that  
7 the party leader would impose a whip on agreement and a sanction with that  
8 whip?

9 A. Absolutely. I think that it's quite reasonable that a big picture can be  
14:18:34 10 painted but what Mr. Bruton's instruction effectively was that each day's  
11 motions would be looked at and a whipped position be taken and that is just not  
12 tenable in my view in terms of the Planning Act.

13 Q. 273 Thank you Mr. Boland. Can I move on now just to the final days voting in  
14 Dublin County Council on the Cherrywood lands, November 11th '93. There was a  
14:19:02 15 motion by councillors Marren and Coffey, which has been mulled over much at  
16 this Tribunal. Can I just explain to the Tribunal what the consequences of  
17 that motion being defeated, as far as the modalities of votes are concerned  
18 within the Dublin County Council chamber, the consequences of a defeat of the  
19 motion in question would be?

14:19:28 20 A. Well the motion wasn't defeated. My understanding was that the manager's  
21 proposals had gone on public display and that I think it was May '91 sorry,  
22 that they came back into the chamber and a proposition was put that the  
23 manager's report be adopted and that motion was defeated.

24  
14:19:58 25 Following that, a motion was successfully put by Deputy Barrett to zone the  
26 land in the manner in which it was presented on the 11th November, after a  
27 public display and it would seem to me that the logic is that if Deputy  
28 Barrett's, sorry, if the Coffey/Marren motion was defeated that it would have  
29 sent the zoning of the parcel of land back to the 1983 position because the  
14:20:33 30 manager's report -- sorry the Barrett motion was effectively defeated. Then

14:20:40 1 the Coffey motion was put, had it been rejected it would have catapulted the  
2 zoning of the lands back to the 1983 position because the 1991 position had  
3 been rejected by the elected members, so the logic of supporting the  
4 Coffey/Marren motion was, in terms of the advice which senior counsel  
14:21:04 5 Mr. Gallagher had given to the County Council, that it was possible to do a  
6 number of things to adopt the Development Plan with the amendment, to reject  
7 the development -- to adopt the plan without the amendment or to find a  
8 compromise between what was displayed in the '91 and the '92 display.  
9

14:21:26 10 But in essence when you came to the '91 display there was two items on the  
11 agenda, on display, there was the 1983 plan and the 1991 proposed amendment.  
12 In my view because the members rejected the manager's report which suggested  
13 the adoption of the displayed maps, it immediately reverted to the 1983  
14 position. Then Councillor Barrett's motion put another proposition on display  
14:22:00 15 with the 1983 position, so the 1992 position really should have shown the 1983  
16 lands, zoning lands and the proposition of Councillor Barrett. And in fact I  
17 noted going through the minutes that a similar situation had arisen, I think,  
18 it's a parcel of land on the Naas Road, and the display actually showed that  
19 one was the deletion of the 1991 position and then moving on to the '92  
14:22:37 20 position. It's the Naas Road, if it's of importance I can find it.

21 Q. 274 Mr. Boland, where would that 1983 position have left the land, at what state?

22 A. I think would have been one house on septic tanks per acre.

23 Q. 275 And now can I move on Mr. Boland, just one last point to make, could I have  
24 page 92 of the brief please. Now before I ask the question Chairman I just  
14:23:06 25 want to clarify, my client does have a right to comment on the Nugent report as  
26 in the brief, did I read you right in saying that, just to comment on it?  
27

28 CHAIRMAN: Yes, he can explain to the Tribunal if the position in the Fine  
29 Gael inquiry report is different to that which we have here on evidence, he  
14:23:27 30 should explain in fairness to himself why that difference is.

14:23:31 1 Q. 276 I think Mr. Boland would you like to explain to the Tribunal your comments on  
2 what's written there about you in the Nugent report please?

3 A. I'd like just to explain my position.  
4

14:23:53 5 The Tribunal of Inquiry wrote to me and asked me to provide information and  
6 they marked the correspondence to me as private and confidential, they equally  
7 said that what they were asking me and what I might tell them should remain  
8 confidential between the Tribunal and myself and I shouldn't advise other  
9 people whether I had been asked otherwise.

14:24:19 10  
11 There was some controversy in the papers with speculation that Mr. Dunlop was  
12 going to accuse Mr. Bruton of knowledge of a request by Councillor Hand of a  
13 sizable contribution and arising out of that Mr. Bruton established the Nugent  
14 Inquiry which strangely enough he and Fine Gael seemed to believe is actually a  
15 kosher Fine Gael operation, but in actual fact is in breach of the constitution  
16 of the Fine Gael party, so effectively it was a Bruton quango rather than a  
17 Fine Gael inquiry.

18  
19 MR. BIRMINGHAM: Chairman, I --

14:25:05 20  
21 CHAIRMAN: Well that's just comment. Just explain, we don't really want to  
22 know?

23 A. My apologies.  
24

14:25:11 25 CHAIRMAN: Just explain, if you feel that the position as is set out in the  
26 report is different to that which you have indicated here in evidence, then you  
27 are entitled to explain why you took the position as would appear from the  
28 report, other than that we don't really want to...

29 A. Sir, I took the position I did in support of what I believed was the request of  
14:25:40 30 Mr. Justice Flood, to hold in confidence any issue which I disclosed to him.

14:25:48 1 In the context that I disclosed to the Tribunal the existence of the  
2 contribution of four thousand pounds by Mr. Frank Dunlop to myself, the manner  
3 of questions and the line of questioning which the Nugent Inquiry put to me  
4 would have meant that I had broken that bond of confidentiality between the  
14:26:09 5 Tribunal and myself. I think that that would have been improper at the time  
6 and in hindsight I believe that the recent evidence from, that's been before  
7 the Tribunal in this Module demonstrates that the position which Justice Flood  
8 had taken at that time, asking people to hold on to themselves the detail of  
9 the information which they were giving to the Tribunal, was an extremely wise  
14:26:35 10 judgement.

11 Q. 277 I have no further questions, thank you Chairman.

12  
13 CHAIRMAN: Mr. Boland could I just ask you, after the meeting of the Fine Gael  
14 group with Mr. Bruton that we have heard about, was it the next day that you  
14:26:55 15 resigned?

16 A. Yes.

17  
18 CHAIRMAN: Did you resign from the party or just from the group?

19 A. I resigned from the group.

14:27:00 20  
21 CHAIRMAN: But you remained a member of the party.

22 A. Yes.

23  
24 CHAIRMAN: When was the Swords vote?

14:27:07 25 A. Sorry, the Swords maps were considered on the 21st, being the Monday, the day  
26 of Mr. Bruton's meeting and on the 22nd. Now they may possibly have run to a  
27 third day but I think it was the 22nd. It did run to a third day but it was  
28 the 21st and 22nd.

29  
14:27:29 30 CHAIRMAN: But was it a concern that you had about how you wanted to vote in

14:27:34 1 relation to the Swords land that prompted you to part company with the Fine  
2 Gael group?

3 A. I had concerns that -- I had concerns with the notion of a whipped position in  
4 any event, but I considered that if people sat down, looked at all the reports  
14:27:58 5 and gave a fair and rational debate, then it was possible to find, to allow  
6 everybody to come to a cohesive position. It seemed to me to be totally  
7 irrational that you could not all of the 19 members were present on the Monday  
8 night, but that you could hardly reconvene a group meeting with a different  
9 composition of members, try and decide the best interest of sorts in a hot,  
14:28:30 10 sticky over crowded room in the space of seven or eight minutes. That doesn't  
11 seem to me to be possible, therefore I would have had difficulty with any whip  
12 arising out of that, but the particular change which was made to my mind was an  
13 extremely poor decision.

14:28:52 15 CHAIRMAN: But was there a difference of opinion between you and other Fine  
16 Gael councillors in relation to Swords?

17 A. I think that's how the voting records certainly would show it. On the day that  
18 I resigned four other members, Alan Shatter, Mary Muldoon, Councillor Maher and  
19 Councillor Laing also voted against the parcel of land which I had concerns  
14:29:19 20 about. I would imagine that 11 or 12, something like that voted.

21  
22 CHAIRMAN: Was that the way you voted then?

23 A. I voted, yes, in that fashion.

24  
14:29:28 25 CHAIRMAN: So, some Fine Gael voted one way and some the other?

26 A. Exactly, yes.

27  
28 CHAIRMAN: And there was no, as far as you are aware there was no suggestion  
29 or attempt of any of those who voted contrary to the majority Fine Gael view,  
14:29:44 30 there was no suggestion or hint of any sanction or --

14:29:48 1 A. I have never been advised of any, I am unaware of any.  
2  
3 CHAIRMAN: Yes, but you would have presumably been aware, your ear would have  
4 been close to the ground at the time?

14:29:58 5 A. I wouldn't have allowed my ear to be close to the ground that day, sir.  
6  
7 CHAIRMAN: But would you not have been aware if disciplinary moves had been  
8 made, isn't it likely that you as one of a group of councillors, although you  
9 were outside the Fine Gael group at the time, but isn't it likely that you  
10 would have been aware of any attempt to sanction or discipline those who had  
11 taken a different view to the majority?

12 A. Yes, absolutely. I would accept I didn't hear of any attempt to sanction them.  
13  
14 CHAIRMAN: So, you would have realised very soon that your understanding of  
15 what Mr. Bruton had said, this is the understanding that you told us about,  
16 that he had applied some sort of a whip, that that was incorrect or likely to  
17 be incorrect or was exaggerated or whatever because it didn't happen in  
18 practice?

14:30:31 19 A. Okay. I wouldn't have been able to form that position from what I heard at the  
20 time and what I have subsequently heard, it's my belief that a sizable number  
21 of the people who attended the Conways meeting held similar interpretations as  
22 to what Mr. Bruton said.  
23  
24 CHAIRMAN: That's fair enough, but within if you like days of Mr. Bruton's  
14:31:17 25 meeting with you, it would have been pretty clear to you, from what you could  
26 see, although you were somewhat outside the fold at the time, that any question  
27 of sanction or discipline in practice wasn't arising for your colleagues?

28 A. Yes, sir. I accept that. I purposely resigned during the course of the debate  
29 in the most public fashion in an effort to bring the Fine Gael members of the  
14:31:46 30 Dublin County Council to a point of realising that what they were proposing to



14:31:50 1 do was improper.

2

3 CHAIRMAN: All right. Thank you very much.

4

14:32:00 5 MS. DILLON: Thank you sir. Thank you Mr. Boland. The next matter is the  
6 evidence in relation to the statements made by the late Mr. Liam Lawlor,  
7 relevant to this Module, prior to his death and Ms. Emma Dalton will deal with  
8 that matter, and after that then there are the submissions from Mr. Seamus  
9 O'Tuathail.

14:32:22 10

11 MS. DALTON: Yes Chairman. If I can have page 1232 please.

12

13 Mr. Lawlor provided the Fianna Fail committee on Standards in Public Life with  
14 information which is recorded on the report of the committee which is dated on  
14:32:36 15 7 of June in the year 2000 and at paragraph I under the heading development  
16 "Regarding donations from developers, Liam Lawlor stated that he would have  
17 received one thousand or 2,000 from Mr. John Byrne at election times and that  
18 Joe Tiernan might have participated in a golf fundraiser.

19

14:32:55 20 The next statement is page 1236 please. "On the 10th January 2001 in a  
21 schedule to an Affidavit of Discovery Mr. Lawlor provided the Tribunal with a  
22 document which is entitled income, including political contributions, donations  
23 and consultancy fees being approximate and as recollected by Liam Lawlor in  
24 respect of the period 1973-2000 and at five it says Monarch Properties, 70s,  
14:33:26 25 80s and 90s, 40 thousand pounds"

26

27 On 4th May 2001 in response to queries raised by the Tribunal, at page 1276,  
28 the late Mr. Lawlor provided the Tribunal with a narrative outlining the  
29 history of his dealings with Phillip Monahan.

14:33:47 30

14:33:47 1 "I first met Phil Monahan in the early 70S at McCann Fruits complex in Dundalk  
2 where he was employed in charge of the maintenance of the banana ripening  
3 rooms. My refrigeration company had a contract, having installed and provided  
4 maintenance for the cooling equipment. Sometime later the company got the  
14:34:05 5 franchise for Chiquita Bananas and I recall travelling to Holland with Phil  
6 Monahan to be provided with a technical briefing on the cooling and ripening  
7 technology associated with above brand of bananas. We installed a number of  
8 chill rooms at the Dundalk, Belfast and Dublin depots. My recollection is that  
9 Phil Monahan went on to form a company called Building and Engineering Limited  
14:34:26 10 and they undertook the construction contracts for new meat processing plant at  
11 Dublin Meat Packers, Cloughran, County Dublin. My company designed, installed  
12 and commissioned the industrial refrigeration equipment.  
13  
14 I had no contact with Phil Monahan over a number of years and when his company  
14:34:42 15 Monarch Properties Limited contracted to purchase the Dublin Corporation Lands  
16 designated for Tallaght Town Centre from the original company London &  
17 Clydeside Ltd who were the management's choice to build the Tallaght Town  
18 Centre but as I recall were unable to fund the project. Monarch Properties  
19 entered into some form of contractual arrangement with a view to building the  
14:35:00 20 town centre but again there were difficulties with funding. Monarch Properties  
21 Limited appointed Burke Kennedy Doyle Architects and I recall Mr. Edward  
22 Sweeney prior to the appointment lobbying along with the then construction  
23 industry, to have a ceiling put on the contribution that required to be paid to  
24 the planning authority, which at the time had a price per square foot."  
14:35:21 25  
26 If we can just go down to the third last paragraph "Monarch Properties Limited  
27 in the 80s lobbied the then Dublin County Council regarding lands at south  
28 County Dublin and again mounted a major campaign. I was not very familiar with  
29 the area and I recall supporting the management's proposal when some issue  
14:35:41 30 arose at the council meeting regarding this area.

14:35:42 1  
2 Monarch Properties Limited agreed, following discussions with Mr. Ambrose Kelly  
3 to financially support at the outset the Irish Consortium, to pursue  
4 development opportunities in the Czech Republic.

14:35:52 5  
6 Mr. Edward Sweeney, development director, Mr. Noel Murray, marketing director  
7 and Mr. Pat Lafferty, architect for Monarch Properties Limited, travelled to  
8 the Czech Republic with me and attended meetings pursuing various property  
9 projects. Such information has been discovered to the Tribunal in various  
10 files relating to the Czech Republic.

11  
12 I also recall and have referred to Monarch Properties in the Green Property  
13 Company explanatory note where Phil Monahan consulted with me on a very regular  
14 basis regarding his interest in making a bid for or some type of agreed merger  
14:36:24 15 with the Green Property Company. Both Companies Offices were I recall at the  
16 time in Earlsfort Terrace. The matter was discussed in great detail  
17 particularly after Monarch Properties succeeded in funding and building the  
18 Tallaght Town Centre.

19  
14:36:36 20 I would have met Phil Monahan at social occasions over the years as detailed in  
21 file B42, I have detailed my recollection of contributions received from  
22 Monarch Properties over the last 25 years."

23  
24 And file B42 contains documents which we referred to moment ago.

14:36:53 25  
26 In an affidavit sworn by the late Mr. Liam Lawlor on 8th April 2002 which is at  
27 page 7583, Mr. Lawlor provided the Tribunal with further information in  
28 relation to his income including political contributions and consultancy fees.  
29 Paragraph 1, name and address of individual who authorised payment, name:  
14:37:15 30 Monarch Properties. 2. Name and address of individual who actually made

14:37:19 1 payment, Mr. Phil Monahan or Mr. Edward Sweeney of Monarch Properties. 3  
2 approximate amount and method of payment. Amount 40 thousand estimated.  
3 Method of payment. Cheques.  
4

14:37:34 5 4. Date of payment, not available. 5. Reason for payments: Political  
6 contributions towards election campaigns and running of my constituency office.  
7 6. How payment was dealt with: Bank details into which monies were lodged.  
8 Lodged to bank accounts active at the time.  
9

14:37:54 10 If I can have page 1269 please? On the 1st May 2002 the solicitor then acting  
11 for Mr. Lawlor wrote to the Tribunal as follows "We refer to your letter of the  
12 13th March 2002 in relation to invoices issued by our client. We are advised  
13 by Mr. Lawlor that the following is a list of names used by him for the  
14 purposes of creating invoices and at B is listed Comex Limited and C, Economic  
14:38:24 15 Reports.  
16  
17 Mr. Lawlor advises that the following entities received or may have received  
18 invoices under the above titles and at C is listed Monarch Properties.  
19

14:38:37 20 Mr. Lawlor again wrote to the Tribunal on 23 of June 2003 and this was at page  
21 1270. At the bottom paragraph "I have further concluded an exhaustive exercise  
22 in cooperation with my accountants which are identified at schedules 2, 3, 4,  
23 5, 6, 7, 11 and 12, providing all available records up to June 2003 which I now  
24 provide to the Tribunal. On assessing the spreadsheets I conclude that the  
14:39:07 25 only income applicable to the Tribunal's terms of reference has been identified  
26 on schedule 11." On the following page. Schedule 11 identifies the political  
27 donations I received from any company or person that had any involvement with  
28 Dublin County Council and by extension it's planning functions. 1983-91  
29 inclusive. During this period I was an elected member of Dublin County  
14:39:30 30 Council. The figure totals 320,150 pounds. This is the figure that warrants

14:39:37 1 the Tribunal's inquiries. Any information the Tribunal further requires  
2 regarding this figure, please contact the undersigned. I terminated my  
3 membership of Dublin County Council in June of 1991.

14:39:49 5 Schedule 12: A further analysis of the figures identifies on schedule 12 the  
6 companies or party that provided political donations in the years 92 through to  
7 2000 inclusive. This figure totals 235,604 pounds.

8  
9 The figures identified in schedule 11 should be investigated and I have no  
14:40:17 10 difficulty being fully answerable for same as I received the sums during my  
11 term of membership of Dublin County Council.

12  
13 CHAIRMAN: Sorry, can we put that back on screen.

14  
14:40:22 15 Ms. Dalton: 1271 please, just at the third paragraph.

16  
17 "In the exercising of my public duties in making policy, any potential conflict  
18 between those duties and the receipts of funds from any party are legitimately  
19 covered by the Terms of Reference of the Tribunal of Inquiry into certain  
14:40:39 20 planning matters and payments for investigation."

21  
22 Any could now have page 1274 please this is the spreadsheet entitled Schedule  
23 11, political donations to Liam Lawlor, 1983 to 91 inclusive, the fourth row  
24 down shows political donations from Monarch, four thousand in 1988, 10,000 in  
14:41:04 25 1989, 10,500 in 1991, totalling 24,500 between 1983 and 1991.

26  
27 And on the following page, 1275, schedule 12, the third row down shows further  
28 payments from Monarch, three thousand in 1994, 2,500 in 1995 which totals 5500  
29 between 92 and 2000.

14:41:34 30

14:41:34 1 That concludes the evidence of the late Mr. Liam Lawlor.

2

3 CHAIRMAN: Thank you.

4

14:41:39 5 MS. DILLON: Sorry sir, Mr. O Tuathail on behalf of Mr. Donal Lydon has  
6 provided written submissions to the Tribunal this afternoon and a copy of  
7 those submissions, I think, you now have in front of you. I think you  
8 indicated would you afford Mr. O Tuathail an opportunity to expand upon, but  
9 not necessarily to repeat what's already contained in the written submissions.

14:42:04 10 And that's --

11

12 CHAIRMAN: Well he can deal with it as he --

13

14 MS. DILLON: That's the only matter that remains.

14:42:10 15

16 CHAIRMAN: All right, Mr. O Tuathail?

17

18

19

14:42:12 20 MR. O TUATHAIL: I provided that outline as an assistance to the Tribunal, I am  
21 grateful Mr. Chairman to yourself and to the Members of the Tribunal for  
22 hearing me today. I had intended going through them in some detail and adding  
23 to them, now if there is now a ruling that they are acceptable as are with any  
24 additions that I may make I can go that road as well.

14:42:35 25

26 CHAIRMAN: Well, you provided us with the submissions which can be made  
27 available to anyone, any of the interested parties or to the press, and if you  
28 want to then add to them as you deem fit then we can take it what's down in  
29 writing as well as what you add to them as your total submissions.

14:42:57 30

14:42:57 1 MR. O TUATHAIL: I appreciate that Chairman and that will shorten matters today  
2 but I should in any event explain that I am here because Senator Lydon insofar  
3 as he is concerned in proceedings of this Module, it involved a statement made  
4 in private to John Gallagher in, on the 6th July by Mr. Bill O'Herlihy, that's  
14:43:18 5 the purpose of my -- this statement was adduced in evidence on the 7th June  
6 2006 and to give the brief background to the provenance of that statement, on  
7 the events about, out of which this statement by Mr. Bill O'Herlihy arose was  
8 when Mr. O'Herlihy had been employed by Monarch as a public relations  
9 consultant in relation to the Cherrywood project and concerned events around a  
14:43:47 10 meeting of the Dublin County Council on 27th May 1992. It's important to note  
11 that this statement that Mr. O'Herlihy made was made some eight years later to  
12 Mr. John Gallagher, in privacy in Dublin Castle, and was only made public on  
13 the 7th June, in the sense that a ruling of this Tribunal made it public in  
14 relation to Senator Lydon. And that was on the 7th June 2006, some 14 years  
14:44:20 15 after the events allegedly giving rise to the statement.

16  
17 Now prior to the publication of that statement, we had a knowledge that the  
18 statement was about to be made, either included in the opening statement or  
19 otherwise travelled in evidence, and by letters of the 16th May 2006 and the  
14:44:42 20 1st June 2006 we protested strongly that given the quality of that evidence and  
21 given the statement itself by Mr. O'Herlihy as made to Mr. Gallagher, that it  
22 was entirely improper and grossly prejudicial to Senator Lydon to connect his  
23 name to what essentially could be described as a rumour or a fairy tale and  
24 more so and particularly so when we now look back at the evidence given in this  
14:45:14 25 Tribunal, where this statement has been denied by the person who allegedly made  
26 it, who wasn't even present on his own evidence, when allegedly he made the  
27 statement in the Royal Dublin Hotel to Mr. O'Herlihy, and Mr. O'Herlihy  
28 himself, before he gave any evidence, stated that this was hearsay, unsupported  
29 by any other evidence whatsoever and could not be supported on his oath.

14:45:44 30

14:45:44 1 Since engaging in the correspondence with the Tribunal we have been helped very  
2 much by Mr. King's responses, and the case law he has sent to us which  
3 indicates that a Tribunal has a discretion to accept hearsay, unlike a civil  
4 court or criminal court. In that correspondence we pointed out of course the  
14:46:05 5 dangers of hearsay, but the case cited to us from Mr. King and we accept the  
6 statement, is Murphy and Flood, that particular case, in which alleged hearsay  
7 evidence was challenged in the High Court and the High Court and Supreme Court  
8 in turn supporting the High Court, stated that this was admissible in the  
9 public interest. Now I accept that, I am not disputing that in general terms,  
14:46:40 10 but the question I am here today to discuss and to address is what is the  
11 effect once this hearsay is allowed in? What is the after effects of allowing  
12 it?  
13

14 And I say that the Tribunal, while it can entertain hearsay in the interests of  
14:47:00 15 the common good and can listen to it and can test it and have it tested as has  
16 happened in this case, that of course the hearsay itself is not capable of  
17 cross-examination. I make that point strongly. And I quote there from the Law  
18 Reform Commission report on hearsay in 1988, I will just, for the record I  
19 should set it out, that the Law Reform Commission says "Hearsay is excluded  
14:47:31 20 because of the twin safe guards of an oath and cross-examination do not attend  
21 it's introduction. The law takes the view that truth is best ascertained by  
22 the unrehearsed answers and oath or affirmation of witnesses who have actually  
23 perceived the relevant events and who were then subjected to cross-examination  
24 in the presence of the court. Hearsay statement is by definition not made  
14:47:50 25 before the court and if the maker does not testify he can not be cross examined  
26 nor can his demeanour be observed or his credibility tested. With a hearsay  
27 statement, if it is oral there is a possibility that it may be altered in the  
28 telling, where it is made formally there is a danger that it will be tailored  
29 to the requirement of the party making it. Further reasons sometimes given for  
14:48:13 30 the rule is the possibility that a jury, where there is one, will be confused



14:48:17 1 by a proliferation of evidence of little value. This would add to the cost of  
2 litigation, hearsay evidence is also said to operate unfairly by catching the  
3 other party by surprise."  
4

14:48:27 5 Now, apart from the final sentence in that quotation, every other evil  
6 attending and did attend the evidence given by Mr. O'Herlihy who initially  
7 asked that he not be forced as it were, to connect the name of my client with  
8 the story he was telling or had remembered, and who then obviously on advice  
9 from his own counsel gave his further evidence under protest. The difficulty  
14:48:56 10 we have Chairman, is that the media do not distinguish between evidence, gross  
11 hearsay evidence given in those circumstances and actual allegations or  
12 evidence given in the normal sense in a court of law and/or at this Tribunal.  
13

14 Essentially by, go ahead as it were to the point I wish to make in relation to  
14:49:23 15 the -- this cross-examination, it was internally contradictory as set out in  
16 that document and I would much prefer to rely on the statement made to  
17 Mr. Gallagher in it's own terms because it was made six years before rather  
18 than on the evidence given at the Tribunal in relation to it six years later.  
19 But that's a matter for the Tribunal, I accept that. But how could anybody  
14:49:51 20 believe in evidence which is accompanied by statements by the witness who  
21 allegedly heard it or who remembered hearing it, Mr. O'Herlihy, that it could  
22 have been a fellow boasting in a bar for all I know, he could have been taking  
23 the Mickey out of me and so on -- so that we say that Senator Lydon has been  
24 subjected to an unsupportable piece of malicious gossip and he is a Senator, he  
14:50:18 25 is a public person, he relies on the parliamentary party of which he is a  
26 member for a nomination to the Senate and he relies as, on his electorate being  
27 the County Councillors throughout Ireland.  
28

29 Now this is damaging to him in any test of libel, be it holding him out to  
14:50:39 30 odium, ridicule and contempt or lowering him in the eyes of a large section of

14:50:45 1 or class of people. This of course meets the test and is, is and has been most  
2 damaging and all the more aggravated in our sense of it, in that Mr. O'Herlihy  
3 is not and has not made any allegation against Senator Lydon from his own  
4 knowledge or any knowledge he had and he has said that. And normally this  
14:51:12 5 Tribunal only investigates allegations made by a party, and this --  
6 Mr. O'Herlihy's statement was anecdote and it fails if we take the In re:  
7 Haughey test it certainly could not qualify in relation to that, in that a  
8 person before a Tribunal of this nature should be furnished with a copy of the  
9 evidence, any copy, any evidence which reflected on his good name. There is no  
14:51:46 10 evidence from Mr. O'Herlihy in any real sense of the word evidence, it's a  
11 remembered story and gossip in a bar.

12  
13 Sub paragraph B of that held from In re: Haughey 1972, that he should be  
14 allowed to cross examine by counsel his accusers. Of course that's rendered  
14:52:11 15 impossible by the provenance of this hearsay. That he should be allowed to  
16 give rebutting evidence, how could he? And, so that all of the parameters that  
17 would normally guard and defend the reputation of a citizen of this country  
18 have been denied to Senator Lydon and I refer there just in support of that to  
19 the particular statements by Mr. Justice Hardiman in Maguire and Ardagh 2001  
14:52:45 20 volume 1 IR, that the right to cross examine one's accusers is a constitutional  
21 right and not a concession. It applies as In re: Haughey 1971 IR,  
22 affirmatively, as that affirmatively demonstrates in an Oireachtas committee or  
23 subcommittee as well as in any other forum, which in my respectful submission  
24 includes the present forum, where a citizen may be accused. And it is an  
14:53:15 25 essential, it is an essential constitutionally guaranteed aspect of fair  
26 procedures.

27  
28 So, I wish to quote, just it may be a slight addition to what I have included  
29 there, but I will just do it as quickly as I may, Ms. Justice McGuinness in  
14:53:34 30 that particular case again, Maguire and Ardagh which was the prelude to the

14:53:40 1 Barr Inquiry in the events in Abbeylara, but 2002 volume 1 IR at page 619 of  
2 the report, and I come here to one of the main reasons I am here today and that  
3 is the constitutional protection of any citizen's good name. Ms. Justice  
4 McGuinness at page 619 cites the article 43.1 and article 43.2 which I know the  
14:54:10 5 members are familiar with.

6  
7 Article 43.2 states "The State shall in particular by it's laws protect as best  
8 it may from unjust attack and in the case of injustice done vindicate the life,  
9 person, good name and property rights of every citizen" and she continues this  
14:54:28 10 very comprehensive statement of the background and provenance of that right and  
11 constitution. "This constitutional right to protection of one's good name is  
12 not one which is found in by any means all statements of basic human rights.

13 The rights to protection of one's life, person or property are much more  
14 universal and constitutional statements of rights or bills of rights throughout  
14:54:48 15 the world. Right to protection of one's good name is not specifically found  
16 for instance in the European Convention of Human Rights. It is not included as  
17 a right in the United States constitution nor is it included in the Canadian  
18 Charter of Rights and Freedoms contained in the Constitution Act 1982 nor in  
19 the Commonwealth of Australia Constitution Act 1900. The inclusion of this  
14:55:11 20 specific right in the Irish constitution marks a recognition by the framers of  
21 the constitution of the damage that can be done to a citizen even in the  
22 situation where he or she is not subjected to legal penalties, to loss of  
23 liberty or property or to physical injury, considering the balance which must  
24 be held between the rights of the Oireachtas as such and those of the  
14:55:30 25 individual citizen and the priorities which must be given to each, the right to  
26 protection of the individual's good name has to be given due weight."

27  
28 And, it is in that very area that I am proposing my submission here today to  
29 the Tribunal. The Tribunal in the interests of the common good has admitted  
14:55:54 30 what we see as a grossly disproportionate piece of gossip and hearsay, having

14:56:01 1 no probative value whatever. That evidence is still running around this  
2 country and anybody interested in public affairs as many people are, are aware  
3 of it. And consequently, must think the less of the person who is the victim  
4 of it.

14:56:19 5  
6 Now the question is, for this Tribunal, that having allowed it and it could be  
7 defended, having allowed it in the interests of the common good, what can it do  
8 now to justify that allowance and vindicate to the extent possible and to  
9 mitigate the damage done to Senator Lydon's reputation and in other words I am  
14:56:45 10 saying and I can quote here Mr. Justice Hamilton, the former Chief Justice in  
11 the case of Haughey and Moriarty, 1999, 3 IR page 1, where he poses this, sets  
12 up this question himself, he says there at page 59 of the report "The  
13 exigencies of the common good require matters considered by both houses of the  
14 Oireachtas to be of urgent public importance be inquired into. Particularly  
14:57:17 15 where such inquiries are necessary to preserve the purity and integrity of our  
16 public life without which a successful democracy is impossible" and in that  
17 particular case the Oireachtas deemed it expedient that one be established but  
18 he goes ahead, pertinently to our situation the effect of such resolutions is  
19 undoubtedly to encroach upon the fundamental rights of the plaintiffs in the  
14:57:40 20 name of the common good. The encroachment of such rights is justified in this  
21 particular case by the exigencies of the common good, but he then adds "Such  
22 encroachment must however be only to the extent necessary for the proper  
23 conduct of the inquiry. Both houses of the Oireachtas are entitled to assume  
24 that the Tribunal will conduct its investigation according to the principles of  
14:58:04 25 constitutional justice and fair procedures and will only interfere with the  
26 constitutional rights of the plaintiffs when and only to the extent that it is  
27 necessary for the proper conduct of the inquiry."  
28

29 So, and that was of course Haughey and Moriarty about access by another  
14:58:20 30 Tribunal to the bank accounts without affording the plaintiffs in that case an

14:58:25 1 opportunity to contest an Order for Discovery.

2

3 But the comments are a apposite in a general sense and relate to Mr. Justice

4 Hamilton's clear understanding of the balance that should be obtained between

14:58:40 5 the necessity to serve the public interests on the one hand and preserve the

6 rights and constitutional rights in particular of the persons affected there

7 by.

8

9 Now, we say that our case falls into this area and that in my respectful

14:58:57 10 submission and request to the Tribunal, one way now and the only way I can see

11 that Senator Lydon's position can be vindicated in the short term is that the

12 Tribunal make either an early final decision in relation to the admissibility

13 of this evidence of Mr. O'Herlihy or at least an interim decision which will

14 indicate to the wider world the weight that might be attached to this evidence

14:59:28 15 which of course respectfully we would say is nil, minus.

16

17 We say that because there is a general election by May of next year, if we can

18 believe the pundits and the Taoiseach, and the Senator, Senator's professional

19 political career will be in the balance like all other Senators and Teachta

14:59:55 20 Dail at that time, and if that is not, if this Tribunal is continuing beyond

21 that date and I can't speculate on that, then if it's, if we were to have some

22 timius mitigation of the damage done to us it must be in the short term rather

23 than the long term.

24

15:00:14 25 I would say that, this is why we ask you to make these submissions at the end

26 of this Module, and we can sympathise with other parties who are affected by

27 other statements, by other witnesses and have found their own means of trying

28 to redress that in the public media. We are coming here to the Tribunal, which

29 is the source of the damage to our client, and we are asking at source that

15:00:40 30 this damage be now limited and that that particular heinous piece of hearsay be

15:00:50 1 dealt with in the short-term. Of course that's a matter for the Tribunal, what  
2 weight might be attached or should be attached, but insofar as this may seem an  
3 exceptional request, I am aware that in and this is an addition as it were, by  
4 letter of the 9th December 2002 which is nearly, well quite a while ago now,  
15:01:15 5 but paragraph 8 of that letter from the Tribunal to Mr. Anton De Lapp of Edge  
6 Manning acting for Mr. Lydon, it was stated that the Tribunal has already  
7 stated that it will not reach any final decision in relation to the allegations  
8 made by -- another witness at this Tribunal -- until all of the Modules in  
9 which he makes allegations against councillors have been completed.

15:01:39 10  
11 Now I mention that in case that reflects the general policy. We are not in  
12 anyway engaging in relation to the person named in that paragraph, but we are  
13 saying that Mr. O'Herlihy's evidence stands alone, is unique, the damage done  
14 is unique, and that it can be dealt with exceptionally if that's the phrase  
15:02:03 15 that has to be used, in this module, in order that proportionality and  
16 reasonableness be reasserted in terms of the balance of the constitutional  
17 rights involved, and in particular the right of Senator Lydon to pursue his  
18 chosen career, and so that the wrong in relation to Senator Lydon may cease and  
19 the right prevail.

15:02:31 20  
21 Thank you Mr. Chairman.

22  
23 CHAIRMAN: All right. I would like to say that we would be in a position to  
24 give the ruling in relation to your submission this week, I think that's  
15:02:46 25 probably not practical at this stage. If we do manage to succeed in that  
26 endeavour we'll let you know through your solicitor, if not, certainly it will  
27 be a matter which will be dealt with on the first day of public hearings in  
28 September.

29  
15:03:02 30 MS. DILLON: I think that's the 19th.

15:03:04 1  
2 CHAIRMAN: Which is the 19th September.  
3  
4 MS. DILLON: 19th of September.  
15:03:07 5  
6 CHAIRMAN: Yes. So, the Tribunal's solicitor will be in contact with your  
7 solicitor.  
8  
9 MS. DILLON: If I could just say very briefly in response, for fear that there  
10 might be any belief that there is a concession being made as to the matters  
11 that have been canvassed by Mr. O'Tuathail.  
12  
13 It is not accepted that the Tribunal behaved either improperly or grossly  
14 prejudicially towards Mr. Lydon, nor is it accepted that any of Senator Lydon's  
15 In re Haughey rights have been breached. It is noted that Mr. O'Tuathail,  
16 contrary to his earlier position, now accepts the right of the Tribunal to  
17 receive and take hearsay, and that apparently what Mr. O'Tuathail seeks is an  
18 exceptional interim ruling from the Tribunal in what he describes as  
19 exceptional circumstances. Thank you.  
15:03:59 20  
21 MR O'TUATHAIL: Well Mr. Chairman, very briefly if I can respond to that? I  
22 have said it may be deemed to be exceptional, I don't accept that it's  
23 exceptional. I think there is a necessary element to this.  
24  
15:04:12 25 The 19th September seems to my ears to be, I would agree that the Tribunal has  
26 to do it's homework and have it's own position, but it seems to me to be a bit  
27 late in time in terms of the public arena aspect of this.  
28  
29 I know the Dail will not be sitting for the summer, but if possible I would  
15:04:40 30 prefer an earlier date and I don't think I have changed my position on this.

15:04:49 1 My position has been all along that Mr. O'Herlihy's evidence was pure hearsay  
2 and that Mr. O'Herlihy himself asked that the name not be released, that in my  
3 view could have been done. And there is a perception abroad among councillors  
4 generally, that because of certain High Court actions that are holding up other  
15:05:11 5 modules of this Tribunal, that they are being unfairly recycled through various  
6 modules. And certainly my client would, I think, share that view.  
7

8 But that being so, I am -- I will await the Tribunal's decision in the matter  
9 and I thank the Tribunal for hearing me this afternoon.

15:05:33 10  
11 CHAIRMAN: Right. Well I would be inclined to -- I don't know whether I  
12 should make some comment, just in relation to what you have said about  
13 "councillors generally believe that because of certain High Court actions they  
14 are, that are holding up modules of the Tribunal that they are being unfairly  
15:05:52 15 recycled through various modules". Well that's not an accurate comment in the  
16 sense that the only module that's being held up insofar as your client is  
17 concerned would be that of Quarryvale. And had things been different, if there  
18 had been no challenge in the courts in relation to Quarryvale, Quarryvale would  
19 presumably have concluded by now and we would be at the, we would be engaged in  
15:06:23 20 the modules that we are now engaged in in any event. We might about two or  
21 three months behind the positions we are now in, but certainly the, insofar as  
22 your client and other witnesses common to these modules are concerned, almost  
23 certainly they would have spent much of this year in some degree of engagement  
24 with the Tribunal.

15:06:50 25  
26 MS. DILLON: Yes sir, that's correct. The Tribunal has completed six modules  
27 since last Christmas and it anticipates completing six more before next  
28 Christmas. Those modules were all ready to take their place after Quarryvale  
29 and there has been no question of anybody being recycled, or matters such as  
15:07:06 30 that.



15:07:06 1  
2 CHAIRMAN: No. No, I just want to make that clear. The work we are doing now  
3 was work we were going to do in any event, it might have been in a slightly  
4 different order, but so far as your clients are concerned, the net effect would  
15:07:19 5 be the same.

6  
7 All right, well we'll do the best we can to expedite a ruling. We are sitting  
8 tomorrow at -- that effectively concludes --

9  
15:07:30 10 MS. DILLON: Yes, there is about ten minutes left for one very short witness  
11 whom, subject to agreement we hope to slot in this week, but the balance of  
12 this week will be taken up with the resumption of the Walls/Kinseally Module  
13 which it hopes to conclude by Friday.

14  
15:07:47 15 CHAIRMAN: But with the exception of the short witness that effectively  
16 concludes the Cherrywood.

17  
18 MS. DILLON: Monarch Module.

19  
15:08:01 20 CHAIRMAN: The Monarch Module. All right, half ten tomorrow.

21  
22 MS. DILLON: May it please your Lordship.

23  
24 **THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY**  
15:08:25 25 **WEDNESDAY 26TH JULY 2006 AT 10.30 AM.**

26  
27  
28  
29  
30