SPECIAL COMMISSION OF INQUIRY INTO MATTERS RELATING TO THE POLICE INVESTIGATION OF CERTAIN CHILD SEXUAL ABUSE ALLEGATIONS IN THE CATHOLIC DIOCESE OF MAITLAND-NEWCASTLE

At Newcastle Supreme Court Court Room Number 1, Church Street, Newcastle NSW

On Wednesday, 24 July 2013 at 10.20am (Day 15)

Before Commissioner: Ms Margaret Cunneen SC

Counsel Assisting: Ms Julia Lonergan SC

Mr David Kell Mr Warwick Hunt

Crown Solicitor's Office: Ms Emma Sullivan,

Ms Jessica Wardle

2 3 4 5	this morning. Although our wonderful transcr have boundless energy, the batteries that the their equipment do not. Hence the need to ha delay this morning. I call Father Brian Jose	ript reporters by use for live a short
6 7 8	<pre><brian joseph="" lucas,="" pre="" sworn:<=""></brian></pre>	[10.20am]
9 10 11	MR SKINNER: Commissioner, my client claims under section 23(2) of the Act.	protection
12 13	THE COMMISSIONER: Thank you, Mr Skinner. T	hat is noted.
14 15	<pre><examination by="" lonergan:<="" ms="" pre=""></examination></pre>	
16 17 18	MS LONERGAN: Q. Your full name is Father Lucas? A. Yes.	Brian Joseph
19 20 21 22	Q. You're a Catholic priest? A. Yes.	
232425	Q. You are incardinated to the Archdiocese A. Yes.	of Sydney?
26 27 28	Q. You were ordained in August 1980? A. Yes.	
29 30 31 32	Q. Prior to being ordained as a Catholic procompleted a law degree?A. Yes.	riest, you
33 34 35	Q. You completed that in 1974? A. Yes.	
36 37 38 39	Q. You practised as a legal practitioner for did you?A. Yes.	or a period,
40 41 42 43 44 45 46 47	Q. Could you outline what kind of work you practitioner? A. I spent two years as an articled clerk docommercial work for a firm in Phillip Street, I then stayed with that firm as a solicitor for year doing general commercial and property last of 1974, or beginning of 1975, I then retired work and went to the seminary at St Columba's	loing general in Sydney. For another w. At the end I from that

- I maintained my practising certificate, which 1 Springwood. 2 at that stage was an unrestricted practising certificate, 3 with a view during the seminary holidays of doing some 4 part-time practice. Towards the middle, I think, of 1975, the New South Wales Law Society then established 5 6 a legal aid scheme in the Sydney Childrens Courts, and 7 I participated as a duty solicitor in that scheme through 8 the summer holidays and occasionally the mid-year holidays from the seminary through until the end of 1979. 9 then ordained a deacon. At that time I asked that my name 10 be struck from the roll of solicitors and I was admitted as 11 12 a non-practising barrister.
 - Q. After the time you were admitted as a non-practising barrister, did you carry out any more legal practice?
 A. No.
 - Q. I'm going to ask you questions about the Sydney Childrens Court duty solicitor work you did. At that time the Childrens Court dealt with children who were in trouble with the law; is that the position?

 A. Yes.
 - Q. Or children who were having difficulties with placement in terms of where they were living? A. Yes.
- Q. In your time in that role, did you deal with children who had been victims of sexual abuse?

 A. Many occasions, yes.
 - Q. That gave you some insight into the sorts of troubles that can be associated with children who have gone through that experience?
- 35 A. Yes.

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- Q. Father, in your study as a lawyer, you would have taken notes during lectures?
- 39 A. Yes.
- 41 Q. And you would have taken notes during study? 42 A. Yes.
- Q. That's because it's important to keep notes so you can remember things?
- 46 A. For exam purposes, yes. 47

1 Q. For exam questions? 2 Α. For exam purposes, yes. 3 4 While you were a lawyer, you would have taken notes 5 from your clients? 6 Α. Yes. 7 8 Q. That's so that you could present their cases at court? Α. Yes. 9 10 And so that you could remember important things 11 related to those clients? 12 13 Α. Yes. 14 15 Q. That's a discipline you learned as a legal student? Α. 16 17 Q. And as a lawyer? 18 19 Α. Yes. 20 21 That's a discipline that stays with you for your 22 lifetime, isn't it? 23 Not necessarily, because there are some circumstances 24 when one is a priest and no longer a lawyer when it can be quite counterproductive to take notes in conversations with 25 26 One does not take notes, for example, in hearing 27 someone's confession. 28 29 Oh, one would never expect that to happen, because, as you know and as probably everyone in this court knows, 30 31 priests cannot disclose what happens in the confessional. 32 Α. Yes. 33 34 But in situations where you are, as part of your 35 execution of duties, an official of the Catholic Church and independent of confessionals and sacraments and private 36 37 conferences, you had as an aspect to your role an important 38 disciplinary aspect, didn't you? 39 Α. I'm not quite sure I understand that question. 40 41 You were retained by the Australian Catholic Bishops 42 Conference to assist in structuring protocols for the 43 Catholic bishops to follow when they were dealing with 44 priests who got themselves into trouble? 45 Yes, I was part of a committee for that purpose. Α. 46 47 Q. I'm not suggesting you did it on your own, but in that

1 2 3 4 5	role you were recognising, were you not, that important rights of priests may be affected by the way in which the protocol was structured? A. Yes.
6 7 8 9	Q. Important rights being their being allowed to continue practising as priests? A. Yes.
10 11 12 13 14	Q. It's the position, isn't it, that a priest is a priest for life; is that the way the ordination process works? A. Well, that's the theological concept. Whether he's allowed ever to practise as a priest for life depends on circumstances.
16 17 18 19	Q. So circumstances may arise where a priest is deprived of his faculties because of things he has done? A. Yes.
20 21 22 23	Q. That are thought to be wrong or against the teachings of the church? A. Yes.
24 25 26 27	Q. And you had a role on occasion to be part of that process where priests had their faculties removed? A. Sadly, yes.
28 29 30 31 32 33 34 35 36	Q. I will hand you up a copy of your curriculum vitae, which is in the statement bundles that have already been served on parties at the Bar table, and also a copy for the Commissioner. I'm going to ask you a few more questions about some matters in your curriculum vitae. Would you agree with me that having a good memory is very helpful for the study of law? A. Yes.
37 38 39	Q. You completed a Master of Laws by course work? A. No, by thesis.
40 41 42 43	Q. By thesis, in 1978. You also completed a Master of General Studies at the University of New South Wales? A. Yes.
44 45 46 47	Q. And that was about the Good Shepherd Sisters and the adolescent girl in need of care? A. Yes.

- Did any aspect of that thesis deal with the effects of 1 Q. 2 or the relevance at all of sexual abuse of children? 3
 - Yes, it certainly did.

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- That featured in the thesis, did it? Q.
- Most of the study at that particular time focused on other issues related to adolescent girls who were in need The child welfare legislation at the time used to contain the expression "exposed to moral danger" and the What we were probably much less aware of at the time I did that thesis was the internal sexual abuse of girls, particularly in the familial situation. But the program that I did the study on, conducted by the Good Shepherd Sisters, developed particularly through the early 1980s to have quite a specialist part that related to dealing with young people who had been the victims of sexual abuse.

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- You also completed a Bachelor of Theology at the Catholic Institute of Sydney in 1980?
- Α. Yes.

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- A Graduate Diploma of Religious Education in 1986?
- 23 Α. Yes.

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And a Diploma of Jurisprudence through the University of Sydney and you received a particular award for that? Α. Yes.

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You also completed a Licentiate in Sacred Theology featuring a thesis on the secrecy of the confessional and civil law and related to a case study there? Yes. Α.

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So is it fair to say you have a particular interest in the questions of the way in which confidential matters relating to church business should be dealt with? Α. Yes.

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You also have a Certificate in Pastoral Communication from the Pontifical Gregorian University in Rome in 2002? Α. Yes.

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- Ω. What was that about?
- 44 It was a course related to the way in which church 45 agencies would deal with media. It was part of a Churchill 46 fellowship that I had been awarded, and I undertook that 47 short course.

You have been the official media spokesman for the archdiocese of Sydney between 1985 and 2002? 4 Α. Yes.

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- And also a columnist for the Catholic Weekly from 1983 to 2002?
- Α. Yes.

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- The time frame to which I'm going to direct your mind shortly is 1988 to 1993 inclusive.
 - Α. Yes.

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- Before I do that, from 1988 to 1999 you were a member of the Australian Catholic Bishops Conference committee for professional standards?
- Α. Yes.

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- Can you outline for the benefit of those present what the work of that particular committee was?
- That committee was established. I'm not sure of the precise date it was formally established, but I think in early 1989. The purpose of that committee was to prepare a protocol to assist bishops and congregational leaders in dealing with allegations of criminal behaviour by members of the church.

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Do you recall now what, if any, particular events prompted the commencement of that committee in 1988? There had been some publicity relating to some cases, I think particularly in Melbourne, but also there had been some publicity relating to these matters in the United States and in Canada.

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- Are you able to say who, if any individual indeed did this, prompted the establishment or recognition of the need for a committee of this nature to help advise the Catholic bishops and Catholic community?
- I'm not sure what you're asking me, which particular bishop?

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- How did it happen? Did somebody prompt it? Did you prompt it? Did a number of bishops get together and say that this was an issue or how was it born?
- 45 To the best of my recollection, there must have been 46 some conversation among the bishops. I recall - and my 47 memory on this is fragile, whether it was at the end of

- 1987 or 1988, the document attached to my statement refers to April 1988, but I have always had a feeling that we had a call from Cardinal Clancy. I say "we" it was either a call by Cardinal Clancy to Father John Usher and he spoke to me or a call by Cardinal Clancy to me and I spoke to John Usher, but the two of us went out one evening to Kensington to the plenary meeting of the Australian Catholic Bishops Conference and gave a short presentation. As I said, my recollection has always been that that was at the end of 1987, but when I came upon that document in April 1988, perhaps that recollection is mistaken. It may have been in April 1988 that we made a presentation to the bishops. In that presentation, I made a recommendation that they needed to study these issues in more depth and that they should establish a committee for that purpose
 - Q. I will show you some documents shortly that might assist further with those time frames that you have just given evidence about. At the time you made these recommendations and gave this information to the Catholic Bishops Conference, you understood, didn't you, the effect of sexual abuse on children could manifest itself way into their adult years?
 - A. I don't know that, to be honest, in 1988 the understanding was as good as it is some 25 years later, but there was certainly some understanding.
 - Q. Did you have an understanding that it could affect children who had been abused as children into their adult years?

A. Yes.

- Q. You had discussions with Father Usher about those matters?
- A. That was more his area of expertise.
- 36
 37 Q. He was a psychologist, was he?
 - A. No, he was a social worker.

Q. Father, I'll have you shown a copy of your affidavit that you prepared for the benefit of this Commission. It's dated 11 March 2013. You'll see that the affidavit has had some pseudonyms slotted into it, and that is because various persons have been given pseudonyms in these proceedings. There are also a couple of parts that have been redacted for relevance - relevance in terms of the terms of reference for this Special Commission. You have

1 2 3 4	annexed some documents to it that you consider to be helpful in outlining the matters about which your evidence had been sought? A. Yes.
5 6 7	Q. Is the affidavit true and correct? A. Yes.
8 9 10	Q. Is there anything that you wish to change in there? A. Not that I'm aware of.
1 2 3	MS LONERGAN: I tender the affidavit, Commissioner.
4 5 6	THE COMMISSIONER: The affidavit of Father Brian Lucas dated 11 March 2013 will be admitted and marked exhibit 142.
18 19 20	EXHIBIT #142 AFFIDAVIT OF FATHER BRIAN LUCAS DATED 11/03/2013
21 22 23 24 25	MS LONERGAN: Q. Keep that affidavit with you, and I will show you some documents from our materials collected for the benefit of the exploration of issues for the Special Commission. On your right, there's a number of volumes. I want you to reach for volume 2, please, and go to tab 138.
27 28 29	MS LONERGAN: Commissioner, I should tender the curriculum vitae of Father Lucas as well.
30 31 32	THE COMMISSIONER: That will be marked exhibit 143.
33 34	EXHIBIT #143 CURRICULUM VITAE OF FATHER BRIAN LUCAS
35 36 37	MS LONERGAN: Q. Tab 138, Father Lucas. A. Is that a letter dated October 26?
38 39 40	Q. That's right. A. Yes.
11 12 13 14	Q. That's a letter from Father Usher - was he Father Usher then or Monsignor? A. Father.
15 16 17	Q. Father Usher, to you? A. Yes.

1 2 3 4 5	Q. And it suggests or confirms that there will be a child sexual assault seminar that you and he were planning together? A. Yes.
6 7 8 9	Q. From reading that letter, was that seminar something you were going to present to the Catholic Bishops Conference or was it something else? A. No, I think that seminar was for clergy.
11 12 13 14	Q. For which diocese or dioceses? A. It would have been clergy of the archdiocese of Sydney.
15 16	MS LONERGAN: I tender that letter, Commissioner, on Centacare letterhead dated 26 October 1987.
17 18 19 20	THE COMMISSIONER: The letter from Father Usher to Father Lucas dated 26 October 1987 that will be admitted and marked exhibit 144.
21 22 23 24	EXHIBIT #144 LETTER FROM FATHER USHER TO FATHER LUCAS DATED 26/10/1987
25 26 27 28 29 30 31	MS LONERGAN: Q. If you wouldn't mind turning to tab 142 in the same volume, please. Father, you'll see that's a document headed "When clergy are accused of criminal acts". Before I ask you some questions about the document, there was no doubt in your mind, was there, in 1988 that sexual abuse of a child was a criminal offence? A. Certainly not.
32 33 34	Q. No doubt? A. No doubt.
35 36 37 38 39	Q. Did you have sufficient knowledge in terms of your legal background to differentiate between what abuses of children, sexual abuses of children, were felonies and which were not?
40 41 42 43	A. I wouldn't know that now, and I'm not sure that I would have known that then. I knew the distinction, that there - I'll perhaps explain it more clearly. I knew there was a distinction in the law between a misdemeanour and

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Q.

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1558 B J LUCAS (Ms Lonergan)

a felony, but I don't know that I knew precisely which types of offences would have fallen into which category.

Is it fair to say you would have certainly had the

Is it your evidence you didn't write that commentary;

Father Matthews did, to your understanding?

Α. Oh, yes.

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Is there any way of distinguishing by looking at the document what's commentary and what's the initial Canadian document, or is that a task you just wouldn't be able to assist with?

Having compared this document with the other document,

1 2 3 4	I think what is in bold is the Canadian document, and what is in a lighter font, I think is Father Matthews' commentary.
5 6 7 8 9	Q. Are you able to give any evidence confidently that this particular document was in fact disseminated to Australian Catholic bishops for their information and assistance? A. That I'm not sure.
11 12 13 14	Q. So you would be guessing in terms of its dissemination? A. Yes.
15 16 17 18 19 20 21 22 23 24 25	Q. Did you use any parts of this document to assist in preparation of any other protocol or procedure documents for the assistance of the Catholic Bishops Conference? A. Yes, I think when the bishops committee began working on a protocol, the general structure of the Canadian document I think formed a basis for reflection and consideration. I think it was in 1991 that a fairly brief document was prepared for consideration and discussion and consultation for about a year that led to a more mature document in 1992.
26 27 28 29	Q. I'm going to stop you there. Thank you for that history. Did you prepare that document you've just outlined? A. Not personally. I was part of a committee that
30 31	prepared the document.
32 33 34	Q. You had a role in preparing the document?A. Yes.
35 36 37 38	Q. In preparing the document, was this document we're looking at now, "When clergy are accused of criminal acts", used in any way to prepare the subsequent 1991 draft? A. I don't recall.
39 40 41 42 43	Q. You don't recall? A. No. I presume it was available, but I have no recollection as to the extent to which Father Matthews' commentary was significant or not.
44 45 46 47	Q. At the time you prepared or assisted in preparing the 1991 draft document, you had read this 1988 document we're looking at?

1	A. I presume so, but I don't recall.
2	O You procume so Why would you procume so?
3 4	Q. You presume so. Why would you presume so?A. Well, I presume that if this document was available to
5	the committee, I would have received a copy of it and read
6	it.
7	
8	Q. And that is a perfectly reasonable assumption, is it
9	not?
10	A. Certainly.
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12	Q. So you can comfortably state that the likelihood of
13	you having read this document before you assisted in
14	preparing the 1991 document is high?
15	A. Yes.
16	
17	MS LONERGAN: Commissioner, I tender the 1988 document.
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19	THE COMMISSIONER: That's tab 142?
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21	MS LONERGAN: Yes, Commissioner.
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23	THE COMMISSIONER: The material behind tab 142 entitled
24	"When clergy are accused of criminal acts", by Father Kevin
25	Matthews, will be admitted and marked exhibit 145.
26	EXHIBIT #145 DOCUMENT ENTITLED "WHEN CLERGY ARE ACCUSED OF
27 28	CRIMINAL ACTS", BY FATHER KEVIN MATTHEWS (TAB 142)
29	CRITINAL ACTS , BI TATHER REVIN HATTHEWS (TAB 142)
30	MS LONERGAN: Q. Father Lucas, did you agree broadly
31	with the matters set out in this draft document that we're
32	looking at, "When clergy are accused of criminal acts", in
33	terms of it being a reasonable approach for bishops in
34	Australia to manage? Did you have a view as to whether
35	this was a reasonable approach, as set out in this
36	document, for bishops to approach the difficulties they
37	faced when clergy were accused of criminal offences?
38	A. I find it hard to answer that in those general terms.
39	Obviously there would be some aspects of this document that
40	were more significant than others with which I would have
41	had a more sort of central - where my agreement would be
42	more significant. I'd have to reread the document now to
43	see if there were aspects of it where I may have taken
44	a different opinion.
45	
46	Q. I might ask you to do that later in the morning. If

you wouldn't mind turning to page 9 of the document, which

is tab 222 of the bundle. Do you see under the paragraph next to number 2 - it's talking about return to ministry of a cleric who had been accused of criminal behaviour, Father Lucas - this observation is noted:

This is one area where all bishops in Australia should arrive at a common policy. The damage, contradiction and seeming injustice possible where one bishop could advocate dismissal from the clerical state, while another pushes for a quick return to the ministry and yet another imposes precepts of taking certain medication for life need to be weighed up carefully.

A. Yes.

Q. You agree with that as a proposition, that there needed to be a consistency amongst bishops in Australia? A. Yes.

Q. Part of your role on the committee that we have been discussing was to assist in structuring a protocol or policy so that there could be consistency?

A. Yes.

Q. At the bottom of that same page under the heading "Other factors to be noted", there is this comment:

 In contemplation of litigation and for the benefit of the legal counsel of the diocese, it is recommended that a written record be kept of all steps taken at the diocesan level from the moment the denunciation was first received. Care should be taken to protect the confidentiality of such documentation, depending to a large extent on the prevailing civil legislation.

Then it goes on to say:

The written record shall be endorsed as being prepared for the benefit of and assistance of the diocesan counsel.

Are you able to say whether this is part of

- Father Matthews' suggestions or it was in the original document, or you can't say?
 - A. I think this was part of the Canadian document, just by use of the language suggests it. For example "assistance of diocesan counsel" would not be an Australian expression, so I think that paragraph is also involved was the Canadian document.
 - Q. What's your view about the recommendation or the suggestion that it is a good idea to keep a written record of steps taken at a diocesan level about when clergy are accused of criminal behaviour?
 - A. I think that's too simplistic as it's presented there. I think there are a number of different circumstances and different sorts of conversations where sometimes it's appropriate to have a written record and other times where it's not.
 - Q. What about in circumstances where evidence is being taken with a view to that evidence being used to strip a priest of his faculties?
 - A. If there's a formal canonical trial, then the very nature of church canonical trials requires that they be documented.
 - Q. Putting aside formal canonical trials, what is your view about the wisdom or otherwise of keeping a written record of evidence related to, or that's going to be used for, stripping a priest of his faculties?
 - A. Again, that would depend very much on the circumstances. There are some circumstances where, for example, in a conversation with a priest where one is trying to persuade him to resign his ministry, it would be counterproductive to write that down because that would send a signal to him that would suggest he not say anything to anyone, and that could be counterproductive. So much depends on the circumstances and the type of action one is trying to take.
 - Q. What about taking notes after the cleric left the room?
 - A. Well, if you take notes after the cleric left the room, in fairness to him he ought to see them and endorse them as being accurate, and then you're back to where you were if you had taken the notes in front of him.
 - Q. Surely a set of notes taken endorsed or not endorsed

It depends on the circumstances. Generally speaking I would agree, but it would depend sometimes on the circumstances of what else was done by way of reporting the nature of that conversation.

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Let's address ourselves to the situation where an Q. interview is had with a cleric at which he is presented with information to the effect that he had sexually abused a number of children.

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Α. Yes.

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And the interviewer is somebody who has been retained to find out from the perpetrator what happened and/or encourage him to remove himself from ministry?

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Yes. Α.

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Q. Or allow himself to be removed from ministry? Yes.

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Α. 21

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Wouldn't you agree it would be very beneficial for notes to be taken of that conference by the person conducting the interview?

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As I said, if you're sitting in front of him taking notes, he will not say anything. That was my experience.

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That was your experience, all right. We weren't necessarily talking about you in the example, but happy to talk about you if you would prefer. Wouldn't the position be far stronger in terms of confronting the alleged perpetrator with information if he was presented with notes of accounts that had been given about him?

32 33 34

If such notes existed. Α.

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Wouldn't it be much easier to present to an accused cleric the case against him if there were notes? That would again depend on some circumstances. It may be that in a particular situation, you may not wish to identify a particular victim to the particular cleric. There are issues of relationship, risk of reprisal. the other aspect of this sort of conversation is that simply presenting a set of facts with a particular victim simply leads to a denial. Sometimes that conversation

43 44

needs to work around the cleric's own perception of who might be making such allegations with a view to confronting

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Q. Sometimes presenting a cleric with some facts about their sexually abusive behaviour leads to an admission, doesn't it?

A. It can do.

Q. And it has, hasn't it, in cases where you've confronted clerics with allegations of sexual abuse of children?

A. It has.

Q. It would be most useful, wouldn't it, to note that the cleric had admitted to certain offences, wouldn't it?

A. If that was the situation in the particular case, but depending on the nature of that conversation, it may be simply a matter of reporting the event back to the bishop, if that was what was requested.

 Q. But would you agree with me that for the person who was sitting there while Father X said, "I interfered with X sexually when she was nine", it would be much more valuable for that person who took that admission, who heard it with their own ears, to write it down and then convey a note of it to the relevant bishop or superior?

A. Not necessarily. The priest, whatever we think about the law, has his right to silence. There has to be some fairness to him, and the circumstances could be such that if he thought that there was going to be some permanent record, he would simply not speak in the first place, and that was the real dilemma, and I absolutely accept, counsel, what you're putting to me, and I found that a constant dilemma.

 Q. But, Father Lucas, wasn't that the position, and let's go straight to you - in a role you completed for the assistance of various bishops in New South Wales, you had the role of persuading a priest to leave ministry?

A. Yes.

40 Q. That's the position, isn't it?

41 A. Yes.

Q. When a priest had been accused of sexually abusing children and probably other circumstances as well; is that right?

46 A. Yes.

1 2 3	Q. So you would, after these chats with the priests, make a phone call to the bishop or the superior, would you? A. Yes.
4	
5 6	Q. Did you ever on any occasion provide to the bishop or superior notes of your discussion with the alleged
7	perpetrator?
8	A. If the bishop wanted some written letter as to the
9	outcome, I would do that.
10	
11	Q. Did you ever provide to the bishop or superior notes
12	of complaints of the victims?
13	A. That may have been the case. I don't recall
14	a specific instance. And I'm not quite sure - I don't want
15	to misrepresent my answer.
16	
17	Q. I'm asking a very general question.
18	A. Yes.
19	
20	Q. Did you ever provide to bishops or superiors notes of
21	complaints by complainants that you had taken yourself, let
22	me confine the question a little?
23 24	A. There would have been some instances I'm sure where
2 4 25	a victim presented a written statement and I would have passed it on to a bishop.
26	passed it on to a bishop.
27	Q. And in some circumstances you actually took complaints
28	from complainants yourself, didn't you?
29	A. On some occasions. Very rarely. Mostly the
30	complainants were dealt with by Father John Usher.
31	compramates note deate with by racher contribution
32	Q. But you did on at least some occasions take
33	complaints?
34	A. Yes.
35	
36	Q. And at the time you made notes about what the
37	complaints were?
38	A. There could have been some instances of that, yes.
39	
40	Q. Why only some instances of that?
41	A. It depends very much on the circumstances and what
42	a particular complainant wants to do. If a complainant
43	came with a written statement, for instance, and wanted
44	that written statement passed on to a bishop, it may be
45	that there were some aspects of that statement to clarify.
46	In other instances, depending again on the circumstances,
47	it would be counterproductive to sit in front of

- Q. One thing that is absolutely common to all complainants is that they're complaining; that's right, isn't it?
- A. Yes.

Q. They want a complaint conveyed and dealt with? A. Yes.

- Q. For a complaint to be accurately conveyed, wouldn't you agree with me that it would be proper to take a note of it so that it can be conveyed accurately if you do not have a written note of it provided to you already?
- A. My experience would be if a victim wanted some formal conveyance of a complaint in most of the cases I dealt with, the victim had already made a complaint to the church authority. That's why the matter was referred to me. They had already made that complaint. I'd be very cautious of wanting them to restate again what they had already stated.

Q. Didn't you need to evaluate what they were saying so you could present that material to the alleged perpetrator?

A. Only in the most general terms.

Q. It needed to be more than general terms, didn't it, so that you could confront the alleged perpetrator with what was being alleged about him?

A. Not in specific detail. That was generally not necessary. It was enough to confront him with the fact that there had been allegations made against him. The precise detail of those allegations, generally speaking, were not necessary.

Q. You wouldn't be able to encourage a priest to leave ministry just saying, "There have been allegations made against you." Wouldn't you at least need some detail about what those complaints were, that is, they were of a sexual nature in relation to a child or they were of an inappropriate nature in relation to a grown adult, or at

Q. Wouldn't you need to have made some determination in your mind as to whether these allegations were so fanciful that you shouldn't even be confronting the priest about them?

I think the question of whether they were fanciful was

probably already determined by the person they made the original complaint to. That's not absolutely the case in every instance, but the sorts of cases - I can recall one specific case where there was a very fanciful conversation, and that conversation took place in the presence of the complainant's solicitor.

- Q. Yes. And that was one fanciful account out of how many that you dealt with in your career?
- A. Oh, that would be one out of I don't know, but very rare.

- Q. One out of I'm going to ask you to make a stab, an educated stab, at how many of these types of matters you've dealt with?
- A. When I was asked that question before, I took the opportunity to then try to refresh my memory by looking at a website where there was a list of names of perpetrators, and I would think it would probably be of the order of somewhere around 35, give or take a view. There are some where my memory is fading.

Q. Thirty-five give or take a few over what time period? A. This would be over the period from about 1990 through to 1995 or 1996.

- Q. And you stopped that particular special role you had at 1995/1996; is that your evidence?
- A. Around then, when the Professional Standards Office was established in Sydney.

- Q. Can I ask you some questions about this special role. Who suggested to you that you should fulfil this particular task in dealing with clerics who had been accused of particular conduct?
- A. The protocol that was established in 1992 established a resource group in each province, and there were several of us appointed to that resource group in Sydney.

- Your particular role was it duplicated by anybody 1 2 else, to your knowledge? Generally the cases I dealt with, I dealt with in 3 4 company with Father John Usher. 5 6 So to that extent he didn't duplicate your role; he 7 accompanied you? 8 Α. Yes. 9 Q. Do you know if anybody duplicated your role? 10 I expect that he dealt with some instances on his own 11 12 and I expect that there may have been others who dealt with instances on their own. 13
- 14 15 Q. Which others?

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- A. I'd need to check who were members of the committee at the particular time. I know that Father Bob McGuckin was a member of the committee at one stage. Father Bill Burston was a member of the committee at one stage. Sister Evelyn Woodward was a member of the committee at some stage, but I can't be sure of the precise times.
- Q. I should make the question more specific. I'm dealing with people from that particular group or committee who had the role of confronting perpetrators or alleged perpetrators of sexual abuse with the allegations of abuse with a view to persuading them out of ministry?

 A. Yes.
- Q. That was the role you performed, wasn't it?
 A. Generally in conjunction with Father John Usher, yes.
 - Q. I'm sorry, I didn't mean to leave him out of the equation. Do you know whether Father Burston or Father McGuckin performed that role, as well as you, during the same period you did it?
- A. I don't have any specific examples, no.
- Q. By that answer, are you suggesting they didn't do it or you just don't know?
- 41 A. I just don't know. 42
- Q. You would be contacted by various bishops around New South Wales, would you, to assist with that particular task where they had a priest who had been accused of sexually abusive behaviour?
- 47 A. Yes.

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- 8 9

by the bishops.

Q.

Α.

Q.

Α.

Q.

you.

Sorry.

allegations.

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- Q. Is that an accurate observation, though?

canon lawyers have been very critical.

- Α. I think so.
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your process was outside any canon law processes?

Were you also asked to do that task in relation to

inappropriate behaviour, or was it only the sexual abuse? No, other behaviour, but the other behaviour would

have probably been confined to the archdiocese of Sydney.

Other types of behaviour were probably dealt with locally

had been allocated to you as part of the group you've

described, did you on occasion take canon law advice?

were a number of canon lawyers who had views on various

the way in which you went about your particular tasks?

process that would have required canon law advice.

Let me ask some preliminary questions.

need to comply with any canon law processes?

role that you were carrying out as having absolutely no

It depends on what the canon law processes were.

I think the general view at the time, and a view certainly

that I had at that time, was that the canon law processes, the formal structured canon law processes, were unworkable

and we needed to find a different way of dealing with these

That would be a general observation of which many

So are we to understand your answer as suggesting that

There was certainly canon law advice -Father Matthews' document would be part of that.

As part of your fulfilling this particular role that

Did you take advice from them on occasion regarding

I don't recall that I was ever involved in a canonical

That's a little different to the question I'm asking

Do you see the

priests who had been accused of other kinds of

You're not a canon lawyer?

aspects of the procedure.

- Q. What about in circumstances where the alleged perpetrator admitted that he had engaged in criminal conduct would not notes of that admission or those admissions have been useful to pass on to those who thought a canon law process would be an appropriate further way to deal with the priest?
- A. I'm not sure once he had agreed to resign his ministry, there generally wasn't any need for a canonical process.

- Q. An agreement to resign ministry is not a laicisation, is it?
- A. No, there's a distinction between agreeing to resign ministry and formally being deprived of the clerical state. In my view, that is more a theological issue than a practical issue.

 Q. Did you hold the view, or do you hold the view, that laicisation is appropriate for priests who sexually abuse children?

A. That would depend on some circumstances, for a younger priest who wants to leave the clerical state and make a secular life. But there is also an instance, particularly for an older priest, where you certainly - and remembering the first priority in all of this is to ensure that he's not a risk to children - whether or not he is laicised may not make much difference to that particular issue, again, depending on the circumstances. Sometimes it's more advantageous that he not be laicised, which gives the bishops some leverage over his living circumstances and some better control over him. So a lot depends on the particular circumstances.

- Q. How does removal of faculties provide safety for children in the vicinity of the priest?
- A. Once the priest is not functioning as a priest, he's been removed from ministry, his faculties have been taken from him, he can't hold himself out as a priest, he can't

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- Is it your understanding that when faculties are removed, a priest is not permitted to wear his cross or his collar?
- That would be the normal expectation, and generally that would be part of the arrangement the bishop made with him.

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- Q. If a priest is not compliant with that arrangement and continues to wear his priestly outfit, what power does the bishop have to do anything further about that?
- Well, the bishop can have some canonical process, but even if at the end of that canonical process the sentence that is imposed is laicisation, that still doesn't stop a man wearing clerical dress.

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- You mentioned that there is a pastoral aspect to taking complaints from victims of sexual abuse. your practice when you were in the position of taking these particular complaints to only do them in person, that is, you sitting with the alleged victim?
- In taking a complaint? Α.

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- Q. Yes.
- I rarely would take a formal complaint from a victim, Α. but you would do that, obviously, in some form of meeting with that victim.

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- I suggest to you in relation to two particular complainants regarding McAlinden, who's the priest we're dealing with in the main today, that you took the Do you recollect that? complaints over the phone. I'm aware of those comments. I would not say that The complaints had already been made, I took complaints. and I don't recall the specifics of conversations, but my understanding and my best recollection - and I'm very conscious of not turning a recollection into some
- 41 42 self-serving reconstruction, but my best understanding of 43 that was simply to pass on a message as to what was 44 happening, not to take details of the complaint.
- 45 understanding is complaints had already been made elsewhere.

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- I suggest to you that in relation to McAlinden, you 1 2 phoned a particular person who we're referring to in these proceedings as [AJ]. There's a list of pseudonyms in the 3 witness box with you if you --4
 - I'm aware of who [AJ] is, yes.

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- And you phoned her and actually asked her to tell you what happened in relation to McAlinden over the phone. What do you say about that?
- Well, I don't recall any specifics, but when you say "tell what happened", it probably would have gone no further than something euphemistic, "I understand" - from whoever told me to ring her - "that you were a victim of sexual molestation" - or "inappropriate touching" or some euphemistic word - "I just want to tell you that this is what we're doing, we're seeing", or whatever the message I would certainly never, ever take - firstly, I would very rarely take details of sexual assault from a victim. There's issues there about the risk of contaminating evidence that I was always conscious of, but I would certainly never do it over the phone.
- Presuming that you had no statement from this particular person already, how would you be able to confront the priest, in this case McAlinden, with the information if you didn't phone the alleged complainant? I would have received from - whoever asked me to telephone [AJ] would have told me whatever [AJ] had told that person.
- Q. And you'd write that down?
- 32 Α. Not necessarily.
- 34 You'd just rely on your memory to be able to have the 35 phone number of this person in your mind?
- Oh, no, I would have written down the phone number for 36 Α. 37 sure.
- 39 Q. You would have written down the name?
- 40 Α. Yes.
- 42 And wouldn't you have written down something about 43 what it was that you were going to pursue in relation to 44 that person?
- 45 Not necessarily in any detail, no. Α.
- 47 Q. I'm not talking about in any detail. Would you have

1 written anything? Well, I might have written the name of McAlinden next 2 to the person in my workbook, but that wouldn't have gone 3 4 any further than a name and a phone number. 5 6 Can we take it from your evidence that you have no 7 recollection of ringing an alleged victim of McAlinden's 8 and talking to her over the phone about the alleged abuse? No. I can't recall that directly. Obviously from all 9 of this material, that certainly happened. I don't resile 10 from the fact that that happened. As I said, I'm very 11 12 conscious of not wanting to in some way reconstruct what might have occurred in that telephone conversation. 13 sorry, I just don't recall that conversation. 14 15 16 Q. But your usual practice is to not phone complainants? I would have been asked by somebody - if I phoned that 17 Α. 18 person --19 20 Q. I'm going to stop you. 21 Α. Sorry. 22 23 I'm just asking about usual practice. I'm not delving 24 back into recollection. Your usual practice as at 1993 would have been not to phone victims and talk to them on 25 the phone about their abuse? 26 27 I would have telephoned them to make an appointment if 28 that was what was being asked of me. But I would not talk 29 over the phone with a victim about the details of the 30 allegation at all. 31 32 Q. That wouldn't have been your usual practice? 33 Α. Never. 34 35 Q. You were based in Sydney at that time? Α. Yes. 36 37 38 Let's focus on late 1992 and early 1993. Would vou 39 on occasion travel away from Sydney to interview 40 complainants regarding sexual abuse? Yes. 41 Α. 42 43 And you would on occasion travel to other locations to

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Q. And present accusations to them?

Α.

interview priests?

Yes.

3 4 5 6 7	Q. In relation to any interviews that you carried out with priests where you presented accusations to them, in 1992 or 1993, did you make any notes? A. Of a conversation with a priest?
7 8 9 10 11	Q. Yes. A. There were some instances where I, after the event, wrote to the bishop giving a report, yes.
12 13 14 15	Q. So you would prepare that report or write that report just after the interview with the priest, would you? A. Yes, within a few days.
16 17 18 19	Q. Do you know how many occasions you did that in 1992 and 1993? A. I'm sorry, I don't.
20 21 22	Q. More than one occasion or you can't say?A. I can't say, sorry.
23 24 25 26 27	Q. In relation to cases where you didn't make notes, you conveyed the information to the bishop, did you? A. Yes, or the vicar general, depending on who I was dealing with.
28 29 30 31 32 33	Q. You would do that immediately after your contact with a particular alleged perpetrator? A. Generally the same day, or if the bishop or the vicar general wasn't available, as soon as they were available.
34 35 36 37 38 39	Q. You took care to ensure the information you conveyed to them about what the perpetrator had said was accurate? A. Not so much what the perpetrator had said. Again remembering the circumstances of that conversation, certainly what the agreed outcome was.
40 41 42 43 44 45 46 47	Q. You'd want to convey what the perpetrator said as well as part of that outcome, wouldn't you? A. Again, this is difficult. If one has entered into the conversation with the perpetrator on the basis of some confidentiality, if the confidentiality extended, of course, to reporting to the bishop and he agreed with that, I'd report whatever level of detail the bishop would want.

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Yes.

Α.

Not exactly. The bishop was looking for somebody to achieve an outcome.

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You were effectively his delegate, weren't you? I don't think we ever used the word "delegate". I think --

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But you were doing this for the bishop, weren't you? Well, I was assisting the bishop in doing something he asked me to do, certainly.

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- And it was important to convey accurately to the bishop what had occurred during the conference with the alleged perpetrator?
- No, it was important to convey to the bishop the agreed outcome that the bishop was looking for.

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- If part of the outcome that the bishop was looking for was to get a particular alleged perpetrator out of ministry, the fact that the alleged perpetrator had admitted to offending against children in your conversation with him would have been a really important thing to convey back to the bishop, wouldn't it?
- It would depend on how general those admissions were and how specific they were and what was necessary for the purposes of reporting back to the bishop.

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- If they were made, you would have reported them to the bishop, wouldn't vou?
- That would depend on the circumstances. I wouldn't be confident that I would have given every bishop all of the detail of particular parts of a conversation.

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- But if the alleged perpetrator denied any of the acts he had been accused of, you would have told the bishop that, wouldn't you?
- 40 It would depend on the nature of the conversation. Many perpetrators would obfuscate and minimise, and at the 42 end of the day you weren't quite sure what they were 43 agreeing with or not agreeing with, and I would have 44 conveyed that to the bishop in terms of, "Look, we've had 45 this conversation. He's all over the place. I can't be 46 sure of what's happened or hasn't happened. But at the end of the day he has agreed to resign".

That was more the norm, wasn't it, that the alleged perpetrator would deny or obfuscate in terms of the 4 accusations?

Yes. Α.

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- It was very unusual in your experience, wasn't it, particularly in 1992 and 1993, for an alleged perpetrator to admit they had carried out any illegal conduct with children?
- Α. There are --

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- It was unusual, wasn't it?
- Not necessarily. There were various grades of admitting or not admitting or agreeing or not agreeing from the perpetrator who would see his whole life come to an end and - and I can think of one particular example of a priest who spent most of the conversation absolutely sobbing his heart out --

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- I'm going to stop you there. Was that priest McAlinden?
- Α. No.

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- Then we don't need to hear that evidence. In relation to your evidence along the lines that there were graded types of admissions, in your experience, it was very unusual, wasn't it, for a priest to say, "Yes, I abused Ms X or Ms Y"?
- It's hard to evaluate what's usual or unusual but --Α.

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- 32 Q. You're the one who was doing this job? 33
 - No, no, in terms of trying to remember all the particular instances to work out how many fell into which category, I don't want to mislead you and I'm not quite sure what number constitutes unusual.

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- If you do 35, less than 10 may be thought to be unusual. Let's just use that as a working basis. Did you have more than 10 priests admit to particular instances of sexual abuse of particular people, broadly?
- Thinking of those that I persuaded to plead guilty, yes, there probably were.

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- Q. More than 10?
- 46 Α. Could well be, yes. I'm not sure exactly.

- Q. In relation to those, did you tell the bishops that they had admitted to particular instances of abuse against particular people?
 - A. I would have given a general report in whatever terms the bishop asked for.

- Q. The bishop would have been interested in whether admissions were made about particular people and particular abuse, would he not, as a general proposition for a bishop in this circumstance?
- A. That's if we were dealing with particular individuals and particular fact situations, yes.

- Q. Making your own note about what happened in your conversation with an accused priest doesn't breach any confidentiality with the perpetrator, does it, because you're just making your own note?
- A. I think fairness would suggest to him that if I'm going to write down something, some fairness to him would suggest that if I'm going to create some permanent record, that that permanent record, given it's so adverse to his interests, ought to be seen by him and regarded as being accurate. That would be my understanding.

- Q. That's not what I'm asking you.
- A. Sorry.

- Q. What I'm suggesting to you is you making a note of your conversation with this person isn't per se a breach of his confidentiality, is it? It's what you do with it where it gets messier, but just actually the act of taking the note?
- note?
 A. Certainly not the act of taking the note.

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- Q. So there's no reason on the confidentiality basis as to why you could not have taken a note of your conversation with him? That's the position, isn't it?
- A. Sorry?

- Q. It's a proposition I'm putting to you; you could have accepted it or rejected it. There's no reason why your taking a note of your conversation with a perpetrator would have breached his confidentiality, would it?
- A. I think that would be a matter some people would argue about, to be honest.

Q. I don't want to know what some people would argue

1 about. I'm asking you. 2 I would be cautious of doing that. 3 4 Q. Cautious of taking any note? 5 Α. Yes. 6 7 Is the real position as to why you didn't want to take 8 any note that you didn't want it to have to be disclosed in any subsequent legal process? 9 I think that would be a reasonable comment. 10 11 12 And you have on occasion published advice and your thoughts on that particular subject, that it is wise on 13 occasion not to have notes so that they can't be compelled 14 15 to be disclosed in later legal proceedings? That would be a position in some instances, given the 16 circumstances of duress in which a perpetrator has made 17 18 some statements, yes. 19 What I'm asking about, though, is your writings, 20 independent of any particular notes you did or didn't take 21 22 in these types of conversations we've been talking about, 23 where you have published views for the benefit of other 24 clergy to the effect that it's a good idea not to take notes, so that a subsequent legal process that would compel 25 26 production of them cannot be successful? 27 In some instances that would be accurate, yes. 28 29 Q. You published to that effect? 30 Α. Yes. 31 32 Q. And it's a view you hold? 33 Α. Yes. 34 35 Q. And it's a view you held in 1992/1993? Α. Yes. 36 37 38 What I want to suggest to you is that you deliberately 39 didn't take notes of these events because you did not want 40 any paper trail relating to the types of matters you were 41 discussing with priests? 42 I think that's, with due respect, not quite the 43 position I was adopting. 44 Explain what the position was that you 45 Q. All right. 46 were adopting? 47 We're dealing with a person who has his right to

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- Q. So one solution would have been for you to take a note and show it to the perpetrator so he could ensure it was accurate?
- A. Yes.

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- Q. Did you do that?
- 16 A. No.

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- Q. Never did that?
- A. No.

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- Q. That would have been a fairer process, wouldn't it, because then that would have been a memo of your discussion with the priest, your conversation, and his acknowledgment that it was accurate?
- A. And probably create significant disturbance in his mind about the consequences of that from his perspective.

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- Q. But he knew you were going to convey information to the bishop, such as to allow the bishop to make that final definitive step of removing the faculties of the priest, didn't he?
- A. Yes, yes.

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- Q. So the fact that there's documentation about it or not is really not a particularly important matter to that particular priest when he knows he is not going to be allowed to practise as a priest any more if the conversation goes the way the bishop would like it to go; is that a fair summary?
- is that a fair summary?A. That would be a fair summary.

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- Q. Why do you say that notes made in those circumstances of the conversation with you would not be admissible?

 A. Oh, look, I think you're talking about a person who and as I understand the general procedures, people have a right to be silent. Whether we agree with that being the
- a right to be silent. Whether we agree with that being to the same or not is a different question. Generally people are

1	cautioned before they make comments adverse to their
2	interests. The practicalities of dealing with these
3	priests were that one had to, in a sense, seduce them into
4	agreeing to resign. And I understand the unfairness of
5	that, but that was the practical outcome.
6	
7	Q. Did you receive legal advice to the effect that any
8	handwritten or typed statement by you of your conversation
9	with any alleged perpetrator would be inadmissible in any
10	court proceedings?
11	A. No.
12	
13	Q. That was just your own view?
14	A. Yes.
15	
16	Q. That view may be wrong; do you agree?
17	A. It may be wrong.
18	, c
19	Q. It's a very important matter, since you were attending
20	to these types of tasks in relation to a number of priests,
21	to have received some accurate advice about that particular
22	issue; od you agree?
23	
24	MR SKINNER: I object, Commissioner.
25	
26	MS LONERGAN: I withdraw the question. I'll move to
27	something else.
28	
29	THE COMMISSIONER: Thank you, Ms Lonergan.
30	, · · · · · · · · · · · · · · · · · · ·
31	MS LONERGAN: Q. Father, did you have any meetings with
32	Father James Fletcher of the nature we've been discussing?
33	A. No.
34	
35	Q. Did you at any time to your recollection take any
36	complaints from any alleged victims of James Fletcher?
37	A. No.
38	
39	Q. You're aware, aren't you, that the other priest with
40	which this Commission is particularly concerned is
41	Father McAlinden?
42	A. Yes.
43	
44	Q. And you did have a conversation with Father McAlinden
45	in early 1993?
46	A. Yes.
47	

- Q. Do you recall that particular meeting - was there more than one meeting? So far as I'm aware, there was only one meeting, but I don't recall it. You say so far as you're aware. How do you know there was a meeting if you don't recall it? Well, all of the evidence suggests that there was I don't recall the detail of that meeting and I can't, in my mind's eye, construct where it was, what he looked like, or what he said.
 - Q. I suggest to you that the meeting was around about February 1993?

A. Yes.

- Q. Would you agree with me that the material you've read suggests that's probably accurate?

 A. Yes.
- Q. Please, these propositions I'm putting to you, if you don't agree with them, please say so. Have you looked for any records, diaries or other information that could assist you in identifying the date the meeting with McAlinden occurred and/or the location?

A. Yes.

- Q. Have you turned anything up that has assisted in pinpointing either of those things?

 A. No.
 - Q. At that stage, February 1993, are you able to say how many priests you had had these particular special meetings with?
 - A. I can't. There would be a number, but I can't recall.
 - Q. Are you able to say when you started I think I've already asked you this question, but just to pinpoint it going backwards doing these sorts of meetings with alleged perpetrators?
 - A. It would be some time around 1989/1990.
- Q. You stopped around about 1995/1996 when the
 Professional Standards Office was set up; is that the
 position?
 A. Yes.

46 A. \

1 2 3	Q. Are you able to say what month of which of those years, or not? A. Sorry?
4 5 6 7	Q. That you stopped doing these sorts of tasks. A. I think the Professional Standards Office was set up at the end of 1996.
8 9 10 11 12	Q. So once that office was up and running, you no longer performed these tasks for the archdiocese; is that the position? A. It wasn't just the archdiocese. It was the province
13 14 15 16	of New South Wales. Q. The whole of New South Wales including the ACT? A. Yes.
17 18 19 20 21 22	Q. Do you remember physically attending the Maitland-Newcastle bishop's house to conduct an interview or a meeting with an alleged victim of McAlinden? A. I recall having a meeting with an alleged - well, a victim, but as far as I
23 24 25 26 27	Q. A lady? A. A lady who was a victim of McAlinden. I'm not sure where it was. I don't, in my recollection, recall where it was.
28 29 30 31	Q. It was up here somewhere, though, in the Newcastle area? A. That's my understanding, yes.
32 33 34 35 36 37	Q. It's your understanding or your recollection? A. I think I'd have to put it that it's my understanding. I simply don't recall the place. I'm almost certain it was in Newcastle, in all of the circumstances, but I don't recall.
38 39 40 41	Q. You recall it was a meeting with an alleged victim of McAlinden's? A. Yes.
42 43 44 45 46 47	Q. Do you remember where it occurred in relation to your meeting that must have taken place with McAlinden, whether it was before or after? A. My recollection would be that the meeting with the victim was before the meeting with McAlinden.
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to recall that the meeting with McAlinden's victim was information upon which you relied in your meeting with McAlinden or not? What I do remember very clearly - and I'm guided, counsel, by some circumstances of non-publication and

I appreciate you don't have a memory of your actual meeting with McAlinden, but do you have sufficient memory

confidentiality relating to the particular person we're speaking about and I'm in your hands as to how I should deal with that, because one aspect of that I have a clear recollection about.

We'll have to come back to that in another setting. Now, [AJ], who I've already asked you some questions about - it's the position, isn't it, that you have no recollection of ever meeting her in person, [AJ]? Yes. Α.

- Q. That's the position?
- Yes, certainly. Α.
- You say you don't remember having a phone conversation with her where you asked her to detail the abuse that she suffered at the hands of McAlinden?
- I don't recall a phone conversation but I would be confident that I would not, over the phone, have asked somebody to detail the abuse.
- You've given evidence that you expect you would have spoken to [AJ] about what was planned to happen in relation to McAlinden?
- Α. Yes.
- I want to suggest to you that in your first phone contact with [AJ], you said, "Tell me what happened. old were you? What did he do to you?"
- While I cannot remember, I would have to refute that. It would not be in character for me ever over the phone to ask other than in the most broad sense, "We understand that there has been some allegation" or "You're making an allegation of sexual molestation" or some euphemism like I would never, ever over the phone ask a victim for
- any detail of that, for various reasons. First, as I've said before, it is very, very difficult for victims to
- speak about this, in any event. It is even worse to talk about it over the phone. In any event, I would be very

34 35 Α. Certainly.

vicar general.

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Q. You certainly had the conversations? Oh, I'm sure there were a number of conversations. I can't pinpoint which conversations would have been with Bishop Clarke and which would have been with his

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42 And his vicar general was Monsignor Hart? Q. 43 Α.

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Are you able to assist with which of those two gentlemen, if it was one of those two, who first retained your assistance in relation to McAlinden?

ı	A. I Can t recarr.
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3	Q. It could have been either?
4	A. Could have been.
5	
6	Q. It's your recollection you had conversations with both
7	of them about the matter?
8	A. Yes.
9	
10	Q. And did you have conversations with both of them in
11	early 1993?
12	A. If that was the occasion, yes, certainly.
13	
14	Q. You're aware, aren't you, that there's also an entry
15	in your 1995 diary to the effect that you were to ring
16	Monsignor Hart regarding McAlinden?
17	A. Yes.
18	A. 163.
19	Q. I just want to pinpoint involvement at that time. Do
20	· ·
	you recollect whether you in fact rang Father Hart at that
21	time or do you have any recollection of those matters?
22	A. I don't have any recollection of the phone call, but
23	I understand from this material that shortly after the date
24	of that entry, which I think was in the middle of June,
25	a letter was written to the apostolic nuncio making
26	reference to that letter being written partly on my advice.
27	So I'm presuming that the conversation with Monsignor Hart
28	was about the construct of that letter or the strategy that
29	that letter involved.
30	
31	Q. You have put that memory together from looking at
32	various documents with the assistance of your legal
33	representatives?
34	A. Yes.
35	
36	Q. I'm not being critical about that at all. Do you have
37	any recollection of having dealt with the McAlinden issue
38	in early 1993 and looking at that diary entry in 1995,
39	having any ongoing role in relation to McAlinden's ministry
40	and/or advising the bishop of the diocese or anybody else
41	in the diocese about what to do with him?
42	A. No, no.
43	·
44	O. Did you make any plan with Bishop Clarke, to your

your particular involvement?

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47

recollection, as to what should happen with McAlinden after

I presume there was some conversation about that, but

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had with [AJ] where you discussed what your role would be or what the processes would be in relation to you speaking to McAlinden or having anything to do with McAlinden? Again this is a reconstruction because I don't recall the conversation, but it would have been - the suggestion

is there are two conversations. My reconstruction would be

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- Are you able to state now where McAlinden was located at the time you were first retained to assist?
- The timing of this is confusing in my mind. that he had been in Western Australia, he'd been acquitted of charges in Western Australia. At what point the bishop brought him back and the timing in relation to when I then spoke to him, I'm not clear about.

14 15 16

And you're not clear about that because you have no notes that were made by you at the time to assist you? Α. That's right.

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- Would you agree with me it would have been helpful if you had some so that you could pinpoint times when things occurred?
- If 20 years later I needed to have that information, it would have been helpful, but at the time I didn't need to know that.

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- You have an idea that McAlinden was recalled by his bishop - was that your evidence? - or called by his bishop from Western Australia?
- That's my understanding. Α.

30 31 32

It's an understanding you've reached from looking at material now as opposed to recalling the situation then? Yes. Α.

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Either way, the bishop was able to request or demand that McAlinden return to a certain location: was that the way it worked in the 1990s? Α. Yes.

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I suggest to you that in a call after your conversation with McAlinden, you said to [AJ] that McAlinden had made admissions to you about his behaviour; does that ring a bell? I don't think I would have said that.

45 46 47

Q. Why wouldn't you have told an alleged victim of

Α.

McAlinden's that admissions had been made by him? 1 2 I'm not sure what admissions he made or what detail he 3 gave me. 4 5 I'm not asking you that. I'm asking you a more 6 general question. Why wouldn't you have told an alleged 7 victim if admissions had in fact been made by McAlinden in 8 vour conversation with him? Well, that's a matter between myself and McAlinden, 9 but I would have told the victim that we had arrived at the 10 outcome the victim wanted, which was his dismissal from 11 priesthood. 12 13 But don't you think acknowledgment on the part of the 14 15 alleged perpetrator that he had in fact done to her what 16 she said he had done was an important part of her pastoral 17 care? That's assuming that he had made that admission about 18 Α. 19 her. 20 21 I want you to assume he made that admission for the 22 purposes of my question. I'm not asking you to acknowledge 23 that that was in fact what occurred or did not occur in the 24 interview. I'm asking you a more theoretical question. 25 Don't you agree that it would have been helpful from a pastoral point of view for the victim to have that 26 27 acknowledgment that the perpetrator had done to her what 28 she said he had? That would be in the normal case, yes. 29 30 31 Q. What do you mean "That would be in the normal case"? Well, if in fact the victim was looking for that 32 33 acknowledgment, and if in fact the perpetrator had 34 acknowledged the particular allegations of that particular 35 victim. 36 37 Q. Putting aside whether the perpetrator in fact acknowledged it or not, isn't it the case, in your 38 39 experience, that one thing that victims of sexual abuse 40 crave is an acknowledgment of the truth of what happened to 41 them?

42 A. Yes. 43

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MS LONERGAN: Would that be a convenient time, Commissioner?

THE COMMISSIONER: Yes. Just before we rise, Ms Lonergan.

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45 46 47 Q. Father Lucas, you mentioned one of the reasons that you didn't take notes of your interviews with these errant priests as being that priests have a right to silence and right to be cautioned, and so on. But that right exists, doesn't it, just in order to protect people from the possibility of oppression by the state? In other words, that's when you're being spoken to by police officers. That's your understanding, isn't it?

A. Yes, but it also applies in canon law.

Q. I see. And you thought that this was a procedure that, in some way, had canon law applicable to it?

A. I think the general principle is relevant, while this

was not a formal canonical process.

It wasn't something in the nature of an employer speaking to an employee? Even though I know that that is not an accurate analogy, one wouldn't expect to have a right to silence in those circumstances, would one? The canon law does speak about not being able to administer an oath to a priest and not being able, in a sense, to force some admission out of him. I acknowledge that that was the process we did adopt and were criticised for it by canon lawyers, but it was to get to the practical outcome of getting him to agree. his agreement, if I can explain it this way, to resign from ministry that gave the bishop the wherewithal to be able to deal with it. Otherwise we would be back to where we were before 1988 with an allegation and a denial and an impasse. Particularly - and this is only ever in the context of victims who have chosen not to take the matter to the That was always the best outcome - if they authorities. would take the matter to the authorities. But we're talking in the context where they chose for whatever reason not to do that.

THE COMMISSIONER: Thank you, Father Lucas. I will adjourn for 20 minutes.

SHORT ADJOURNMENT

MS LONERGAN: Commissioner, there has been a request from the media for access to various exhibits 132 through 145 inclusive. If those at the Bar table can let those who assist you know by 1.15 whether there is any objection to the release of those documents.

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MS LONERGAN: Q. Father I was asking you some questions regarding phone calls that you had with [AJ]. I appreciate your position is that you don't recollect any specifics of such phone calls, but judging by your usual practice you would have had such phone calls, given that she was a complainant about McAlinden. Are you comfortable with that as the position of the evidence this morning? I certainly don't resile from the fact there were phone calls, yes, certainly.

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I suggest to you that you phoned [AJ] after you had spoken to McAlinden and said words to the effect that, "I am just calling to let you know that I've interviewed McAlinden and he has been removed". Does that sound like the sort of thing, judging by your usual practice, you would have advised complainants about McAlinden who you were aware of? Yes.

20 21

Α.

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- I suggest to you that you also went on to say, "He has made admissions to me about his behaviour and that he sexually abused [AL] and [AK]" - and a lady who is on the pseudonym list as [AI]?
- I don't think that would accord with my usual practice, to speak to one victim about the names of other victims.

29 30 31

32 33

What about disclosing to a particular victim that the perpetrator had made admissions about his behaviour? Again, that would depend on what exactly the admission was or how specific it was.

34 35 36

37

If it was a specific admission, would you, judged by Q. your usual practice at the time, tell a victim that admissions had been made?

38 39

Α. I'd have been cautious about doing that.

40 41

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Q. You might have been cautious about it, but would you have done it?

43 44 45 46 47

It would turn on the sort of language I would have used in conveying that. On the one hand you certainly want the victim to feel affirmed. On the other hand specific statements by a perpetrator really belong to that perpetrator. I wouldn't have conveyed those specific

1 2	state	ements.		
3	Q.	I'm not talking about specific statements. I'm		
4	talking about the effect of what you were told in that			
5		meeting by the perpetrator. You understand what an		
6	admission is, don't you?			
7	Α.	No.		
8				
9	Q.	You don't understand what an admission is?		
10	À.	An admission can be a whole range of different sorts		
11	of st	tatements.		
12				
13	Q.	Let me help you focus on the word "admission". You		
14	have	legal training, background legal training?		
15	Α.	Yes.		
16				
17	Q.	You have a degree in law?		
18	Α.	Yes.		
19				
20	Q.	You practised for some years?		
21	Α.	Yes.		
22				
23	Q.	Including attending to some criminal matters?		
24	À.	Not too many criminal matters, no. I tended in the		
25	Child	drens Court to prefer to deal with the welfare matters		
26		the criminal matters.		
27				
28	Q.	You studied criminal law at university?		
29	Α.	Yes.		
30				
31	Q.	You understand that you can admit, "I did X"; you		
32	undei	rstand that as a general proposition?		
33		Yes.		
34				
35	Q.	And you understand that that is different to, "I deny		
36		d X"?		
37	Α.	Yes.		
38				
39	Q.	In the context of talking to a priest about sexual		
40	abuse	e, it's your position, isn't it, and your experience as		
41	at ea	arly 1993 that people who have engaged in paedophilic		
42		viour often deny it, don't they?		
43	Α.	They will either say, "This absolutely never		
44	happe	ened", or, "I've never known that person", or, "I was		
45		r in that place where that person says something		
46		ened", or they might say, "Well, look, actually I do		
47		that person, but I didn't do anything", or, "Something		

1 happened that has been misinterpreted by that person as 2 a sexual assault", so you get a whole range of different 3 sorts of statements. 4 5 That range you've just gone through - none of those 6 are admissions of sexually abusing a child, are they, none 7 of those? 8 Well, they certainly can lead to some inferences. 9 Sure, but none of those are admissions that they 10 sexually abused a child? 11 12 Α. Not in the legal sense. 13 But if a priest says, "I admit that I interfered with 14 15 Miss X", that's an admission, isn't it? 16 If that's what he said, yes. 17 If that's what he said. I'm asking you to just bear 18 Q. 19 with me. Α. 20 Sorry. 21 We're examining the word "admission" because you seem 22 to have some difficulty managing or answering questions 23 about that concept, and I understand --24 25 I object. Commissioner, this line of 26 MR SKINNER: 27 questioning arose when my friend asked something about The witness paused and said "no", and wasn't 28 29 allowed to finish the answer, and we've gone from there. 30 In my submission, it is not well founded on the evidence at 31 this point of time that he is having difficulty. My friend can ask about it, but she is not entitled, in my 32 33 submission, to feed into her question in that way a submission. 34 It is not fair. 35 The difficulty arose from not the answer 36 MS LONERGAN: 37 "no", but the fact that the question seemed to be a very 38 simple one regarding admissions, in my respectful 39 submission, and the witness was taking some care in dealing 40 with that particular word, and no doubt, partly related to 41 his legal background, wants things to be very clear in 42 terms of what he is admitting to, if I can put things that

43 44 45

46 47 In my respectful submission, it is proper for me to further examine, and the answer did indicate a difficulty - I don't mean an intellectual difficulty; I mean

way.

1 2	a hesitation in adopting "admission" as a word that could be generally used - and I'm trying to drill down to
3 4	a particular context to assist.
5 6	THE COMMISSIONER: The context was: did you consider "I interfered with Miss X" to be an admission?
7 8 9	MS LONERGAN: That's right.
10 11 12	Q. So the question is if a priest says to you, "I did interfere with Miss X", that's an admission, isn't it? A. It's an admission, yes.
4 5 6 7 8	Q. So you would not have told a bishop of a priest who you had interviewed that the priest admitted to having interfered with a particular person unless that priest had in fact made those admissions, would you? A. Certainly not.
20 21 22	Q. I beg your pardon? A. Certainly not.
23 24 25 26 27	Q. It was your practice to convey as soon as possible after any conversations you had had with an accused priest to the bishop, the result of your conversation? A. Yes.
28 29 30 31 32	Q. Was it also part of your practice, soon after your conversation with a particular priest accused of these matters, to phone the complainants and tell them the results of your interview? A. Yes.
34 35 36 37	Q. From an earlier answer you gave, can we take it that it wasn't your practice to tell certain complainants about other complainants? A. That's correct.
39 40 41 42 43	Q. If it's suggested by [AJ] that you mentioned that admissions had been made by McAlinden - I'm going to the specifics now - about his behaviour and that he had sexually abused [AL], [AK] and [AI], do you deny that you would have done that? A. That would not be my normal practice.
15 16 17	Q. That would not be your normal practice, but is it possible that you did it on this occasion?

3 4		d you have no recollection, but would you it's possible that you did it on this
5	occasion?	re a possible that you are it on this
6		say that if you're asking me on the
7		I would have said it or would not have said
8	it, I'd have to	say I would not have said it.
9		
10		ing you on the balance. I'm asking you
11	whether it's pos	sible?
12	A. I don't thi	nk it's possible. I can't put it any
13	higher than that	, because I don't recall.
14	•	
15	Q. I suggest t	o you that you also told [AJ], "McAlinden
16		I put forward your name as he didn't know
17		oceeded to name other people with the same
18	first name"?	occoded to flame other people with the came
19	A. Yes.	
	A. 165.	
20 21	O T know you	don't recellest the portionler
	-	don't recollect the particular
22		at's your evidence, but what about that as
23		uld have said to a complainant?
24		nk I would have mentioned the names of
25	other complainan	ts.
26		
27		o you that [AJ] then said, "You've given
28		rname. I have a different name and you
29	didn't give him	my maiden name." What do you say about
30	that exchange ha	ving taken place?
31	A. I have no r	ecollection of that exchange and if that
32	exchange had hav	e taken place and I was so foolish as to
33	have used the wr	ong name, that might have been something
34		prompted me, but I don't recall the
35	conversation.	'
36		
37	Q. Do vou reca	ll a Mercy nun, Sister Paula Redgrove?
38	A. Yes.	
39	7.1 1001	
40	Q. Do you reca	11 you had some discussions with her about
41	McAlinden in and	•
42		sent at an interview.
43	A. She was pre	Selle at all fillerview.
	O That was th	a interview with [ALIC
44 45		e interview with [AL]?
45	A. Yes.	
46	0 54 (3	le to Cioton Dodawice before (1 1 1 1 1
47	Q. Did you tal	k to Sister Redgrove before the interview
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I have no recollection.

1

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Α.

1 2 3	with [AL] or only as part of that A. I have no recollection of that.
5 5 6 7	Q. No recollection of the interview with [AL]? A. No, I have some; some aspects of the interview with [Al], I have an absolutely crystal clear recollection of.
8 9 10 11	Q. But no specifics of any conversation you had with Sister Redgrove? A. No.
12 13 14 15	Q. The crystal clear recollection in relation to [AL] - does that relate to the meeting that you had with her at which Sister Paula was present? A. Yes.
17 18 19 20	Q. What were those crystal clear aspects of your recollection?A. Am I able to mention the relationship?
21 22 23 24	Q. No. A. Well, that was a critical aspect. The reason why she told me she didn't want any police aspect was connected with that, and that is a crystal clear recollection.
25 26 27 28 29	Q. And that's to do with the willingness or otherwise to report the matter to the police? A. And the reason she gave me.
30 31 32 33 34 35 36	Q. And the reason, all right. Any other aspects of the interview, such as do you recall whether [AL] outlined the abuse that had happened to her in any physical terms or you're not able to say? A. I don't recall that, and I would have been very cautious of allowing her to do that.
37 38 39 40 41 42 43	Q. For the reasons you've already outlined? A. And this may have been misguided on my part, but I was always very concerned not to get into detail with victims, partly for the fact of the pain of them having to restate a story, but mostly on the question of putting words in their mouth or running the risk of contaminating what they might say if there were subsequent proceedings.
44 45	Q. So if I suggest to you that [AL] actually described

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the abuse in physical terms of what McAlinden did to her

when she was a little girl, would you say that did not

- occur or you're just not able to say, given that you have a partial recollection of the meeting?
 - A. I think if there was a detailed description given to me and if, contrary to my practice, I allowed her to do that, that would have been something I would recall.
 - Q. If a complainant wishes to describe the abuse, can we take it you wouldn't cut them off and say, "I don't want to hear about that"?
 - A. I probably would have and I would have explained, "I don't need to know from you; you don't have to go into the detail. I don't wish to embarrass you." Particularly with a female victim, who's at the time approximately my own age, I just think it's foolish to allow a victim to go into detail. It's enough for them to acknowledge that they were sexually abused, in euphemistic and plain and general terms. That was enough for my purposes. I would have been very cautious about going into detail because I wouldn't want them to be put in a position of somebody subsequently alleging that when she gave the detail, perhaps in a police interview, that having discussed it with me, some of what she was saying might have been words I put in her mouth.
 - Q. You're surmising all of this, aren't you?

 A. I am surmising that, according to my usual practice, yes.
 - Q. You recall Sister Redgrove was present?

 A. I do. And that was a very unusual event. I'd never had a situation where a support person for a victim was a religious sister and I do recall she was present.
 - Q. Did you know Sister Redgrove independent of this? A. No.
 - Q. Would you expect a religious sister to tell the truth about what happened in a meeting such as that?

 A. I'd expect that she would tell the truth to the best of her ability. To what extent her memory is accurate many years later, I have no capacity to comment.
 - Q. I'm not suggesting that you would. Euphemisms you say that you would have expected euphemisms to be used. What do you mean by that?
- A. I think generally it was enough for a person to say
 they were sexually molested or they were interfered with or
 they were inappropriately touched, without going into the

1 2	precise nature of that activity.
3	Q. What was the purpose of your meeting with [AL]?
4	A. I think it was to hear what she wanted done with
5	respect to McAlinden, particularly given the matter I can't
6	speak about.
7	
8	Q. If you take an account without interjection or
9	interference from you, there's no risk of contamination of
10	her version of events, is there?
11	A. Well, that would depend on whether that's what's
12	related later on.
13	
14	Q. You would take care not to interject, wouldn't you?
15	A. I would, but I wouldn't want someone to draw an
16	inference subsequently that I might have or I might have
17	put words in her mouth. It's best not to go down that road
18	of her giving detail. That was my personal view at the
19	time.
20	
21	Q. The fact that you met with this lady at all could lead
22	to suggestions that things were said which, in your view,
23	weren't said, couldn't it?
24	A. It could, but I would like to be put in a position, if
25	someone asks me "Did she go into detail with you?", to be
26	able to say, "No, I didn't allow that to happen."
27	
28	Q. One way of dealing with any possible mistake about
29	what occurred in the meeting would have been to take notes
30	of the meeting?
31	A. No, if we needed to have a record of what she said,
32	I would have asked her to write it out in her own
33	handwriting.
34	<u> </u>
35	Q. One way to avoid any confusion or difference of
36	account about what happened in the meeting would have been
37	to take notes of what occurred in the meeting, wouldn't it?
38	A. That's one way, but the circumstances of that meeting

That's one way, but the circumstances of that meeting wouldn't have been conducive to sitting there with a pad open taking notes while a victim of child sexual abuse is saying whatever she's saying.

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We have been across this territory already. You would have been able to make notes after the meeting, wouldn't you, as to what was discussed, in broad terms? I would have if I had needed to.

1 2	Q . A .	You decided you didn't need to? Yes.
3		
4	Q.	And why didn't you need to?
5	Α.	I was reporting back to the bishop and preparing
6	myse	lf to talk to McAlinden.
7	,	
8	Q.	You know that a felony is a more serious type of
9		nce than a misdemeanour?
10	Α.	
11	,	
12	0	And you knew that in 1993?
13	A.	Yes.
14	۸.	165.
	0	Taking your mind hook to 1002 did you have a view
15		Taking your mind back to 1993, did you have a view
16		in terms of sexual abuse, skin-on-skin type of
17		nces were of a more serious or different nature to
18		e that occurred, for example, through clothing?
19	Α.	Certainly.
20		
21	Q.	
22	Α.	Of course.
23		
24	Q.	And you knew that from your knowledge of criminal law
25	or f	rom your
26	Α.	It's commonsense.
27		
28	Q.	In terms of the type of sexual abuse conduct with
29	whic	h you were dealing, you knew, didn't you, that the
30		uct was in the nature of criminal conduct?
31	Α.	Yes.
32		
33	Q.	You agree with me, do you, that if you make notes
34		rding allegations of criminal conduct and those notes
35		kept by you and seen by others later, it could be
36		ested that those notes amounted to evidence that you
37		about criminal conduct, wouldn't they?
38	A.	Yes.
39	Λ.	163.
39 40	0	To that a reason why you didn't keep notes of these
	Q.	Is that a reason why you didn't keep notes of those
41	matt	
42	Α.	No.
43	0	N (
44	Q.	Not at all?
45	Α.	No.
46	_	
47	Q.	So you would have been comfortable, would you, having
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notes of allegations of criminal conduct even though they could have been later accessed by, for example, legal authorities or the police and a suggestion put to you that you had notes recording allegations of criminal conduct?

A. Yes.

Q. You had no difficulty with that?

A. No

- Q. Was any part of your managing of these matters directed by any concern on your part of possible liability on your part for misprision?
- A. Yes.

- Q. And how did you manage those considerations when dealing with these matters?
- A. That was a risk we took.

- Q. A risk you took?
- 20 A. Yes.

- Q. Did you say you took or we took?
- A. We took.

- Q. Who else took that risk?
- A. I think Father John Usher, who was part of it, but also this was within the context of broad legal advice about misprision of felony and the circumstances were known to lawyers and this was an issue; it was a well-known and well-understood issue and a predicament. It was a real and serious predicament, on the one hand, to get someone out of ministry, and if it came to the choice of respecting what a victim wanted with respect to police action and a charge of misprision of felony, my view would have been then, and it would be my view today, I'd respect what the victim wanted done.

- Q. One way of managing the risk was to report the matter to the police yourself, wasn't it?
- A. Not if the victim specifically and for good reason didn't want that done.

- Q. That's a different issue. One way of managing the risk would have been for you to report what you knew to the police, wouldn't it?
- A. If that involved betraying a victim, I wouldn't do that.

- Q. I'm not asking you that. One way of managing the risk would have been for you to report the matter to the police?

 A. I could report the matter to the police, but if that involved betraying a victim, that would not be something I would do.
- Q. Putting aside your scruples about betraying a victim, you could have phoned the police and said, "This has been alleged about Father X", couldn't you?
- A. That was certainly possible, but not practical, in my view.
- Q. You had received legal advice by early 1993, had you, as to the law in relation to misprision?
- A. There was a formal legal advice given subsequently, but certainly at the time there was informal advice, and certainly given the number of lawyers who had pored over the protocols and who understood the procedure and what was being done, the question of misprision of felony was known about but was not regarded as an issue that affected the way the cases were managed.
- Q. In relation to the times where lawyers were poring over protocols, what time frame are you talking about?

 A. From early 1991, probably even when the committee was first established.
- Q. Did any part of those discussions, to your knowledge, include the suggestion that if the Catholic Church knew about these allegations, they ought to be reported to the police?
- A. That was not the understanding at that time in circumstances where a victim specifically didn't want the matter reported.
- Q. What I'm asking is a broader question. Putting aside whether the victim wanted it reported or not, was there discussion amongst those lawyers and others who looked at these protocols about the subject of reporting these matters to the police by the clergy, by the people who received these complaints?
- A. Generally speaking, the complaints only came to the church, because the victim had chosen not to go to the police. The situation really didn't arise. If a victim wanted the matter to go to the police, the victim would have gone to the police. It was only in circumstances

1 2	the church that this dilemma - and it was a serious and
3 4	well-understood dilemma - arose.
5	Q. Would you agree with me that on occasion victims came
6	to the church for support in terms of their own Catholic
7	faith?
8	A. Yes.
9	
10	Q. And it's the position, isn't it, that a number of
11	victims came to the church because they considered the
12	church would have immediate power over the priest to do
13	something about what had happened?
14	A. Yes.
15	
16	Q. Would you agree with me that prior to the 1996 Towards
17	Healing protocol, there was significant confusion as to
18	obligations or otherwise on the part of bishops or other
19	clergy as to what they should do when these people came
20	forward with these allegations?
21	A. I wouldn't put it as confusion, but there were
22	dilemmas that were difficult to resolve.
23	
24	Q. So you see dilemmas as different to confusion?
25	A. Yes.
26	
27	Q. Dilemmas being people knew what the options were but
28	didn't know which one to choose?
29	A. They knew what the options were, but would have
30 31	struggled as to which was the better course of action.
32	Q. And in terms of confusion, you understand that to mean
33	they didn't know what to do at all generally?
34	A. Yes.
35	
36	Q. Would you agree with me that you were probably in
37	a better position than a number of bishops, because you'd
38	helped to establish the protocols and had your legal
39	background, to understand what the various dilemmas were?
40	A. Yes.
41	
42	Q. Would you agree that because the victims of sexual
43	abuse with whom you were dealing were those practising the
44	Catholic faith, they were more likely to go to the police
45	if they had the support of church people?

47

That could be the case in some instances, yes.

- Q. Why do you only say it could be the case in some instances?
 - A. It depends whether or not they had a different reason for not going to the police. There would be some for whom some involvement in the church perhaps embarrassment about revealing something that a priest had done. There would be others who would have different reasons for not wanting to go to the police. My view which I took at the time was to be fairly neutral about that. For a victim to go to the police is a very serious issue that can have quite sometimes adverse consequences for them. I neither encouraged nor discouraged and tended to go along with what the victim indicated was the outcome they were after.

- Q. You recognised at a later point in time that it was more appropriate to encourage rather than be neutral about the issue of going to the police?
- A. A number of situations arose around about 1995, particularly when there was significant agitation by some victims groups agitating for prosecution for concealment of offences, and then the situation arose as to disputation about what the victim wanted or didn't want. Then the practice arose, which I think is the current practice, requiring victims, very explicitly and in their own handwriting, to indicate if they didn't wish the matter to go to the police, that that's what they wanted.

Q. I'm asking you a different question. Was it the position that your view altered towards the wisdom or otherwise of encouraging victims of sexual abuse to go to the police as opposed to remaining neutral about it?

A. Yes, that would be true.

Q. That was part of the Towards Healing protocol? A. Yes.

Q. So you would agree with me that prior to that particular view, the practice or policy of the church was to remain neutral about the question of reporting to the police or not?

A. When you say "neutral about reporting to the police", neutral about whether to put pressure on or discourage or encourage a victim to go to the police.

Q. Yes, yes. You yourself have published at least one paper on the question of how concealing offences might be dealt with in terms of the criminal law, haven't you?

1 2	A. I'm not able to recall the specific article to which you're referring.
3 4 5 6	Q. You agree with me that you have written at least one article on the subject? A. Specifically on
7 8 9 10 11	Q. That addresses misprision of felony as a crime? A. I didn't know that it was a specific article on that particular topic. It may have been, but I don't recall that, I'm sorry.
13 14 15 16	Q. Sorry, I should say within an article that you prepared, there is an addressing of the issue of misprision of felony? A. Oh, yes, I'm sure I would have addressed - yes.
17 18 19 20 21 22 23	Q. Including an analysis of section 316 of the Crimes Act which creates an offence if a person who has knowledge of a serious crime fails to disclose this to the authorities without lawful excuse? A. Yes.
24 25 26 27 28 29	Q. Is it your position now - and then I'll go back to earlier in time - that lawful excuse in the context of that particular offence includes whether or not the victim wants to go to the police? A. Yes.
30 31 32 33 34	Q. So it's your view that if the victim doesn't want to go to the police, that gives a lawful excuse to you, for example, to not report the matter to the police? A. Yes.
35 36 37 38 39 40	Q. Have you taken advice from others that that's the effect of that particular section of the Crimes Act? A. That's my understanding was the common view of the various lawyers who had discussed this at various times, yes.
41 42 43	Q. So you discussed that particular view with other lawyers? A. Yes.
44 45 46 47	Q. It's your impression that they adhere to that view? A. Yes.

- 1 They're lawyers retained by the Catholic Church, are Q. 2
 - Α. And also in other informal situations. These matters were often dealt with in seminars and I think it was a matter probably dealt with at the church law forum in Sydney, which was a group of lawyers who act for churches. I don't have a specific recollection of a specific instance, but certainly in informal conversations with various lawyers, that was my understanding of the position.
 - Was that your understanding in 1993 as well or do you have a more sophisticated understanding now?
 - I'd have a more sophisticated understanding now. not quite sure when I became explicitly aware of the introduction of section 316. I think it was introduced in 1990. When particularly my mind focused on that, I can't recall.
 - You agree that you have written that there is a mood in society that failure to report on the part of the Catholic Church when these types of allegations were made to it could well be considered to be an active covering-up of such offences?
 - Α. Certainly.
 - You gave evidence to the effect that you had a concern in relation to reporting sexual abuse allegations to the police that such a report might have adverse consequences for the victim?
 - Yes. Α.

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- Q. By that, do you mean having to go through the legal processes?
- I think in 1992/1993 the prosecutorial process was nowhere near as victim sensitive as it is today, in my understanding, and I think there were real issues about the trauma to a victim of prosecutions.
- What about the questions of safety of children from criminal conduct by paedophile priests - was that a consideration?
- That was the number one consideration. Α.
- 44 Q. If that was the number one consideration, wouldn't 45 that have militated more towards reporting the matter to 46 the police rather than not reporting? 47
 - Not necessarily. Even a reporting to the police

Q. The fact he had been reported for sexual abuse of a child in Western Australia and beat the charge suggests, doesn't it, that there were more than the reports you knew about out there about his behaviour with children?

A. I'm not quite sure exactly when I became aware of the Western Australia matter. I think it was in the context of the phone calls with Bishop Clarke, but it certainly aroused my suspicion that the substance of what [AL] may have said and what [AJ] may have said had some basis to it.

Q. You talk about adverse consequences for the victim. There would have been adverse consequences for the priest and the church as well if the matter was reported to the police, wouldn't there?

A. I'm not so much interested in adverse consequences to the church. Obviously there are adverse consequences to the perpetrator, which he deserves.

Q. There are adverse consequences to the church, because it would bring the reputation of the church into some disrepute, wouldn't it?

A. I've heard that, and that is the prevailing narrative. My view, and it's consistent in everything I've written on this subject, is that the reputation of the church is trashed not by some sort of protection of the perpetrator; it is trashed by failing to deal properly and decisively with these allegations and remove the person from harm's way.

Q. The priest is a representative of the church, isn't he, even one who has been accused of sexually abusing children?

A. In my view - and I can only express my personal view - I couldn't care less about the reputation of the priest. My concern was always to ensure that priests who offended against children were removed from that opportunity, and my view on the reputation of the church was that it was precisely the failure to do that that would do most damage to the reputation of the church.

Q. How is the removal of a priest from ministry published?

- It may or may not be published. Again there's issues of privacy both to him and to his victim, but he would be -and this is a matter still of some contention as to whether his name is put in the official directory of the Catholic Church and in what category. If he was removed from ministry, he would probably be in the list that has "no appointment" or "retired".
 - Q. This is some private church list, is it, "no appointment" or "retired"?
 - A. No, there's a published book, the official --
 - Q. A published church list?
 - A. Yes, there is a published book, the official directory of the Catholic Church in Australia, and a priest who has had his faculties removed and has been removed from all ministry probably would not appear there.
 - Q. Would not appear?A. He may. This is a matter of some contention as to whether he appears as "living privately" or whether he
- 22 appears as "retired".

- Q. So if it says that he's retired, that would be untrue, wouldn't it, because he had been removed from ministry and had his faculties stripped for being a paedophile? Is that the position?
 - A. He may well have been described as being "retired".
 - Q. Unlikely it would have described him as "retired paedophile"?
 - A. We don't generally put labels on people so they walk around saying, "I'm a retired paedophile".
 - Q. How are the children protected in terms of this information that appears to remain private to the Catholic Church from somebody who, not long ago or maybe a long time ago, was Father X?
 - A. The answer to that is the fact that he has no parochial appointment. He would be forbidden to engage in any parochial appointment. He ought then to be living somewhere where he is not known as Father X. The difficulty of him living too close to where he is known as Father X is that people will put pressure on him and ask him to do a wedding or funeral or, worse still, he will still have friendships and ingratiate himself with those families.

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removed?

reprimanded him about that.

faculties removed?

Unlawfully?

Yes.

Yes.

Sorry.

paedophile acts?

unlawfully.

Q.

Α.

Q.

Α.

Α.

a priest.

biggest risk.

Yes.

children, doesn't it?

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- Α.

Q.

.24/07/2013 (15)

You know, don't you, that McAlinden walked around in

Do you know that he celebrated his golden jubilee in

He would have done that, of course, guite

Sorry, are you asking me what circumstances would have

How would it become publicly known

Again, what steps, as you understood it, did the

church put in place to ensure that people knew that this

person had had his faculties removed and should not be

that this person who had had his faculties removed for

man was no longer a priest and known to have committed

paedophile behaviour - how would it be published to members outside the church, people outside the church, that this

the entire world that he's a paedophile, but you make sure

he is not in a position where someone can think that he is

and continue to be a risk to the community, couldn't he?

The relationship, or the fact of a person being

a priest gives him more access in a trusted situation to

Theoretically that's possible, but it's the

relationship of being a priest that generally is the

I think it goes the other way. It's not that you tell

But he could go to a playground and hand out lollies

performing any trusted accesses as a priest?

arisen to prevent him acting as a priest?

I'll withdraw that question.

I will try again.

his priest's outfit for some time after his faculties were

I understood that and I understood the bishop

the United Kingdom some years after he had had his

- But it doesn't prevent him accessing other children in the community outside of that priestly relationship, does it?
- No. Α.

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- Do you agree with me from your criminal law training and knowledge from your law degree that one of the aims of the criminal law is to punish?
- Α. Yes.

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- And it's to prevent crimes of the same nature being committed by others?
- Α. Yes.

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- By way of making examples of persons who engage in Q. such crimes being publicly put on trial for them and publicly punished?
- Α. Yes.

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- You mentioned in one of your answers to one of my questions that there was a theoretical risk in terms of a priest having been removed from ministry being able to access children in the community not as a priest. risk is more than theoretical, isn't it, because the risk associated with this person is that he is a paedophile: the risk isn't associated with him being a priest?
- I think the substantial risk is precisely that he's a priest, that he's trusted, that he can ingratiate himself with families, that he's working in situations where he has intimate contact with children. Otherwise, he's like any member of the public, and the risk is no different. come out of gaol and the same predicament can exist.

33 34 35

36 37

- Would you agree with me that if a priest is put on trial for paedophile offences, it would attract a significant amount of publicity?
- Α. It would.

38 39 40

41

And that publicity has the effect of warning people that a particular priest has been accused of paedophilia? Oh, only in the most broad sense. Α.

42 43

44 Q. What do you mean "only in the most broad sense"? 45 Well, people who see the trial in one place may know something, but on the other side of the country, they may 46 not know anything about that trial.

- 2 3 4
- 5

interfere with?

to gaol, did you?

abusing children?

Yes.

a paedophile?

No.

at a school?

I didn't, no.

That's true.

his answer in that sense.

No.

MR SKINNER:

MS LONERGAN:

Α.

Α.

Α.

Α.

Α.

Q.

liars?

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.24/07/2013 (15)

1610 B J LUCAS (Ms Lonergan)

Yes, and isn't that always the more reason why

location where he can find a fresh batch of children to

No, I wouldn't agree with that proposition at all.

the relationship that, in our mind, was most significant.

prosecuted, but when you have a situation of victims who

explicitly and for good reason don't want that to happen,

we have this very dilemma, and that dilemma ultimately was

conversations with the NSW Police regarding McAlinden going

I object. The witness clearly didn't mean

The witness can answer my question, then.

Did you have any conversations with the NSW Police to

Do you have any doubt in your mind that McAlinden was

While McAlinden was in gaol - this is a theoretical

The situation where - we'll use McAlinden as the

example - his faculties were removed would not prevent him from reinventing himself as a school teacher or assistant

example - he would be no risk to children, would he?

It's the nature of

a priest shouldn't be cut loose and sent to another

Ideally, you would certainly want the priest to be

able to be resolved in our conversations with the

Let's just study that. You didn't have any

the effect that McAlinden had been accused of sexually

You've published a view that you held in 1988 and maybe subsequently as well that paedophiles are chronic

I understand the point of the question.

NSW Police that came a few years later.

- A. I think we're talking about a 70-year-old man.
 I think we're past that.
- Q. So are you saying men over 70 are past employment?
 A. I would have thought that someone wanting to employ a person 70 years of age would make inquiries as to his background.
 - Q. You're hoping?A. I think commonsense would suggest that's a prudent thing to do.
 - Q. Was that the position in 1993, that people would make inquiries as to people's background, working with children checks, and that sort of situation was that in place in 1993?
 - A. The working with children checks weren't in place. But in terms of church law, if we simply focus on him wanting to practise as a priest somewhere else, one of the most fundamental principles of clergy management is that you have to be incardinated somewhere and you have to be in good standing and you can't work as a priest unless someone makes the appropriate inquiries.
 - Q. I understand that. My questions are based on the assumption that the priest has had his faculties removed and is thus holding himself out to be nothing more than a person and, for example, may be volunteering to do work around children. How would having removed his faculties protect children from that kind of behaviour potentially? A. As I said, in terms of him being a man in the community, like any other man in the community, that element of risk is there. Our focus was on the fact that, as a priest, it would give him greater access to children and that's what we wanted to remove.
 - Q. You've suggested that you personally didn't care about a priest having his reputation damaged by going through a process where it was revealed that he was a paedophile. Is that the way I understand your evidence?

 A. Certainly.
 - Q. This concept of bringing scandal on the church you know that appears in various canon law edicts?
 A. Yes.
 - Q. Is there an obligation on the part of you as

A. I would take the view that if something is done that's wrong, it's done and it's wrong, and the impact by way of scandal on the church is irrelevant.

- Q. Irrelevant, so you don't see any obligation on anything you did in relation to McAlinden to have been governed by any requirement for you to avoid scandal being brought on the church?
- A. No, my view of scandal on the church comes from the fact that if you don't deal with these people decisively and appropriately, that's what creates the scandal.

- Q. Do you agree with me that a priest cut loose from the church norms and protection and supervision means that that person poses a greater risk to children than if he was being observed or supervised by other clergy?
- A. The preference would be that he would be in some circumstance or situation of supervision or care to the extent to which that's possible.

 Q. Would you agree with me that one of the aims of criminal law in relation to prosecuting offences of this nature is both specific and general deterrence to others?

A. I have no quibble with the fact that the very best outcome for these complaints is that the person be

Q. And would you agree with me that a person can't be prosecuted if he is not reported to the police?

A. He can't be prosecuted if there's not a victim willing to go to the police.

Q. Well, he can't be prosecuted if he is not reported to the police. Don't worry about who reports.

A. That's true.

Q. He can't be prosecuted if the first step isn't taken and this person's conduct isn't referred to the police?

A. That's true.

Q. Do you have your affidavit in the witness box with you? Attached to your affidavit is, first of all, a 1988 document headed "Clergy and child sexual assault", and it's annexure B. I'm going to get you to pause when you get to it.

prosecuted.

1 2	Α.	Yes.
3 4 5 6	•	There's one other question I should have asked about meeting with [AL] and Sister Redgrove. Yes.
7 8 9 10	Q. after A.	Do you recall making a phone call to Sister Redgrove your interview with McAlinden? I don't recall it, but it's likely, yes.
11 12 13 14	Α.	Why is it likely? I would have reported back what the outcome was after t with McAlinden.
15 16 17 18	Α.	Why would you have reported it to Sister Redgrove? I understood her to be the support person for [AL]. ald have passed the message to her to pass to [AL].
19 20 21 22	Α.	You didn't ring [AL] yourself? I don't recall that I did. I don't recall ringinger Paula, but that would be my practice.
23 24 25 26 27 28 29 30 31	Conve I sug your was t ring	I appreciate you say you don't recall your ersation with Father McAlinden as he then was, but can agest to you that you stated to Sister Redgrove after conversation with McAlinden that he had cracked and he the hardest nut you had ever had to crack. Does that a bell? It doesn't ring a bell, but that could well be the
32 33 34 35 36	A. recal	Is that the sort of language you may have used about sts at that time? It doesn't sound like my sort of language, but not lling, I don't deny it. It doesn't sound like the sort anguage I would have used quite that crudely.
37 38 39 40 41	Q. A. yes.	But you don't deny that you may have said that? I would have said something to that effect, possibly,
42	Q.	I'm just going to show you a photograph of McAlinden.
43 44 45 46 47		I only have one copy, Commissioner, to show to the ess at this stage. We can make copies for others at ter point in time.

1	Commissioner, you may well have seen this photograph.
2	THE COMMISSIONER: Yes.
4	THE CONTINUENCE TEST
5 6 7 8	MS LONERGAN: Q. I am instructed that that is a photo of McAlinden. Does looking at that photo assist you in terms of your recollection of having met the person that appears in that photo?
9	A. No, I've seen that photo on television for many weeks,
10	and having seen that photo and the images of him, sorry, it
11	doesn't jog my memory.
12	MC LONEDCAN. I tondon that shotospenh
13 14	MS LONERGAN: I tender that photograph.
15 16	THE COMMISSIONER: The photocopy of a photograph of Denis McAlinden will be admitted and marked exhibit 146.
17 18	EXHIBIT #146 PHOTOCOPY OF PHOTOGRAPH OF DENIS MCALINDEN
19	EXHIBIT #140 THOTOGOTT OF THOTOGRAPH OF BENTO HOALINDEN
20 21	MS LONERGAN: Q. I've asked you to have a look at annexure B to your affidavit.
22 23	A. Yes.
24 25 26	Q. Have you read your affidavit and the material attached to it in preparation for giving evidence today? A. I have, but not in the last day or so.
27 28 29 30 31	Q. Your lawyers were provided with seven volumes of material relevant to this part of the terms of reference of this Special Commission. A. Yes.
32 33 34 35	Q. Did you review that material yourself? A. Yes.
36 37 38 39	Q. All of the seven volumes? A. I don't say that I read every word of every document, because some documents obviously were not relevant to me, but I did read a fair bit of the material.
40 41 42 43	Q. Did you take care to read documents that appeared to relate to your involvement in matters? A. Yes.
44 45 46 47	Q. I'm not at all being critical: did you spend some time to ensure that you had read all the material that related to you?

1 2	Α.	Yes.
3 4 5 6	Q. see t	Just looking at annexure B to your affidavit, do you that's a note prepared by you? Yes.
6 7 8 9 10	Q. Confe A.	In April 1988 for the Australian Catholic Bishops erence? Yes.
11 12	Q. conf	It's marked confidential. Why is it marked idential?
13 14 15 16 17	part	I think it would have been given to the bishops for rown personal use. It was a tentative opinion on my . I wouldn't have wanted this published or to have beyond the bishops to whom it was circulated.
18 19 20	Q. Proce	You mention under the heading "1.1 Criminal eedings":
21 22 23 24		These may be instigated if the police have sufficient evidence. It is likely that the investigation will result from a complaint from a victim or victim's family.
25	Vau r	make that charmyation?
26 27	Your	make that observation? Yes.
28	Λ.	165.
29	Q.	Down the bottom of that part of the document you make
30 31		observation:
32		Bishops and major superiors and other
33		church officials must be careful not to
34		hamper police inquiries, act as accessories
35		or attempt to cover-up an offence.
36		
37	Α.	Yes.
38		
39	Q.	What do you mean by "act as accessories"?
40	Α.	That would be to do something that - I'm trying to
41		k of what an example would be in this context - somehow
42		nother to - I'm trying to think of what an example
43		d be. Presumably it would be some way in which you
44		litated the offence or did something to destroy
45		ence or something of that sort, could have been what
46	I th	ink I would have had in mind, yes.
47		

- Q. When you say "or attempt to cover up an offence", would you agree with me that failing to take notes of an interview with a priest who has been accused of sexual abuse could be seen to be an attempt at covering up the offence?
 - A. That would never have been in my mind.

Q. I'm not saying that it was in your mind. I'm asking you theoretically, in a situation where a priest is interviewed and no notes taken of that particular interview, would you agree with me that that could be seen to be attempting to cover up the offence?

MR SKINNER: I object, Commissioner. By a fair-minded person or a malevolent person?

MS LONERGAN: By Father Lucas. I'm sorry, I should have made that absolutely clear.

THE WITNESS: No, I would never have regarded that as a cover-up.

- MS LONERGAN: Q. And why not?

 A. I think cover-up is to destroy evidence or hide some facts that need exposure in some circumstances where there's not some reasonable grounds for doing that.
- Q. Facts that need exposure would facts that need exposure include a priest having admitted to sexually abusing a child?
- A. Again in the context in which this interview was taking place, you have these competing values. On the one hand, you are not going to get him to say anything if he thinks that what he says is going to be reported.
- Q. I'm only talking theoretically or asking you theoretically, Father Lucas. Would you agree with me that a fact that would need exposure is the fact, or a fact, that a priest had admitted to sexually abusing a child?

 A. I don't think I can answer, with due respect, the question in that form, for this reason, that the circumstances in which that fact comes to be known are very relevant to the ability one has to reveal that fact to the authorities.
- Q. So is it your position that if a priest makes an admission to having sexually abused a child in

A. That may well be the case, depending again on the particular situation in which that statement is made.

- Q. Even if the admission made is an admission that a person has sexually abused a child?
- A. If the person makes that statement in the context where there is some reasonable expectation on their part that, if they say that, it will be reported, then they won't say it.

- Q. But what about a position where the person has in fact made the admission?
- A. If they make the admission in some broad sense in which there is no issue about the circumstances of that particular meeting, that's a different set of circumstances. I mean, if a person has direct knowledge of some offence, that's obviously a matter to be reported. But in the context of the sorts of conversations we're talking about, if the perpetrator understood that anything that was going to be said was going to be reported to the police, the simple fact of the matter is that they wouldn't say anything, and then we're faced with this predicament, which was the impasse of the past, where there's an allegation and a denial. A better way forward, in my view, was to encourage the person to get engaged in conversation about what's happened and agree to resign.

Q. You say that it's your view that if you said to the alleged perpetrator that things are going to be reported to the police, they wouldn't say anything, but you don't know that that's the position of a particular individual, do you? You're just assuming that?

A. You know fairly quickly whether the person is coming along to make some full disclosure, and I gave an example where that happened in another case. They can sometimes do that, and then they will go to the court and they will plead guilty, and many that I dealt with did that.

Q. Is it your position that, because of the special nature of the conversations you had with, in this case McAlinden, you had no individual obligation to report any admissions he made to you, if he made them, to the police? A. There's two aspects to that. One is the relationship

1	with nim, that the absolutely prevailing issue in that
2	particular case, in my mind, was the desire of [AL] that
3	the matter not go to the police, for the very good reasons
4	that she gave me that we can't speak about.
	that she gave me that we can t speak about.
5	0 8 9 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7
6	Q. Did you tell [AL] that McAlinden had made admissions
7	to you that he had sexually abused her?
8	A. I don't recall that I had such a conversation.
9	
10	Q. You may well have told her if he had made such an
	admission, or you're not able to say?
11	
12	A. I'm not sure whether, after I spoke with McAlinden,
13	I spoke directly with [AL] or again or spoke to her through
14	Sister Paula.
15	
16	Q. In conducting your special issues interviews with
17	priests in the way that you have outlined, you were
18	prepared to take the risk of potentially committing the
19	offence of misprision?
20	A. Yes.
21	
22	MS LONERGAN: Is that a convenient time, Commissioner?
23	
24	THE COMMISSIONER: Yes. 2 o'clock. Thank you.
25	·
26	LUNCHEON ADJOURNMENT
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UPON	RESUMP	TION
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MS LONERGAN: Q. Father, just before the luncheon adjournment, I was asking you some questions about misprision of felony. Do you recall that?

A. Yes.

Q. You agreed with the position that you were prepared to go about church business in such a way that there was a risk that you may be misprizing of a felony?

A. Yes.

Q. You've written papers on that particular subject matter, haven't you?

A. Yes.

Q. In those papers - and I'll show you an example of one shortly - you have floated the view that one way of avoiding any sort of accusation of misprision is not to acquire the knowledge in the first place?

A. Yes.

Q. One way of looking like the knowledge hasn't been acquired is to not make a record of it; isn't that right?

A. I wouldn't accept that as a proposition, as though that's some sort of deliberate attempt for that purpose. The real reason for not taking notes comes back to the fact that the person talking to you simply won't talk to you.

 Q. What I'm suggesting to you is a broader proposition, though, that one way of not being able to be accused of misprision of felony is not to make any record of any circumstances where such an accusation could arise; that's the position, isn't it?

A. I wouldn't accept that as something that I would ever want to deliberately do.

 Q. I wasn't suggesting that you personally would do it. I'm speaking theoretically. In terms of your own particular practice, which we can move to now, you wouldn't, would you, pursue a policy of calculated ignorance so that you couldn't be accused of misprision? A. The turning of the blind eye is not something that I would countenance as some form of deliberate strategy to pervert the course of justice or interfere in the processes of justice, but these dilemmas arose and we had these conflicting values, and that was always the dilemma and the

 Q. Did you consider that the church's processes, in the way they dealt with priests who were accused of sexually abusing children, were more important than the criminal law processes in this state of dealing with persons accused of sexually abusing children?

7 sexually ab8 A. Never.

- Q. Given your answer is "never", did you on any occasion report personally a priest to the police for sexually abusing children?
- A. Cases that I dealt with involved either victims not wanting to go to the police, or police involvement on a number of occasions I encouraged priests to go to the police and they pleaded guilty.

- Q. Did you, yourself, ever report a person accused of sexually abusing children to the police, yourself?
- A. That situation never arose for me.

Q. You never did it?

23 A. No.

- Q. When you say the situation never arose, you're not suggesting, are you, that you weren't party to information which, if reported to the police, may well have led to a police investigation for sexual abuse of children are you?
- A. That certainly could have happened, but it would have been against some conflictual situation where there would have been a good reason not to do that.

- Q. A good reason in your mind for not doing that; is that the position?
- A. Well, not simply as a subjective decision of mine. That would have been against the background of suitable advice.

Q. Have you on occasion taken legal advice specifically as to whether you should report a priest who had been accused of sexually abusing a child to the police?

A On a specific instance. I have no recollection

A. On a specific instance, I have no recollection.

 Q. So you don't recollect any occasion where you personally have sought legal advice as to whether you should report a particular person to the police or not for

sexually abusing children or allegations relating to 1 2 sexually abusing children? 3 I don't have that recollection. 4 When you say you don't have that recollection, are you 5 6 suggesting that you may have done so, sought advice of that 7 nature, but you just don't remember doing so? 8 My recollection is that there was very general advice on these dilemmas with respect to section 316 and 9 misprision of felony. I can't recall specific advice on 10 a specific instance. 11 12 13 Q. That you sought yourself? Α. Yes. 14 15 Q. Do you recall writing an article in 1996 for the Canon 16 Law Society of Australia and New Zealand titled "Are our 17 archives safe?" 18 Yes. 19 Α. 20 21 Q. You remember the article, do you? 22 Α. Yes. 23 I'll give you a copy of it, because there's a few 24 Q. things in there that we will go to. 25 26 Α. Yes. 27 28 I'll hand you a copy now just so that there's no 29 Have you read that again recently? unfairness to you. Not for some weeks, as far as I can recall. 30 31 32 Q. Not for some weeks? 33 Α. Yes. 34 35 When you say that, does that mean that you read it a few weeks ago? 36 37 Α. Yes, I did. 38 39 Did you read it in preparation for giving evidence at 40 this Commission? Yes. 41 Α. 42 43 Ω. The title, "Are our archives safe?" - was that a title you designed? 44 45 Α. Yes. 46 47 Q. Safe from what?

- A. The subtitle is "an ecclesial view of search warrants".

 Q. So is the question you are raising there and correct me if this isn't the right interpretation are our archives safe from being reviewed by members of the police
 - force of New South Wales?

 A. And also particularly issues to do with material that, for example, could involve the privacy of individuals.

 This was if I can perhaps explain the context --

This was - if I can perhaps explain the context -
11

Q. Actually, I will cut across you there and we'll come
to a broader explanation shortly. I am zeroing in on the

question of, safe from what? The question I posed to you is: safe from the New South Wales Police Force? You would agree with me that the only organisation that can execute search warrants is the police force?

search warrants is the police force?

A. That's true.

Q. So your article is directed at keeping --

MR SKINNER: I don't know if that's quite correct, actually.

THE COMMISSIONER: Yes, I don't know if it is.

MS LONERGAN: Q. Apparently that's not correct. I withdraw the question. I'm terribly sorry, Father Lucas, I didn't mean to mislead you. That shows my ignorance. Excuse me. I should have put the question this way: the only organisations or persons that can execute search warrants are the police or other investigative agencies that operate outside the Catholic Church?

A. Yes.

- Q. Father, in those circumstances, your article is directed at the question of keeping safe from seizure church records, and that is seizure by organisations or investigative bodies that operate outside the church?

 A. I think the way in which that word "safe" is used is not so much to seek to prevent the execution of a search warrant. I think perhaps the last paragraph of the article gives the proper context to what "safe" means as I used it.
- Q. We'll come to that. Under the heading "Introduction", you have raised as a rhetorical question, I suggest:

1 2 3	To shred or not to shred - is that the question?
4	A. Yes. Could I perhaps just explain?
5 6 7 8 9 10	Q. I will let you explain in a minute. All right, I'll let you explain now. A. This was a talk given rather than a written article, so obviously there were some elements of rhetoric involved in giving a talk to a group of people, to attract their attention. So, "To shred or not to shred", I said, "is
12 13	that the question?"
14 15 16	Q. So it's a Shakespearean reference - that's right?A. I'm not that familiar with Shakespeare, I'm sorry.
17 18	Q. It's from Hamlet. A. Is it?
19 20 21 22 23	Q. Yes. A. Can I say that I didn't know it was from Hamlet and I'm pleased that Shakespeare and I are able to be of one mind.
24 25 26 27 28 29 30 31 32 33	Q. "To be, or not to be, that is the question." You have no doubt, do you, that although a jocular reference, "To shred or not to shred", would pique the interest of those present at the paper you were giving, to raise in their mind whether documents should be kept or not? A. And I think this article argues, as I recall it now, very persuasively that shredding is not a solution to anything.
34 35 36 37 38	Q. Does it say that in the article somewhere? A. I'd have to go and reread it, but I think that was the general tenor, and I think I gave some examples that you might think you're destroying a document, but there will be some reference to it somewhere else.
39 40 41 42 43	Q. What about situations where no document is created at all; there's no need to shred then, is there? A. I think that's a matter of general practical prudence, as people manage their affairs.
44 45 46	Q. Not to make notes or keep documents about certain subjects?
47	A. In circumstances where that's regarded as prudent and

won't talk.

Q. I'm asking a slightly different question. I appreciate we've covered that broader ground and you've given that answer to that effect a number of times today. What I'm asking is did you have a view that to not take notes of interviews conducted with priests who had been accused of sexually abusing children was prudent?

A. In some circumstances, it would be. There would be others when it wouldn't be.

- Q. Who was this particular conference attended by? Was it only clerics?
- A. No, this is the Canon Law Society of Australia and New Zealand. About 10 or 15 per cent would be clerics. The rest would be other laypeople members of that association.

- Q. Do you recollect how many attended this particular conference, in broad terms? Are we talking about hundreds or a smaller group?
- A. It would be a hundred or so, I think.

- Q. Do you know whether this paper was provided to any Australian Catholic bishops?
- A. I have no idea it was then published in the proceedings. It would be available to anyone who wanted it.

- Q. The views that you express in this paper were they views that you held prior to the time at which the paper was presented, which is October 1996? I've asked that. Let me start again. The views expressed in this paper, which appears to have been published in October 1996 were they views you had held for some period prior to preparing the paper, so did you hold those views in 1993, or were they newly minted views, or are you unable to say?

 A I really couldn't say I'd have to look at which
- A. I really couldn't say. I'd have to look at which particular view and whether this was a maturing of thinking or it was something I had a strong view on earlier.

carried out for the archdiocese and your discussions wit particular priests, did you consider them to be in any w a penal investigation? A. No. Q. And penal investigation means a particular canon la process that's a very formal process? A. Yes, yes. Q. Does it need a judge appointed and all those sorts things? A. Yes. Q. You didn't see yourself as a judge at canon law? A. Certainly not. Q. On page 54, you have continued to outline various canons relating to documents. In the bottom two paragra on that page you deal with the question of admission of guilt. I had better let you read that whole page. In fact, I should probably let you read the whole section dealing with the canon law, because I don't want to be unfair to you. A. No, I'm reasonably familiar. If you direct me to a particular paragraph, I'll do my best to deal with it.	1		the investigation.
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Q. His is of serious concern if the person felt induced to make the admission on the basis of a promise of confidentiality.	40 41	-	
	43 44 45 46	Q.	felt induced to make the admission on the

1 2	A. Yes.
3	Q. As I understand your evidence you are suggesting the
4	processes you engaged in were not canonical processes?
5	A. No.
6	
7	Q. But your evidence is to the effect that there should
8	be some limit in the use of any admissions made to you,
9	because you gave a promise of confidentiality in your
10	meetings with various priests; is that your position?
11	A. Yes.
12	
13	Q. Yes?
14	A. Yes.
15	
16	Q. As I understand your evidence, you don't recollect
17	your conversation with McAlinden?
18	A. True.
19	
20	Q. You don't recollect McAlinden at all, the person?
21	A. In terms of a visual
22	
23	Q. The visual appearance?
24	A. No.
25	
26	Q. But you recollect certain circumstances surrounding
27	him?
28	A. Yes.
29	
30	Q. You say you have a crystal clear recollection of one
31	particular aspect of the meeting you had with [AL] about
32	McAlinden?
33	A. A few aspects of that.
34	One we have to leave to ane side that's to do with her
35	Q. One we have to leave to one side that's to do with her
36 37	particular relationship A. Yes.
38	A. 165.
39	Q to McAlinden. The other is that she did not want
40	to go to the police?
41	A. Yes.
42	71. 100.
43	Q. And that's bound up with that relationship question?
44	A. And another very critical part of that is the reason
45	why she didn't want to go to the police that she
46	articulated to me.
47	

1 2 3	Q. That's bound up with her particular relationship? A. Yes, yes.
4 5 6 7	Q. Was there anything else that's crystal clear in terms of recollection from that meeting with [AL]? A. That Sister Paula was present.
, 8 9 10 11	Q. That's the only other thing that you remember from that meeting? A. That immediately comes to mind, yes.
12 13 14 15	Q. I'm sorry if I've asked you this question already, but it's your recollection, is it, that there was no other church official present at that meeting, or you're just not sure?
16 17 18 19	A. That was my initial recollection. I'm aware of suggestions to the contrary and it has caused doubt in my mind with respect to one of those suggestions, and I'm clearer with respect to the other suggestion.
20 21 22 23 24	Q. Father Usher was somebody that you often met other victims of sexual abuse in the company of? A. Yes.
25 26 27 28	Q. You're aware that Father Usher is someone who is suggested as having been present at this meeting with [AL]? A. Yes.
29 30 31 32 33 34 35 36 37	Q. Is it the possible that you just don't recollect him being there, but he may have been there? A. No, I'm more confident that he wasn't there, partly because in the context of some other inquiries that were made prior to this Commission, when I sought to refresh my memory, I asked him did he recall being present or having an involvement with McAlinden, and he didn't have that recollection.
38 39 40	Q. But he may be mistaken about that? A. He may be, yes.
41 42 43 44 45 46 47	Q. In terms of Monsignor Hart, do you remember him having been present or not? A. I didn't have a recollection that he was, but it's more likely perhaps that he was, as the person who introduced the meeting. I think I would form a view that to have three clerics present in that sort of interview would be contrary to my ordinary practice.

But your ordinary practice, on occasion, involved two

clerics being present? Normally that would be with a conversation with an

offender.

5 6 7

Q. Oh, I understand, you and the offender?

8 If there was a conversation with an offender, it was very common that John Usher and I would deal with 9 that together. But a conversation with a victim, I rarely 10 was involved in. That tended to be something where 11 12 John Usher was more skilled and more competent, and generally through Centacare would be where victims would 13 engage with the church. 14

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So it is your evidence that you understanding is that Q. John Usher would do them by himself, generally? Or with a counsellor from Centacare or something of that sort.

- Did you see yourself, in relation to this paper that we have been looking at, as setting out some guidelines for any clergy present as to how they should manage documents? I think it was an academic paper raising questions for canon lawyers to further reflect on and discuss. Ιt certainly had no authority to it. I was not in a position to make any authoritative recommendations other than to
- raise questions that I thought were relevant for their further reflection. One of the questions that you raised was the question of destruction of documents in accordance with canon 489,

and that's mentioned on page 53, where they were documents

of criminal cases concerning moral matters. It's just below the halfway mark on page 53.

Yes, that sets out what that canon says.

- Did you have any experience yourself as to whether bishops that you were associated with followed that canon and destroyed documents of criminal cases concerning moral matters?
- I'd have to reread the article, but I have a feeling that I might have queried the prudence of that particular canon.
- I'm sorry, I wasn't asking about your view about it but whether you had any experience, in a practical sense,

Α.

of knowing that any bishops that you worked with followed 1 2 that particular canon in terms of destruction? I've not had that experience. 3 4 You raised the question of the wisdom or otherwise of 5 6 creating documents in the first place that relate to church business, on pages 70 to 71. I'll just give you a moment 7 to read that, from heading "5. Our policy for documents", 8 in particular the material that occurs at the top of 9 page 71. 10 Α. Yes. 11 12 13 You direct attention to the question of the appropriateness or otherwise of creation, retention and 14 15 destruction of documents? Yes. 16 Α. 17 And you raise the question: why it is that we wish to 18 19 create a particular document? Α. Yes. 20 21 22 Is that a question that you posed to yourself on 23 occasion when you were carrying out the business of the archdiocese, in particular relating to interviewing priests 24 accused of sexual abuse? 25 I don't recall that I directed my attention in that 26 Α. 27 way. 28 29 "Why do we wish to retain it?", is another question, and the third question is, "Why are we destroying it?" 30 31 Α. Yes. 32 33 Was this paper written to deal with any suggestion 34 that documents relevant to church activities were being 35 destroyed? Α. No. 36 37 38 So why have you raised that particular question there? Q. 39 The problem archivists have is the sheer size of the 40 material and what sort of retention and destruction policy 41 should exist. I think perhaps the third paragraph on that 42 page may give some answer to that question. 43 That's the "In practice, however"? 44 Q. 45 Α. Yes. 46

The bit about:

Q.

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... the need for an historical archive would prohibit total destruction even after a period of time.

- Yes, and then the limits on space probably mean it's impractical that everything be kept, so you have to have some policy as to what's relevant, what's kept and what's And I set out then in the fifth paragraph that selection based on certain reasons could involve adverse inferences, and so on.
- But would you agree with me that if documents have been selected and destroyed, then they can't be gathered by a search warrant process?
- And I think I've argued there that that's a very dangerous thing to do.
- You mention in your paper that selective culling of all the incriminating material will be likely to be discovered?
- Yes. Α.
- Q. Have you had experience of that happening, that there has been selective culling of incriminating material and then it was subsequently discovered?
- I've never had that experience.
- But you're just identifying that that may well happen? Q. I think I was expressing some caution that if you think you are going to get away with some sort of selective destruction, the sophistication of the process will mean that you will be caught.
- A higher level of sophistication would be, would it not, never to create documents in the first place? That could be a policy decision, depending on the circumstances of whether it's prudent to create the One of the difficulties, of course, was document. documents that intrude upon the privacy of individuals, and in the context of marriage cases there were issues about that.
- Would you agree with me that in the context of marriage cases that have to go to the particular tribunals, there's a canon law requirement that certain documents are created?

1 2	Α.	Yes.
3 4 5 6 7	conf	So we're talking about documents not being created at not documents that are created and have to be kept idential? Yes.
8 9 10 11		On the next page, page 72, you deal with the question ocuments that involve allegations of misconduct and the for those to be considered as a separate category. Sorry, which paragraph?
13 14 15	Q. A.	I'm sorry, page 72, paragraph 6. Yes.
16 17	Q.	You make this observation:
17 18 19 20 21 22 23		If the allegations are admitted then the retention of the complaint is irrelevant. All that may need to be retained is the evidence of the admission, and then only if there is some further purpose for this.
24 25	Α.	Yes.
26 27 28 29 30 31 32 33	1993 sugge A. notes and	Applying your statement there to your situation in with McAlinden if he made an admission, is this not esting that evidence of the admission ought to be kept? No, because I've said it many, many times: if I take s of what he's saying to me, he will not talk to me, if he thinks there's going to be some permanent record nat he says to me, he's not going to talk to me.
34 35 36 37 38	giver A.	In terms of canon law requirements, I think you've a evidence to the effect that a caution ought to be a if there's a canon law process going on? If there's a canon law process, it's a whole different bach to documentation completely.
39 40 41 42	Q. perso A.	And it includes requiring a caution of the particular on that you would be dealing with? I'm not quite sure of the precise process of that.
43 44 45 46 47	Q. you? A.	But you weren't following a canon law process, were No.

1 2 3 4	Q. You don't have a recollection of your conversation with McAlinden, do you? A. No.
5 6 7 8 9	Q. So you don't know whether you induced him to tell you things on the basis of a promise that you wouldn't reveal what he told you to anyone, do you? A. I don't have a recollection of the context of the conversation.
11 12 13	Q. So you may well have not given him any inducement at all? A. I'd be very confident that there was a very serious
14 15	inducement to persuade him to resign from priesthood.
16 17 18 19 20 21	Q. Oh, I understand that. I'm sorry, because you can't recollect any conversation with McAlinden, you couldn't give evidence to the effect that you told him that you wouldn't tell anybody what he told you? A. I think I would have said to him, "Look, this conversation is between us and the bishop."
23 24 25	Q. You're surmising now, aren't you? A. Yes.
26 27 28 29	Q. Because you don't recollect the conversation? A. That's my surmising, yes. That would be my normal practice.
30 31	Q. But you may well not have engaged in your normal practice?
32 33 34	A. That's quite possible, but normally you do normally engage in your normal practice.
35 36	Q. Normally you do, but there's always an exception, isn't there, otherwise it would be your invariable
37	practice?
38 39 40 41	A. Well, it might have been my invariable practice. If you put it to me in those terms, my practice was fairly consistent so far as I can recall it.
42	Q. Because you can't recollect your conversation with
43	McAlinden, he may well have sat down and admitted to
44	a number of abuses with no inducement whatsoever from you?
45	A. I think I - if that was the case, because that's not
46	so common, I'd have a recollection.

- 1 Q. But you don't have any recollection of your 2 conversation with McAlinden at all, do you? 3 That's true. 4 5 You don't even recollect where it was? Q. 6 Α. Yes. 7 8 And you've reconstructed from other documents when it Q. happened? 9 Yes. Α. 10 11 12 Otherwise, you have no memory of any kind that it had ever occurred; is that the position? 13 That's the position. 14 15 16 Q. A perpetrator would have no knowledge as to whether the bishop might make a permanent record of what you tell 17 the bishop, would he? 18 19 Α. That's probably the case, yes. 20 21 Given that situation, from a confidentiality point of 22 view, there is no reason why you ought not make a permanent 23 record as well? 24 It's not so much from the confidentiality point of view; it's the conversation you're having with him would 25 not take place if he believed that I was taking notes. 26 27 what he would understand, again according to the normal 28 practice, would be that I would report back to the bishop 29 the outcome but wouldn't need to go into whatever details of conversation he had with me. 30 31 Given your child protection background, the fact that 32 33 34 35 was a significant one to bear in mind for child protection 36
 - a priest made an admission to you regarding having sexually abused a number of children, if he did make that admission, issues, wasn't it?
 - Certainly. Α.
 - And the bishop would need to know that a person accused of sexually abusing children admitted he'd done that, wouldn't he?
 - Not necessarily. All that the bishop needed to know was that he had agreed to resign from ministry and the bishop would draw his conclusions as to why that was, and then the child protection comes from the fact that he has been removed from ministry.

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Q. That is a very different thing, feeling strong-armedout of priestly ministry, to admitting sexually abusing children, isn't it?

A. Well, some will make some admissions in varying degrees. I've had a situation of an absolute denial but still an agreement to withdraw from ministry.

Q. I understand that, but what I'm asking you to accept as a proposition is accepting a withdrawal from ministry, having been encouraged to do so by your particular processes, is a very different thing to saying, "Yes, I'll get out of ministry", and, "Yes, I abused those three or four children sexually", isn't it?

A. It would depend on the context of the conversation.

Q. Why does it depend on the context of the conversation? I've just outlined a conversation for you. We've got a situation where a priest says, "Yes, I'll step out of ministry because I feel you've strong-armed me out of it", and a different priest saying, "I actually sexually abused children A, B, C and D, I'll get out of ministry." They're very different situations?

A. I'm sorry, I've misunderstood your question, I apologise.

Q. They are very different situations, aren't they? A. Yes.

Q. Isn't it important for the bishop to know that the second priest we talked about has held up his hand and said, "Yes, and I sexually abused child A, B, C and D"?

A. I don't think he needs to know A, B, C and D. I think he just needs to know that this is the circumstance of the agreement to resign from ministry.

Q. He needs to know that the priest has admitted engaging in that behaviour, doesn't he?

A. I don't think he does.

Q. Doesn't a bishop of a diocese need to know that a priest has engaged in that behaviour so that a priest who at that stage is still incardinated to his diocese is not

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let have access to children, having admitted that he 1 2 engaged in that kind of behaviour? 3 The bishop would know that he can't ever work as 4 a priest again, on the basis of the agreement that he would 5 The details of names of particular victims or 6 particular details, the bishop wouldn't necessarily need to 7 know that to fulfil his child protection obligations. 8 The important piece of information isn't the names of 9 the children; it's the fact that a priest has admitted that 10 he sexually abused children. Isn't that the important 11 12 fact? That was taken for granted in the entire context. 13 Α. 14 15 It doesn't have to be taken for granted just because a priest holds up his hand and says, "All right I'll 16 withdraw from ministry"? 17 I think that's the inference in the context of these 18 19 conversations. 20 Would you agree with me "the inference" is a very 21 22 different thing from a stated admission of conduct 23 involving sexually abusing children? 24 Α. It is. 25 Were you trying to protect the bishop from a potential 26 27 misprision of felony by shielding him from that particular 28 specific information? 29 No, I'm sorry, this is the first time I've ever had 30 that suggestion put to me. That never occurred to me. 31 32 Q. So can we take it from your answer that you weren't? 33 Α. No, certainly not. 34 35 Doesn't the bishop need to know from a pastoral care 36 37 abused A, B, C or D child? From the point of view of the pastoral care of the 38 39

point of view that a priest has admitted to having sexually

priest?

40 41

42

- Q. No, the pastoral care of the children who may now be adults?
- 43 Obviously, the pastoral care of the children. 44 had already made their contact with the diocese. 45 bishop knew who they were.

46 47

Q. But doesn't the bishop need to know that not only were

- 1 the complaints made but that the perpetrator admits he did 2 Doesn't the bishop need to know that so he can have an 3 appropriate pastoral engagement with those adults who were 4 sexually abused as children? 5 In the sense of affirming those children's complaints. 6 7 Q. 8 Α. I don't think there's any dispute about that. 9 10 What is there no dispute about that? Α. The need to give proper pastoral care to the people 11 12 who have been - who have made complaints and to affirm them in that situation. 13 14 15 Don't you think part of a proper pastoral care in a situation where a priest has admitted that he sexually 16 abused these people was to tell those people that that 17 admission had been made? 18 19 On an individual basis. 20 21 Q. Yes, you're agreeing with me?
 - Q. Yes, you're agreeing with me?
- 22 A. Certainly. 23

28 29

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- Q. For that to have been carried out, the bishop would need to know, wouldn't he?
 - A. Well, the bishop's delegate or the Centacare, or whoever is caring for those people, yes.
 - Q. You didn't always contact the complainants individually after you had spoken to a priest in question, did you?
 - A. Always.
- Q. Oh, you always did?
 - A. Or some person on their behalf. As I said, with [AL], it may have been that I spoke to Sister Paula as her support person. I don't recall that. But it would certainly be my practice always to give feedback to a complainant about the outcome of the conversation with the priest.
- Q. My question was, though, that you didn't always do it yourself direct to the complainant, did you?

 A. Yes.
- Q. You're saying yes, but you've just given an example where you didn't?

Yes.

Α.

got to make some prudential judgment about the

circumstances and the context of the conversation.

5 6 7

So obtaining details of admitted activity by a priest suspected of paedophilia is important, isn't it?

If you can get it.

9 10 11

8

Yes, if you can get it, and it's important in terms of risk evaluation?

Yes. Α.

13 14 15

16

12

And the risk being evaluated is the risk that that priest will sexually abuse other children?

Α. Yes.

17 18 19

The person with the responsibility of the relevant risk evaluation isn't you in these circumstances, is it? Ultimately the responsibility will be with the bishop.

21 22 23

24

20

So that's why the bishop needs to know the details of what conduct has been acknowledged or admitted to and the details associated with that conduct?

25 26

27

28

29

30

I think the information that is most helpful to the bishop is the willingness of the priest to take himself out of ministry and after that - I mean, I think this is fairly black and white, in my mind. There are not really degrees If he has to be taken out of ministry, he has to of risk. be taken out of ministry, and --

31 32 33

34

35

Isn't that a very small-minded approach to the Q. problem, that is, focusing only on removal of this criminal person from ministry as opposed to keeping children safe from his paedophile behaviour?

36 37 38

The best way to keep children safe from the paedophile behaviour of a priest is to take him out of priestly ministry.

39 40 41

What if a priest doesn't properly cooperate with the Q. arrangement made that he is to extract himself from priestly ministry?

43 44 45

42

There's a limit to what you're able to do, depending on the constraints that are there with respect to taking further action.

1 Q. There's a limit to what you can do as a representative 2 of the Catholic Church, isn't there? 3 Yes. 4 5 And in terms of criminal behaviour, there is an Q. 6 obvious other step, isn't there, and that is reporting the 7 perpetrator to the police? 8 Provided you're in a position where you are able to do that without other constraints upon you. 9 10 The constraints you've outlined are your understanding 11 12 that some people feel they don't want to go to the police; 13 is that the position? It's more than they feel they don't want to go to the 14 15 There are some people who are just absolutely completely and utterly unwilling to go to the police. 16 17 You would agree with me, wouldn't you, that on 18 19 occasion people who are utterly and completely unwilling to go to the police change their mind and become willing to go 20 21 to the police? And that's a good idea and --22 Α. 23 And it happens, doesn't it? 24 Q. 25 Α. Yes. 26 27 Q. And you've seen it? You've seen it happen? 28 Α. I expect I have. 29 After you had attended to your particular duties in 30 31 relation to McAlinden in early 1993, you didn't have any 32 ongoing role with management of him, did you? 33 Not that I'm aware of, other than the phone call in Α. 34 1995. 35 36 Did you know that a plan had Q. Put that to one side. 37 been made for him to go and live with a relative in the 38 United Kingdom? 39 Α. Yes. 40 41 Q. When did you become aware of that plan? I don't know. 42 Α. 43 44 Q. Were you part of making that plan for him? 45 Α. No. 46 47 Q. Do you know who made that plan for him?

1	A. I expect that was the authorities in the diocese of
2	Maitland.
3	
4	Q. Have you on any other occasion made particular plans
5	regarding where a priest should be physically located after
6	he has had a conversation with you?
7	A. My general practice would be that he would go back to
8	his bishop. I would have reported that he's now willing to
9	resign from ministry, and then the circumstances and where
10	he'd live or whatever would be taken up between himself and
11	the bishop.
12	
13	Q. That paper we've just been looking at, I have a couple
14	more matters to raise with you about it. On page 74, which
15	is the last page, you're still addressing the question of
16	overall policy for documents, and you raise this question:
17	
18	If, through a tribunal process, it comes to
19	light that a person is abusing children,
20	might it not be argued that the greater
21	good would be served by disclosing this
22	concern to the authorities. Is this
23	a higher value than the value of preserving
24	the confidentiality of the church process?
25	This is a matter that is at least worth
26 27	discussing.
28	As at October 1996, what was your view on that question you
29	posed: is reporting a matter to the authorities, outside
30	the church, of higher value than preserving the
31	confidentiality of the church process?
32	A. That will depend on the nature of the information and
33	the circumstances of the confidentiality.
34	the off dame tarreds of the defin radictarrey.
35	Q. Let's assume this: the nature of the information is
36	that a priest is accused of sexually abusing a number of
37	children.
38	A. Sorry, this is through a tribunal process.
39	
40	Q. Sorry?
41	A. The context of this is a tribunal process.
42	·
43	Q. So are you saying that the process you performed has
44	no relationship whatsoever with a tribunal process?

Α.

Q.

45

46

47

Yes.

None whatsoever?

1	A. Yes.
2 3	Q. You're looking at and assessing accusations that
4	a priest has sexually abused children, aren't you, in your
5	process?
6	A. Yes.
7	
8	Q. And you're confronting the perpetrator with the
9	allegations in your process?
10	A. Yes.
11	O Vandara and making any mater about the manage through
12	Q. You're not making any notes about the process, though,
13	are you?
14	A. No.
15 16	Q. Aren't there at least some parallels to the tribunal
17	process you're referring to here?
18	A. There's a parallel, but the particular context of that
19	paragraph is the general confidentiality of marriage cases
20	and
21	
22	Q. We're not talking about marriage cases. You're
23	talking there about it having come to light that a person
24	is abusing children?
25	A. There is a marriage case, someone is giving evidence
26	in the marriage case and making some allegation about some
27	child abuse.
28	
29	Q. I understand, all right.
30	A. Then the question is whether the greater good would be
31	served by disclosing that concern to the authorities or
32	preserving the confidentiality of the church process.
33	
34	Q. Doesn't that question apply by way of a parallel to
35	the situation where it comes to light that a priest is
36	abusing children? Might it not be argued that the greater
37	good would be served by disclosing this concern to the authorities? Don't you agree there is a parallel there?
38 39	A. I'm sorry, I misunderstood where you're coming from.
40	I apologise. There's a clear analogy because you've got
41	the same dilemma.
42	and diremmen
43	Q. So you agree that the dilemma you're referring to
44	there is the dilemma that arises in your processes with
45	a conversation with a priest who has been accused of
46	sexually abusing children?
47	A. It was a very clear, well known and well understood

- Q. So is it your position that the most important value in the equation of the matters that you have dealt with is a victim's request that the matter not be reported to the police?
- A. I think that's a very significant value.

Q. Is that the most important value?

A. I don't think you can say that one is more important when you have conflicting values. That's the whole point of a dilemma. I don't think you can say one, in a sense, is more important or less important. You have a dilemma. Whatever you do is going to be a problem.

Q. It doesn't fix the problem, does it, to simply remove the man from ministry?

A. In terms of the total problem, there is no solution to that problem in any fashion. There are only really three outcomes of a complaint about child sexual assault. The first is the police process, and that has its limits. The second is a formal church process, and that has even more limits. And the third is some informal process to at least take him out of ministry, which goes a long way towards protecting children into the future.

 Q. When did you become aware that McAlinden had been charged with sexually abusing a child in Western Australia? A. I presume at some stage after he had been acquitted in the context of these conversations.

- Q. At the time you were having the conversation with him in early 1993, were you aware of that?
- A. Yes, he had been acquitted already. That was partly what brought the whole matter to light.

Q. So you knew that at the time you were speaking to [AL]

1 2 3 4	<pre>and [AJ]? A. Yes, that's what made them angry - that he had been acquitted.</pre>
5 6 7	Q. You don't recollect your conversations with [AJ] at all, do you? A. No.
12 13	Q. So you are unable to state what her attitude was regarding reporting her allegations to the police? A. No, I think I came to the understanding that she didn't want the matter reported to the police, from the information I was given before I spoke to her.
14 15 16 17 18	Q. You say you don't recollect any conversation with [AJ]? A. Yes.
19	Q. So the information can't have come from her? A. No.
22 23	Q. Who do you say that information came from? A. It would have been - and I don't recall now whether it was Bishop Clarke or Monsignor Hart who gave me the phone number to ring [AJ]. I don't recall which it was, but I'd be very confident that in the course of being told that it would be good to ring her to tell her what we're doing about McAlinden, it would have been certainly my understanding that there was no police process involved.
31 32	Q. Sorry, there was no police process involved?A. Involved or contemplated, yes.
33 34 35 36 37	Q. Let's clarify that. There was no police process involved, so you knew the police hadn't been told yet? A. Yes.
38 39	Q. What information was conveyed to you that [AJ] did not want the police involved? A. I don't remember any particular words, but if I'd been led to believe that she may have wanted to go to the police, I would have been very reluctant to engage with her at that time until after she had been to the police.
45 46 47	Q. So from that, you're assuming, are you, that [AJ] didn't want to go to the police? A. Yes.

Yes. Α.

It's attributed to you and John Usher and dated Q. 12 April 1988?

Yes. Α.

31

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Q. Did you prepare this document?

Α. No, I think that's John Usher's document. That's not my typescript, and it's the same date as my document, which is in my statement.

- Q. So is it your position that you prepared none of this material?
- I have no recollection now whether I saw it or this looks like, given the content of it, this would have been the presentation John Usher gave to the bishops on the same occasion that I gave my presentation.

1 2	Q . A .	And you were present for it? Yes.
3 4	Q.	,
5 6 7	head A.	ed "Confidentiality of Church Process". Yes.
7 8 9	Q.	There's a statement:
10 11 12		Secret archives may not be exempted from civil law.
13 14	Α.	Yes.
15 16 17	Q . A .	You agree with that? Yes.
18 19	Q.	And:
20 21 22 23		Instruct the diocesan solicitor and give him the documentation which then becomes
24 25	able	there's a word missing and inverted commas. Are you to say what that was referring to and whether the word
26 27 28	Α.	well have been "privileged"? Yes, that's likely. One of the issues that had en, and I think I make a reference to it also in my
29 30	pape	r - in a canonical process, what can you do to preserve confidentiality and privacy of witnesses? They're not
31 32	priv	ileged the way they would be privileged in the civil system. A suggestion that had come from some canonists
33 34	was	that to protect those witnesses, victims or others who giving evidence in a church process, it may be
35 36 37	poss	ible to construct it in a way that would give rise to l professional privilege.
38 39 40		ONERGAN: Commissioner, did I tender the document nd tab 153, which was the witness's April 1988 notes?
41 42		COMMISSIONER: It is part of exhibit 142, being xure B to Father Lucas's affidavit.
43 44 45	the	ONERGAN: Q. Father, you've given some evidence to effect that you had some involvement in the structuring
46 47		protocol for dealing with allegations of criminal viour for the benefit of the Australian Catholic
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```
Bishops Conference?
1
              Yes.
2
        Α.
3
4
              You've annexed to your statement a protocol dated
5
        April 1992?
6
        Α.
              Yes.
7
8
        Q.
              That's annexure C to your statement. Is that the
        protocol that you are referring to?
9
10
              Referring to where?
11
12
        Q.
              Or were you referring to an earlier version of the
13
         same protocol?
        Α.
              Sorry, I'm not sure.
14
15
        Q.
              Annexure C to your affidavit.
16
              Yes.
        Α.
17
18
19
              My question is, in the text of your affidavit you've
        referred to annexure C in the very long paragraph that
20
        appears on page 3, in the second paragraph on page 3, that
21
22
        this is a draft protocol dated April 1992? Is that the way
23
        I should read that paragraph?
              Yes.
24
        Α.
25
26
        Q.
              You had a role in drafting this particular protocol?
27
        Α.
              I was part of the committee, yes.
28
29
              In terms of the title "Special Issues", which is
        referred to in the definition section on page 3, who came
30
31
        up with that title?
32
              That was a title that came up with the - are you
33
        talking about the special issues resource group?
34
35
        Q.
              Just the words "special issues".
36
        Α.
              It was a title that was used by the insurance company.
37
38
              Is it a reference to sexual abuse behaviour by clergy
39
        or something more wide?
              It's wider than that. It would include - it's really
40
        a subcategory of public liability claims that were of the
41
42
        nature of molestation claims, perhaps orphanage claims,
43
        forced adoption claims, adult boundary violation claims -
44
        that general broad category of misconduct.
45
              And misconduct that includes criminal misconduct?
46
        Q.
47
        Α.
              Yes.
```

1 2	0	On the second page of the decument under the heading
3		On the second page of the document, under the heading amble", it says in the fifth paragraph:
5 6 7 8		It is understood that this protocol in no way affects any rights and obligations, arising from canon law either universal or particular
10 11 12	Do yo	yes.
13 14 15 16 17	Α.	Is that a savings provision in relation to canon law rements; is that the way that should be read? I think this particular protocol was not intended to formal canonical process.
18 19 20 21 22	Is th	What I'm asking you is something different, though. nat paragraph there stating that canon law processes still be conducted? Yes.
23 24 25 26 27 28 29	entir A. there	Is it your position that this protocol operates rely outside canon law? It can't operate entirely outside canon law, because would be certain aspects of canon law that may be rant to it, but this was not intended to be a canonical ess.
30 31 32		And it is not a substitution for canon law? No.
33 34 35 36 37 38	and I to, b A.	In terms of the protocol set out in this document - I'll give you a moment to read it again, if you need out I take it you're well across it in broad terms. I'm very happy for you to take me to a particular graph.
39 40 41 42		I will if I need to, but did this protocol inform your rities in February 1993 with McAlinden? Broadly, yes.
43 44 45	Were	What were you doing in reference to this protocol? you the preliminary investigation?
46 47	Q.	Where is the bit that refers to what you were doing?

- 1 I'm not quite sure you'd find it in those words. 2 I think to some extent the protocol had been concertinaed 3 into a conversation with McAlinden to induce his 4 resignation from priesthood. The more elaborate processes here and all of the different policies and principles 5 6 enunciated here to some extent were taken for granted and 7 short-circuited.
 - Why was it appropriate for you to short-circuit these documented processes and policies and go straight for the conversation?
 - Because that was the best outcome.
 - Who told you that that's how it should be conducted? Q. This was not a common practice but a reasonable practice that John Usher and I had adopted within the spirit of this protocol but without necessarily going through every particular part of a process if the circumstances were such that you could induce his resignation from ministry.
 - Q. Doesn't this protocol talk about the need for documentation of different parts of the process? If there is a process in place, yes.
 - To that extent, your special conversation didn't follow that requirement, did it? No, it wasn't possible to document it because he
 - wouldn't talk to you if you documented it.
 - Q. You don't know that? I do know that.

 - Q. How do you know that? Because that was a very common practice and experience that a priest who's being talked to in that context is not going to talk if you pull out the notepad and say, "Now, I'm going to write down everything you say."
- 40 Q. But you didn't know McAlinden before your 41 conversation?
- 42 I could be very confident that he would not speak to 43 me if he knew that I was going to take notes of what he said. 44
- 46 Q. You are assuming that?
- I am assuming it from experience. 47

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Α.

Q.

THE COMMISSIONER:

Thank you, father. Thank you,

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reason, is there, that you couldn't have made notes after your discussion?

A. I've said many times there is no reason not to, but it wasn't necessary to.

the one exception who is prepared to speak frankly and

openly, within reason, and have everything taken down.

might be the one exception. I never came across a priest

I could never be a hundred per cent certain if he is

Given the answer you have just provided, there is no

You don't know it?

who ever did that.

Q. It wasn't necessary to because you were proceeding on the basis that you would always remember the conversation, were you?

A. No, I'd report the conversation immediately to the bishop.

THE COMMISSIONER: I'm sorry to interrupt, Ms Lonergan. It has just reminded me of something that I would like to clear up.

- Q. Father, some time ago in your evidence, perhaps half an hour ago, you said that you would be very confident there was a very serious inducement to persuade McAlinden to resign from the priesthood. Although you don't remember the conversation, what was the nature of the inducement that you are likely to have offered him?
- A. If he doesn't resign from priesthood, there are people making these accusations; they will continue to make those accusations. They don't want him to be a priest. And there's no future, given the circumstances and history of what seems to have happened, that the bishop will ever give him an appointment, so better for him and for everybody to formally resign from ministry.
- Q. Might it ever have been an inducement that the police authorities would be advised if he didn't resign?

 A. I think that would be taken as an obvious outcome. I should say, by the victims who perhaps who were simply wanting him out, and if he refused to get out, they may well have changed their mind, which would have been the best outcome for everyone.

1	Ms Lonergan.
2 3 4 5 6 7	* MS LONERGAN: Q. So is it fair to say that the processes that you were engaged in were offered as an inducement to avoid a situation where these crimes would be reported to the police? A. No, I think that's
8 9 10 11 12	MR SKINNER: I object to that. The witness has just given an answer where he has made it quite plain that there were several steps to that end. It is not fair to put it like that.
13 14	THE COMMISSIONER: Not directly stated.
15 16	MR SKINNER: Yes, night following day.
17 18 19 20 21 22	MS LONERGAN: I didn't say that night followed day. I didn't say it came from the question that you asked, Commissioner. I'm putting the proposition, which the witness can accept or reject, as a highly educated, clearly intelligent person.
232425	THE COMMISSIONER: Yes.
26 27	MS LONERGAN: Q. You have rejected it, as I understand your answer?
28 29 30 31	A. I was about to answer the question when my counsel stood up. Perhaps if I could have the question again, I'd prefer to give a better answer?
32 33 34	Q. Thank you. Could the question be read, please? A. I don't mean to make it difficult, but I don't now remember the question.
35 36 37 38	Q. No, it's not that you're being difficult. I should remember it, and I don't, I'm sorry.
39 40	(Question marked * read)
41 42 43 44	THE WITNESS: No, I would reject that because the reason these crimes weren't reported to the police was because of the desire of the victims that they not be reported to the police.
45 46 47	MS LONERGAN: Q. In the protocol document that I have just taken you to, you say that your particular processes

1 2 3		't follow chapter and verse this protocol; that's the tion, isn't it? Yes.
4 5 6 7 8		But did your processes at least follow in broad terms values to be promoted? Yes.
9 10 11	Q. docur	The values to be promoted appear on page 5 of the ment, and they are listed as:
11 12 13 14 15 16		In dealing with allegations of criminal behaviour against the accused, the competent ecclesial authority is obliged to take into account and preserve various values.
18	Α.	Yes.
19 20 21 22	Q. the e	In the context of your particular process, you were ecclesial authority, in effect, weren't you?
23 24 25 26 27 28 29	the A.	Not in the special terms as set out here but in terms he requirement to act in a certain way consistent with values of this protocol document? I would have personally wanted to act according to e values, but I wasn't in any sense ever the competent ch authority.
30 31 32 33 34 35 36	anoth that	But you were acting as a church authority in the sense you were engaging in a process that was requiring ner priest to cooperate with a particular interview was going to have potentially a lasting effect on his ity to continue to practise as a priest? Yes.
37 38 39	Q.	As to the values - first is:
40		To act with justice, mercy and charity.
41 42	Α.	Yes.
43 44	Q.	Second is:
45 46 47		To respect the civil law and not obstruct or pervert the process of justice.

1		
2	Q.	Do you see 4.1.4 on page 304 mentions the need to:
3		
4		safeguard the good name of the Church
5		as a whole and act to prevent or remedy
6		scandal.
7		
8	Do v	ou see that?
9	•	Yes.
10	, , ,	
11	Q.	So this one occurs about three years before the
12	-	ion we've just been looking at? The other one is April
	1992	
13		
14	Α.	•
15	nave	been in May 1990. Two years.
16	_	
17		Say again?
18	Α.	I think this was two years before.
19		
20	Q.	Yes, I see, this one is late 1989.
21	Α.	No, it's in fact - yes, this was presented in May
22	1990	, I'm sorry, yes.
23		
24	Ο.	You get that date from?
25	Α.	<u> </u>
26	,	Trom the covering hete.
27		proposes to move at the 1990 Conference
28		· ·
		for the acceptance in principle of the
29		strategy outlined in the protocol
30	C - 41	his of this stars is a dueft decominat
31	50 T	his, at this stage, is a draft document.
32	•	
33	Q.	The version that we were looking at before the one you
34		ently have in front of you does not have that rider
35	that	they:
36		
37		must safeguard the good name of the
38		Church as a whole and act to prevent or
39		remedy scandal.
40		·
41	Α.	Yes.
42		
43	Q.	Can you assist with the origin of that particular
44		se, what it means and its importance or otherwise?
45	Α.	I can't, I'm sorry.
46	Λ.	I can c, I iii sorry.
46	Q.	You have no idea where it comes from?
41	u.	TOU HAVE NO TUEA WHELE IT COMES ITOM!
24/	07/00	13 (15) 1654 B.J.LUCAS (Ms.Lonergan)
/41	11///	TO LIGHT TO THE PLANTING TO THE LONG TO A TO THE TO THE TO A TO THE TO

1 2	A. The words - the words? I'm sorry, I'm not sure which words.
3 4 5	Q. The part I read about attempting to deal with the matter so as to avoid bringing
6 7	THE COMMISSIONER: "To prevent or remedy scandal".
8 9 10 11	MS LONERGAN: Q. Yes. A. "Prevent or remedy scandals" is a common canon law expression.
2 3 4 5 6	Q. Do you know why that was removed from the later version of the protocol? A. No, it's in there. It's 4.1.5:
17 18	To act so as to prevent or remedy scandal.
19 20 21 22	Q. So why was that then moved to be a separate consideration, do you know? A. I have no idea, I'm sorry.
22 23 24 25 26 27 28 29	Q. What does it mean? A. It would be a situation, for example, where suppose somebody in a parish makes allegations about the priest. Let's hypothesise those allegations are unfounded. There's controversy and whatever in the parish. There would be the need to do something to remedy that and also to deal in a way that doesn't allow, for example, that sort of gossip around a parish that creates scandal.
32 33 34 35 36	Q. Do you agree that a bishop reporting a priest to the police for sexually abusing a child would create scandal? A. It would probably, to the contrary, prevent scandal, if that's the method used to prevent harm to people in the future.
38 39 40 41	Q. So there would be nothing in 4.1.5 that would prevent a bishop reporting a priest to the police for sexually abusing a child? A. No.
12 13 14 15 16 17	Q. You were asked to prepare an affidavit or a statutory declaration in relation to the activities of a company known as Encompass Australasia Limited? A. Yes.

1 2 3 4 5 6	Q. You prepared a statutory declaration that addressed searches that had been made to see whether either Denis McAlinden or James Fletcher had been dealt with by the Encompass organisation? A. Yes.
7 8 9 10	Q. I will provide to you a copy of your statutory declaration and ask you whether it's true and correct? Car you outline just in very general terms the operation of Encompass Australasia and the purpose of it being established?
112 13 14 15 16 17	A. Yes, in about 1996, from recollection, the bishops sought to put in place a therapy program to deal with people in the church who may benefit from some form of therapy connected with psychosexual disorders and other psychological problems - depression, anxiety, alcoholism and the like.
19 20 21	Q. It was wound up at some point? A. It was.
21 22 23 24	Q. Why was it? A. They ran out of customers.
25 26 27	MS LONERGAN: Commissioner, I tender the statutory declaration, which is dated 30 April 2013.
28 29 30	THE COMMISSIONER: The statutory declaration of Father Lucas will be admitted and marked exhibit 148.
31 32 33	EXHIBIT #148 STATUTORY DECLARATION OF FATHER LUCAS, DATED 30/04/2013
34 35 36 37 38	MS LONERGAN: Q. Did you satisfy yourself personally, Father Lucas, that there was no material within the records relating to Encompass that touched on Fathers McAlinden or Fletcher? A. I did. Twice.
39 40 41 42 43	Q. What was the year that the Encompass organisation ceased operation? 2008 it ceased operation? A. That sounds correct, yes.
44 45 46 47	Q. Are you suggesting from your answer that, as from 2008, no priest had any psychological or psychosexual or alcohol-related problem? A. No, of course not. But this particular program, which

1 2 3	was a very expensive program, didn't have the critical mass to conduct that sort of program. The therapists who were engaged in it were then willing to continue in a private
4	capacity and they dealt with what cases arose after the
5	program was wound down, and the other matters were dealt
6	with in other psychiatric facilities.
7	
8	Q. As at February and March 1993, had you put together
9	a particular way in which you would approach these
10	particular conversations that you had with priests?
11	A. Between ourselves, John Usher and myself had a broad
12	methodology, but it certainly wasn't documented.

Q. It wasn't documented as a procedure or a protocol that you and Father Usher used?

A. No.

Q. Prior to McAlinden - and I appreciate you don't remember your actual conversation with him - are you able to say how many of these conversations you had conducted? A. I wouldn't remember now, no.

MS LONERGAN: Commissioner, could I have a five-minute break to take some instructions on a particular matter?

THE COMMISSIONER: Yes, certainly.

SHORT ADJOURNMENT

MS LONERGAN: Thank you for that time, Commissioner. I was able to shortcut various other matters I was to go to.

THE COMMISSIONER: Very well, Ms Lonergan.

MS LONERGAN: Commissioner, there has been a request from the media for access to copies of exhibits 142 to 148. If those at the Bar table could let those who assist you know by 4.15pm if there is any objection to the release of those documents.

THE COMMISSIONER: Yes.

MS LONERGAN: Q. Father Lucas, you've given evidence to the effect that you have a crystal clear recollection of certain things that happened in 1993.

A. Yes.

One of those things is certain aspects of your meeting 3 with [AL]? 4

Α. Yes.

5 6

7

The crystal clear recollection includes Sister Paula Redgrove being present as the support person? Yes.

8 9 10

11

And a crystal clear recollection that Ms [AL] didn't want to go to the police and the reasons associated with it?

12

Yes. Α.

13 14 15

16

- But it's the situation, is it, that you cannot recall McAlinden at all?
- Α. Yes.

17 18 19

20

21

And you cannot recall meeting with McAlinden in circumstances where he had escaped conviction in Western Australia for child sexual abuse allegations or charges? I was aware of that.

22 23 24

25

26

Q. And you can't remember McAlinden, even though you saw him not that long after the establishment of the special issues group of which you were a member?

That's correct.

27 28 29

30

31

32

- He would have been one of your first half dozen, would Q. he, priests that you interviewed?
- I can't recall. And remember, not only were there priests involved, there were also religious brothers, and so forth, yes.

33 34 35

36

37 38

You've said that over the period of about six to eight years, there were about 35 that you dealt with? And that's a figure I can't stand by as - it was my best estimate from trying to be more accurate from a question put to me once before.

39 40 41

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43

44

47

Q. I understand that. Once you were given this special role with the special issues group, was there a flood of incidents where you had to go and interview priests and persons associated with the Catholic Church for paedophile-related offences?

45 46

I'm not sure how we define what a "flood" is, but this was a time in 1992/1993 where there was significant

1	publicity.
2 3 4 5 6 7 8	Q. You suggested that you recollect or at least acknowledge that Sister Redgrove may well have been told by you that McAlinden was a hard nut to crack? A. Yes, that doesn't sound like my language, but words to that effect is quite likely.
9 10 11 12 13	Q. You have also given evidence to the effect that a paedophile, to your experience, rarely admits that they had engaged in child sexual abuse? A. Some do, but most don't.
14 15 16	Q. You still maintain the position, do you, that you have absolutely no recollection of your meeting with McAlinden? A. Yes.
17 18 19 20 21 22 23	Q. You're aware, aren't you, from reading the bundles of material prepared for this Commission, that McAlinden wrote to Bishop Clarke and, in his letters in 1995, mentioned his interface with you? A. Yes.
23 24 25 26 27	Q. You have read those letters with some care, haven't you? A. Yes.
28 29 30 31 32 33 34	Q. If I could show them to you again, the first is behind tab 264 in volume 3. It is also exhibit 68. You're aware, aren't you, father, that McAlinden, in this and at least one other letter, states that he had made admissions regarding his conduct with children to you? A. Yes.
35 36 37	Q. The relevant part of this letter in terms of its reference to you is in the third paragraph on the first page, where he says:
38 39 40 41 42 43 44	Incidentally, the word "confidential" has a very hollow ring as far as Maitland is concerned: Brian Lucas convinced me, against my better judgment, to accept that the information I gave him would be held in strict confidence by the Bishop; yet within
45 46	a few weeks, the same as mentioned above, was able to repeated on the testimony of

47

[a certain person].

2 Were 3 this

Were you informed by Bishop Clarke about having received this particular letter?

A. No.

Q. Do you see in the paragraph above the one I've just read to you, it refers to McAlinden having received correspondence in the Philippines?

A. Yes.

- Q. So it's clear, isn't it, that McAlinden went overseas and lived a life independent of the diocese in the Philippines?
- A. I understand that's the case.

- Q. Do you understand also that McAlinden, whilst he was in the Philippines, pretended to be a priest?
- A. I've heard that suggestion. I find that quite extraordinary, that the bishops in the Philippines wouldn't have followed the most fundamental and basic of church rules and checked him out and allowed him to function as a priest.

Q. Did you find out whether those in the Maitland-Newcastle diocese had bothered to inform the bishops in the Philippines about McAlinden's offending background?

A. The way things work, you don't need to inform them. There is nothing more fundamental than the rules about incardination of priests, that no-one should ever be allowed to minister without him producing his celebret, and there's no way in the world McAlinden would have had a celebret, and there's no way in the world a bishop should have ever allowed him to have worked as a priest without ensuring that he was a priest in good standing.

- Q. Was that the position in 1995?
- A. It has been the position since the day I was ordained, when I got my first celebret.

Q. What's a celebret?

A. A celebret is a document that priests will take with them when they travel, generally in Latin, signed by the bishop, sealed by the bishop, a fairly elaborate,

fancy-looking_document_that you can use if you are

travelling. For example, you may wish to join a priest in a parish for a Sunday mass. Prudence would dictate that he

- Q. It wasn't done in this case, you assume?
- A. Apparently not. I have no idea, but apparently not.

- Q. You know, don't you, that McAlinden was able to, in pretending to be a priest, access children in the Philippines?
- A. I have no knowledge of that.

Q. Could the witness be shown exhibit 78. Just before you have a look at that document, were you satisfied, after your role in dealing with McAlinden, that appropriate steps had been taken from a child protection point of view?

A. I think it was probably the best that was on offer at

24 the time.

Q. Would you agree with me that the best that was on offer at the time wasn't very good, was it?

A. It's hard to put a value on that. As I said, I would never have foreseen in 1992 that any priest could work anywhere in the world without a local bishop checking him out. I would never have foreseen that. This is the most extraordinary behaviour by the Philippine bishop.

Q. Did you inquire of the bishop at Maitland-Newcastle what sort of background McAlinden had so that you could properly assess whether the job you were doing for the bishop was going to be enough to keep children safe from McAlinden?

A. I was confident, because I understood the church law and the policies and processes, that once he was taken out of ministry, that was as far as we could go. Ideally if the victims had wanted the matter prosecuted, and assuming a successful prosecution, that would have been a better outcome, but that wasn't the outcome that was available.

Q. Did you ask Bishop Clarke or anybody from the diocese what was known about McAlinden's history of offending, if

- there was any, in addition to the particular people you
 were dealing with or had heard of?
 A. I don't recall, I don't recall that. I think I took
 on face value whatever either Bishop Clarke or
 Monsignor Hart told me.

 Q. At that time, did you have a practice as part of your
 processes to inquire as to whether there were any other
 - Q. At that time, did you have a practice as part of your processes to inquire as to whether there were any other historical complaints of sexual abuse by a particular priest you were having a conversation with?
 - A. I presumed what they told me was what they wanted to tell me.
 - Q. The question I'm asking is a little different. Did you have a practice where you actually asked them what else was known about a particular priest by way of historical complaint?
 - A. I would have wanted to know what was the general understanding of who this person was, what were the complaints and what was known, yes.
 - Q. You would have expected that to be conveyed to you without you asking?A. Yes, certainly.
 - Q. Have a look at the first page of the letter. It's apparently a letter from McAlinden to Bishop Malone? A. Yes.
 - Q. It's dated 5 December 1995. Have you seen this letter before today?
 - A. If it was in the bundle of papers, I may have read it. I don't specifically recall it, but --
 - Q. It wasn't in the bundle of papers. It was tendered later.
 - A. I've never seen the document.
 - Q. It commences with "To whom it may concern" on the following page, and then there are some handwritten notes under the heading "Canon 1044". Do you see that?

 A. Yes.
- Q. On numbered page 2, which has number 87 in the middle of the page, there is a reference, right down the bottom of the page, to some years in Papua New Guinea, where he had:

1 2 3		no problems whatsoever, even though I was called on to do regular clinical work before we got a permanent nurse
4 5	Α.	Yes.
6 7	Q.	On the next page:
8		
9		On the various occasions when things did go
10		wrong, I never for a moment tried to
11		minimise my guilt by blaming some
12		uncontrollable tendency - always making
13		sure of receiving the Sacrament of Penance
14 15		before offering Mass.
16	Do vo	ou see that?
17	•	Yes.
18	Λ.	163.
19	Q.	And:
20	Q.	Auto :
21		Likewise when I visited a qualified
22		psycho-analyst some years ago in
23		Castle Hill, after 5 or 6 consultations, he
24		assured me he found nothing in the nature
25		of an aberration.
26		or an aborracioni
27	Do vo	ou see that?
28	A.	
29	,	
30	Q.	Did you know anything about McAlinden having been
31	-	noanalysed by someone in Castle Hill?
32	Α.	I don't think I was ever told that. I think that
33		d be something I would remember.
34		5
35	Q.	That would have been information that would have
36	assis	sted you in your processes, or not?
37	Α.	Marginally, perhaps. I don't know.
38		
39	Q.	It would have been relevant for you to know, though,
40	wheth	ner there was any psychological disorder?
41	Α.	Yes.
42		
43	Q.	Then on the next page, page 4, under "Canon 277", you
44		mention in this statement:
45		
46		Yes, here I have failed miserably in
47		observation of "perfect and perpetual

1 2	continence"
3	Do you ago that?
	Do you see that?
4	A. Yes.
5	
6	Q. You know that canon 277 is regarding perfect and
7	perpetual continence, is it?
8	A. Yes.
9	
10	Q. He goes on to say:
11	, ,
12	in relation to my vow of Chastity in
13	matters about which I have been accused and
14	of which I have accused myself, though some
15	of the individual cases mentioned by
16	Father Lucas (1993) did not occur, most of
17	all that concerning [AK]
18	
19	And then he goes on to make some comments about [AK]
20	
21	neither did the case happen that was
22	brought to court in WA in 1992.
23	
24	Do you agree with me that that paragraph indicates that
25	there has been some admission - I'm not saying to whom - on
26	the part of McAlinden that some individual cases that he
27	has been accused of did occur?
28	A. I don't know that that follows - the fact that he has
29	said individual cases did not occur, one might assume that
30	there were individual cases that did occur, but I don't
31	know that.
32	
33	Q. You don't draw that from that paragraph?
34	A. It's a possible inference.
35	
36	Q. You don't draw that inference?
37	A. I haven't given the matter consideration.
38	That on a given and maccor contract actions
39	Q. We might ask you to do so overnight. Now, two
40	· · · · · · · · · · · · · · · · · · ·
	paragraphs down:
41	
42	However, as I explained to
43	
44	I'm sorry, I should let you read the intervening paragraph:
45	
46	I have seen in these failures the fact that
47	I allowed my spiritual life to become

weakened with the excuse of being too
busy - barely "fitting in" prayers of
obligation such as Divine Office, though
managing a daily Rosary.

Do you see that? A. Yes.

Q. Under that:

However, as I explained to Father Lucas in '93, that, by the grace of God and the help of Our Blessed Lady, I had already become completely free from all such wrong-doings, in fact regard such as an abomination.

Then he sets out a number of practices that "have been ever so effective". Do you see that?

A. Yes.

- Q. From your knowledge of paedophilia, is it the position that paedophiles generally become completely free from that particular disorder?
- A. Not of the type of paedophilia that I think we're associating with McAlinden.

Q. I will ask you to read this letter overnight to see if there are any other matters you could assist us with, but at the bottom paragraph on page 90 there is a reference again to you. The paragraph commences:

Fortunately, at a very early age, I'd been taught the power of prayer, and now feel I can claim to be a living example of that power. So much so, that when I spoke to Father Lucas, about 3 years ago, I assured him I had no worry or fear of falling back into the problems of the past. In fact, no way would I have opened up and confessed so freely to Father Lucas, admitting my past failings, had I not been convinced that this was a thing of the past.

A. Yes.

Q. Would you agree with me that that, read at face value, appears to be confirming that McAlinden admitted to you

1 2		dences of past failings? Assuming he's telling the truth there.
3 4		Assuming he's telling the truth, that he admitted to
5 6	, ,	past failings? Assuming he's telling the truth.
7 8	Q.	Yes. And in the context of your conversation with
9		"past failings" must be a reference to allegations of
10 11		ally abusing children? Yes.
12	Α.	165.
13	Q.	Does that prompt a memory of McAlinden in your mind,
14		the references to prayer and the way in which he uses
15	•	age or speaks about his particular predicament?
16	_	No.
17		
18	Q.	In the next paragraph, would you agree with me there
19	-	pparently an admission of failing miserably regarding
20		277, and that means a failing in relation to
21		etual and perfect continence?
22	Α.	Yes.
23 24	Q.	That's a reference to inappropriate sexual behaviour
2 4 25		exual behaviour?
26		Yes, yes.
27	۸۱.	103, y03.
28	Q.	Do you see on page 7, McAlinden refers to having had
29		months at San Pablo
30	Α.	Yes.
31		
32	Q.	Colleges Complex. Do you see that?
33 34	Α.	Sorry, at the Cathedral of San Pablo, at the top.
35	Q.	Thank you very much. Yes, he had been posted to the
36		edral of San Pablo. I'm sorry, we had better check
37		from the page before. McAlinden claims, in the last
38		graph on page 91, that Bishop Bantigue had asked him
39	to:	
40		
41		undertake the position of Chaplain to
42		the San Pablo Colleges Complex where there
43 44		was an enrolment of over 7,500 pupils, ranging from kindergarten through primary,
44 45		secondary, teachers college, University and
46		including Medical College.
47		
. 24/0	07/201	13 (15) 1666 B J LUCAS (Ms Lonergan)

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1 2	-	ou see that? Yes.
3 4	Q.	McAlinden claims that he:
5 6 7 8 9		made a point of explaining my situation and past history to the good Bishop, and advised him why my Faculties had been withdrawn.
11 12 13 14	havi you	do you see that, on the next page, McAlinden refers to ng heard "no less than 10 thousand Confessions"? Do see that? Yes.
15 16	THE (COMMISSIONER: In six months, Ms Lonergan.
17 18 19 20 21	in s	ONERGAN: Q. Yes, in six months - 10,000 confessions ix months. Would you agree that that must have iled access to a number of children, in that statistic? As I read that, I think this is a fantasy.
22 23 24 25 26 27 28 29 30 31 32	child like had a A. and work an op	Albeit as a priest associated with a school that has dren ranging from kindergarten, there is a high lihood, is there not, that McAlinden accessed children, access to children? As I said, I am absolutely staggered and completely utterly appalled that any bishop would allow anyone to in that situation. I think, if you're asking me for pinion on this on face value, he has dreamt up this asy for the purposes of justifying his canonical tion.
34 35 36 37	Α.	You know as a matter of fact that McAlinden did work he diocese of San Pablo, don't you? That seems to be the situation, yes. As I said, and it extraordinary that he was allowed to do that.
38 39 40 41 42 43	peop A bish	That he was able to go overseas, work in another ese in a foreign country and conduct confessions with le, including children? As I said, that staggers me and shocks me, that the ops could have been so appallingly careless in owing the fundamentals of church policy.
45 46 47	Q. A	What it shows, doesn't it

1 2 3	doing. I don't know the extent to which what he says he's doing in fact he did do.
4 5 6	Q. You know from documents you've read in the bundles that he did work in the diocese of San Pablo? A. Yes.
7 8 9 10	Q. You know that? A. Yes, but I don't know that that necessarily involved any misconduct.
11 12 13 14 15	Q. I'm not suggesting that, but you know that he worked as a priest in the San Pablo diocese from the documents you've read? A. That's what I'm saying; that is what I find quite staggering.
17 18 19 20 21	Q. You were working on the basis that the processes that you had engaged in would mean that McAlinden would not have this privilege and this access, acting as a priest? A. Certainly.
22 23 24 25 26	Q. By your "processes", I mean the conversation with McAlinden in 1993 where his removal of faculties was negotiated. A. Yes.
27 28 29 30	Q. You understand that, don't you; that's the process I'm talking about? A. Yes.
31 32 33 34 35	Q. So would you agree with me that the process failed in terms of preventing McAlinden from acting as a priest? A. In this particular instance, it did, yes.
36 37	MS LONERGAN: Would that be a convenient time, Commissioner?
38 39 40	THE COMMISSIONER: Yes, thank you very much, Ms Lonergan. I will adjourn until 10 o'clock tomorrow.
41 42 43 44 45 46 47	AT 4PM THE COMMISSION WAS ADJOURNED TO WEDNESDAY, 25 JULY 2013 AT 10AM

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