

**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 Friday, 26 July 2013 at 9.50am  
(Day 17)

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

1 MS LONERGAN: Commissioner, there has been a misreporting  
2 in the media that Father Lucas is a barrister. The word  
3 "barrister" was used. I'm informed that Father Lucas is  
4 not a barrister, nor did Father Lucas give evidence to the  
5 effect yesterday or the day before that he was a practising  
6 barrister.

7  
8 Father Lucas has never practised as a barrister and  
9 was, for a short period, on a roll that the Bar Association  
10 used to have, called a non-practising barristers roll.  
11 That roll has not been in operation for over 15 years. It  
12 is noted for the record that that is the correct position  
13 in relation to Father Lucas's status as a barrister, or  
14 not, as is the case.

15  
16 THE COMMISSIONER: Yes.

17  
18 MS LONERGAN: Commissioner, I also ought to have tendered  
19 a document in my examination of Father Lucas yesterday, and  
20 it is the media statement dated 5 July 2012. I tender that  
21 document.

22  
23 THE COMMISSIONER: Thank you. The media statement of  
24 5 July 2012 will be admitted and marked exhibit 155.

25  
26 **EXHIBIT #155 MEDIA STATEMENT OF 5/07/2012**

27  
28 **<BRIAN JOSEPH LUCAS, sworn: [9.52am]**

29  
30 **<EXAMINATION BY MS GERACE CONTINUING:**

31  
32 MS GERACE: Q. Father, you have given evidence that in  
33 terms of whether or not victims went to the police, you  
34 were neutral in terms of neither discouraging nor  
35 encouraging victims to go to the police. Do you recall  
36 giving that evidence?

37 A. I do.

38  
39 MS GERACE: For the practitioners that is at transcript  
40 page 1603 lines 8 to 42.

41  
42 Q. I think you've given evidence to this effect, that by  
43 the time the matter got to you, you had assumed that the  
44 victims did not want to go to the police. Is that  
45 accurate?

46 A. In some instances, yes.  
47

1 Q. Because I don't act for [AL], I want you to understand  
2 that I'm not suggesting at all that what you say about your  
3 recollection of [AL]'s not wanting to go to the police and  
4 the specific reasons for that is untrue. Do you understand  
5 that?  
6 A. I understand that, yes.  
7  
8 Q. I want to make that clear that that was not what I was  
9 suggesting yesterday.  
10 A. I didn't understand --  
11  
12 Q. You didn't understand that from my questions  
13 yesterday?  
14 A. That's my recollection, yes.  
15  
16 Q. In terms of [AJ], can I suggest that you did not, in  
17 either of the conversations you had with her, ever ask her  
18 whether she wanted to go to the police?  
19 A. Well, I can't recall that.  
20  
21 Q. I think you said that your recollection was that you  
22 received some information from somewhere that that was  
23 indeed her wishes?  
24 A. It was certainly my understanding, and the fact, as  
25 I understand the matter, is that [AJ] did not go to the  
26 police around that time and did not go to the police  
27 subsequently until perhaps a much later time.  
28  
29 Q. That is in fact correct. Your understanding is  
30 correct. So can we say that your evidence at its highest  
31 is that at the time of these conversations with [AJ], you  
32 were of the understanding that she did not want to go to  
33 the police?  
34 A. Yes.  
35  
36 Q. You do not know where that information came from?  
37 A. No.  
38  
39 Q. And you do not dispute positively her assertion that  
40 you did not ask her whether she wants to go to the police?  
41 A. Well, I can't dispute that because I can't recall it.  
42  
43 Q. Precisely, so you accept that as a proposition: you  
44 don't dispute positively her suggestion that you never  
45 asked her whether she wanted to go to the police?  
46 A. Well, I can't recall.  
47

1 Q. That position, not asking [AJ] whether or not she went  
2 to the police, is consistent, is it not, with you taking  
3 a neutral position to neither discourage nor encourage  
4 victims to go to the police?

5 A. No, I wouldn't accept the link in that way. This is,  
6 again, the difficulty of not wanting to reconstruct the  
7 conversation with [AJ]. The question in detail, if an  
8 issue had arisen with [AJ] as to whether or not she wanted  
9 to go to the police, that would have been in the context,  
10 obviously, of a face-to-face interview with her. When  
11 I say that at that particular time in 1992 I was neutral,  
12 that was in the context of picking up a message from  
13 a victim where there was a more intimate relationship,  
14 face-to-face context where you would - there would be some  
15 mention, perhaps, or some issue, if the victim gave some  
16 hint of wanting to go to the police, we would head down  
17 that path; if the victim gave some hint of not wanting to  
18 go to the police, we would take that on board. But the  
19 view I took at that time, and that view has modified since,  
20 was that if you tended the victim in a direction contrary  
21 to what the victim wanted and the outcome for that victim  
22 then was problematic, that would not be a good thing for  
23 that victim.

24  
25 Q. So following on from what I hear now you explain that  
26 position, coming back to the fact that you only ever, I put  
27 to you, spoke to [AJ] on the telephone, it is consistent  
28 with what you have just said that this issue or exploration  
29 of whether or not she wanted to go to the police would not  
30 have been done on the telephone?

31 A. That's correct, and the understanding I had,  
32 I wouldn't have based on that. I would have based it on  
33 what background information or what someone else may have  
34 told me, or the mere fact that if - I mean, the commonsense  
35 position would have been at the time of those telephone  
36 calls that if in fact she was going to the police, I expect  
37 I would have known that and she would have gone to the  
38 police, and then the whole situation would have changed  
39 dramatically with respect to those conversations.

40  
41 Q. Let me deal with, father, now this issue of going to  
42 the police. You accept in [AJ]'s case that consistent with  
43 what you've just told the Commission now, it is unlikely  
44 that you raised with her the issue of going to the police  
45 in a telephone call - yes?

46 A. I'm not saying it's unlikely, because I can't recall.  
47 What I'm saying is that if we were exploring the question

1 in some detail of whether she wanted to go to the police or  
2 not, if that was a matter that we needed to go into, in  
3 a brief telephone conversation I don't think that would  
4 have been the context.

5

6 Q. So again it is unlikely that you did that in  
7 a telephone conversation?

8 A. Did what?

9

10 Q. Speak to [AJ] about whether or not she wanted to go to  
11 the police.

12 A. No, there could have been a brief mention of that, but  
13 I don't recall.

14

15 Q. You're not in a position to dispute the positive  
16 assertion that she says that you did not ask her about  
17 whether she wanted to go to the police in this  
18 conversation?

19 A. I cannot recall that.

20

21 Q. Let me talk to you about some of the reasons you've  
22 given about why someone may not go to the police. In one  
23 instance you raise the fact that it might have been  
24 a harrowing experience for a victim to go to the police and  
25 to go down that path. Do you recall that?

26 A. Yes.

27

28 Q. Another situation is that a parishioner or a believer  
29 of the church would come to the church for guidance about  
30 how to deal with a problem; do you accept that?

31 A. I'm not quite sure I - with respect, I'm not quite  
32 sure I understand that question.

33

34 Q. Let me be clearer. Do you accept that a believer in  
35 the church, a Catholic, strongly committed to faith, might  
36 come to the church for guidance by the church about how to  
37 deal with the problems of their abuse by Father McAlinden?

38 A. That's correct.

39

40 Q. Father, for many Catholics, the church and its priests  
41 have stood for them as an authority to guide them in their  
42 day-to-day life. Do you agree with that?

43 A. That's a very broad generalisation.

44

45 Q. Yes, as a broad generalisation it's correct, though,  
46 isn't it?

47 A. It would apply to some.

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Q. I said "for many", didn't I? I didn't say "for all Catholics"?

A. I don't know whether it's a few, some, many, most or all.

Q. So do you accept, then, father, that for some Catholics, the church and its priests stand for them as authority, as an authority to guide them in their day-to-day life?

A. Well, my experience of 32 years as a priest is that many Catholics will look for guidance on various issues. Sometimes they may be personal issues. Sometimes they may be issues of conscience. There is an enormous variety of different circumstances in which people will engage with their pastor.

Q. Do you agree that some Catholics, then, look to the church and its priests for authority to guide them in their day-to-day life?

A. Some may on some issues.

Q. It was common, was it not, for the church to provide Catholics with guidance, whether or not they accepted it; do you accept that?

A. If they sought it.

Q. Whether they sought it or not, were not the teachings of the church to advise people about various things about what they should do in their life, like whether to engage in sex before marriage or not; do you accept that?

A. I presume some people spoke about that.

Q. Were they the teachings of the church, father?

A. Certainly.

Q. Was it also the teachings of the church to provide guidance to people about decisions they made about contraception and otherwise, was it not?

A. That's well known.

Q. Of course it is, and I'm putting it to you was it also the position of the church that they would provide guidance on how to deal with various practices in the church, like Lent and what to eat and what not to eat and on what days; do you agree with that?

A. Yes.

1  
2 Q. Was it also that there were directions by the church  
3 and guidance to people about when to go to mass: do you  
4 accept that was a teaching of the church?  
5 A. Certainly.  
6  
7 Q. Was it a practice of the church to teach people about  
8 how and when to make communion and what needed to be done  
9 in order to take communion at the time?  
10 A. Yes.  
11  
12 Q. What to do with children in terms of baptising and  
13 when to baptise them - do you accept that was a practice  
14 that the church provided guidance on?  
15 A. Certainly.  
16  
17 Q. Did the church provide guidance to people about the  
18 place of God in their lives - do you accept that as  
19 a proposition?  
20 A. Yes.  
21  
22 Q. Do you accept that the church asked them to put God  
23 first and foremost in their life - do you accept that as  
24 a proposition that that was a teaching of the church?  
25 A. Yes.  
26  
27 Q. Do you accept also that it asked people to put the  
28 church first and foremost in their life, in their service  
29 to God; do you accept that?  
30 A. No, I won't accept that as a broad proposition.  
31  
32 Q. But the point that you seem to have difficulty in  
33 accepting is that for many Catholics the church and its  
34 priests stood for them as an authority to guide them in  
35 their day-to-day life. Do you accept that now as a general  
36 proposition?  
37 A. I've said already that that is a very broad, general  
38 proposition that would apply to different people in  
39 different circumstances.  
40  
41 Q. What about an ardent Catholic, father, someone who  
42 was a - and accept from me that I understand your evidence  
43 to be some people took some of the teachings of the church  
44 and followed them; is that correct?  
45 A. Yes.  
46  
47 Q. Some people didn't?

1 A. Yes.  
2  
3 Q. Some were perhaps more sort of transient in their  
4 beliefs of the church and others more ardent; would you  
5 accept that?  
6 A. I would.  
7  
8 Q. Some would have more integrity in their practices than  
9 others; do you accept that?  
10 A. Yes.  
11  
12 Q. May I raise with you an example of someone who was an  
13 ardent believer in the church and its processes, a true  
14 Catholic - yes?  
15 A. Well, I wouldn't accept the "true Catholic"  
16 proposition, but I would accept that there were people  
17 whose participation in their faith was more or less  
18 enthusiastic than others.  
19  
20 Q. Someone who had accepted - someone who was active in  
21 church life?  
22 A. Yes.  
23  
24 Q. Someone who had worked with the church and its  
25 teachings to run groups to disseminate the teachings of  
26 Vatican II, for instance, in women's groups and other  
27 groups that were run?  
28 A. Yes.  
29  
30 Q. Would you accept that we are talking about someone  
31 whose faith was more ardent than perhaps others?  
32 A. Yes.  
33  
34 Q. And someone who was more involved in the church in its  
35 day-to-day implementation in society; would you accept  
36 that?  
37 A. Yes.  
38  
39 Q. In those circumstances, can you accept that someone in  
40 that position might look to the church to do something  
41 about McAlinden and his abuse on that person?  
42 A. I'm not quite sure what you're putting to me. So  
43 I can understand the question, are you putting to me that  
44 this hypothetical person - I withdraw that. Are we  
45 speaking about a particular person to do with McAlinden?  
46  
47 Q. Yes, and I'll come to that. I am talking about [AJ].



1 A. Yes.

2

3 Q. Okay? And I want you to assume that all of those  
4 matters are things that are known about [AJ].

5 A. Yes.

6

7 Q. She was active in church life. She ran groups within  
8 her home for years, teaching people about Vatican II.  
9 She's described --

10

11 MR SKINNER: Commissioner, obviously one can see where  
12 Ms Gerace is going. I don't want to interrupt her getting  
13 to where she's going. But, with respect, I think the  
14 evidence is that in a very short phone call that my client  
15 can't remember, there was an exchange between him and [AJ].  
16 My learned friend can ask my client to accept certain  
17 things about [AJ] on an assumption basis, but she then  
18 can't start giving that evidence, as it were, from the Bar  
19 table.

20

21 THE COMMISSIONER: Yes. I expect that Ms Gerace doesn't  
22 expect Father Lucas to have known all of these features.

23

24 MS GERACE: No, I don't.

25

26 THE COMMISSIONER: But the point of your question,  
27 Ms Gerace, is to ask Father Lucas to assume that [AJ] was  
28 a person with those features?

29

30 MS GERACE: It was to set a foundation for some other  
31 matters.

32

33 MR SKINNER: My objection is it was going further and it  
34 was being put it, as it were, as fact from the Bar table by  
35 Ms Gerace.

36

37 THE COMMISSIONER: Ms Gerace can ask Father Lucas to  
38 assume. Thank you, Mr Skinner.

39

40 MS GERACE: Q. Assume those matters that I said. Just  
41 assume those matters that I said are in fact the case: you  
42 have a parishioner who was active in church life, running  
43 community groups, dealing with educating people about the  
44 teachings of Vatican II, being a life-long believer in  
45 Christ and a practiser at church, someone who took the  
46 teachings of the church seriously. I am not suggesting to  
47 you, Father Lucas, that you knew any of those matters when

1 you spoke to [AJ].

2 A. Yes.

3

4 Q. A parishioner or a believer, in those circumstances,  
5 do you accept, in coming to the church and raising  
6 a complaint about having been abused by Father McAlinden,  
7 might be looking to the church for guidance about how to  
8 deal with this issue of her abuse by Father McAlinden; do  
9 you accept that as a general proposition?

10 A. I have no difficulty with that. I'm sorry, if that's  
11 where we were headed, I could have got there much more  
12 quickly, I'm sorry.

13

14 Q. Do you also accept that in order to truly understand  
15 the nature of a victim's wishes in relation to  
16 Father McAlinden, some discussion needs to take place about  
17 what those wishes are?

18 A. With someone in the church, yes.

19

20 Q. That requires questions to be asked of the  
21 complainant, doesn't it?

22 A. By the person who's giving them the pastoral care,  
23 yes.

24

25 Q. And exploring with them what they seek to achieve by  
26 coming to the church - yes?

27 A. Well, it would depend on the context. If we're  
28 talking about a pastoral counselling context with someone,  
29 for example, in Centacare or their spiritual director or  
30 someone in a pastoral context, that pastoral discussion  
31 would take whatever direction it took.

32

33 Q. You didn't see your role as the pastoral adviser, did  
34 you, Father Lucas, in your dealings with [AJ]?

35 A. Certainly not, no.

36

37 Q. I'm going to suggest to you that [AJ] told you that  
38 what she wanted for McAlinden was for him to be taken off  
39 the streets and for him to be supervised; do you accept  
40 that?

41 A. I can't remember what she told me.

42

43 Q. And that she told you she wanted him to be removed  
44 from contact with young children?

45 A. I can't remember the conversation.

46

47 Q. I suggest that she used words to the effect that she

1 wanted McAlinden put in a safe house?

2 A. I don't recall the conversation.

3

4 Q. But it was in fact the case as at 1993 when these  
5 matters were taking place that the church did not have safe  
6 houses to which a priest could be confined against his  
7 wishes; is that true?

8 A. No, the church doesn't conduct institutions where  
9 people could be confined against their wishes, with this  
10 exception, that it does - well, it does in fact conduct,  
11 and had in various times conducted, institutions where  
12 people were confined against their wishes. It ran a number  
13 of institutions where children were committed from  
14 children's courts as an alternative to state detention, and  
15 it does run psychiatric hospitals where sometimes people  
16 may be scheduled according to the legislation in different  
17 places. The concept of a safe house is a concept, I must  
18 say, that I have never heard of in this context at all.

19

20 Q. The point was that in 1993 there were no houses or  
21 places to which the church, or you particularly in your  
22 dealings with Father McAlinden, could have confined him  
23 against his wishes at that time?

24 A. Not against his wishes.

25

26 Q. So you may have asked him to reside somewhere where he  
27 could be supervised; that's true, isn't it?

28 A. Yes.

29

30 Q. But you could not have compelled him to do so?

31 A. That's correct. I should say, not in the physical  
32 sense, but the pressure brought to bear by his bishop and  
33 the relationship he had with his bishop could bring to bear  
34 some measure of emotional compulsion of some sort.

35

36 Q. That depended upon the bishop being able to bring that  
37 emotional compulsion upon a priest, for instance, if he was  
38 unwilling?

39 A. Yes.

40

41 Q. Can I suggest that if a complainant came to the church  
42 with a desire that the perpetrator be taken off the streets  
43 and kept away from children, and accepting she said,  
44 "I don't really want to go to the police at this stage", or  
45 even said, "I don't want to go to the police at the moment.  
46 What I want is him taken off the streets and kept away from  
47 children", it was incumbent on the church at that time to

1 say, "This is what we can do and these are the limits to  
2 what we can do"; do you accept that?

3 A. I had many experiences where people asked precisely  
4 that, and the response would be, "We will do our best to  
5 arrange for him to resign from ministry." We would find  
6 some place where he might live and pass that information  
7 back to the person making the complaint.

8

9 Q. Your evidence in this case, is it not, Father Lucas,  
10 that in response to [AJ], you would have told her, although  
11 you can't recall, that you will be taking steps to deal  
12 with the matter and looking to remove Father McAlinden?

13 A. That's my understanding of what happened.

14

15 Q. You also say your evidence is that you would have gone  
16 back to her, although you can't recall this, and told her  
17 something to the effect, "It is done. We're removing  
18 Father McAlinden"?

19 A. That's likely.

20

21 Q. At no stage, at any part of the evidence that we have  
22 heard so far to this point, have you ever suggested that  
23 you told [AJ] that there were limits to what you could do  
24 to protect the public from Father McAlinden; is that true?  
25 That's what you've said so far - you've never raised those  
26 matters, have you?

27 A. No. I think, in fairness, though, the way you put the  
28 question, it would be well understood by this ardent  
29 practising Catholic that there were obviously limits to  
30 what the church could do.

31

32 Q. Really? In order for you to say that, father, you  
33 would have had to have had some discussion with [AJ] to  
34 really say that, wouldn't you?

35 A. No, I think the way you've put the question to me,  
36 with all due respect, doesn't lead to the conclusion that  
37 you're driving at.

38

39 \* Q. We'll just leave that for the Commission to decide.  
40 That aside, Father Lucas, you are not in a position to say  
41 what [AJ] knew about the limits of the church because you  
42 had never discussed that with [AJ]?

43 \* A. Well, I can't recall, and I can't say that it was  
44 never discussed. I can't recall whether I had that  
45 discussion, and I certainly have no knowledge of whether  
46 the other people she was speaking to, particularly the  
47 spiritual direction or pastoral care that she had, didn't

1 have that discussion with her. I would have assumed, if  
2 there was detailed, lengthy conversations between her and  
3 some other person about what she wanted done, the most  
4 obvious thing would have been to explain the limits of what  
5 the church would be able to do. But that was not, as  
6 I could best recall it and best construct it, part of the  
7 brief conversations I had with her. I would have assumed  
8 that would have been part of more detailed conversations  
9 she had with other people.

10  
11 \* Q. So you would have assumed that it was a discussion  
12 that was had somewhere else, and in accordance with your  
13 practice and the fact that you only had brief conversations  
14 with her, it was not something you would, you think, have  
15 discussed with her, but you can't discount it?  
16

17 MR SKINNER: I object. My friend just included in that  
18 the proposition "in accordance with your practice", which  
19 makes two questions.  
20

21 MS GERACE: I withdraw it. Could the last answer be read  
22 back?  
23

24 MR SKINNER: And the last question.  
25

26 (Questions and answer marked \* read)  
27

28 MS GERACE: I withdraw the question. It's unnecessary.  
29 Thank you very much, Commissioner.  
30

31 Q. Just so I can be clear about a number of other things  
32 about what the church could and could not do in 1993, did  
33 the church have some process by which it could search  
34 against a priest's wishes his home to confiscate vestments  
35 in the case of a priest who had agreed to no longer wear  
36 his vestments?

37 A. I've never heard of such a proposition.  
38

39 Q. Did the church have, within its power in 1993, the  
40 ability to search against a priest's wishes his home to  
41 confiscate or look for crosses which a priest may wear in  
42 circumstances where the priest had agreed not to wear  
43 crosses because his faculties had been withdrawn?  
44

45 THE COMMISSIONER: Ms Gerace, what if a priest has crosses  
46 in his home? If he has been told not to wear them, having  
47 them in the home doesn't make any difference, does it?

1 Surely he is not precluded from having crosses in his home?

2

3 MS GERACE: No, but I can be more specific. I was talking  
4 about the small crosses that members of the clergy often  
5 wear to denote the fact that they are members of the clergy  
6 or otherwise. It goes to this issue that shortly after the  
7 decree and Father McAlinden's consent - this witness  
8 doesn't say he had that knowledge - Father McAlinden was  
9 seen wearing his crosses and was confronted about that by  
10 Bishop Clarke. If you don't think this assists --

11

12 MR GYLES: If I might be heard on this proposition?

13

14 THE COMMISSIONER: Yes, Mr Gyles.

15

16 MR GYLES: This proposition about Father McAlinden being  
17 seen wearing his crosses, including allegedly by the  
18 bishop, was in one of the questions that Ms Lonergan asked.  
19 In my respectful submission, if one goes to tab 219, which  
20 is the relevant evidence, such as it is, in circumstances  
21 where the decree was ordered on 27 February 1993, the best  
22 we do on this point is a file note on 20 March 1993, that  
23 is, within three weeks of that, and what the note says is  
24 that Father McAlinden told him it is being alleged that he  
25 was seen wearing crosses. So it is, at its highest, an  
26 allegation.

27

28 A question which would arise is: was he seen before  
29 27 February or not? So far as McAlinden is concerned, he  
30 denies it. One needs to be careful in putting propositions  
31 to the effect that McAlinden was seen by the bishop wearing  
32 crosses or, indeed, McAlinden was seen by anyone wearing  
33 crosses.

34

35 The evidence before you on this issue - and if there  
36 is additional evidence, I'm not aware of it and I'd like to  
37 be told about it - is that there was an allegation made by  
38 an unspecified person, including unspecified as to date.  
39 There is possible confusion as to when it was - after the  
40 giving of the decree. The justification for the question  
41 at the moment is putting that evidence too high, in my  
42 respectful submission.

43

44 MS GERACE: May I be heard?

45

46 THE COMMISSIONER: Yes, Ms Gerace.

47

1 MS GERACE: I'm grateful to Mr Gyles for clarifying the  
2 issue. I didn't put that proposition to the witness. The  
3 point was that I wanted to explore the powers that the  
4 church had as far as this witness is concerned as at 1993.  
5 It was relevant to that issue, but it's relevant to other  
6 issues, not just concerning Father Lucas, but what was done  
7 by all of Monsignor Hart, Bishop Clarke, at or about that  
8 time and what was told to people.

9  
10 THE COMMISSIONER: Ms Gerace, even if the bishop went  
11 around and took all the vestments and crosses, it's not  
12 like a Superman suit, that's bulletproof, from Krypton.  
13 They're easy to come by.

14  
15 MS GERACE: But that's precisely the point, Commissioner,  
16 and that's precisely the point of the questions - that  
17 there were limits to what the church could do with someone  
18 like Father McAlinden. Perhaps those limits only became  
19 apparent after Father Lucas's involvement, when it became  
20 very clear that Father McAlinden had no intention of  
21 confirming to the restrictions placed upon him.

22  
23 Part of what is being raised by a number of witnesses  
24 of the church is that the victims did not want to go to the  
25 police. My instructions are very clear about when or if  
26 those matters might have changed. What I am seeking to  
27 clarify with the witness is what the limits were of what  
28 the church could do at that time. In that context I say it  
29 is relevant to perhaps further discussions needing to take  
30 place or those limits becoming apparent and going back to  
31 victims and complainants and saying, "There's nothing more  
32 we can do. Do you want to take a different course now?"  
33 That's where the matter is going.

34  
35 THE COMMISSIONER: Would you put that to Father Lucas.

36  
37 MR SKINNER: Could I be heard briefly?

38  
39 THE COMMISSIONER: Yes, Mr Skinner.

40  
41 MR SKINNER: Again, Commissioner, I don't object to this  
42 line of questioning - it is a bit similar to a line of  
43 questioning to which I did object yesterday - as long as my  
44 client is asked about these sorts of matters on an  
45 assumption or a hypothetical basis, but if it's put that he  
46 knew about all of this, I would object, because that is not  
47 the evidence.

1  
2 THE COMMISSIONER: Quite.  
3  
4 MR SKINNER: When I say "knew all of this", I'm referring  
5 specifically to pages 1714 and 1715 of the transcript  
6 yesterday. I think it was put to him that he knew about  
7 McAlinden walking around wearing his priestly uniform and  
8 his crosses. He said, "I didn't know that then."  
9  
10 MS GERACE: That wasn't put by me, I don't think.  
11  
12 MR SKINNER: No, I understand.  
13  
14 MS GERACE: And I didn't put that to this witness.  
15  
16 MR SKINNER: I understand. Then there was an objection  
17 and the line of questioning was continued at page 1717 on  
18 a hypothetical basis, to which I would not object. I would  
19 not object again as long as that is clear.  
20  
21 THE COMMISSIONER: Yes. Thank you, Mr Skinner. That's  
22 clear, Ms Gerace.  
23  
24 MS GERACE: Q. You heard the Commissioner's point about  
25 priests' vestments and crosses.  
26 A. Yes.  
27  
28 Q. That they could be readily obtained, even in the event  
29 that they were removed?  
30 A. Yes.  
31  
32 Q. Or surrendered by a priest?  
33 A. Certainly.  
34  
35 Q. So as at the time you spoke with Father McAlinden and  
36 as at the time his faculties were being removed, the  
37 question of safety or otherwise of those measures depended,  
38 for the most part, on Father McAlinden confirming to an  
39 agreement that he would not wear his vestments and identify  
40 himself as a priest?  
41 A. Perhaps if I can explain --  
42  
43 Q. No, do you agree or disagree with that proposition?  
44 A. No, I think that proposition can't be answered in  
45 those terms.  
46  
47 Q. Do you accept that it depended upon two key issues -



1 one is the faculties being removed by his bishop formally?  
2 A. Yes.  
3  
4 Q. And secondly his confirming to those restrictions  
5 placed upon him not to wear his vestments and to wear  
6 a cross?  
7 A. And there is then a third proposition that --  
8  
9 Q. Do you agree with that?  
10 A. Yes, and there is then a third proposition that has to  
11 be part of the story as well.  
12  
13 Q. And I'm sure Mr Skinner, who has been very on to this  
14 issue, will ask you if it needs clarification and bring it  
15 out, but do you agree with those two propositions? The  
16 first is that safety, in terms of the matters put in place  
17 by the church, depended, one, on the bishop removing his  
18 faculties - do you agree with that?  
19 A. That was part of it.  
20  
21 Q. Secondly, Father McAlinden confirming to the  
22 restrictions placed upon him?  
23 A. That's another part of it.  
24  
25 Q. Now, what was the third one you wanted to tell me?  
26 A. The most - I'm sorry to interrupt you and I didn't  
27 mean to be discourteous. I am sorry, if I was  
28 discourteous, I apologise.  
29  
30 Q. No, not at all.  
31 A. The third part is that the fundamental principle of  
32 management of clergy in good standing is the request by  
33 a bishop or priest, or wherever they turn up to want to  
34 work, of checking they're in good standing. If I could  
35 perhaps illustrate this with an example, a very practical  
36 example --  
37  
38 Q. No, unnecessary. Let me stop you there. I accept  
39 that you have said - and you've been very clear on this  
40 issue - that wherever Father McAlinden turned up dressed as  
41 a priest, the bishop in that diocese should have asked for  
42 his celebret and checked whether he was a person in good  
43 standing before allowing him to practise?  
44 A. Yes.  
45  
46 Q. I accept that is the evidence you've given. We don't  
47 need to go any further with that. Father, while we're on

1 that issue of celebret, the need to present a celebret  
2 would be where a priest wished to undertake some active  
3 formal ministry within a diocese?

4 A. Or even very casual ministry. As I said, the celebret  
5 was more a document for casual travelling. I was going to  
6 give an example where the - but I won't --

7  
8 Q. Please, I understand that. It's where either casual  
9 or active ministry wished to take place within a diocese?

10 A. Yes, but if one was engaged in more than merely  
11 a casual participation, for example in a Sunday mass in  
12 a place, if a priest went to another place and wanted to  
13 work in a parish, for instance, or work in some form of  
14 formal ministry, a celebret would not be sufficient. The  
15 bishop of that place would need - and I would always have  
16 expected, and it's beyond my imagining why it didn't  
17 happen - and require from him a letter of recommendation  
18 from his bishop, and that would have then been verified by  
19 the appropriate telephone call, or whatever other  
20 verification might be required.

21  
22 Q. Where a priest was on holidays, for instance, and was  
23 just travelling around in priestly garb, it was not  
24 necessary for a priest to carry a celebret for those  
25 purposes, was it?

26 A. It certainly was. That was the very point of  
27 a celebret.

28  
29 Q. The point of it was to identify himself to a bishop  
30 managing a diocese where he wished to undertake some form  
31 of ministry; do you accept that?

32 A. If a priest is simply travelling on an aeroplane,  
33 going somewhere, and he is not going to engage in any form  
34 of activity at all in terms of church participation --

35  
36 Q. Church participation, yes.

37 A. -- then he doesn't need a celebret. But if he turns  
38 up, for example, at St Mary's Cathedral in Sydney and says,  
39 "I'm a visiting priest from somewhere and I'd like to  
40 participate in the high mass on Sunday", prudence would  
41 require that the priest at the cathedral, unless he was  
42 known to him and known to him to be in good standing, would  
43 ask him to present his celebret.

44  
45 Q. So exploring that a little bit more, a priest overseas  
46 in his garb, in his priestly garb, and crosses, who is not  
47 approaching a church or seeking to do some formal ministry

1 within the church, is not required to carry a celebret with  
2 him?

3 A. No.

4  
5 Q. And would not be asked to produce a celebret just  
6 because he's in his priestly garb and walking around  
7 somewhere where someone didn't know him, would he, outside  
8 of the church or active ministry?

9 A. Yes, I wouldn't expect a member of the public would  
10 ask him for that.

11  
12 Q. One of the decisions reached in this matter,  
13 I understand was that Father McAlinden would leave the  
14 country and go and live with his sister; do you understand  
15 that?

16 A. I understand that.

17  
18 Q. As I understand your evidence, and I'm not suggesting  
19 it, you were not involved, you say, in that decision?

20 A. There may have been some reference of that to me, but  
21 I don't recall specifically, but my understanding, and the  
22 proper practice would be, that would be ultimately  
23 a decision for his bishop.

24  
25 Q. Do you understand that one of the consequences of  
26 a decision to send a priest overseas would be that, in the  
27 event of charges being laid against a priest or police  
28 seeking to lay charges, the fact that the priest was  
29 overseas would make that process more difficult?

30 A. It wouldn't. If there was any hint or suggestion of  
31 that possibility, prudently that ought not to have happened

32  
33 Q. And that is also the case, is it not, in the event  
34 that a priest was sent interstate; it would make that  
35 process more difficult rather than keeping a priest  
36 within --

37 A. I'm not sure how difficult intrastate or interstate  
38 extraditions are. I wouldn't have thought it would be  
39 particularly difficult. I assume it's a bureaucratic  
40 process to bring someone from somewhere to somewhere else.

41  
42 Q. But do you accept where the priest was sent  
43 internationally, that would in fact be a more difficult  
44 process?

45 A. Assuming that there needed to be a process. If, for  
46 example, charges were pending with respect to McAlinden,  
47 and he was where you said he was, I would have thought

1 every effort would be made by the bishop to bring him back,  
2 and in the consequence of whatever conversation I had with  
3 him, my expectation would have been that he would have come  
4 back voluntarily to deal with those matters.

5  
6 Q. That being so, the actual consequence at the time of  
7 sending him overseas was that at the time there were no  
8 pending charges against McAlinden when the decision was  
9 reached. Assume there wasn't.

10 A. My understanding was that not only were they not  
11 pending; they were not contemplated because of the clear  
12 position of the victims.

13  
14 Q. Father, I know you've said that. I've heard you many  
15 times say it. Everyone has.

16  
17 MR GYLES: I object to that. There's absolutely no reason  
18 for Ms Gerace to be making comments like that.

19  
20 THE COMMISSIONER: Yes. Just ask the question.

21  
22 MR GYLES: The witness has been asked a number of  
23 questions of the same character.

24  
25 MS GERACE: Q. Father, at the time an agreement was  
26 reached for Father McAlinden to return to his sister  
27 overseas, there were no charges pending?

28 A. That's my understanding.

29  
30 Q. Do you accept that a consequence of that decision was  
31 that in the event charges were to become pending  
32 subsequently, it would make the process of locating  
33 Father McAlinden and charging him more difficult because he  
34 was out of the Australian jurisdiction?

35 A. That would depend on whether he responded voluntarily.  
36 It wouldn't be difficult to locate him, because obviously  
37 the location was known.

38  
39 Q. If Father McAlinden did not respond voluntarily, do  
40 you accept that that would make the process of charging  
41 Father McAlinden more difficult?

42 A. I'm not familiar with the detail of how difficult an  
43 extradition is. I presume it's more difficult than  
44 knocking on his door locally, but I'm not - and it would  
45 not have been in my contemplation that there was any  
46 suggestion of trying to make that process difficult.

47

1 Q. I didn't get to that point, but I was just asking as  
2 a general proposition do you accept that a consequence of  
3 the decision was that if Father McAlinden was unwilling to  
4 return voluntarily, the process of charging him would be  
5 more difficult?

6 A. It may have been, yes.

7  
8 MS GERACE: They are my questions, Commissioner.

9  
10 THE COMMISSIONER: Mr Cohen, do you have any questions?

11  
12 MR COHEN: Commissioner, no. Thank you.

13  
14 THE COMMISSIONER: Thank you. Mr Gyles?

15  
16 **<EXAMINATION BY MR GYLES:**

17  
18 MR GYLES: Q. Just two matters, and they both postdate  
19 the removal of faculties, but they are matters that you  
20 have been taken to, in effect, for comment. First, dealing  
21 with this matter which was raised a little while ago in an  
22 objection that I made concerning the question of McAlinden  
23 having been seen after the removal of his faculties,  
24 wearing crosses, you were asked some questions by  
25 Ms Lonergan about this yesterday. At transcript 1714.  
26 Ms Lonergan asked you:

27  
28 Q. ... you knew, didn't you, that the  
29 bishop had seen McAlinden walking around  
30 wearing his priestly uniform and his  
31 crosses within a month or two of having had  
32 his faculties removed; you knew that,  
33 didn't you?

34  
35 Your response was:

36  
37 A. I didn't know that then, but I've seen  
38 that in the papers.

39  
40 Do you recall that response?

41 A. I do recall that response.

42  
43 Q. In terms of what you had seen in the papers, do you  
44 have volume 3 of the bundle. Could you go, for the purpose  
45 of this question, to tab 218. What we see here you can  
46 assume to be a file note of Bishop Clarke of 20 March 1993.  
47 Do you see that?

1 A. Yes.

2

3 Q. You'll see that it deals with this topic, namely, that  
4 he, Bishop Clarke, had seen McAlinden on this day and  
5 raised with him an allegation that he was seen wearing  
6 crosses, which McAlinden denied?

7 A. Yes.

8

9 Q. He agreed that he wouldn't do so, and we see at the  
10 bottom of that column or that half page:

11

12 *I also reminded him [of his promise] not to*  
13 *dress/act as a priest in the public forum.*

14

15 *He promised to let me know the name of the*  
16 *Diocesan Bishop in England & the name of*  
17 *his Spiritual Director.*

18

19 Do you see that?

20 A. Yes.

21

22 Q. What we see in that document is, you would say,  
23 wouldn't you, consistent with the restrictions that had  
24 been placed on him being enforced by Bishop Clarke in the  
25 directions that he is giving?

26 A. Yes.

27

28 Q. The reference you made yesterday to having seen  
29 something in the papers - is this the document that you  
30 recall seeing?

31 A. Yes, and in the light of the way you put the question  
32 now that Ms Lonergan put to me yesterday, when I answered  
33 that question and alluded to seeing it in the papers, I had  
34 not yesterday directed my mind to that question of whether  
35 it was the bishop who saw it or the bishop reporting that  
36 someone else saw it. I hadn't directed my mind to that  
37 distinction, and I apologise for that error.

38

39 Q. I'm not asking you for your apology. I'm simply  
40 seeking clarification as to that was the document that you  
41 were referring to?

42 A. Yes.

43

44 MS LONERGAN: Commissioner, I take this opportunity to  
45 tender the document behind tab 218, given that it has now  
46 been examined on directly.

47

1 THE COMMISSIONER: The note by Bishop Clarke of 20 March  
2 1993 will be admitted and marked 156.

3

4 **EXHIBIT #156 NOTE BY BISHOP LEO CLARKE OF 20/03/1993**  
5 **(TAB 218)**

6

7 MR GYLES: Q. What you do say in response to that  
8 question is, "I didn't know that then." In other words,  
9 you didn't know then that he had been walking around within  
10 a couple of months of the --

11 A. That's my recollection, yes.

12

13 Q. It was then put to you that you were told that by  
14 Monsignor Hart, and you say, "I may have been, but I don't  
15 recall"?

16 A. Yes.

17

18 Q. So your best recollection is that you weren't aware of  
19 that, although it's possible that you may have been told,  
20 but you have no recollection of being told?

21 A. That's correct.

22

23 Q. Ms Lonergan then put a series of propositions to you,  
24 and one of them concerned this matter - this is at  
25 transcript 1724 line 28 - where you give an answer which is  
26 different, which I think you may have been mistaken in  
27 terms of your understanding of the question. As part of  
28 a series of propositions, it was put to you, in context  
29 starting at line 12:

30

31 *Q. Bishop Clarke, in his letters that*  
32 *I have taken you to, but I'll take you to*  
33 *them again if you need your memory*  
34 *refreshed, refers to McAlinden having*  
35 *admitted to sexually abusive conduct?*

36 *A. That's Bishop Clarke's words, yes.*

37

38 *Q. And Bishop Clarke's words relate to*  
39 *admissions regarding sexually abusive*  
40 *conduct having been made to you?*

41 *A. That's what Bishop Clarke said, yes.*

42

43 *Q. You've also seen letters written by*  
44 *McAlinden that suggest that he also*  
45 *acknowledges that he made some types of*  
46 *admissions to you?*

47 *A. And he also wrote that he made*

1           *a number of denials that are probably not*  
2           *correct.*

3  
4           Q.   *You were told that he had disobeyed*  
5           *his bishop in being seen wearing crosses*  
6           *and priestly garb?*

7           A.   Yes.

8  
9           In terms of the answer that you've given there as "yes", it  
10          is not your evidence, is it, that you have any recollection  
11          of being told that?

12          A.   I think I misunderstood that question. "Told" there  
13          would have been what I read in these papers.

14  
15          Q.   All right, thank you. Finally, so far as I'm  
16          concerned, Father Lucas, you will recall being asked some  
17          questions about the document which is at tab 239. It's the  
18          letter of 8 November from Bishop Clarke to the archbishop  
19          in the Philippines.

20          A.   Yes.

21  
22          Q.   You were questioned at transcript 1696 line 41 in  
23          relation to this letter. It was put to you, in the context  
24          of that letter, that:

25  
26                Q.   *It would have been far preferable,*  
27                *wouldn't it, if the bishop from the*  
28                *Philippines had actually written to*  
29                *Bishop Clarke and asked for information*  
30                *about the priest and whether he consented*  
31                *to McAlinden being incardinated to the*  
32                *diocese of San Pablo, to convey that*  
33                *information --*

34  
35          that is, that he was a known paedophile --

36  
37                *wouldn't it?*

38  
39          And you said, "Oh, certainly." It was put to you that this  
40          was a wholly inadequate letter, or answer, and you said,  
41          "I expect it would be." What you weren't taken to,  
42          Father Lucas, was the letter which came before this letter.  
43          So I'd like you now to consider the context in which this  
44          letter was written. If you could please go back to  
45          tab 237, we see a letter written by McAlinden to the  
46          bishop, Bishop Clarke, from the Philippines on 13 September  
47          1994.



1 A. Yes.

2

3 Q. Have you seen this letter before?

4 A. Yes, that's in the bundle of papers, yes.

5

6 Q. What is apparent from this letter is that McAlinden is  
7 telling the bishop that he is in the Philippines, he's gone  
8 there because of health issues, ie, it being a warmer  
9 climate, and then he reports - this is in the second  
10 paragraph, about halfway down:

11

12 *Through the good graces of a ... Father and*  
13 *some Philippine friends ... I was invited*  
14 *to dine on 3 occasions.*

15

16 Do you see that?

17 A. Yes.

18

19 Q. You'll see that he says:

20

21 *During my last visit (12 Sept) I had a long*  
22 *talk with him and gave him my unfortunate*  
23 *background.*

24

25 A. Yes.

26

27 Q. The unfortunate background at this point, at least on  
28 the probabilities, may well have been the unfortunate  
29 background that you had dealt with?

30 A. Yes.

31

32 MS LONERGAN: I object. I'm sorry, the witness has  
33 already answered the question. I object to any further  
34 questions putting words in this witness's mouth that  
35 attempt to validate what in fact McAlinden told or is  
36 alleging he told Bishop Bantigue.

37

38 MR GYLES: Is it seriously contended that it is not  
39 possible that that was the matter that he spoke about?

40

41 MS LONERGAN: It shouldn't be put in the form the question  
42 was put.

43

44 MR GYLES: The question was put in the form of, "Is it  
45 possible that".

46

47 MS LONERGAN: What my learned friend is attempting to do

1 by this line of questioning is to have this witness put  
2 some meaning or adopt the truth of what McAlinden is saying  
3 in this letter, and that is not permissible, in my  
4 respectful submission.

5  
6 MR GYLES: What I'm attempting to do, Commissioner, with  
7 all due respect, is that it was put to this witness by  
8 Ms Lonergan that - the letter that follows on from this  
9 letter has been described as coy, it has been described as  
10 wholly inadequate. I'm attempting to deal with this  
11 question fairly because what this witness is being asked to  
12 do is, in effect, get into the mind of Bishop Clarke when  
13 he wrote the response.

14  
15 MS LONERGAN: Commissioner, that is not what I did with  
16 this witness. This is not the letter that precedes the  
17 letter to which I took Father Lucas at page 1696. This is  
18 a letter between Bishop Clarke and McAlinden.

19  
20 The letter to which I took Father Lucas was the letter  
21 between Bishop Clarke and Bishop Bantigue, and I addressed  
22 Father Lucas's mind to the issue of the adequacy on the  
23 part of a bishop to another bishop in describing what he  
24 knew about McAlinden's offending conduct. This witness has  
25 already given evidence that paedophiles are known liars.  
26 And this is not in the chain of correspondence to which  
27 I directed Father Lucas's attention. This is a totally  
28 different chain of correspondence.

29  
30 THE COMMISSIONER: Yes, but Ms Lonergan, Bishop Clarke may  
31 not have known that paedophiles are known liars, and  
32 perhaps Bishop Clarke may have accepted McAlinden's  
33 assurance to him that he had told Monsignor Bantigue of his  
34 paedophilic background.

35  
36 MS LONERGAN: He may have, but what I directed this  
37 witness's mind to was the role of the bishop, and that's  
38 what I was dealing with on that page of the transcript that  
39 Mr Gyles has taken this witness to - the bishop's  
40 responsibilities. It's a different thing. So to suggest  
41 that a letter between Bishop Bantigue and Father McAlinden  
42 is part of the chain of correspondence between  
43 Bishop Bantigue and his corresponding bishop in  
44 Maitland-Newcastle is not a correct way to assess this  
45 correspondence.

46  
47 THE COMMISSIONER: But, Ms Lonergan, there is one extra

1 thing in Bishop Clarke's mind, whether or not he was  
2 foolhardy in accepting it and whether or not he should have  
3 done anything more. It's a small thing, but Mr Gyles is  
4 entitled to --

5

6 MS LONERGAN: I'm not suggesting Mr Gyles is not entitled  
7 to pursue a line of questioning which brings into play the  
8 correspondence between Bishop Clarke and McAlinden. What  
9 I'm objecting to is the suggestion that this letter to  
10 which attention is currently being directed between  
11 Bishop Clarke and McAlinden was part of a series of  
12 correspondence of which Bishop Bantigue would necessarily  
13 have been aware or that Bishop Clarke would necessarily  
14 have used as some sort of informing matter that was part of  
15 the series of correspondence that he had with  
16 Bishop Bantigue.

17

18 To use, as an implied criticism, that I didn't put  
19 this letter to Father Lucas when I was going through the  
20 line of questioning I was on page 1696 isn't a fair way to  
21 contextualise it.

22

23 THE COMMISSIONER: I don't think any criticism of you is  
24 intended, Ms Lonergan.

25

26 MR GYLES: I'm not being critical. Commissioner, could  
27 you please go to tab 239 to dispose of this issue  
28 precisely. The first paragraph of the letter that  
29 Bishop Clarke writes across to the Philippines is:

30

31 *On my return from annual holidays this week*  
32 *I found awaiting me a letter from one of my*  
33 *priests, Fr. D McAlinden, dated*  
34 *13th September.*

35

36 Is it suggested that there is some other letter of  
37 13 September that this is directed to?

38

39 THE COMMISSIONER: I think not.

40

41 MS LONERGAN: I took the witness to that letter,  
42 page 1697. I asked him to read it. He read it and offered  
43 an opinion as to its adequacy or otherwise, having read the  
44 letter - all of it, I would expect with a witness with this  
45 degree of skill and attention to the way in which he gave  
46 considered answers. So the attention has been directed to  
47 that very matter already on page 1697 of my questioning.

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THE COMMISSIONER: I can't see it there, Ms Lonergan.

MS LONERGAN: The letter, 8 November 1994.

THE COMMISSIONER: Yes, but the letter of 13 September 1994.

MS LONERGAN: Oh, no, I'm not referring to that. My learned friend has just pointed out that the letter of 8 November 1994 refers to the correspondence. I see my learned friend is saying that I should have taken it a step further. I withdraw my objection.

MR GYLES: All I'm saying, Commissioner, is that the very thing that Bishop Clarke was dealing with in preparing the letter of 8 November was the letter of 13 September from Father McAlinden.

THE COMMISSIONER: Yes, I will permit you to put the question, Mr Gyles.

MR GYLES: I'm not being critical. I'm dealing with an objection.

MS LONERGAN: Commissioner, I put it badly. Mr Kell has assisted me with the way I should have phrased my concern about the particular line the questioning is taking. This witness should not be asked to speculate as to what McAlinden might or might not have told Bishop Bantigue. But, in my respectful submission, it is proper to draw to the attention of this witness the contents of the letter of September that preceded this letter in terms of time between McAlinden and Bishop Clarke.

THE COMMISSIONER: Yes, clearly Bishop Clarke has taken on board a number of things that are in that letter of 13 September 1994 about McAlinden's health, the climate that he requires for it, what he has suggested to Monsignor Bantigue, and so on, so it may be that Bishop Clarke thought it was all truthful and acted that way, for good or ill. Mr Gyles, I will permit you to put your question.

MR GYLES: Q. So what we see in the letter, you would have seen, Father Lucas - you have probably read it now - are expressions such as him having a long talk and

1 explaining his unfortunate background; do you see that?  
2 A. Yes.  
3  
4 Q. And that he was very understanding and sympathetic  
5 about that, and saying that rather than being retired and  
6 spending the rest of his days in atonement for past  
7 mistakes - do you see that?  
8 A. Yes.  
9  
10 Q. Again being indicative that there had at least been  
11 a disclosure of past mistakes, although unspecified?  
12 A. Yes.  
13  
14 Q. And that it had been suggested that for McAlinden,  
15 rather than seeing his days out in atonement for those past  
16 mistakes, there might be some work that he could do in the  
17 Philippines?  
18 A. Yes.  
19  
20 Q. The purpose of this letter we see on page 2, is that  
21 the bishop in the Philippines has asked McAlinden to write  
22 "to you suggesting a couple of options" whereby him  
23 spending his days retired, praying in atonement for past  
24 mistakes, is avoided, and he can actually do something  
25 positive, at least so far as the bishop in the Philippines  
26 was concerned?  
27 A. Yes.  
28  
29 Q. To the extent one was to draw from this letter, if you  
30 were standing in the shoes of Bishop Clarke as you were  
31 asked to do yesterday in commenting upon the adequacy of  
32 his response, first you would not read this letter as being  
33 indicative, would you, of Father McAlinden pretending to be  
34 a priest in the Philippines at this point, would you?  
35 A. No.  
36  
37 Q. What he's telling you is that he has had three social  
38 meetings with the archbishop or church officials in the  
39 Philippines?  
40 A. Yes.  
41  
42 Q. The possibility of him working as a priest in the  
43 Philippines has been raised with him by them as  
44 a possibility?  
45 A. Yes.  
46  
47 Q. Plainly, by the writing of this letter, that was

1 something that required the approval of Bishop Clarke?  
2 A. And that's in accordance with normal procedure, yes.  
3  
4 Q. In McAlinden's mind, it was a necessary thing to get  
5 Bishop Clarke's approval to, in effect, not comply with the  
6 results of the process that you put in place, which was the  
7 removal of the faculties?  
8 A. Sorry, I missed the first part of that question. I'm  
9 not sure I understood it clearly.  
10  
11 Q. What we see here is that at least in McAlinden's mind,  
12 he needed approval from Bishop Clarke for either of the  
13 options that are put forward in this letter?  
14 A. Yes.  
15  
16 Q. One being that he be --  
17 A. Excardinated.  
18  
19 Q. Excardinated from the Maitland-Newcastle diocese,  
20 which they say is the preferred option, and then he would  
21 become incardinated in the San Pablo diocese immediately?  
22 A. Yes.  
23  
24 Q. He therefore would become their responsibility?  
25 A. Yes.  
26  
27 Q. And the Maitland-Newcastle diocese and the bishop of  
28 the diocese would no longer have responsibility for him?  
29 A. Yes.  
30  
31 Q. That's what at least he's putting as the preferred  
32 option, and that was possibly the preferred option of those  
33 in the Philippines as well?  
34 A. Possibly.  
35  
36 Q. The second is that he retains his incardination in the  
37 Maitland-Newcastle diocese but is permitted by the bishop  
38 to work in the Philippines?  
39 A. Yes.  
40  
41 Q. As though he had been sent over there, lent to them  
42 for a period of time, but remained under the responsibility  
43 of Maitland-Newcastle?  
44 A. That's correct.  
45  
46 Q. If we then, in that light and in that context, go back  
47 to the letter you were taken to yesterday at tab 239, which

1 is exhibit 64 - and can I say while I remember,  
2 Commissioner, that in due course I will ask Ms Lonergan to  
3 tender the letter at 237.

4  
5 MS LONERGAN: I tender it now, Commissioner.

6  
7 THE COMMISSIONER: Thank you, Ms Lonergan. That letter  
8 from McAlinden to Bishop Clarke of 13 September 1994 will  
9 become exhibit 157.

10  
11 **EXHIBIT #157 LETTER FROM DENIS McALINDEN TO BISHOP CLARKE**  
12 **OF 13/09/1994 (TAB 237)**

13  
14 MR GYLES: Q. So exhibit 64 - this is the 8 November  
15 letter, and this I think was described at various times as  
16 a coy letter?

17 A. Yes.

18  
19 Q. Or a wholly inadequate letter. One thing the letter  
20 is not inadequate about is the unambiguous response to the  
21 two questions that had been asked; that's correct, isn't  
22 it?

23 A. Yes, in the light of the letter of 13 September,  
24 I gave my answers yesterday with respect to this letter of  
25 8 November on an assumption that, at this stage, he was  
26 known to be working already in the Philippines. If the  
27 earlier letter of 13 September is correct, it puts this  
28 letter of 8 November in a somewhat different context.

29  
30 Q. In terms of the request that had been made in the  
31 letter that's referred to - namely, the letter of  
32 13 September - the purpose of the 13 September letter was  
33 to get approval for McAlinden to work in the Philippines,  
34 wasn't it?

35 A. Yes.

36  
37 Q. On either of the two bases that have been put forward?

38 A. Yes.

39  
40 Q. In terms of Bishop Clarke's response to those two  
41 possibilities, his response was, "No, I will not give  
42 approval to either option"?

43 A. That's correct.

44  
45 Q. There was then criticism made of Bishop Clarke by use  
46 of the words, "And Father McAlinden is fully aware of the  
47 reasons for that decision"; do you see that?

1 A. Yes.  
2  
3 Q. You would agree that, putting yourself in the position  
4 of Bishop Clarke, the tenor of the letter might well  
5 suggest that the recipient of his letter already knew about  
6 the unfortunate background and the past mistakes and didn't  
7 need to be told again about it?  
8  
9 MS LONERGAN: I object, Commissioner. Is that being put  
10 as an assumption, given that we don't know the truth of  
11 what was put or otherwise to the bishop? If it's put as an  
12 assumption, I have no objection.  
13  
14 MR GYLES: No, it is not put as an assumption.  
15  
16 THE COMMISSIONER: It is an alternative - two  
17 alternatives, is it?  
18  
19 MR GYLES: What my learned friend has done is ask  
20 Father Lucas to provide his comments on whether this letter  
21 is a wholly inadequate answer. In other words, he was  
22 asked his opinion as to whether Bishop Clarke dealt with  
23 this letter in an appropriate way. I'm putting to him  
24 that, in doing that, it is possible that Bishop Clarke may  
25 have assumed, from the wording of the letter that he was  
26 dealing with, that he may well have been under the  
27 impression that the detail of the predicament McAlinden was  
28 in had already been disclosed.  
29  
30 THE COMMISSIONER: Yes, I think that's fair, Ms Lonergan.  
31  
32 MS LONERGAN: I'm content for the word "possible" to be  
33 used, that it was possible it was disclosed.  
34  
35 THE COMMISSIONER: And I think Mr Gyles used that word in  
36 the question initially.  
37  
38 MR GYLES: That's all I can do.  
39  
40 THE COMMISSIONER: Yes.  
41  
42 MR GYLES: We're dealing with a hypothetical situation.  
43  
44 THE COMMISSIONER: Thank you, Mr Gyles.  
45  
46 MR GYLES: Q. Did you understand the question?  
47 A. Yes.



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Q. In his mind, he may well have assumed that that information was obtained, it had already been provided?

A. Yes, when I read the letter of 8 November in the context of that earlier letter of 13 September, that does change the context. I honestly yesterday, in answering Ms Lonergan's questions about this letter, took this letter in isolation and took it against what I understood had been the allegations that he was already working in the Philippines and the bishop in the Philippines had made not the proper inquiries. It could well be that this letter of 8 November is prior to him doing any work in the Philippines, and this would be part of that exchange of correspondence, making proper inquiries in accordance with normal church practice.

Q. Having now seen the letter of 13 September, which is referred to by Bishop Clarke, you wouldn't describe it now as a wholly inadequate answer, would you?

A. In the context on the assumption of what's in the letter of 13 September being correct, no, I would take a different view.

Q. One thing you did say yesterday was that if there was any doubt in the mind of the bishop in the Philippines, or the archbishop in the Philippines, he could have always got on the phone and spoken to Bishop Clarke about that?

MS LONERGAN: I object. That is not a correct summary of the evidence. What this witness said is, "I wouldn't have written the letter. I would have picked up the telephone."

THE COMMISSIONER: Yes, but now Mr Gyles is putting to Father Lucas that the other bishop could have picked up the telephone, too. Is that right, Mr Gyles - if he had one.

MR GYLES: Q. It's the case, isn't it, that the other bishop could have rung, and if he felt as though he needed to know more information about why Bishop Clarke was not agreeing to these proposals, he could have always rung him and asked for the detail as to the reasons for that decision, obviously?

A. Yes, there could have been some conversation between them, yes.

Q. To be fair, the situation appears to have changed. If we move forward in the bundle to tab 243. The position as

1 at 8 November 1994 was that Bishop Clarke had unambiguously  
2 said, "No, I don't agree to the proposal"?

3 A. Yes.

4

5 Q. We see that on 10 May - this is at tab 243 - in the  
6 fourth paragraph of this letter, Bishop Clarke writes again  
7 to the Philippines, to Bishop Pedro and says:

8

9 *Some people of my Diocese have now learnt*  
10 *that he is not in Ireland but is supposedly*  
11 *working in your Diocese. They have demanded*  
12 *to know whether this is true.*

13

14 A. Yes.

15

16 Q. That then gives rise to some following correspondence.  
17 Obviously, there is this letter where Bishop Clarke says:

18

19 *Could you please advise me that if he has*  
20 *been working in your Diocese that you will*  
21 *now withdraw his faculties and that you*  
22 *will advise him to return to Ireland.*

23

24 Do you see that? That's in the fifth paragraph?

25 A. Yes.

26

27 Q. We see Bishop Clarke, to the extent that there has  
28 been some breach of the protocol and restrictions that were  
29 put in place in 1993, seeking to enforce those again?

30 A. Yes.

31

32 Q. That gives rise to an initial response, tab 246, which  
33 is exhibit 132.

34 A. Page 499?

35

36 Q. Yes.

37 A. Yes.

38

39 Q. The bishop at that point is recovering from major  
40 surgery, but Bishop Clarke is assured that they understand  
41 the importance of this and are taking action?

42 A. Yes.

43

44 Q. Then at tab 250, page 507, in this instance  
45 Monsignor Hart, responding to that letter, says, in the  
46 second paragraph:

47

1           *I now wish to advise that we do require,*  
2           *for the benefit of those who have lodged*  
3           *their complaints ... a letter indicating*  
4           *that your Diocese has removed his faculties*  
5           *and that he will return to England.*

6  
7           A.    Yes.

8  
9           Q.    So they're seeking some confirmation of what they had  
10          requested on 10 May, when people from the diocese had  
11          raised concerns about McAlinden working in the Philippines.  
12          Do you see that?

13          A.    Yes.

14  
15          Q.    That's a prudent thing, to seek such confirmation that  
16          what they wanted to happen had happened?

17          A.    Yes.

18  
19          Q.    If you then go forward to tab 255, there is a response  
20          to Monsignor Hart:

21  
22                *As regards Fr. Denis McAlinden's stay in*  
23                *San Pablo diocese, there will be no problem*  
24                *anymore because his travel visa has not*  
25                *been extended and he himself decided to*  
26                *leave the Philippines on August 2, 1995 for*  
27                *Ireland.*

28  
29          Do you see that?

30          A.    Yes.

31  
32          Q.    So that's an assurance of the position from the  
33          Philippines, as far as the bishop was concerned over there,  
34          and you will see that he sends additional letters - in the  
35          second paragraph he makes reference to a letter from  
36          McAlinden to Bishop Clarke - which were sent but apparently  
37          had been returned and he says he sends them again. I think  
38          we can assume that the letter attached would be the letter  
39          at tab 253, if you go back a couple of tabs. This is  
40          a letter from McAlinden to - this is exhibit 140 - the  
41          archbishop or the bishop of San Pablo confirming that he is  
42          able to inform him that he has arranged to leave, his date  
43          of departure being 2 August, et cetera. So the initial  
44          request on 10 May by Bishop Clarke, and then followed up by  
45          Monsignor Hart on 20 June, has given rise to confirmation  
46          which had been requested both from the diocese and from  
47          McAlinden that he wasn't exercising faculties in the

1 Philippines and was returning to the UK?  
2 A. Yes.  
3  
4 Q. On the face of it, one would see that process as  
5 having dealt with that problem in a practical and effective  
6 way, at least up until the point of him returning to the  
7 UK?  
8 A. I'm not sure if I could fully agree with the word  
9 "effective". I think the breakdown, which obviously may  
10 well have had to do with communication or correspondence  
11 and access to whatever technology was available at that  
12 part of the Philippines in 1994 and 1995, was that the  
13 bishop perhaps - and I have no direct evidence of this -  
14 did allow him some ministry.  
15  
16 Q. I'm sorry, the bishop in the Philippines you're  
17 talking about?  
18 A. The Philippines, yes.  
19  
20 Q. But once that problem came to the attention of those  
21 here - well, initially, when the request was made, it was  
22 unambiguously refused?  
23 A. Yes.  
24  
25 Q. And then when the diocese here became aware that he  
26 may have been exercising faculties - and that's as high as  
27 it was put in that letter --  
28 A. Yes.  
29  
30 Q. -- they sought confirmation both from McAlinden and  
31 from the diocese over there that that would not continue,  
32 to the extent it was happening?  
33 A. Yes.  
34  
35 Q. And those assurances were provided and he left the  
36 Philippines?  
37 A. That appears to be the case.  
38  
39 Q. To the extent that there was a difficulty of McAlinden  
40 exercising faculties in the Philippines, by the time this  
41 letter had been received on 29 July, that was a reasonable  
42 assurance as to that matter having been dealt with; you  
43 would agree with that, wouldn't you?  
44 A. It appears to have been, yes.  
45  
46 MR GYLES: Thank you.  
47

1 MS LONERGAN: Could I ask a couple of questions regarding  
2 the series of correspondence that Mr Gyles has very  
3 properly drawn to the attention of the witness?  
4

5 THE COMMISSIONER: Certainly, Ms Lonergan.  
6

7 <EXAMINATION BY MS LONERGAN:  
8

9 MS LONERGAN: Q. Father, behind tab 238 there is  
10 a letter dated 8 November 1994 from Bishop Clarke to  
11 McAlinden. If you wouldn't mind turning up that letter?  
12 Do you see it's dated 8 November 1994?

13 A. Yes.  
14

15 Q. It is the same date as the letter I directed your  
16 attention to yesterday that became exhibit 64?

17 A. Yes.  
18

19 Q. Directed to Bishop Bantigue; do you see that? I'll  
20 just give you you a moment to read that letter.

21 A. I've read that letter.  
22

23 Q. Thank you, you're a very quick reader. Father, do you  
24 see in the third paragraph, Bishop Clarke says this:  
25

26 *In your letter you quote two options*  
27 *suggested by the local Bishop Monsignor*  
28 *Bantigue. Given the climate here in*  
29 *Australia at the present time it is*  
30 *impossible for me to give permission for*  
31 *you to exercise your priesthood anywhere*  
32 *either here in Australia or overseas.*  
33

34 A. That's correct.  
35

36 Q. So far so good, in your opinion - that's an  
37 appropriate thing to say to McAlinden?

38 A. Yes.  
39

40 Q. What about the next bit:  
41

42 *I have written a letter to Monsignor*  
43 *Bantigue stating that but not giving him*  
44 *any background or reasons for my decision.*  
45

46 A. Yes.  
47

1 Q. What do you think about that as a stated intention or  
2 a stated position of a bishop who has been made aware that  
3 McAlinden has admitted to sexually abusing children?

4 A. To answer that question, I'd need to know whether or  
5 not the bishop had allowed him some ministry. If the  
6 bishop at this stage was waiting for some confirmation and  
7 no ministry was being exercised, so a question of, for  
8 example, risk to children had not arisen, that would be  
9 a reasonable response. But if on the other hand there was  
10 some question of risk arising because Bishop Bantigue was  
11 allowing him to work, then from the perspective of  
12 minimising risk, Bishop Clarke more prudently should have,  
13 either in this letter or perhaps because of some greater  
14 urgency by telephone, put Bishop Bantigue on notice of the  
15 problem. I think the critical fact I am not aware of is  
16 the extent to which McAlinden, in the Philippines at that  
17 time, was or was not holding himself out as a priest.  
18

19 Q. Father, yesterday your evidence was to the effect that  
20 you wouldn't have written the letter that Bishop Clarke  
21 wrote on 8 November 1994 at all; you would have picked up  
22 the telephone. That was your evidence yesterday, wasn't  
23 it?  
24

25 MR GYLES: I object. That may have been the evidence  
26 given yesterday, but the evidence given yesterday did not  
27 take into account the letter --  
28

29 MS LONERGAN: Commissioner, I'm entitled to examine the  
30 evidence given yesterday step by step.  
31

32 MR GYLES: Well --  
33

34 MS LONERGAN: And I'm going to continue to do so. In my  
35 respectful submission, I should be permitted to do so.  
36

37 THE COMMISSIONER: Yes, Ms Lonergan.  
38

39 MS LONERGAN: If the witness could be given a copy of  
40 pages 1696 and 1697.  
41

42 THE WITNESS: I've read the transcript and I'm familiar  
43 with what you're taking me to.  
44

45 MS LONERGAN: Q. I'll repeat the question I've just  
46 asked. Yesterday your evidence was to the effect that you  
47 wouldn't have written the letter of 8 November 1994; you

1 would have picked up the telephone, wasn't it?

2 A. That's what I said yesterday.

3

4 Q. And you've just said that it's your view that because  
5 there was some uncertainty arising in terms of the letter  
6 of September 1994 that you've just been shown, as to  
7 whether McAlinden was already working or not, that may have  
8 made some difference to your evidence yesterday; is that  
9 how I ought to understand your evidence today?

10 A. Yes, if I'd understood the letter of 13 September from  
11 McAlinden to Clarke in the context of that series of  
12 questions yesterday, it may have put some other perspective  
13 on it. I think, again, if you're asking me hypothetically  
14 how prudently to deal with these things, at the highest  
15 level I wouldn't have written letters, which take time to  
16 get there, and assuming there was telephone access, that  
17 would have been the preferred option. One can then have  
18 a more extended conversation and perhaps make it very clear  
19 to the bishop in the Philippines what the state of affairs  
20 is and also perhaps have received from the bishop in the  
21 Philippines - and I'm putting this purely hypothetically,  
22 as you understand - some confirmation that he - you could  
23 assess from the bishop in the Philippines whether he was  
24 agreeing with what was being put and give some comfort that  
25 those steps would be put in place.

26

27 Q. And that's why you would have picked up the telephone  
28 as opposed to correspondence, that may be slow and lacking  
29 in precision?

30 A. That would be my preference.

31

32 Q. We can only talk about your preference, can't we,  
33 because you're the person giving evidence?

34 A. That's correct.

35

36 Q. And it's your position that you would have picked up  
37 the telephone and had the conversation rather than sent  
38 a letter?

39 A. That would have been what I would have done, yes.

40

41 MS LONERGAN: Commissioner, I tender the letter behind  
42 tab 238.

43

44 THE COMMISSIONER: The letter of 8 November 1994 to  
45 Denis McAlinden from Bishop Clarke will be admitted and  
46 marked exhibit 158.

47

1 EXHIBIT #158 LETTER DATED 8/11/1994 TO DENIS MCALINDEN  
2 FROM BISHOP CLARKE (TAB 238)

3  
4 THE COMMISSIONER: Mr Skinner?

5  
6 <EXAMINATION BY MR SKINNER:

7  
8 MR SKINNER: Q. Father, have you ever failed to  
9 facilitate, assist or cooperate with police investigations  
10 or matters involving sexual abuse of children, specifically  
11 in relation to Father Denis McAlinden but in relation to  
12 any other priest at all?

13 A. Not willingly, and I would never do that willingly.  
14 I'm not aware of any situation where I ever had.

15  
16 Q. Without going into the detail of this, can you  
17 confirm, however, that last year on 8 March 2012 you were  
18 extensively questioned and gave extensive answers to  
19 Detective Sergeant Jeffrey Little of Newcastle and  
20 Detective Inspector Graeme Parker about the events  
21 surrounding and your knowledge of your involvement in 1993  
22 to 1995 with Father Denis McAlinden and investigations into  
23 him at that time?

24 A. Yes, Detective Sergeant Little invited me to attend  
25 for an interview and asked me questions, and I responded to  
26 his questions.

27  
28 Q. There have been references here yesterday and I think  
29 the day before in your questioning to the situation as it  
30 was perceived by you in 1996 and, indeed, as you were  
31 questioned in the Wood Royal Commission - full name, the  
32 Royal Commission into the NSW Police Service but  
33 colloquially the Wood Royal Commission - in 1996?

34 A. Yes.

35  
36 Q. You gave extensive evidence on 18 April 1996 to  
37 Commissioner Wood?

38 A. That's correct.

39  
40 Q. Can I take you, please, to part of your evidence, and  
41 you were able to look at this overnight. You were asked  
42 a question by counsel then assisting Commissioner Wood,  
43 Ms Bergin, at 23,824 of the transcript, about issues  
44 involving consultation and communication by the church with  
45 the New South Wales Police Service, as it was then called  
46 at that time in 1996?

47 A. Yes.



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Q. I'd like to take you to an answer you gave. You were asked this question:

*Q. ... in the development of protocols and the like --*

and that was in the context of protocols the church was developing at that stage to deal with the very issues that you are being asked about here again --

*is there any involvement or input by the Police Service or anyone from the Police Service?*

*A. I'm not aware that that has happened directly.*

*Q. Do you see that as a healthy possibility?*

*A. That is a perspective. My only caution is - and this is not to suggest that I wouldn't want to be cooperative with that at all - but the police themselves ...*

I am leaving a few words out but this is the gist of it:

*The civil lawyer perspective is difficult enough to deal with from the perspective of the social sciences. To then try and also reconcile their expectations of pastoral care with police expectations is difficult.*

When you said there "expectations of pastoral care", were you there referring to the alleged victims?

A. Yes.

Q. Then you said:

*This is maybe an unjust statement and I put it no higher than an impression - and I fully appreciate the difficulty the police have in interviewing and dealing with these matters - but the feeling of many people that I have spoken to is that what we might call the harshness - and I don't mean that in a moral sense - of the criminal justice system is one of the*

1                    *greatest deterrents for people wanting to*  
2                    *get involved in it.*

3  
4                    MS LONERGAN:    Commissioner, I object, and I'll just have  
5                    a conversation with Mr Skinner, if I may.

6  
7                    MR SKINNER:    Q.    I'm sorry, I'm not trying to give  
8                    a speech here, but in context, this sort of harshness of  
9                    the criminal justice system that you were there referring  
10                   to on 18 April 1996 - firstly, you said there something  
11                   about "the feeling of many people that I've spoken to".  
12                   Were you speaking to people about these sorts of issues in  
13                   and around April 1996?

14                   A.    Constantly.

15  
16                   Q.    What sorts of people?

17                   A.    There would be the feedback from victims, both  
18                   directly and indirectly. There was a lot of feedback from  
19                   counsellors of victims as to the trauma that victims  
20                   suffered in having to re-tell their stories. There was  
21                   also a lot of input from lawyers. There was input from  
22                   church authorities. There was a wide consultation. At the  
23                   time of April 1996, we'd come right towards the end of  
24                   a very extensive consultation process to revise the 1992  
25                   protocol, so there had been a number of discussions with  
26                   many, many people.

27  
28                   Q.    You've referred on several occasions in your evidence  
29                   in this inquiry to the dilemma of how to deal with  
30                   historical sexual complaints made by adults - that is,  
31                   historical complaints, not contemporaneous ones - that's  
32                   clear, given the situation? If you knew then or at the  
33                   time now of something happening at that very time to  
34                   children in the nature of sexual abuse, what would you have  
35                   done then?

36                   A.    Direct knowledge of suspicion, a child sexual assault  
37                   on a child, the mandatory reporting provisions would kick  
38                   in and there would be no question of that matter being  
39                   referred to the authorities.

40  
41                   Q.    Whether it be a priest or anyone else who had come to  
42                   your knowledge as a possible perpetrator?

43                   A.    Certainly.

44  
45                   Q.    So then in relation to the context, however, of  
46                   historical complaints, that is, an adult coming in saying,  
47                   "Something happened to me years ago", the dilemma that

1 you've referred to is whether or not to go to the police,  
2 if in fact that person doesn't want to go to the police,  
3 isn't it?

4 A. That was a constant and serious and worrying dilemma.

5  
6 Q. And that's the dilemma you discuss here and that's the  
7 dilemma you were discussing in April 1996 in front of the  
8 Wood Royal Commission?

9 A. Certainly, yes.

10

11 Q. I was taking you to an answer you gave about the  
12 harshness of the criminal justice system. There have been  
13 17 and a half years under the bridge since then. Does that  
14 cover the same sorts of issues as those you were referring  
15 to again yesterday to the Commissioner?

16 A. Yes.

17

18 Q. As a result of your evidence to the Wood Royal  
19 Commission and the discussions you were having with people  
20 and the discussions those people were having with other  
21 people, there were improvements, as far as you're  
22 concerned, in the way the Catholic Church tried to resolve  
23 the dilemma I've referred to, put in place, weren't they?

24 A. Yes. The context at that time was that the executive  
25 director of the National Committee for Professional  
26 Standards wrote to each of the archbishops in each of the  
27 capital cities, suggesting that each of them formally write  
28 to the Commissioners of Police in each of those states  
29 seeking an opportunity for dialogue, discussion with  
30 respect to putting in place some form of understanding or  
31 cooperation with respect to how these dilemmas might be  
32 able to be resolved.

33

34 Q. That led to the sort of process that I think has been  
35 referred to in this inquiry - I forget by whom, but one of  
36 the officers, I think in terms of reference 1, referred to  
37 the concept of blind reporting?

38 A. The blind reporting came a little later. The next  
39 step, as I recall it, is that Cardinal Clancy wrote to  
40 the then Commissioner of Police, who I think was  
41 Commissioner Ryan, and asked for that cooperation. I'm not  
42 sure now - and I'd have to check the papers to get the  
43 precise sequence --

44

45 Q. There is no need. If I can just stop you there.  
46 Things developed, and one of the results was this system of  
47 anonymous reporting to the police for intelligence

1 purposes, at the very least, and perhaps more - "blind  
2 reporting" I think it's referred to?

3 A. Yes, the Child Protection Enforcement Agency wrote  
4 simultaneously, and then I had a number of discussions with  
5 several police officers, looking at a memorandum of  
6 understanding. I was not a participant personally in the  
7 finalisation of that or the blind reporting determination.

8

9 MS LONERGAN: Commissioner, I rise to interrupt my learned  
10 friend's examination --

11

12 MR SKINNER: I'll move on.

13

14 Q. Obviously, father, there are other people who can  
15 assist or who might assist in that regard.

16 A. I'm sorry.

17

18 MS LONERGAN: I'm rising not to be rude to Mr Skinner, but  
19 we have very precise terms of reference that deal with  
20 a certain time frame and a particular discrete number of  
21 matters. It would be, in my respectful submission, going  
22 outside our terms of reference to move on into that other  
23 much broader subject. That's for another place and time.

24

25 THE COMMISSIONER: Thank you.

26

27 MR SKINNER: Q. Can I just ask this and you can answer  
28 it "yes" or "no". Is it your view that, although still not  
29 perfect, things have improved?

30 A. Dramatically.

31

32 Q. In relation to church procedures about priests moving  
33 around between dioceses with the celebret - it's almost  
34 like a church passport of sorts; is that right?

35 A. It's just a document that would show some credentials  
36 if a priest turned up somewhere and wanted to participate  
37 in something.

38

39 Q. Have there been progressions in that system,  
40 administratively, between Australia and the Philippines  
41 since 1995?

42 A. What has happened under the protocols - and this is  
43 within Australia - is that if a priest now wishes to work  
44 somewhere else, as well as having his celebret, there is  
45 now an obligation on the priest himself to make any  
46 disclosure to the bishop that personally he is in good  
47 standing. So we avoid a situation arising where there's

1 some error or mistake and someone says to the bishop, "Did  
2 you know?", and the bishop says, "I didn't know", and "Is  
3 the reason you didn't know you didn't ask?" So the bishop  
4 is required to ask the priest to vouch for his good  
5 standing, for whatever that's worth, but at least the  
6 bishop asks. The most critical part of the improvement is  
7 that both bishops have to correspond with each other, and  
8 that is before there would be any exercise of ministry.

9  
10 Q. You have been here for nearly two and a half days,  
11 answering a lot of questions about events that took place  
12 in 1993. You've agreed that you were asked some questions  
13 by the police about similar events in March last year. The  
14 police interview went for several hours?

15 A. It did.

16  
17 Q. You have been asked questions directed to perhaps  
18 a foundation for criticism of your lack of memory about  
19 certain events in 1993?

20 A. Yes.

21  
22 Q. You have given some answers where you've used the term  
23 "remember" as opposed to the term "reconstruct"?

24 A. Yes.

25  
26 Q. What do you mean by a distinction between a memory you  
27 have as opposed to a possible reconstruction of what might  
28 have happened?

29 A. A memory is something that one can visualise in one's  
30 mind. A reconstruction is what one tends to do in trying  
31 to make some assumptions about what probably might have  
32 happened but where there's no clear understanding in one's  
33 mind of what did happen.

34  
35 Q. Have you searched your mind in all conscience trying  
36 to find memories as opposed to reconstructions of, firstly,  
37 your conversations or not with complainants in 1993 and  
38 then, secondly, your conversation with Father McAlinden at  
39 that time?

40 A. I have.

41  
42 Q. Why are you so precise in drawing a distinction  
43 between a memory and a reconstruction?

44 A. Yes, I'd want to be honest, I think there are always  
45 dangers and difficulties in confusing what you remember  
46 with what you reconstruct.

47

1 Q. You've done your best, however, to, one, try to  
2 remember?  
3 A. Yes.  
4  
5 Q. And, two, if you can't remember, to draw a distinction  
6 between what might be memory and what probably is  
7 reconstruction?  
8 A. That's correct.  
9  
10 MR SKINNER: Thank you. That's the re-examination.  
11  
12 THE COMMISSIONER: Thank you, Mr Skinner.  
13  
14 MR COHEN: Commissioner, I'm sorry to do this, but  
15 something that arose in the examination by Mr Skinner  
16 directly with respect to the Royal Commission has excited  
17 a question or two in me. I know this is again  
18 unauthorised.  
19  
20 MR SKINNER: I have no objection, Commissioner, if my  
21 friend wants to ask a question or three or ten, so long as  
22 my rights are preserved.  
23  
24 MR COHEN: I'm not suggesting otherwise. I want to ensure  
25 that all are content before I do that, but I see my learned  
26 friend --  
27  
28 MS LONERGAN: I have no problem at all with Mr Cohen  
29 asking any relevant question that touches on the interests  
30 of his client. If I may just have a quick word with him?  
31  
32 THE COMMISSIONER: Yes, Ms Lonergan.  
33  
34 MR COHEN: I understand I won't cross any boundaries by  
35 asking these questions.  
36  
37 **<EXAMINATION BY MR COHEN:**  
38  
39 MR COHEN: Q. Father, you recall, I take it, your  
40 evidence at the Wood Royal Commission, which was given on  
41 18 April 1996, or at least the fact of you being there?  
42 A. I remember the fact of being there.  
43  
44 Q. Do you recall giving a response to this question put  
45 by Ms Bergin SC, as her Honour Bergin J then was, when she  
46 asked:  
47

1           *What is it that you think brought about*  
2           *that greater realisation of the reality of*  
3           *child sexual abuse?*

4  
5           Do you remember that question?

6           A.    No.

7  
8           Q.    Well, do you recall your answer:

9  
10           *I think there was - if I go back to some of*  
11           *the experience I had when I worked in the*  
12           *children's courts, there had been a growing*  
13           *awareness of child sexual abuse within*  
14           *family and society generally.*

15  
16           *I think the most significant development*  
17           *was - I'm not sure of the exact year, but*  
18           *it would have been the early 1980s, perhaps*  
19           *around 1983 or so, perhaps earlier; I just*  
20           *don't recall exactly - the introduction of*  
21           *mandatory reporting, and that brought to*  
22           *the community's notice the significance and*  
23           *seriousness of this and I think there was*  
24           *a lot of the literature and there has been*  
25           *a lot more work done on the subject since*  
26           *then.*

27  
28           Do you remember that?

29           A.    I do.

30  
31           Q.    That meant, didn't it, that you knew about mandatory  
32           reporting from the early 1980s, didn't it?

33           A.    Well, mandatory reporting in the early 1980s related  
34           to issues relating to children.

35  
36           Q.    Perhaps you would answer my question: you knew about  
37           mandatory reporting from the early 1980s, didn't you?

38           A.    I did.

39  
40           Q.    You understood that when there were, as you put it,  
41           issues relating to children, particularly with regard to  
42           sexual abuse, it was a mandatory obligation to report it,  
43           didn't you?

44  
45           MR SAIDI:    I object to the question. The mandatory  
46           reporting procedures back in the 1980s were limited. There  
47           were prescribed persons who were under the obligation, and

1 there were many people who one would, by today's standards,  
2 regard as a prescribed person who were not prescribed.

3

4 THE COMMISSIONER: Quite so, Mr Saidi,

5

6 MR BARAN: The objection is also taken by me to the extent  
7 it covers Professional Standards because we receive the  
8 complaints. The question is fundamentally wrong, in my  
9 respectful submission, and the mandatory reporting  
10 conditions and requirements did not apply, certainly to  
11 Professional Standards. They had different steps to be  
12 undertaken. The question should be withdrawn.

13

14 THE COMMISSIONER: Yes, thank you, Mr Baran. Mandatory  
15 reporting was very limited at that time and of course has  
16 since been extended, but are you saying --

17

18 MR COHEN: We're talking about 1993.

19

20 THE COMMISSIONER: 1983?

21

22 MR COHEN: 1993. The question was this witness knew about  
23 mandatory reporting obligations from the early 1980s, let's  
24 say 1983. Fine. That was accepted. I was about to get to  
25 the fact that in 1993 there was an operative mandatory  
26 reporting obligation. Let me put that question.

27

28 THE COMMISSIONER: Applicable to which professionals?

29

30 MS LONERGAN: If that question of that kind of general  
31 nature is to be put, the witness ought to be able to give  
32 a full answer and not be locked into a position without  
33 being able to fully say what he understood the position to  
34 be.

35

36 MR COHEN: Q. Did you not understand that by 1993  
37 mandatory reporting had widened and it did include church  
38 officials?

39 A. I'd have to refresh my memory as to which church  
40 officials. I need to preface the question - my  
41 understanding of mandatory reporting was not with respect  
42 to historical cases but with respect to children.

43

44 MR SAIDI: Commissioner, I object. It's really unfair to  
45 put the question on the basis of church officials - the  
46 legislation, as I understood it, and I stand to be  
47 corrected, related to prescribed persons. That was the



1 linchpin to it. Not church officials, not members of the  
2 public.

3

4 MS LONERGAN: Commissioner, given it's historical  
5 legislation and things have changed significantly over  
6 the years, the proper way to go about such an examination,  
7 if you see it of any value to you, Commissioner, is for  
8 Mr Cohen to provide the appropriate historical extracts  
9 from the legislation and provide it for the benefit of the  
10 witness so that he can put his mind back 20-plus years ago  
11 as to how the law stood at the time and deal with it in  
12 that fashion. It's unfair, in my respectful submission, to  
13 do it this way.

14

15 THE COMMISSIONER: I agree, Ms Lonergan.

16

17 MR COHEN: Given the witness said he can't answer the  
18 question and needs to refresh his memory, it is not  
19 feasible to do that now.

20

21 MR SKINNER: I object if it be postponed. My learned  
22 friend has been given an indulgence after he waived his  
23 earlier rights to question. Of course, representing my  
24 client, neither I nor my client wishes to stand in the way  
25 of this Commission having all the information it needs to  
26 fully investigate these matters, but I would firmly object  
27 to some adjournment now, for my client to come back and be  
28 asked about mandatory reporting issues, which are really  
29 not in his expertise.

30

31 THE COMMISSIONER: Yes.

32

33 MR COHEN: I wasn't suggesting any sort of unfairness  
34 like that. What I was going to suggest is, assuming it  
35 is acceptable to all parties, that in the circumstances  
36 and given how awkward the situation is that arises, as it  
37 were, on the run, that this is a matter that perhaps can  
38 be dealt with some short evidence. If it suits you,  
39 Commissioner, and it's seen by all who assist you to be the  
40 proper course - people can think about this without  
41 commenting now - perhaps some short evidence can be led, if  
42 necessary, but this could be relevantly a matter that falls  
43 back to submission ultimately.

44

45 THE COMMISSIONER: Are you suggesting to Father Lucas that  
46 he was mandated to report something, that mandatory  
47 reporting applied to priests, about historical sexual

1 assault in 1990-something?

2

3 MR COHEN: In the circumstances that McAlinden had made  
4 admissions about his propensity to offend against children,  
5 my question was going to be, is that not something that was  
6 properly to be reported?

7

8 THE COMMISSIONER: I think you will find that it wasn't,  
9 Mr Cohen.

10

11 MR COHEN: By the head of mission, which I understood to  
12 be the bishop - the relevant designated person.

13

14 THE COMMISSIONER: You could ask Father Lucas.

15

16 MR COHEN: Q. Do you have the gist of that question,  
17 Father Lucas?

18 A. Yes. This is my understanding now, that the question  
19 of head of mission, which I understand is connected with  
20 the Ombudsman Act - the Ombudsman Act didn't come in, as  
21 I understand it, until after the Wood Royal Commission in  
22 the late 1990s.

23

24 MR COHEN: Very well. Thank you, Commissioner.

25

26 THE COMMISSIONER: Ms Lonergan?

27

28 **<EXAMINATION BY MS LONERGAN:**

29

30 MS LONERGAN: Q. Father, you've given evidence to the  
31 effect that things have improved in terms of reporting  
32 child sexual assault matters to the police?

33

34 A. Yes.

35

36 Q. And structures have been set up to facilitate that,  
37 including blind reporting?

38

39 A. Yes.

40

41 Q. Father, did you blind report what you knew about  
42 McAlinden's offending from your discussions with various  
43 people in 1993?

44

45 A. No, in 1993 the blind --

46

47 Q. I'm sorry, I asked that badly. Can I try that again.  
48 Once these new structures were put in place, the blind  
49 reporting - that was about 1996, was it, or later?

50

51 A. That's my understanding.

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Q. At the time the new structures were put in place that set up this blind reporting, did you then report what you had found out back in 1993 to the police using blind reporting?

A. No, I had no access to or involvement in blind reporting. That was a matter between the various bishops and the Professional Standards Office.

MS LONERGAN: Thank you. No further questions.

THE COMMISSIONER: Thank you, Ms Lonergan.

MR SKINNER: Might my client be excused, Commissioner?

THE COMMISSIONER: I'm just going to ask Ms Lonergan.

MS LONERGAN: Commissioner, those instructing me wish to discuss some matters over the morning tea adjournment, so we will have to postpone him being excused until after the morning tea adjournment.

THE COMMISSIONER: I'm very sorry, Father Lucas, I cannot excuse you at this stage.

#### **SHORT ADJOURNMENT**

MS LONERGAN: Q. Father, before the morning tea adjournment I asked you a question whether you had completed any blind reporting yourself in 1996 or later when the new system commenced.

A. Yes.

Q. Did you take any steps in 1996 or subsequently to ensure that the bishop of Maitland-Newcastle had the information that you had regarding McAlinden to assist him to blind report?

A. No, I was never asked that question.

Q. You were never asked the question, so can we take it you never did that?

A. That's correct.

Q. You adopted a deliberate policy to not take notes of your interviews with priests who were accused of child sexual assault, didn't you?

A. When you say a deliberate policy, that was the

1 practice, for the reasons I've explained. My understanding  
2 was that to take notes would have led to a situation where  
3 those priests would not say anything and the outcome we  
4 were looking for would not have been achieved.

5  
6 Q. And you have made that evidence very clear, father,  
7 but it was your practice to not take notes, wasn't it?

8 A. That's correct.

9  
10 Q. And your decision not to take notes, not anyone  
11 else's?

12 A. No, no, I put it in the context of wide discussion  
13 with, including lawyers. It was something that was well  
14 known and understood by a broader range of people.

15  
16 Q. But it was your discussion with these priests and it  
17 was your decision to take notes or otherwise in those  
18 individual cases where you met with the particular priest?

19 A. That was with respect to my notetaking, yes.

20  
21 Q. I'm only talking about your notetaking. It's contrary  
22 to your understanding of standard practice as a lawyer to  
23 fail to take notes of important matters, isn't it?

24 A. No, with respect, I don't accept that.

25  
26 Q. You were happy to proceed, in relation to important  
27 matters, when you were practising as a lawyer, to do so  
28 without taking any notes of any kind?

29 A. No, no, sorry, in the context of when I was practising  
30 law, I took notes of what I needed to take notes about.

31  
32 Q. Yes, and it's standard practice to do so as a lawyer,  
33 isn't it?

34 A. Depending on the circumstances, yes.

35  
36 Q. In your legal training and practice, there was  
37 emphasis on the importance of documenting significant  
38 matters, wasn't there?

39 A. In the practise of law, most of it was done when I was  
40 practising law - which was before fax and before email - by  
41 way of letter.

42  
43 Q. And to make a letter, you have to make notes or some  
44 sort of imprint on the page with words, don't you?

45 A. Well, depending on the circumstances of what one is  
46 doing, I didn't write down, every day, as a lawyer every  
47 word I ever spoke to every person, obviously.

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Q. Absolutely, and I'm not suggesting you should but significant matters would warrant a note, wouldn't they?

A. What I would do would be to dictate a file note where a file note was appropriate.

Q. On any analysis your conversations with priests accused of sexually abusing children, were significant matters, weren't they, significant conversations?

A. But I was not then a lawyer.

Q. I'm not suggesting that you were acting as a lawyer in those conversations. I'm putting to you a very simple proposition, that your conversations with those priests about them having been accused of sexually abusing children - I'm confining it to that group of priests - were significant, weren't they, a significant matter, a significant conversation?

A. They were.

Q. And your recollection in giving evidence here over the last couple of days has been assisted regarding historical matters by review of various documents that were in the bundles to your right?

A. That's correct.

Q. And your failure to take notes of these meetings with priests, one of whom was McAlinden, means that you can assert a position that you can't recall your interview with McAlinden in particular, because you have no notes to assist you?

A. With respect, I don't think that proposition is fair. The reason that notes were not taken I have explained in some detail. It was certainly never my understanding in 1993 that 20 years later I would be in a commission of inquiry being asked to recall things where a note may have assisted. I had never in my mind that there would be a need to take a note of a conversation in circumstances with McAlinden for some subsequent purpose some 20 years later.

Q. I suggest to you that the decision not to take notes in those special interviews with priests, one of whom was McAlinden, was a deliberate and calculated position?

A. For the reasons I've explained --

MR SKINNER: I object. Deliberate and calculated has

1 a certain pejorative overtone to it, in my submission.

2

3 THE COMMISSIONER: Yes, Mr Skinner. A deliberate  
4 decision - would you be content with that?

5

6 MS LONERGAN: Yes.

7

8 THE WITNESS: That is correct.

9

10 MS LONERGAN: Q. Now that you are here giving evidence  
11 about these matters some years after they occurred, you  
12 don't have the assistance of any note to prompt your  
13 recollection, do you, in relation to McAlinden?

14 A. That is correct.

15

16 Q. You have acknowledged that a note of an admission by  
17 a priest accused of sexually abusing a child or children  
18 would be of assistance to a police investigation, if there  
19 were such a note?

20 A. But if there was notetaking, there would be no  
21 admission.

22

23 Q. Father, I put to you a very simple proposition, and it  
24 relates to the evidence you've given before this  
25 Commission: you have acknowledged that a note of an  
26 admission by a priest to sexually abusing a child or  
27 children would be of assistance to a police investigation;  
28 do you agree with me that you accepted that proposition in  
29 your evidence earlier or not?

30 A. I'd have to look at the precise words, which I don't  
31 need to do as a broad general proposition, but within the  
32 context that if in fact there had been such an admission  
33 and there had been a note, that would have been helpful.  
34 But if there was notetaking, there would not have been an  
35 admission, hence there would not have been a note and --

36

37 Q. Yes, you have given that explanation and your analysis  
38 a number of times now. I'm really asking you just to  
39 accept a simple proposition in terms of evidence you have  
40 already given, and that is an acceptance that if there was  
41 a note of that nature, it would assist a police  
42 investigation, and that was your evidence, wasn't it?

43 A. I'd accept that in general terms.

44

45 Q. I suggest that such a note would also have assisted  
46 the bishop or any subsequent bishops to understand the  
47 situation with that particular priest of the diocese?

1 A. Not if in lieu of a note there was a verbal report to  
2 him.

3

4 Q. I beg your pardon?

5 A. I said not if there was a contemporaneous verbal  
6 report to him.

7

8 Q. But you see, that would only deal with the bishop at  
9 the time, wouldn't it, if you only gave a contemporaneous  
10 verbal report; it would not assist with any subsequent  
11 bishop becoming aware, would it?

12 A. I would have expected that any bishop would have  
13 provided some information to a subsequent bishop, such as  
14 may be relevant.

15

16 Q. The specificity that would be contained in a note  
17 prepared by you, as the person who took the admission,  
18 would be of more assistance than a recollection of the  
19 bishop who wasn't present when you took the admission;  
20 would you agree or not?

21 A. Yes, this hypothetical note, if it could have been  
22 obtained, knowing that there wouldn't have been an  
23 admission if there had been notetaking, would have been  
24 helpful.

25

26 Q. You don't know there would not have been an admission,  
27 father. We've already been over that, haven't we?

28 A. We've been over that. I can be very confident, having  
29 dealt with a number of these priests, that the way in which  
30 the conversation proceeded, which was of a pastoral and -  
31 a pastoral conversation rather than in the context of  
32 taking out a notepad and saying, "Tell me this, that or the  
33 other and I'm going to write it down", the type of  
34 conversation and the context of it was only based on being  
35 able to gain some sense of relationship with him that he  
36 would even say anything.

37

38 Q. Father, you have already acknowledged in your evidence  
39 that you never tried it, so you don't know?

40 A. Well, I can't say that I never tried it. There may  
41 have been some instance --

42

43 Q. Father, that has been your evidence.

44

45 MR SKINNER: Commissioner, I object on relevance. What is  
46 the relevance of reciting here with imprecision, as is  
47 necessarily the case, what his evidence already is. It has

1 carefully been written down and can be submitted upon.

2

3 MS LONERGAN: Because the father appears to be  
4 prevaricating or recanting some of the evidence he has  
5 already given. I am nearly finished, Mr Skinner.

6

7 Q. If I can be permitted to just finish where I'm going,  
8 Father Lucas. I don't mean any discourtesy to you.

9 A. I understand and I don't wish to prevaricate. I gave  
10 my evidence as best as I could and in terms of my general  
11 practice, there was no notetaking. If you're putting to me  
12 the proposition that I never, ever, on any occasion, ever  
13 tried it, my practice would say I didn't. If you are  
14 asking me - and I'm on my oath and I want to be as helpful  
15 as I can be - I cannot absolutely be certain that there may  
16 not have been some occasion when, for some reason, it was  
17 appropriate to take a note of what some priest said to me.  
18 But my general practice was, in the nature of these  
19 conversations with priests, my clear understanding of the  
20 strategy was that if there was to be notetaking --

21

22 Q. I'm going to stop you, father, because this is just  
23 a restatement of evidence you've already given, isn't it,  
24 on that point?

25 A. That was I thought the question you asked me.

26

27 Q. I put a number of propositions to you yesterday  
28 regarding McAlinden that would have made him stand out;  
29 would you agree with me?

30 A. Yes.

31

32 Q. The Irish accent, the fact that he had been accused of  
33 sexually abusing a child in Western Australia, was  
34 arrested, tried and got off?

35 A. Yes.

36

37 Q. Do you recall me putting that proposition to you and  
38 a number of other propositions to you?

39 A. Yes.

40

41 Q. I suggest one of the propositions was that one his  
42 victims, who you had spoken to, was in a particularly close  
43 relationship with him?

44 A. Yes.

45

46 Q. Yet it's your evidence that you have no recollection  
47 of your meeting with McAlinden?



1 A. There obviously was a meeting. I've never resiled  
2 from the fact that there is a meeting. And I've done my  
3 very best, I did my very best with the police, I've done my  
4 very best in other circumstances where you've asked me  
5 those questions, and I've done my very best here. And I'm  
6 on my oath, and my recollection does not allow me to put in  
7 my mind's eye his facial appearance, where the meeting took  
8 place, what his accent was, what he said to me, what I said  
9 to him, how long the interview took place. I am sorry,  
10 I've done my very best but I cannot go to that level of  
11 detail.

12  
13 Q. You say that these special meetings you have can go as  
14 long as five hours or even longer, so over a number  
15 of days; is that the position?

16 A. The general position would be that you wouldn't go  
17 beyond a couple of hours in one session. Sometimes one  
18 session was sufficient. In the specific case we spoke  
19 about with [NP2] --

20  
21 Q. I'm going to stop you. We don't want to go off --

22 A. I'm giving that as an example of --

23  
24 Q. There's no need. You've given evidence on that  
25 particular matter. I'm asking you just a general question  
26 that, on occasion, they can go over more than one meeting;  
27 is that the position?

28 A. That was rare, but that could happen.

29  
30 Q. And it happened with one person, who you've already  
31 given evidence about?

32 A. I didn't recall, when I was asked questions about that  
33 in another context, that there had in fact been subsequent  
34 meetings. I had a recollection - which I obviously  
35 concertinaed into one recollection. But other  
36 documentation revealed that there were in fact three  
37 meetings.

38  
39 Q. Was it the position that if a particular priest was  
40 a hard nut to crack, that suggests that the meeting was on  
41 the longer rather than the shorter side?

42 A. Most likely.

43  
44 Q. I suggest to you that your evidence to the effect that  
45 you cannot recollect your meeting with McAlinden and the  
46 contents of it or any contents of it at all defies belief.

47 A. I find that a very hurtful proposition. I'm very

1 sorry, that is a very hurtful proposition.

2

3 MS LONERGAN: Those are my questions, Commissioner.

4

5 THE COMMISSIONER: Thank you, Ms Lonergan.

6

7 MR SKINNER: Might my client be excused?

8

9 THE COMMISSIONER: Yes, thank you, Mr Skinner.

10

11 Many thanks for your evidence, Father Lucas. You are  
12 excused.

13

14 <THE WITNESS WITHDREW

15

16 MS LONERGAN: Commissioner, I have been instructed to note  
17 for the record that Father Lucas is excused for the  
18 purposes of today and there may be a need to recall him at  
19 a later point.

20

21 THE COMMISSIONER: Thank you, Ms Lonergan.

22

23 MR HUNT: I call [BJ].

24

25 MR LEWIS: Commissioner, I seek your authorisation to  
26 represent this witness.

27

28 THE COMMISSIONER: Certainly, Mr Lewis. Thank you very  
29 much.

30

31 <[BJ], sworn: [12.27pm]

32

33 MR LEWIS: Commissioner, it is probably not necessary, but  
34 I seek a declaration under section 23.

35

36 THE COMMISSIONER: Yes, all right. Thank you very much,  
37 Mr Lewis.

38

39 <EXAMINATION BY MR HUNT:

40

41 MR HUNT: Q. Your name is [BJ]?

42 A. That's right.

43

44 Q. For the purposes of publication in relation to your  
45 evidence at this Commission, you have been allocated the  
46 pseudonym [BJ]?

47 A. Yes.

1  
2  
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47

Q. You are the mother among four sons of [AH]?

A. That's right.

Q. Until you went your separate ways, you were married to [BI] who is the father of those four sons?

A. Correct.

Q. Would you start by telling the Commissioner the pattern of your life as a parishioner during, say, up until the year 2000, the kinds of things that you did in church life?

A. As a parishioner in the Dungog parish, which is the time you're talking about, I think, we played an active role in the church, in church life.

Q. Would you talk to the Commissioner about some of the voluntary and perhaps official roles that you took on as a parishioner during that period?

A. Yes. I cleaned the church. I was a reader at mass. I convened and ran liturgical groups for Lent and Advent for a period of about 20 years. I became a special minister, which meant I was able to give communion at mass and visit sick and elderly parishioners and take communion to them when they were unable to get to our little mass centre. I taught at the local Catholic school, or the parish school at Dungog a couple of days a week, attended parish celebrations, attended funerals. I shared the joys of the Catholic community and I shared the tragedies as well, as you do.

MR HUNT: Can I indicate, Commissioner, that the current witness would be able to give evidence about a lot of things that are to do with [AH]'s disclosure and his journey towards getting involved in first disclosing to his family and then becoming involved in the police investigation. It is not intended to call that evidence from the witness. I'm just going to go to three particular topics with her.

THE COMMISSIONER: Thank you, Mr Hunt.

MR HUNT: Q. There was a time when [AH] was living with his partner at Nelson Bay?

A. Yes.

Q. I'm directing your attention to a time that you were

1 at a parish meeting at Dungog and you had some telephone  
2 communications variously with [BI] and with Father Robert  
3 Searle?

4 A. That's true.

5

6 Q. To the best of your recollection, could you tell the  
7 Commissioner what those conversations involved?

8 A. I was the chairperson of Dungog parish council and  
9 I was at a meeting at the Catholic presbytery in Dungog and  
10 I had a call from my husband then, who told me that our son  
11 was in Nelson Bay very upset, and he knew this because  
12 Father Bob Searle had called him to tell him, and he said  
13 he's yelling out and he's drunk.

14

15 Q. After that conversation with [BI], did you have  
16 a telephone conversation with Father Searle?

17 A. I did.

18

19 Q. Is it the position that, thinking about it now, you  
20 can't recall whether you called him or he called you?

21 A. I knew that Father Bob Searle wanted to speak with me  
22 because my husband had said, "Father Bob wants to talk to  
23 you as well", so I don't know whether I rang him from  
24 Dungog or he rang me, but he knew where I was.

25

26 Q. Is it a fair proposition that you remember the gist of  
27 the conversation and words to the effect, but you don't  
28 want to be bound to an exact form of words?

29 A. That's right.

30

31 Q. Doing your best, could you tell the Commissioner what  
32 was said between you and Father Searle in that phone  
33 conversation?

34 A. Yes, Father Searle said, "You know, don't you, that  
35 [AH]" - my son - "is over here and he's drunk and very  
36 upset." I said, "Yes. I'm aware of that. Can you try and  
37 talk to him?" He said, "No, he's angry." Then he said to  
38 me, "[BJ], he's saying really weird stuff about priests and  
39 sex", and I had no idea why he'd be saying that.

40

41 Q. Did you ask Father Searle to do anything, having heard  
42 that?

43 A. I did. I said, "I can't get to you. I'm an hour and  
44 a half away. I suggest you ring the police and let them  
45 handle it."

46

47 Q. Doing your best now, thinking about the time that you

1 had that position on the parish council, the time [AH] and  
2 his partner and her young children, I think, were living in  
3 Nelson Bay and events that were yet to unfold in his life  
4 and yours, what's your best estimate of when that  
5 conversation happened?

6 A. It would have to be early 1998 or late 1997. Possibly  
7 early 1998.

8  
9 Q. I want to move forward in time. I think as a result  
10 of things that [AH] eventually told you, and then others,  
11 you understood that he commenced to have contact with then  
12 Detective Sergeant Fox?

13 A. That's true.

14  
15 Q. I want to show you a document. I anticipate tendering  
16 it. It has been the subject of some questions and I will  
17 provide a copy before the tender. Is the document that  
18 I am showing you a document that you prepared in your  
19 handwriting?

20 A. Yes.

21  
22 Q. I'm going to come to the circumstances in a minute,  
23 but looking at the second page, the page overleaf, do you  
24 see the initials [BJ] have been inserted at the bottom  
25 there?

26 A. Yes.

27  
28 Q. Did that once have your name on it?

29 A. Yes, it did.

30  
31 Q. There's a date of 8/6/02. Is that the date the note  
32 was taken?

33 A. Yes.

34  
35 Q. Looking at the top of the first page, where it says:

36  
37 *Telephone conversation with Bishop Michael*  
38 *Malone - approx 6.15pm on 5th June 2002.*

39  
40 Is that when the conversation happened that you have noted  
41 there?

42 A. That's the conversation.

43  
44 Q. Were you doing your best to record the conversation  
45 accurately when you did it three days later?

46 A. Yes.

47

1 Q. Can you remember why you took a note or what  
2 circumstances led to you taking a note of the conversation?  
3 A. Yes, I can. After Bishop Michael rang me and told me  
4 what he'd done, I stewed about it the next day, and then  
5 I thought I should try and contact Detective Fox to tell  
6 him that the priest was now aware that my son had gone to  
7 the police.

8

9 Q. In summary, when you're saying when Bishop Michael  
10 told you what he's done, that's in reference to him having  
11 travelled to speak to Fletcher?

12 A. Travelled to Branxton to see Fletcher.

13

14 Q. Did you then contact Detective Sergeant Fox?

15 A. No, I spoke to three different police people at  
16 Maitland police station. They passed me from one to the  
17 other. I said I wanted - I really wanted to speak with him  
18 and give him the information that the bishop had been to  
19 Branxton, and he was either on leave or holidays, and  
20 I said how important I thought it was, and so he rang me on  
21 the Saturday morning, which would be the 8th, and I told  
22 him what I had to tell him.

23

24 Q. Do you tell the Commissioner that a conversation  
25 broadly as recorded in this file note happened between you  
26 and Bishop Michael Malone on 5 June 2002?

27 A. That's right.

28

29 MR HUNT: I tender the file note.

30

31 THE COMMISSIONER: The witness's file note of 8 June 2002  
32 will be admitted and marked exhibit 159.

33

34 **EXHIBIT #159 FILE NOTE PREPARED BY [BJ], DATED 08/06/2002**

35

36 MR HUNT: Q. Can I ask you this. At the end of that,  
37 where there's a notation that Bishop Michael had  
38 a discussion with you about counselling and the like, was  
39 that something that you ever took up with him?

40 A. I certainly did. And I did appreciate it.

41

42 Q. I want to come to some of your impressions and  
43 perceptions about how life changed for you in terms of your  
44 relationships and activities with the church. I'll just  
45 show you this. It is not proposed to tender this. I'm  
46 just going to have it marked for identification. Is it the  
47 position that you wrote a book entitled Holy Hell that set

1 out your subjective experiences involved with what your son  
2 went through and the processes involved?

3 A. Yes, I did.

4

5 Q. The markings are irrelevant for the purpose of the  
6 marking for identification. Is that a copy of that book?

7 A. That is.

8

9 MR HUNT: I just seek that it be marked for  
10 identification.

11

12 THE COMMISSIONER: Yes, the witness's book Holy Hell will  
13 be marked MFI-11.

14

15 **MFI #11 BOOK ENTITLED HOLY HELL WRITTEN BY [BJ]**

16

17 MR HUNT: Q. I just want to take you to a couple of  
18 documents that are not your documents so you can have  
19 regard to them when I ask you about this third topic.

20 A. All right. Thank you.

21

22 Q. Would you look at volume 5 of the tender bundle that's  
23 in front of you. Could you turn up a document that is  
24 behind tab 403.

25

26 I should be patent. It will be obvious, because of  
27 the way I'm asking [BJ] questions that, within the  
28 courtroom I'm attributing her identity because most who  
29 know who she is, but it is proposed to make  
30 a non-publication order in relation to her name, and  
31 I think those reporting this would have in mind that and  
32 any other identifying material.

33

34 THE COMMISSIONER: Yes, I see.

35

36 MR HUNT: I'm foreshadowing that that is the approach and  
37 I anticipate that you will be making an order. It's just  
38 convenient to make the order at the end.

39

40 THE COMMISSIONER: Very well.

41

42 MR HUNT: If people were reporting by way of something  
43 that I understand be called the Twitter-verse, they ought  
44 to have in mind that that is an application that I think  
45 you will grant.

46

47 THE COMMISSIONER: Of course. The witness's name must

1 only be reported as [BJ].

2

3 MR HUNT: Q. [BJ], do you have tab 403 there? Do you  
4 see that's a note in the handwriting of, as we understand  
5 it, Bishop Michael Malone?

6 A. Yes.

7

8 Q. Do you see there is a reference to "support to the  
9 complainant" and "the complainant's family" being referred  
10 to there, and an indication that then Detective Sergeant  
11 Fox would pass on offers in relation to that. Is that  
12 something that you have a recollection of?

13 A. No recollection.

14

15 Q. Could you also look at tab 407, which is of the  
16 character of a pastoral message. Do you have that open?

17 A. Yes.

18

19 Q. Did you see that pastoral message at the time that it  
20 was published in the diocese?

21 A. Yes, I think I've seen it before.

22

23 Q. The question that I'm asking you at the moment is -  
24 I accept that you might have seen it in the course of these  
25 proceedings or otherwise - do you remember whether you saw  
26 a copy of that document when it was published?

27 A. I'm pretty sure somebody gave it to me back then.

28

29 Q. So you were aware that there was a reference to the  
30 bishop saying, "I am concerned for the complainant and that  
31 person's personal struggle in coming forward, I am  
32 concerned about that person's family and friends". Do you  
33 know whether that was material that either from your  
34 knowledge [AH] knew or that you drew to his attention at  
35 the relevant time?

36 A. I don't think I showed it to him. I don't know  
37 whether he was aware of it in any other - from any other  
38 source, but I probably didn't show it to him.

39

40 Q. I think the position is in terms of the things that  
41 you're about to give some evidence about, you hold in mind  
42 your engagement for counselling and the gratitude that  
43 you've expressed for that?

44 A. Yes.

45

46 Q. And you accept that there was some conversation  
47 between Bishop Malone and Detective Sergeant Fox about



1 concerns for the family, even if you didn't come to know  
2 about that yourself?

3 A. Mmm-hmm.

4  
5 Q. You started to notice, after [AH]'s first disclosures,  
6 a change in your relationships with some of the parish  
7 arrangements that you had been involved in?

8 A. Mmm.

9  
10 Q. What did you notice?

11 A. I think from early 2001, I certainly noticed that  
12 Fletcher himself ceased all contact with us, and I say "us"  
13 because I know that's the whole family, because I've asked  
14 and we knew at the time.

15  
16 Q. So you're talking about your nuclear family, your  
17 husband and your children?

18 A. Nuclear family, husband and four sons. And then there  
19 was a change in the relationship that I had with my parish.

20  
21 Q. How did that manifest? Did that manifest in practical  
22 ways in terms of appointments and things like that?

23 A. Well, it eventually did, but it wasn't overt. It was  
24 subtle. There was a cooling of greetings, interchange  
25 between - you know, out shopping, normally you'd greet  
26 people and have a conversation. Suddenly people were in  
27 a hurry or disappeared out of the supermarket aisle. We  
28 felt - I felt estranged.

29  
30 Q. Were there some changes in term of your memberships of  
31 particular organisations within the parish starting around  
32 that time or later?

33 A. That was a bit later. Probably up as far as early  
34 2003, I had continued in the cleaning roster and reading at  
35 mass roster and --

36  
37 Q. What changes did you note in early 2003?

38 A. I wasn't on the roster. I went to the church to pick  
39 up my share of the roster, to find out, so I could mark on  
40 the calendar when I was due to be reading, et cetera, and  
41 I'd been left off.

42  
43 Q. Did you have any overt explanation for that?

44 A. None at all. I did ring the presbytery and said, "Are  
45 we having a Lenten group this year? I'm happy to have it."  
46 That was probably in the lead-up to March or whenever  
47 Easter was that year. And nobody rang back. I think I got

1 the message.

2

3 Q. Moving forward, in terms of whether the trial process  
4 or before, is it a fair summary that you had some  
5 interactions with people that you suspect were motivated by  
6 things connected with [AH] and Fletcher and the trial  
7 process, but you can't be sure?

8 A. That's true.

9

10 Q. And then there's some that because of the  
11 circumstances, you feel comfortable, that there is  
12 a relationship?

13 A. Yes.

14

15 Q. Limiting yourself to the ones that you feel  
16 comfortable that there's a relationship with the actions,  
17 could you tell the Commissioner about those?

18 A. After Fletcher was arrested, I had anonymous phone  
19 calls. I had --

20

21 Q. What kinds of things were said in those calls?

22 A. Nothing. Just they were hang-up ones.

23

24 Q. Was that something that had ever happened in your life  
25 before?

26 A. Never, ever. I was shopping in Raymond Terrace, and  
27 a man and his wife met me. We knew them quite well, but he  
28 said something about, "Your son has caused a lot of  
29 trouble", and I went to speak and he rammed his supermarket  
30 trolley into my leg and rushed off. His wife followed him,  
31 and came back and she said to me, "Oh, [BJ], you've got to  
32 understand he's very upset about Father Jim." And I said,  
33 "He's upset?" What do you do?

34

35 Q. So in that situation, it was because of the  
36 conversation that you feel comfortable in attributing that  
37 action to --

38 A. I'm very comfortable that he was upset about what was  
39 happening to his priest.

40

41 Q. Were there either things that did happen or didn't  
42 happen once Fletcher's trial was being held that you see as  
43 part of things that you didn't welcome in terms of the  
44 church community's response to what had happened?

45 A. What didn't happen was any approach from any clergy  
46 whatsoever to support us through the trial, to come and  
47 pray for us, because they were certainly praying for

1 Fletcher and visiting him through the trial.

2

3 Q. I don't want you to go into identities.

4 A. Yes.

5

6 Q. But you came to know, during the trial process, that  
7 there was another family of parishioners that had direct  
8 involvement in the trial?

9 A. That's true.

10

11 Q. From your direct observations rather than what they  
12 told you, did you make any observations about actions or  
13 omissions towards that family in the trial process? And  
14 what I'm talking about is pastoral support and the like.

15 A. No. The other family who were involved in the trial  
16 had similar experiences that we had through no support.

17

18 Q. Did something happen by way of, rather than an  
19 omission, an action during the trial?

20 A. Yes.

21

22 Q. Tell the Commissioner about that.

23 A. I think I can. I went to the toilet through the  
24 trial, and a lady who had been a supporter of Fletcher's,  
25 because I'd seen her there, somewhere in the court complex,  
26 and she was supporting him - she washed her hands and then  
27 just gave me a push and knocked me into the waterpipe above  
28 the basin in the female toilets at East Maitland courthouse  
29 and whirled out of the room. I was very stunned but I came  
30 out of the room and told the people that she'd just  
31 assaulted me. I don't know why she'd do that. I'm the  
32 mother. I decided not to - I mean, it was assault, but  
33 I wasn't going to - my son was going through an  
34 extraordinary amount of stress, talking about his real  
35 assault and real abuse. I just put it to one side.  
36 I wasn't going to - I didn't want to do anything about it.

37

38 Q. What do you say to the Commissioner is your own view  
39 or experience as to how those kinds of actions impact the  
40 willingness or ability of a family to do the kinds of  
41 things that [AH] and his family had to do to move the  
42 matter through the criminal justice process?

43 A. Do you mind repeating that, please?

44

45 Q. I want you, in your own words, to say what you think  
46 either the effect was on your family or another family in  
47 your situation, trying to determine whether to use the

1 criminal justice process in terms of an allegation against  
2 a clergy member, how those actions would affect a family in  
3 making those kinds of decisions.

4 A. It became clear that it would have been easier for my  
5 son not to do anything. It was long and hard, and we had  
6 a lot of resistance and we had a lot of ostracisation, and  
7 the easiest thing would have been to just let it go. But  
8 he, and then us, chose not to do that.

9

10 Q. You were here on Tuesday of this week when your son,  
11 slightly departing the script, read his statutory  
12 declaration?

13 A. Well, that's him. Yes.

14

15 Q. And I think you were proud of him?

16 A. I'm extremely proud of [AH].

17

18 MR HUNT: That's the evidence-in-chief.

19

20 THE COMMISSIONER: Thank you very much, Mr Hunt.

21

22 <EXAMINATION BY MR COHEN:

23

24 MR COHEN: Q. Madam [BJ], may I apologise in advance,  
25 I don't intend to make this any more difficult than it is,  
26 but there are a number of things that I need to put to you.  
27 I apologise if this is a matter that causes you distress,  
28 but it's intended to assist the interests of justice and  
29 the Commission, so if you could accept that, I would be  
30 grateful.

31 A. Thank you, Mr Cohen.

32

33 Q. You gave some evidence just a little while ago in  
34 answer to the questions from my learned friend Mr Hunt  
35 about the discussion with Father Searle. Doing the best  
36 I could - I apologise, I don't have the transcript -  
37 I recorded your discussion with Father Searle that he said  
38 to you - I believe you said, "Can you talk to him? He is  
39 saying some really weird stuff." Do you recall that? Did  
40 Father Searle go into what he meant by "weird stuff"?

41 A. Weird stuff about priests and sex.

42

43 Q. Did he identify any conversations he may have had?

44 A. No, and I didn't ask him.

45

46 Q. Did he identify how long he was observing this process  
47 go on?

1 A. No, no, he didn't.  
2  
3 Q. Did he say how recently before the call it had  
4 occurred?  
5 A. Well, my son was still there doing it while I spoke to  
6 him, and he'd rung his father earlier and he'd been a while  
7 there when he rang him, so I presume it was a time; it  
8 wasn't a two-minute thing.  
9  
10 Q. Having regard to the time between the conversation  
11 when you first spoke to your former husband [BI] and the  
12 conversation with Father Searle, that interval, doing the  
13 best you can, what would you estimate that to have been?  
14 Between first speaking to your former husband and then  
15 speaking with Father Searle, what rough interval, do you  
16 recall, if you can assess it, elapsed between those two  
17 periods?  
18 A. Twenty minutes.  
19  
20 Q. Your evidence is that during that course [AH] was  
21 consistently and continuously --  
22 A. Yes, he was still there when I was talking to  
23 Father Searle.  
24  
25 Q. You understood that because Father Searle communicated  
26 that to you at the time of the conversation between you and  
27 him?  
28 A. He said, "He's still here", and that's why I said to  
29 him, "Ring the police."  
30  
31 Q. Did Father Searle indicate whether or not he'd been  
32 outside of the presbytery at the time of this event to  
33 investigate what had in fact occurred?  
34 A. No, he said he was outside.  
35  
36 Q. He said your son, [AH], was outside?  
37 A. Yes.  
38  
39 Q. My question, though, is did Father Searle indicate to  
40 you at any time in the discussion that you had with him  
41 that he, Father Searle, had been outside to investigate  
42 what was happening or identify in any way how he'd come to  
43 understand this?  
44 A. Not that I can recall.  
45  
46 Q. But he indicated, did he, that it was loud enough to  
47 be heard and not to be missed; is that the point?

1 A. Yes, yes.  
2  
3 Q. You also gave some evidence about what your experience  
4 of ostracism and the like was in response to questions from  
5 Mr Hunt. You also referred to discussions on I think more  
6 than one occasion with Detective Chief Inspector Fox, as he  
7 then was Detective Sergeant Fox; is that so?  
8 A. Yes.  
9  
10 Q. In respect of the ostracism as you have identified -  
11 I'm using that label, your word - did you identify this  
12 phenomenon to then Detective Sergeant Fox?  
13 A. I'm sure I did.  
14  
15 Q. Do you recall how you went about doing that, and was  
16 it by phone call, did you go into the station, police  
17 station?  
18 A. There were phone calls from Detective Fox over the  
19 period of the investigation. Because my son wasn't  
20 travelling so well emotionally and - well, that about  
21 covers it - we made a bit of a plan that he would ring me  
22 first to see how my son was travelling before the next - if  
23 there were any developments, before he rang him, just to  
24 check that he was in an okay place, that he was home and he  
25 was --  
26  
27 Q. Receptive to the approach; is that what you mean?  
28 A. Yes. Because he lived very close to - right next door  
29 to the school that I was teaching at, I had a fair handle  
30 on how he was travelling. So he'd check first and then  
31 he'd do what he had to do. In those conversations,  
32 I conveyed to him that things weren't going so well for the  
33 whole of the family.  
34  
35 Q. That is to say, this phenomenon of ostracism?  
36 A. That's right.  
37  
38 Q. Subtle, then more overt with physical --  
39 A. Much more overt as time got on.  
40  
41 Q. Again using your best recollection, and I know it's  
42 difficult in the witness box because this is some nine or  
43 ten years ago, what was the period of time that this  
44 process, as it were, escalated?  
45 A. I think it began early in 2001, and then it just  
46 escalated up until the trial.  
47

1 Q. In 2004?  
2 A. In 2004, and even when the trial was over, it  
3 continued. And today there are pockets of people who are  
4 still character assassinating our family.  
5  
6 Q. You've identified the commencement of the period in  
7 2001. Is there a particular incident or episode? And I'm  
8 sorry if this is painful. I do apologise.  
9 A. No, but that was --  
10  
11 Q. An event that you --  
12 A. I was fairly recently separated, from two months  
13 before, so I can remember that year as being particularly  
14 difficult.  
15  
16 Q. You say that was the commencement of this process of  
17 subtle ostracism?  
18 A. I wondered why the priest hadn't contacted us, for  
19 a start, why our good family friend, who had spent a lot of  
20 time with us, who had organised our papal blessing for  
21 being married 25 years - why there was nothing from him.  
22  
23 Q. Is that a priest whose name you can mention?  
24 A. James Fletcher.  
25  
26 Q. Moving through the period, you've indicated from 2001  
27 this became - I think your word was progressive or  
28 increasing; is that right?  
29 A. It did increase.  
30  
31 Q. When did you notice it increasing? Again, I'm sorry  
32 if this is painful.  
33 A. Probably after June 2002.  
34  
35 Q. From the time of the first approach to Detective  
36 Sergeant Fox, as he then was?  
37 A. Yes, and after Fletcher became aware that there was an  
38 investigation.  
39  
40 Q. So this is around about 4 or so of June 2002, is it?  
41 A. 5 June was when he was told that my son had gone to  
42 the police.  
43  
44 Q. And that's also the day that you had the discussion  
45 with Bishop Malone, as recorded in your file note; is that  
46 right?  
47 A. Well, I don't know whether he went up that afternoon

1 or the day before, but he rang me on 5 June and told me  
2 he'd been up.

3

4 Q. In this chronology of events, this was the next  
5 escalation, was it, of this?

6 A. Absolutely.

7

8 Q. How noticeable was the escalation?

9 A. I think I'd say I started to wear sunglasses a lot,  
10 and that's - I'm just explaining that it was embarrassing  
11 to go to speak with people that I had known for 20 years,  
12 and they turned away. They suddenly weren't there.

13

14 Q. I take it this was hurtful to you?

15 A. It was extremely hurtful.

16

17 Q. Was that understood, in your impression, by the people  
18 who were doing this to you?

19

20 MR HUNT: I object to that. It's getting into the mind of  
21 somebody else, that has been the subject of so many  
22 objections.

23

24 THE COMMISSIONER: Yes.

25

26 MR COHEN: Q. My friend chides me because I have asked  
27 you an inadmissible question. I will approach it this way.  
28 Did you perceive that there was a strategy being directed  
29 against you?

30 A. I believed - I believe that they had been told about  
31 my son and --

32

33 Q. What was the basis for that belief you just  
34 identified?

35 A. Because he himself was feeling it and being identified  
36 as he went about his daily life.

37

38 Q. And communicating this to you on a daily basis?

39 A. He was finding the same sort of thing, but it must  
40 have been worse for him.

41

42 Q. This is [AH] you mean now?

43 A. [AH]. We didn't know who knew, and so when something  
44 would happen, you'd think, well, is that a normal thing or  
45 is it because they know now?

46

47 Q. Did you have any discussions to this effect with any



1 of your other sons?  
2  
3 MR HUNT: I object to that.  
4  
5 MR COHEN: I withdraw it.  
6  
7 Q. With [BI], about this phenomenon?  
8 A. Yes.  
9  
10 Q. What did he tell you?  
11 A. He said that he went about his job --  
12  
13 MR HUNT: I object to this as well.  
14  
15 THE COMMISSIONER: Because, if necessary, [BI] can give  
16 the evidence.  
17  
18 MR HUNT: Yes.  
19  
20 MR COHEN: Very well.  
21  
22 Q. You gave evidence about an event during the course of  
23 the trial of Father Fletcher in 2004 where you were  
24 assaulted in the women's toilet. I understand your  
25 evidence is that you didn't want to trouble your son, very  
26 understandably from a mother's perspective, but did you  
27 communicate those facts to anybody, for example, did you  
28 tell Detective Sergeant Fox?  
29 A. I did tell him, and he said something like, "Well,  
30 that's assault. Do you want me to do anything about that?  
31 Do you want to make" - whatever you make.  
32  
33 Q. A complaint?  
34 A. A complaint. And I said, "No, no. "How could I do  
35 that?"  
36  
37 Q. For the reasons you've identified earlier; is that  
38 right?  
39 A. My son was doing this much. I wasn't going to make  
40 a fuss about one little thing.  
41  
42 Q. Were there any other events like that, of that sort of  
43 momentous nature, that you experienced at the time of the  
44 trial?  
45 A. Oh, eggs on the house, eggs on my garage door. No,  
46 not really.  
47

1 MR COHEN: Thank you very much. Thank you, Commissioner.

2

3 THE COMMISSIONER: Thank you, Mr Cohen. Mr Gyles?

4

5 MR GYLES: I do have some questions, but could I deal with  
6 them at 2 o'clock.

7

8 THE COMMISSIONER: Yes.

9

10 MR HUNT: Could I indicate, before you adjourn,  
11 Commissioner, that the media has sought access to exhibits  
12 155 to 159 inclusive, and if any member at the Bar table  
13 has a difficulty, perhaps they could approach me  
14 straightaway, and otherwise those might be released fairly  
15 shortly.

16

17 THE COMMISSIONER: Thank you, Mr Hunt. I will adjourn  
18 until 2 o'clock.

19

20 **LUNCHEON ADJOURNMENT**

21

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1 UPON RESUMPTION

2

3 <EXAMINATION BY MR GYLES:

4

5 MR GYLES: Q. Your understanding of the events of the  
6 night in question are that [AH] turned up at the Nelson Bay  
7 presbytery?

8 A. Yes.

9

10 Q. He was drinking a bottle of beer?

11 A. Probably.

12

13 Q. He was yelling out certain things?

14 A. Yes.

15

16 Q. As a consequence of that, Father Searle got in contact  
17 with your husband?

18 A. Yes.

19

20 Q. Father Searle was known to your husband, wasn't he?

21 A. And to me, and to our family, yes.

22

23 Q. Your husband then went to the Nelson Bay presbytery?

24 A. Yes.

25

26 Q. Spoke to Father Searle? If you don't know about that,  
27 that's fine.

28 A. No, I can't recollect whether he actually had  
29 a conversation with Father Searle over at the presbytery.

30

31 Q. In any event, it's your understanding of events that  
32 Father Searle contacted your husband and he went to Nelson  
33 Bay to, among other things at least, pick up or to see what  
34 the problem was with [AH]?

35 A. To try and sort out another disaster.

36

37 Q. Is it your understanding that on the night in question  
38 he was very drunk?

39 A. Yes.

40

41 Q. Irrational, having trouble standing up?

42 A. Maybe he was having trouble standing up, but I've had  
43 some very good conversations with my son when he's very  
44 drunk.

45

46 Q. Are you aware that at a later time --

47

1 MR HUNT: I object from this point. I was careful not to  
2 lead a hearsay account from the witness and to limit her  
3 evidence to her direct knowledge of dealings with  
4 Father Searle. This must be a hearsay set of perceptions  
5 by the witness.  
6

7 MR GYLES: I'm happy to move on. I don't want to keep the  
8 witness in the witness box longer than necessary.  
9

10 THE COMMISSIONER: Thank you.  
11

12 MR GYLES: Q. As far as the conversation that you say  
13 you had with Father Searle that night, you can't be sure  
14 when it was - I think you said it was probably 1997 or  
15 1998; is that right?

16 A. Yes.  
17

18 Q. That is, about 15-odd years ago?

19 A. Can you do the maths, please?  
20

21 Q. Take it from me and assume that it is. You're not  
22 able, are you, to draw upon any note that you made on the  
23 night to assist you in your recollection of those events?

24 A. Not a written note, but I came out and told the whole  
25 parish council.  
26

27 Q. But you are not able to draw upon a diary or a note  
28 you made on the night as to that conversation; that's the  
29 case, isn't it? I'm not being critical at all.

30 A. No, I didn't write anything down.  
31

32 Q. You told Mr Hunt, when he was asking you some  
33 questions, that you couldn't recall the specific words that  
34 were used, but essentially you said to him that the extent  
35 of your recollection was that Father Searle said words to  
36 the effect of, "[AH] was yelling, weird stuff about priests  
37 and sex"?

38 A. That's right. I won't be forgetting that.  
39

40 Q. But you weren't telling Mr Hunt, were you, that you  
41 were able to recall the specifics of what was said?

42 A. We didn't discuss the specifics.  
43

44 Q. Given that we're talking about events of 15 years ago  
45 and given that you have no note at the time which enables  
46 you to refresh your memory, can I suggest to you that you  
47 might be mistaken about having spoken yourself to

1 Father Searle on that night?  
2 A. No way at all.  
3  
4 Q. Can I suggest to you that you did not speak to him on  
5 that night?  
6 A. No, that's incorrect.  
7  
8 Q. Can I suggest to you that if you did have  
9 a conversation with him that night, he did not say to you  
10 that [AH] was still there at the time of that conversation?  
11 A. No, he told me he was outside. That's why I said for  
12 him to ring the police.  
13  
14 Q. Could I suggest to you that the sequence of events was  
15 that Father Searle heard the yelling, went outside and told  
16 [AH] that if he didn't leave, then he'd call the police and  
17 ring his parents?  
18  
19 MR HUNT: I object to that one on the same basis. The  
20 witness's ability to answer that question --  
21  
22 MR GYLES: I'm happy to move on.  
23  
24 Q. Could I suggest to you that to the extent there was  
25 a conversation with you on the telephone that night, he did  
26 not say that what [AH] was saying was loud enough not to be  
27 missed; he did not use those words?  
28 A. Sorry, I missed that. Can you repeat that. Sorry,  
29 there was a cough there.  
30  
31 Q. Can I suggest to you that to the extent that there was  
32 a conversation that night, Father Searle did not use the  
33 following words, "What [AH] is saying is loud enough not to  
34 be missed"; he didn't use those words, did he? I'm  
35 suggesting to you that he didn't?  
36 A. No, he said he was saying weird stuff about priests  
37 and sex.  
38  
39 Q. Could I suggest to you that to the extent that  
40 anything was said about what [AH] was yelling, it was that  
41 he was yelling, "Nobody loves me"?  
42 A. No, he didn't say that.  
43  
44 Q. Can I suggest to you that Father Searle did not, to  
45 the extent there was any conversation, say to you that he,  
46 [AH], was yelling anything weird, or at all, about priests  
47 and sex?

1 A. No, I can't agree with that, because he did say that.

2

3 MR GYLES: Thank you. I have no further questions.

4

5 <EXAMINATION BY MR GOGARTY:

6

7 MR GOGARTY: Q. For the purposes of avoiding upsetting  
8 either you or me, I shall keep this brief. Could you tell  
9 the Commissioner, during the time in which he was at the  
10 Dungog parish, did you come to think of Father James  
11 Patrick Fletcher as a friend?

12 A. Yes, Mr Gogarty, I did.

13

14 Q. Did your personal and perhaps your family friendship  
15 continue with Father Fletcher when he moved on from the  
16 Dungog parish?

17 A. It wasn't as frequent, our contact with him, but we  
18 did travel to Branxton for some parish turnout.

19

20 Q. Did you consider that Father Fletcher as a priest,  
21 initially as your parish priest, had a special place in  
22 your life and in the life of your family?

23 A. Yes, I did.

24

25 Q. Could you describe that for the Commissioner?

26 A. I'll try. He was the parish priest, so that accorded  
27 him respect. He took an interest in our children. He  
28 celebrated mass in our home. He would be interested in the  
29 latest cricket scores. He arrived with sweets and cordial.  
30 He was a fairly generous man. He attended birthday  
31 parties - my 40th birthday party. His mother and my mother  
32 struck up some sort of a friendship, and I had them to  
33 dinner ten times. We socialised with other families with  
34 Father Jim, his special friends.

35

36 Q. Would you think that the fact that he was a priest  
37 made the friendship more special?

38 A. Oh, probably, yes. Our boys attended a government  
39 primary school and they attended a Catholic secondary  
40 school and senior secondary school, and so we encouraged  
41 any contact with the priest, as Catholic people, so they'd  
42 get to know that side of the religion.

43

44 Q. Would you agree with my proposition that in the years  
45 leading up to around 2001 and 2002, you were a devout  
46 Catholic and that yours was a devout Catholic family?

47 A. Yes, I'd agree with that.

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Q. What sorts of things do you think people would look at or point to to evidence that devotion to the church?

A. We attended mass very regularly. My four sons were altar servers. I've talked about the various roles I had in the parish. They could look at those, and that's what we did.

Q. Prior to [AH] disclosing his story to you and his father, [BI], would you have been likely to seek counsel from the Catholic Church on major moral or personal dilemmas in your life?

A. We had discussions with priests. Probably didn't follow the advice. I certainly consulted Father Jim Fletcher about my upsets, and the upsets that we had with our son as we puzzled what was happening to him. I spoke to him often, because he had had - he had had a special interest in [AH].

Q. Would it be fair to say that in a general sense when wrestling with any life issue or moral dilemma, you would fall back on your faith and on your devotion to the church in search of an answer?

A. Maybe in my 20s. I think by the time this all became evident, I personally had worked out a way to solve my problems without leaning too heavily on the church.

Q. With the Commissioner's indulgence, I would just like to say thank you both to you and to [AH] for your unbelievable strength over the last several years.

A. Thanks, Mr Gogarty.

**<EXAMINATION BY MR BARAN:**

MR BARAN: Q. I will try to be as brief as I can. I want you to understand this is not a memory test and I'm not being critical of you. All right?

A. Mmm.

Q. You had some dealings on or about wither September or November 2002 with the Professional Standards Office; does that sound about right?

A. I had, yes, a few different communications with them. I had a phone call and I wrote a letter, or they wrote to me. I thought that might have been 2003, but if you say it's 2002.

1 Q. Could I suggest this to you, that from the material  
2 I have, it appears to be one date that is postulated is  
3 September 2002; the other is 11 November 2002. If it  
4 sounds about right, say so. If you don't know, you don't  
5 know?  
6 A. I need to know what the context was.  
7  
8 Q. On 11 November 2002, you rang a Mr Davoren about [AH].  
9 Does that sound right?  
10 A. Yes.  
11  
12 Q. I'm not going to bind you to dates, but did you speak  
13 to Mr Davoren some time around about November 2002. Does  
14 it sound about right?  
15 A. If you have it there, yes, it must be.  
16  
17 Q. I'm reading from an email created by Mr Davoren. It  
18 is behind tab 373 of the document. You don't need to go  
19 to it for present purposes. It recounts the brief history  
20 of what occurred. I want to ask you some questions about  
21 that. So you gave some brief details to Mr Davoren on that  
22 particular occasion on what had happened to your son.  
23 You're nodding your head?  
24 A. Well, I feel I had more communication after the arrest  
25 of Fletcher, but I must have contacted --  
26  
27 Q. I'll come to that.  
28 A. Yes, all right.  
29  
30 Q. I'm just talking about the beginning of the process  
31 first.  
32 A. Okay.  
33  
34 Q. So you had that initial communication with Mr Davoren.  
35 Firstly, do you accept that Mr Davoren took your complaint  
36 very seriously?  
37  
38 MR LEWIS: I object, Commissioner. Once again, how can  
39 she answer that?  
40  
41 THE COMMISSIONER: It's difficult to see how --  
42  
43 MR BARAN: I will put it another way.  
44  
45 Q. Mr Davoren wasn't dismissive of what you were telling  
46 him, was he?  
47 A. What did he do about the complaint?



1  
2 Q. I'm just asking, when you first spoke with Mr Davoren,  
3 he wasn't dismissive about it, was he?  
4 A. Probably not.  
5  
6 Q. Shortly after you had the first conversation, do you  
7 recall being told either by Mr Davoren or by Detective  
8 Sergeant Fox that Mr Davoren had spoken with Detective  
9 Sergeant Fox?  
10 A. No, I can't recall that.  
11  
12 Q. And later on, in February 2003, did you call again to  
13 Mr Davoren, and by that time I think your son had gone to  
14 the police?  
15 A. If it was early 2003, yes, he had.  
16  
17 Q. So the decision had been taken by that point to go to  
18 the police, as far as you can recall?  
19 A. Yes.  
20  
21 Q. And when that had occurred, again do you recall  
22 Mr Davoren had forwarded to you a complaint form?  
23 A. Yes.  
24  
25 Q. Did you return the complaint form to him?  
26 A. I have no idea.  
27  
28 Q. Do you recall to the best of your knowledge, and I'm  
29 only asking about your knowledge, do you have any  
30 independent recollection as to whether or not your son had  
31 returned the complaint form to Mr Davoren?  
32 A. I can't even say whether I gave the complaint form to  
33 my son.  
34  
35 Q. The Professional Standards Office, so far as  
36 Mr Davoren is concerned, when he spoke to you - he offered  
37 counselling and support; is that correct?  
38 A. For my son?  
39  
40 Q. Yes.  
41 A. He may have.  
42  
43 Q. Also, a bit later on, you know, don't you, that  
44 Mr Davoren also assisted the police so far as their  
45 inquiries were concerned regarding the investigation of  
46 Fletcher?  
47 A. I don't think I know that, no.

1  
2 Q. You know that Mr Davoren expressed his sympathy with  
3 the proposal that was conveyed by Detective Sergeant Fox  
4 that Fletcher should be stood down?  
5 A. Well, he would have.  
6  
7 Q. And again in your dealings with the Professional  
8 Standards Office, they have never been uncooperative or  
9 dismissive of you, have they?  
10 A. Well, I believe they have.  
11  
12 Q. In what way?  
13 A. I made a complaint to the Professional Standards  
14 Office - no, Towards Healing. Towards Healing. And they  
15 said because I wasn't a victim, my complaint wasn't  
16 captured in their guidelines.  
17  
18 Q. That was at a time when there was a police  
19 investigation on; correct?  
20 A. Yes.  
21  
22 Q. After the police investigation had been concluded and  
23 the conviction had been secured against Fletcher, did you  
24 pick up that complaint and maintain it?  
25 A. I had a meeting with a Sister Angela Ryan and she came  
26 up to Newcastle and accompanied me to have an interview  
27 with Bishop Michael Malone.  
28  
29 Q. I understand that part of it, but in terms of the  
30 Professional Standards Office and the complaint that had  
31 been commenced by you, the complaint process, once the  
32 conviction was secured against Fletcher - did you then  
33 pursue that further and continue it with the Professional  
34 Standards Office?  
35 A. I think I was gutted by the time it all finished.  
36 I probably crawled back into my shell. Oh, I did have  
37 a conversation, I'm sorry, I've just recalled, with  
38 a Megan Brock.  
39  
40 Q. When was that?  
41 A. Somewhere in the process. After - probably after the  
42 conviction. She had been the school captain at my high  
43 school, which was St Joseph's at Merewether and she told  
44 me, "Merewether girls don't cry."  
45  
46 Q. Did Ms Brock work for the Professional Standards  
47 Office?

1 A. I think she was a St Joseph's sister and she was  
2 somehow attached to the Towards Healing program.  
3  
4 Q. But just my question, if you could just address that:  
5 to your knowledge, did Ms Brock work for Professional  
6 Standards?  
7 A. I have no idea.  
8  
9 Q. You have made an assertion to the Commission that both  
10 during and whilst the trial was taking place, and after it,  
11 there has been a campaign against you; that's right? You  
12 don't for a minute suggest that the Professional Standards  
13 Office had anything to do with that, do you?  
14 A. Not at all. I've never asserted that.  
15  
16 MR BARAN: Thank you.  
17  
18 **<EXAMINATION BY MR HARBEN:**  
19  
20 MR HARBEN: Q. Madam, you were shown a document earlier  
21 today, which you identified as a file note that you made  
22 following a conversation with Bishop Malone?  
23 A. Yes.  
24  
25 Q. That is now exhibit 159. That was made, I think,  
26 a few days later but recorded your recollection of the  
27 conversation?  
28 A. Yes.  
29  
30 Q. That telephone call was instigated by the bishop,  
31 wasn't it?  
32 A. Yes.  
33  
34 Q. He rang you?  
35 A. He did ring me.  
36  
37 Q. And he rang you to tell you that, on that very day, he  
38 had been up to see Father Fletcher?  
39 A. I believe he said, "I've been up to see Jim this  
40 afternoon", or whatever.  
41  
42 Q. You understood that he was ringing you almost as soon  
43 as he had done that?  
44 A. Absolutely, yes.  
45  
46 Q. There's no question about that?  
47 A. No.

1  
2 Q. Did you understand that by telephoning him, he was in  
3 fact reporting what he had done, to you?  
4 A. Yes.  
5  
6 Q. There was no secrecy about that?  
7 A. No, that's the only way we got to find out he ever  
8 went up there. He told me.  
9  
10 Q. In that conversation, I think you conceded there was  
11 discussion about counselling?  
12 A. Yes.  
13  
14 Q. And you followed that. It's the case, isn't it, that  
15 because of your concern for your son, you decided not to  
16 tell him about Bishop Malone's trip to see Father Fletcher;  
17 that's right, isn't it?  
18 A. Well, not that night, and probably not for a couple  
19 of days.  
20  
21 Q. It's the case, isn't it, that upon learning of the  
22 visit, your immediate decision was not to tell your son?  
23 A. Immediate decision, yes.  
24  
25 Q. Because you wanted to shield him from that knowledge  
26 that you had, for his own good?  
27 A. I didn't want my son to know that his father had told  
28 the bishop.  
29  
30 Q. Following the trial and the sentencing process,  
31 I think Bishop Malone wrote to you and your son?  
32 A. Yes.  
33  
34 Q. Prior to that and immediately after the trial, or  
35 certainly within a short time of the trial, there was  
36 a telephone call to your husband and he spoke to him and  
37 your son?  
38 A. Yes, that was just a couple of hours after the guilty  
39 verdict.  
40  
41 Q. It was after that time - not that day, but on the next  
42 day or so - that the bishop wrote to you?  
43 A. Yes.  
44  
45 Q. I won't go into the details of what he said, but  
46 expressing certain things about what had transpired?  
47 A. Yes.

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Q. And again offering support by way of counselling or the like?

A. Yes.

Q. And you were grateful for that contact, weren't you?

A. Yes.

Q. You took it in the spirit that you understood it was intended?

A. I've exchanged quite a lot of letters with Michael Malone since then.

MR HARBEN: Thank you.

MR LEWIS: Nothing arising, thank you, Commissioner.

THE COMMISSIONER: Mr Hunt?

MR HUNT: I don't have any more questions for the witness.

THE COMMISSIONER: Q. May I ask you this, and I hope it doesn't detain you in the witness box too long. You said that you were gutted by the time the trial process had finished, and that was with obtaining a good result with the conviction. Can you imagine how you would have felt if, for some reason, the jury had not been able to be satisfied beyond reasonable doubt?

A. We would have been devastated. It had been a long process, and my son needed so much support through that with his partner and the children, and our whole fractured family, so upset about their brother and our son, of course, by the time we got to the end of it, I don't know what we would have done if he had been found not guilty. I can't imagine. It had taken so much out of us and had wrecked [AH]'s life that the whole process of the - he said the other day, when he finally got the courage to tell someone, we just expected the church would help us, and it wasn't to be. So the desolation we felt was enormous.

Q. And what about the court process - how did you find it?

A. Commissioner, I say the legal process didn't let us down at all. The Catholic Church did. We were treated with respect by the investigating police, by court officers, by members of the DPP, and the most important thing they did was show [AH] respect, and that process, as

1 terrible as it was, was made better by the professionalism  
2 in the legal system.

3

4 Q. Can you tell us any more about what makes the process  
5 terrible, even with the optimum result?

6 A. There's a lot of publicity. There's a lot of gossip  
7 and innuendo. Newcastle is a small place with a very  
8 Catholic grapevine, it flourishes, and everyone has  
9 a version and they're not hesitant in putting it out there  
10 as something they knew or observed. It was a hard enough  
11 process, without that. It's a terrible thing to see  
12 a child - and I wasn't in the courtroom when he spoke,  
13 because I was the next witness - it's a terrible thing to  
14 see a much-loved son have to say those words and put it out  
15 there for people to think, is he telling the truth or is he  
16 not? It was an enormous cost.

17

18 THE COMMISSIONER: Thank you very much. Many thanks for  
19 your evidence. You're excused.

20

21 MR HUNT: Could I just say this, for the record, that  
22 those assisting you, as the Commissioner, are loath to  
23 summons victims or their family unless there is a real  
24 willingness in the witness to come to court, and so we are  
25 grateful to [BJ] for giving her evidence today.

26

27 THE COMMISSIONER: We certainly are. Thank you very much.

28

29 <THE WITNESS WITHDREW

30

31 MR HUNT: Could I ask, Commissioner, that you formalise,  
32 to the extent that this witness's own name or her son's own  
33 name have been identified in the course of the evidence  
34 today, that they should be reported as being [AH] and BJ.

35

36 THE COMMISSIONER: Yes, I make a direction that the real  
37 names of [AH], [BJ] and [BI] not be published. That  
38 direction is made pursuant to section 8 of the Special  
39 Commissions of Inquiry Act.

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1 MR HUNT: Thank you, Commissioner. I call Father Desmond  
2 Stanley Harrigan.

3

4 <DESMOND STANLEY HARRIGAN, sworn: [2.42pm]

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6 (Transcript suppressed from page 1861 line 6 to  
7 page 1890 line 12)

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MR HUNT: Can I indicate for the assistance of those at court that the proposal is that we adjourn early, given that we had an early start this morning, Commissioner, and that the order of witnesses for Monday, assuming that we move through them, would be Father Robert Searle, the resumed evidence of Father Burston, Elizabeth Doyle and then John Davoren.

THE COMMISSIONER: Thank you, Mr Hunt.

In that case, I will adjourn until 10 o'clock on Monday.

**AT 3.43PM THE COMMISSION WAS ADJOURNED  
TO MONDAY, 29 JULY 2013**





**access** [4] - 1810:11, 1813:16, 1825:6, 1848:11  
**accompanied** [1] - 1856:26  
**accordance** [4] - 1787:12, 1787:18, 1804:2, 1807:14  
**accorded** [1] - 1852:26  
**according** [1] - 1785:16  
**account** [2] - 1812:27, 1850:2  
**accurate** [1] - 1776:45  
**accurately** [1] - 1835:45  
**accused** [5] - 1825:45, 1827:8, 1827:15, 1828:17, 1830:32  
**achieve** [1] - 1784:25  
**achieved** [1] - 1826:4  
**acknowledged** [3] - 1828:16, 1828:25, 1829:38  
**acknowledges** [1] - 1797:45  
**Act** [3] - 1824:20, 1860:39  
**act** [1] - 1777:1  
**acted** [1] - 1802:41  
**acting** [1] - 1827:12  
**action** [3] - 1808:41, 1840:37, 1841:19  
**actions** [4] - 1840:16, 1841:12, 1841:39, 1842:2  
**active** [7] - 1782:20, 1783:7, 1783:42, 1792:2, 1792:9, 1793:8, 1833:14  
**activities** [1] - 1836:44  
**activity** [1] - 1792:34  
**actual** [1] - 1794:6  
**additional** [2] - 1788:36, 1809:34  
**address** [1] - 1857:4  
**addressed** [1] - 1800:21  
**adequacy** [3] - 1800:22, 1801:43, 1803:31  
**adjourn** [4] - 1848:10, 1848:17, 1890:13, 1890:22  
**ADJOURNED** [1] - 1890:25  
**adjournment** [4] - 1823:27, 1825:19, 1825:21, 1825:29  
**ADJOURNMENT** [2] - 1825:26, 1848:20  
**administratively** [1] - 1818:40  
**admission** [9] - 1828:16, 1828:21, 1828:26, 1828:32, 1828:35, 1829:17, 1829:19, 1829:23, 1829:26  
**admissions** [3] - 1797:39, 1797:46, 1824:4  
**admitted** [6] - 1776:24, 1797:2, 1797:35, 1812:3, 1813:45, 1836:32  
**adopt** [1] - 1800:2  
**adopted** [1] - 1825:44  
**adult** [1] - 1816:46  
**adults** [1] - 1816:30  
**advance** [1] - 1842:24  
**Advent** [1] - 1833:21  
**advice** [1] - 1853:14  
**advise** [4] - 1780:29, 1808:19, 1808:22, 1809:1  
**adviser** [1] - 1784:33  
**aeroplane** [1] - 1792:32  
**affairs** [1] - 1813:19  
**affect** [1] - 1842:2  
**afternoon** [2] - 1845:47, 1857:40  
**Agency** [1] - 1818:3  
**ago** [7] - 1795:21, 1816:47, 1823:10, 1842:33, 1844:43, 1850:18, 1850:44  
**agree** [18] - 1779:42, 1780:18, 1780:46, 1790:43, 1791:9, 1791:15, 1791:18, 1806:3, 1808:2, 1810:8, 1810:43, 1823:15, 1828:28, 1829:20, 1830:29, 1852:1, 1852:44, 1852:47  
**agreed** [4] - 1787:35, 1787:42, 1796:9, 1819:12  
**agreeing** [2] - 1807:40, 1813:24  
**agreement** [2] - 1790:39, 1794:25  
**AH** [25] - 1833:2, 1833:43, 1834:35, 1835:1, 1835:10, 1838:34, 1840:6, 1841:41, 1843:20, 1843:36, 1846:42, 1849:6, 1849:34, 1850:36, 1851:10, 1851:16, 1851:26, 1851:33, 1851:40, 1851:46, 1853:9, 1853:29, 1859:47, 1860:34, 1860:37  
**AHJ** [4] - 1842:16, 1846:43, 1853:18, 1854:8  
**AHJ's** [3] - 1833:34, 1839:5, 1859:36  
**aisle** [1] - 1839:27  
**AJ** [16] - 1777:16, 1777:25, 1777:31, 1778:1, 1778:8, 1778:27, 1779:10, 1783:17, 1783:27, 1784:34, 1784:37, 1786:10, 1786:23, 1786:33, 1786:41, 1786:42  
**AJ** [5] - 1778:7, 1782:47, 1783:4, 1783:15, 1784:1  
**AJ's** [1] - 1778:42  
**AL** [1] - 1777:1  
**ALJ's** [1] - 1777:3  
**allegation** [4] - 1788:26, 1788:37, 1796:5, 1842:1  
**allegations** [1] - 1807:9  
**ALLEGATIONS** [1] - 1775:16  
**alleged** [2] - 1788:24, 1815:34  
**allegedly** [1] - 1788:17  
**alleging** [1] - 1799:36  
**allocated** [1] - 1832:45  
**allow** [2] - 1810:14, 1831:6  
**allowed** [1] - 1812:5  
**allowing** [2] - 1791:43, 1812:11  
**alluded** [1] - 1796:33  
**almost** [2] - 1818:33, 1857:42  
**altar** [1] - 1853:5  
**alternative** [2] - 1785:14, 1806:16  
**alternatives** [1] - 1806:17  
**amount** [1] - 1841:34  
**analysis** [2] - 1827:7, 1828:37  
**Angela** [1] - 1856:25  
**angry** [1] - 1834:37  
**annual** [1] - 1801:31  
**anonymous** [2] - 1817:47, 1840:18  
**answer** [19] - 1787:21, 1787:26, 1797:25, 1798:9, 1798:40, 1806:21, 1807:19, 1812:4, 1815:2, 1817:11, 1818:27, 1821:8, 1821:36, 1822:32, 1823:17, 1842:34, 1851:20, 1853:23, 1854:39  
**answered** [3] - 1790:44, 1796:32, 1799:33  
**answering** [2] - 1807:6, 1819:11  
**answers** [4] - 1801:46, 1805:24, 1814:18, 1819:22  
**anticipate** [2] - 1835:15, 1837:37  
**apologise** [6] - 1791:28, 1796:37, 1842:24, 1842:27, 1842:36, 1845:8  
**apology** [1] - 1796:39  
**apparent** [3] - 1789:19, 1789:30, 1799:6  
**appearance** [1] - 1831:7  
**applicable** [1] - 1822:28  
**application** [1] - 1837:44  
**applied** [1] - 1823:47  
**apply** [3] - 1779:47, 1781:38, 1822:10  
**appointments** [1] - 1839:22  
**appreciate** [2] - 1815:41, 1836:40  
**approach** [6] - 1837:36, 1840:45, 1844:27, 1845:35, 1846:27, 1848:13  
**approaching** [1] - 1792:47  
**appropriate** [6] - 1792:19, 1806:23, 1811:37, 1823:8, 1827:5, 1830:17  
**approval** [5] - 1804:1, 1804:5, 1804:12, 1805:33, 1805:42  
**approx** [1] - 1835:38  
**April** [6] - 1814:36, 1816:10, 1816:13, 1816:23, 1817:7, 1820:41  
**archbishop** [4] - 1798:18, 1803:38, 1807:26, 1809:41  
**archbishops** [1] - 1817:26  
**ardent** [5] - 1781:41, 1782:4, 1782:13, 1782:31, 1786:28  
**arise** [1] - 1788:28  
**arisen** [2] - 1778:8, 1812:8  
**arises** [1] - 1823:36  
**arising** [4] - 1812:10, 1813:5, 1818:47, 1859:16  
**arose** [1] - 1820:15  
**arrange** [1] - 1786:5  
**arranged** [1] - 1809:42  
**arrangements** [1] - 1839:7  
**arrest** [1] - 1854:24  
**arrested** [2] - 1830:34, 1840:18  
**arrived** [1] - 1852:29  
**aside** [1] - 1786:40  
**assassinating** [1] - 1845:4  
**assault** [7] - 1816:36, 1824:1, 1824:32, 1825:46, 1841:32, 1841:35, 1847:30  
**assaulted** [2] - 1841:31, 1847:24  
**assert** [1] - 1827:29  
**assertion** [1] - 1857:14  
**assertion** [3] - 1777:39, 1779:16, 1857:9  
**assess** [3] - 1800:44, 1813:23, 1843:16  
**assist** [10] - 1814:9, 1818:15, 1823:39, 1825:36, 1827:31, 1828:41, 1829:10, 1842:28, 1850:23  
**assistance** [5] - 1828:12, 1828:18, 1828:27, 1829:18, 1890:12  
**assisted** [5] - 1802:27, 1827:22, 1827:37, 1828:45, 1855:44  
**Assisting** [1] - 1775:37  
**assisting** [2] - 1814:42, 1860:22  
**assists** [1] - 1788:10

**Association** [1] - 1776:9  
**assume** [10] - 1783:3, 1783:27, 1783:38, 1783:40, 1783:41, 1793:39, 1794:9, 1795:46, 1809:38, 1850:21  
**assumed** [6] - 1776:43, 1787:1, 1787:7, 1787:11, 1806:25, 1807:2  
**assuming** [4] - 1793:45, 1813:16, 1823:34, 1890:15  
**assumption** [7] - 1783:17, 1789:45, 1805:25, 1806:10, 1806:12, 1806:14, 1807:20  
**assumptions** [1] - 1819:31  
**assurance** [3] - 1800:33, 1809:32, 1810:42  
**assurances** [1] - 1810:35  
**assured** [1] - 1808:40  
**AT** [1] - 1890:25  
**atonement** [3] - 1803:6, 1803:15, 1803:23  
**attached** [2] - 1809:38, 1857:2  
**attempt** [1] - 1799:35  
**attempting** [3] - 1799:47, 1800:6, 1800:10  
**attend** [1] - 1814:24  
**attended** [6] - 1833:27, 1833:28, 1852:30, 1852:38, 1852:39, 1853:4  
**attention** [10] - 1800:27, 1801:10, 1801:45, 1801:46, 1802:32, 1810:20, 1811:3, 1811:16, 1833:47, 1838:34  
**attributing** [2] - 1837:28, 1840:36  
**August** [2] - 1809:26, 1809:43  
**Australia** [5] - 1811:29, 1811:32, 1818:40, 1818:43, 1830:33  
**Australian** [1] - 1794:34  
**authorisation** [1] - 1832:25  
**authorities** [2] - 1816:22, 1816:39  
**authority** [5] - 1779:41, 1780:9, 1780:19, 1781:34  
**available** [1] - 1810:11  
**avoid** [1] - 1818:47  
**avoided** [1] - 1803:24  
**avoiding** [1] - 1852:7  
**awaiting** [1] - 1801:32  
**aware** [16] - 1788:36, 1797:18, 1801:13, 1805:46, 1810:25, 1812:2, 1812:15, 1814:14, 1815:15, 1829:11, 1834:36, 1836:6, 1838:29, 1838:37, 1845:37, 1849:46  
**awareness** [1] - 1821:13  
**awkward** [1] - 1823:36

---

**B**

---

**background** [8] - 1778:33, 1799:23, 1799:27, 1799:29, 1800:34, 1803:1, 1806:6, 1811:44  
**badly** [2] - 1802:26, 1824:44  
**Bantigue** [14] - 1799:36, 1800:21, 1800:33, 1800:41, 1800:43, 1801:12, 1801:16, 1802:30, 1802:40, 1811:19, 1811:28, 1811:43, 1812:10, 1812:14  
**baptise** [1] - 1781:13  
**baptising** [1] - 1781:12  
**Bar** [4] - 1776:9, 1783:18, 1783:34, 1848:12  
**BARAN** [5] - 1822:6, 1853:33, 1853:35, 1854:43, 1857:16  
**Baran** [1] - 1822:14  
**barrister** [6] - 1776:2, 1776:3, 1776:4, 1776:6, 1776:8, 1776:13  
**barristers** [1] - 1776:10  
**based** [3] - 1778:32, 1829:34  
**bases** [1] - 1805:37  
**basin** [1] - 1841:28  
**basis** [7] - 1783:17, 1789:45, 1790:18, 1822:45, 1846:33, 1846:38, 1851:19  
**Bay** [6] - 1833:44, 1834:11, 1835:3, 1849:6, 1849:23, 1849:33  
**bear** [2] - 1785:32, 1785:33  
**became** [9] - 1789:18, 1789:19, 1810:25, 1811:16, 1833:22, 1842:4, 1845:27, 1845:37, 1853:24  
**become** [4] - 1794:31, 1804:21, 1804:24, 1805:9  
**becoming** [3] - 1789:30, 1829:11, 1833:36  
**beer** [1] - 1849:10  
**beg** [1] - 1829:4  
**began** [1] - 1844:45  
**beginning** [1] - 1854:30  
**behind** [5] - 1796:45, 1811:9, 1813:41, 1837:24, 1854:18  
**belief** [2] - 1831:46, 1846:33  
**beliefs** [1] - 1782:4  
**believer** [5] - 1779:28, 1779:34, 1782:13, 1783:44, 1784:4  
**benefit** [2] - 1809:2, 1823:9  
**Bergin** [3] - 1814:43, 1820:45  
**best** [2] - 1786:4, 1787:6, 1788:21, 1797:18, 1820:1, 1830:10, 1831:3, 1831:4, 1831:5, 1831:10, 1834:6, 1834:31, 1834:47, 1835:4, 1835:44, 1842:35, 1843:13, 1844:41, 1855:28  
**better** [1] - 1860:1  
**between** [24] - 1783:15, 1787:2, 1800:18, 1800:21, 1800:41, 1800:42, 1801:8, 1801:10, 1802:34, 1807:43, 1818:33, 1818:40, 1819:26, 1819:43, 1820:6, 1825:7, 1834:32, 1836:25, 1838:47, 1839:25, 1843:10, 1843:14, 1843:16, 1843:26  
**beyond** [3] - 1792:16, 1831:17, 1859:28  
**Bl** [8] - 1833:6, 1834:2, 1834:15, 1843:11, 1847:7, 1847:15, 1853:10, 1860:37  
**bind** [1] - 1854:12  
**birthday** [2] - 1852:30, 1852:31  
**Bishop** [77] - 1788:10, 1789:7, 1795:46, 1796:4, 1796:16, 1796:24, 1797:1, 1797:31, 1797:36, 1797:38, 1797:41, 1798:18, 1798:29, 1798:46, 1799:36, 1800:12, 1800:18, 1800:21, 1800:30, 1800:32, 1800:41, 1800:43, 1801:1, 1801:8, 1801:11, 1801:12, 1801:13, 1801:16, 1801:29, 1802:16, 1802:30, 1802:34, 1802:36, 1802:41, 1803:30, 1804:1, 1804:5, 1804:12, 1805:8, 1805:40, 1805:45, 1806:4, 1806:22, 1806:24, 1807:18, 1807:27, 1807:39, 1808:1, 1808:6, 1808:7, 1808:17, 1808:27, 1808:40, 1809:36, 1809:44, 1811:10, 1811:19, 1811:24, 1811:27, 1812:10, 1812:12, 1812:14, 1812:20, 1813:45, 1835:37, 1836:3, 1836:9, 1836:26, 1836:37, 1838:5, 1838:47, 1845:45, 1856:27, 1857:22, 1858:16, 1858:31  
**bishop** [64] - 1785:32, 1785:33, 1785:36, 1788:18, 1788:31, 1789:10, 1791:1, 1791:17, 1791:33, 1791:41, 1792:15, 1792:18, 1792:29, 1793:23, 1794:1, 1795:29, 1796:35, 1798:5, 1798:27, 1798:46, 1799:7, 1800:23, 1800:37, 1800:43, 1803:21, 1803:25, 1804:27, 1804:37, 1806:11, 1807:10, 1807:25, 1807:34, 1807:38, 1808:39, 1809:33, 1809:41, 1810:13, 1810:16, 1812:2, 1812:5, 1812:6, 1813:19, 1813:20, 1813:23, 1818:46, 1819:1, 1819:2, 1819:3, 1819:6, 1824:12, 1825:35, 1828:46, 1829:8, 1829:11, 1829:12, 1829:13, 1829:19, 1836:18, 1838:30, 1857:30, 1858:28, 1858:42  
**BISHOP** [3] - 1797:4, 1805:11, 1814:2  
**bishop's** [1] - 1800:39  
**bishops** [3] - 1819:7, 1825:7, 1828:46  
**bit** [6] - 1789:42, 1792:45, 1811:40, 1839:33, 1844:21, 1855:43  
**BJ** [14] - 1832:31, 1832:41, 1832:46, 1834:38, 1835:24, 1836:34, 1837:15, 1837:27, 1838:3, 1840:31, 1842:24, 1860:25, 1860:34, 1860:37  
**BJJ** [2] - 1832:23, 1838:1  
 **blessing** [1] - 1845:20  
**blind** [13] - 1817:37, 1817:38, 1818:1, 1818:7, 1824:36, 1824:39, 1824:42, 1824:45, 1825:3, 1825:4, 1825:6, 1825:30, 1825:37  
**board** [2] - 1778:18, 1802:37  
**Bob** [3] - 1834:12, 1834:21, 1834:22  
**BOOK** [1] - 1837:15  
**book** [3] - 1836:47, 1837:6, 1837:12

**bottle** [1] - 1849:10  
**bottom** [2] - 1796:10, 1835:24  
**bound** [1] - 1834:28  
**boundaries** [1] - 1820:34  
**box** [3] - 1844:42, 1850:8, 1859:23  
**boys** [1] - 1852:38  
**Branxton** [3] - 1836:12, 1836:19, 1852:18  
**breach** [1] - 1808:28  
**breakdown** [1] - 1810:9  
**BRIAN** [1] - 1776:28  
**bridge** [1] - 1817:13  
**brief** [8] - 1779:3, 1779:12, 1787:7, 1787:13, 1852:8, 1853:35, 1854:19, 1854:21  
**briefly** [1] - 1789:37  
**bring** [5] - 1785:33, 1785:36, 1791:14, 1793:40, 1794:1  
**broings** [1] - 1801:7  
**broad** [5] - 1779:43, 1779:45, 1781:30, 1781:37, 1828:31  
**broader** [2] - 1818:23, 1826:14  
**broadly** [1] - 1836:25  
**Brock** [3] - 1856:38, 1856:46, 1857:5  
**brother** [1] - 1859:32  
**brought** [3] - 1785:32, 1821:1, 1821:21  
**bulletproof** [1] - 1789:12  
**bundle** [4] - 1795:44, 1799:4, 1807:47, 1837:22  
**bundles** [1] - 1827:24  
**bureaucratic** [1] - 1793:39  
**Burston** [1] - 1890:17  
**BY** [15] - 1776:30, 1795:16, 1797:4, 1811:7, 1814:6, 1820:37, 1824:28, 1832:39, 1836:34, 1837:15, 1842:22, 1849:3, 1852:5, 1853:33, 1857:18

---

**C**

---

**calculated** [2] - 1827:44, 1827:47  
**calendar** [1] - 1839:40  
**campaign** [1] - 1857:11  
**cannot** [5] - 1779:19, 1825:23, 1830:15, 1831:10, 1831:45  
**capital** [1] - 1817:27  
**captain** [1] - 1856:42  
**captured** [1] - 1856:16  
**Cardinal** [1] - 1817:39  
**care** [4] - 1784:22, 1786:47, 1815:31, 1815:33  
**careful** [2] - 1788:30, 1850:1  
**carefully** [1] - 1830:1  
**carry** [2] - 1792:24, 1793:1  
**case** [15] - 1776:14, 1778:42, 1783:41, 1785:4, 1786:9, 1787:35, 1793:33, 1807:37, 1810:37, 1829:47, 1831:18, 1850:29, 1858:14, 1858:21, 1890:22  
**cases** [2] - 1822:42, 1826:18  
**casual** [4] - 1792:4, 1792:5, 1792:8, 1792:11  
**Cathedral** [1] - 1792:38  
**cathedral** [1] - 1792:41  
**CATHOLIC** [1] - 1775:16  
**Catholic** [16] - 1779:35, 1781:41, 1782:14, 1782:15, 1786:29, 1817:22, 1833:26, 1833:29, 1834:9, 1852:39, 1852:41, 1852:46, 1853:11, 1859:44, 1860:8  
**Catholics** [7] - 1779:40, 1780:3, 1780:8, 1780:12, 1780:18, 1780:24, 1781:33  
**caused** [1] - 1840:28  
**causes** [1] - 1842:27  
**caution** [1] - 1815:21  
**ceased** [1] - 1839:12  
**celebrated** [1] - 1852:28  
**celebrations** [1] - 1833:28  
**celebret** [13] - 1791:42, 1792:1, 1792:4, 1792:14, 1792:24, 1792:27, 1792:37, 1792:43, 1793:1, 1793:5, 1818:33, 1818:44  
**Centacare** [1] - 1784:29  
**centre** [1] - 1833:26  
**certain** [7] - 1783:16, 1818:20, 1819:19, 1828:1, 1830:15, 1849:13, 1858:46  
**CERTAIN** [1] - 1775:16  
**certainly** [21] - 1777:24, 1780:35, 1781:5, 1781:15, 1784:35, 1786:45, 1790:33, 1792:26, 1798:39, 1811:5, 1816:43, 1817:9, 1822:10, 1827:34, 1832:28, 1836:40, 1839:11, 1840:47, 1853:14, 1858:35, 1860:27  
**cetera** [2] - 1809:43, 1839:40  
**chain** [3] - 1800:26, 1800:28, 1800:42  
**chairperson** [1] - 1834:8  
**change** [3] - 1807:6, 1839:6, 1839:19  
**changed** [5] - 1778:38, 1789:26, 1807:46, 1823:5, 1836:43  
**changes** [2] - 1839:30, 1839:37  
**character** [3] - 1794:23, 1838:16, 1845:4  
**charges** [6] - 1793:27, 1793:28, 1793:46, 1794:8, 1794:27, 1794:31  
**charging** [3] - 1794:33, 1794:40, 1795:4  
**check** [3] - 1817:42, 1844:24, 1844:30  
**checked** [1] - 1791:42  
**checking** [1] - 1791:34  
**chides** [1] - 1846:26  
**chief** [1] - 1842:18  
**Chief** [1] - 1844:6  
**CHILD** [1] - 1775:16  
**Child** [1] - 1818:3  
**child** [10] - 1816:36, 1816:37, 1821:3, 1821:13, 1824:32, 1825:45, 1828:17, 1828:26, 1830:33, 1860:12  
**children** [21] - 1781:12, 1784:44, 1785:13, 1785:43, 1785:47, 1812:3, 1812:8, 1814:10, 1816:34, 1821:34, 1821:41, 1822:42, 1824:4, 1827:8, 1827:16, 1828:17, 1828:27, 1835:2, 1839:17, 1852:27, 1859:31  
**children's** [2] - 1785:14, 1821:12  
**chose** [1] - 1842:8  
**Christ** [1] - 1783:45  
**chronology** [1] - 1846:4  
**church** [81] - 1779:29, 1779:35, 1779:36, 1779:40, 1780:8, 1780:19, 1780:23, 1780:29, 1780:34, 1780:37, 1780:43, 1780:44, 1781:2, 1781:4, 1781:7, 1781:14, 1781:17, 1781:22, 1781:24, 1781:28, 1781:33, 1781:43, 1782:4, 1782:13, 1782:21, 1782:24, 1782:34, 1782:40, 1783:7, 1783:42, 1783:45, 1783:46, 1784:5, 1784:7, 1784:18, 1784:26, 1785:5, 1785:8, 1785:21, 1785:41, 1785:47, 1786:30, 1786:41, 1787:5, 1787:32, 1787:33, 1787:39, 1789:4, 1789:17, 1789:24, 1789:28, 1791:17, 1792:34, 1792:36, 1792:47, 1793:1, 1793:8, 1803:38, 1807:15, 1814:44, 1815:8, 1816:22, 1818:32, 1818:34, 1822:37, 1822:39, 1822:45, 1823:1, 1833:11, 1833:15, 1833:20, 1836:44, 1839:38, 1840:44, 1853:3, 1853:22, 1853:26, 1859:38  
**Church** [4] - 1775:26, 1817:22, 1853:11, 1859:44  
**circumstances** [15] - 1780:15, 1781:39, 1782:39, 1784:4, 1787:42, 1788:20, 1823:35, 1824:3, 1826:34, 1826:45, 1827:38, 1831:4, 1835:22, 1836:2, 1840:11  
**cities** [1] - 1817:27  
**civil** [1] - 1815:27  
**Clancy** [1] - 1817:39  
**clarification** [2] - 1791:14, 1796:40  
**clarify** [1] - 1789:27  
**clarifying** [1] - 1789:1  
**CLARKE** [3] - 1797:4, 1805:11, 1814:2  
**Clarke** [48] - 1788:10, 1789:7, 1795:46, 1796:4, 1796:24, 1797:1, 1797:31, 1797:41, 1798:18, 1798:29, 1798:46, 1800:12, 1800:18, 1800:21, 1800:30, 1800:32, 1801:8, 1801:11, 1801:13, 1801:29, 1802:16, 1802:34, 1802:36, 1802:41, 1803:30, 1804:1, 1804:12, 1805:8, 1805:45, 1806:4, 1806:22, 1806:24, 1807:18, 1807:27, 1807:39, 1808:1, 1808:6, 1808:17, 1808:27, 1808:40, 1809:36, 1809:44, 1811:10, 1811:24, 1812:12, 1812:20, 1813:11, 1813:45  
**Clarke's** [5] - 1797:36, 1797:38, 1801:1, 1804:5, 1805:40  
**cleaned** [1] - 1833:20  
**cleaning** [1] - 1839:34  
**clear** [14] - 1777:8, 1787:31, 1789:20, 1789:25, 1790:19,

1790:22, 1791:39,  
1794:11, 1813:18,  
1816:32, 1819:32,  
1826:6, 1830:19,  
1842:4  
**clearer** [1] - 1779:34  
**clearly** [2] - 1802:36,  
1804:9  
**clergy** [5] - 1788:4,  
1788:5, 1791:32,  
1840:45, 1842:2  
**client** [9] - 1783:14,  
1783:16, 1789:44,  
1820:30, 1823:24,  
1823:27, 1825:14,  
1832:7  
**climate** [3] - 1799:9,  
1802:38, 1811:28  
**close** [2] - 1830:42,  
1844:28  
**Cohen** [6] - 1795:10,  
1820:28, 1823:8,  
1824:9, 1842:31,  
1848:3  
**COHEN** [21] - 1795:12,  
1820:14, 1820:24,  
1820:34, 1820:37,  
1820:39, 1822:18,  
1822:22, 1822:36,  
1823:17, 1823:33,  
1824:3, 1824:11,  
1824:16, 1824:24,  
1842:22, 1842:24,  
1846:26, 1847:5,  
1847:20, 1848:1  
**colloquially** [1] -  
1814:33  
**column** [1] - 1796:10  
**comfort** [1] - 1813:24  
**comfortable** [4] -  
1840:11, 1840:16,  
1840:36, 1840:38  
**coming** [5] - 1778:26,  
1784:5, 1784:26,  
1816:46, 1838:31  
**commenced** [3] -  
1825:31, 1835:11,  
1856:31  
**commencement** [2] -  
1845:6, 1845:16  
**comment** [1] -  
1795:20  
**commenting** [2] -  
1803:31, 1823:41  
**comments** [2] -  
1794:18, 1806:20  
**COMMISSION** [2] -  
1775:12, 1890:25  
**commission** [1] -  
1827:35  
**Commission** [15] -  
1778:43, 1786:39,  
1814:31, 1814:32,  
1814:33, 1817:8,  
1817:19, 1820:16,  
1820:40, 1823:25,  
1824:21, 1828:25,  
1832:45, 1842:29,  
1857:9  
**Commissioner** [58] -  
1775:34, 1776:1,  
1776:18, 1783:11,  
1787:29, 1789:15,  
1789:41, 1795:8,  
1795:12, 1796:44,  
1800:6, 1800:15,  
1801:26, 1802:15,  
1802:26, 1805:2,  
1805:5, 1806:9,  
1812:29, 1813:41,  
1814:37, 1814:42,  
1816:4, 1817:15,  
1817:40, 1817:41,  
1818:9, 1820:14,  
1820:20, 1822:44,  
1823:4, 1823:7,  
1823:39, 1824:24,  
1825:14, 1829:45,  
1832:3, 1832:33,  
1833:9, 1833:17,  
1833:32, 1834:7,  
1834:31, 1836:24,  
1840:17, 1841:22,  
1841:38, 1848:1,  
1848:11, 1852:9,  
1852:25, 1854:38,  
1859:16, 1859:43,  
1860:22, 1860:31,  
1861:1, 1890:14  
**commissioner** [3] -  
1825:18, 1832:16,  
1832:25  
**COMMISSIONER** [78]  
- 1776:16, 1776:23,  
1783:21, 1783:26,  
1783:37, 1787:45,  
1788:14, 1788:46,  
1789:10, 1789:35,  
1789:39, 1790:2,  
1790:21, 1794:20,  
1795:10, 1795:14,  
1797:1, 1800:30,  
1800:47, 1801:23,  
1801:39, 1802:2,  
1802:6, 1802:20,  
1802:36, 1805:7,  
1806:16, 1806:30,  
1806:35, 1806:40,  
1806:44, 1807:33,  
1811:5, 1812:37,  
1813:44, 1814:4,  
1818:25, 1820:12,  
1820:32, 1822:4,  
1822:14, 1822:20,  
1822:28, 1823:15,  
1823:31, 1823:45,  
1824:8, 1824:14,  
1824:26, 1825:12,  
1825:16, 1825:23,  
1828:3, 1832:5,  
1832:9, 1832:21,  
1832:28, 1832:36,  
1833:41, 1836:31,  
1837:12, 1837:34,  
1837:40, 1837:47,  
1842:20, 1846:24,  
1847:15, 1848:3,  
1848:8, 1848:17,  
1850:10, 1854:41,  
1859:18, 1859:22,  
1860:18, 1860:27,  
1860:36, 1890:20  
**Commissioner's** [2] -  
1790:24, 1853:28  
**Commissioners** [1] -  
1817:28  
**Commissions** [1] -  
1860:39  
**committed** [2] -  
1779:35, 1785:13  
**Committee** [1] -  
1817:25  
**common** [1] - 1780:23  
**commonsense** [1] -  
1778:34  
**communicate** [1] -  
1847:27  
**communicated** [1] -  
1843:25  
**communicating** [1] -  
1846:38  
**communication** [4] -  
1810:10, 1814:44,  
1854:24, 1854:34  
**communications** [2] -  
1834:2, 1853:43  
**communion** [4] -  
1781:8, 1781:9,  
1833:23, 1833:24  
**community** [2] -  
1783:43, 1833:29  
**community's** [2] -  
1821:22, 1840:44  
**compelled** [1] -  
1785:30  
**complainant** [4] -  
1784:21, 1785:41,  
1838:9, 1838:30  
**complainant's** [1] -  
1838:9  
**complainants** [2] -  
1789:31, 1819:37  
**complaint** [15] -  
1784:6, 1786:7,  
1847:33, 1847:34,  
1854:35, 1854:47,  
1855:22, 1855:25,  
1855:31, 1855:32,  
1856:13, 1856:15,  
1856:24, 1856:30,  
1856:31  
**complaints** [5] -  
1809:3, 1816:30,  
1816:31, 1816:46,  
1822:8  
**completed** [1] -  
1825:30  
**complex** [1] - 1841:25  
**comply** [1] - 1804:5  
**compulsion** [2] -  
1785:34, 1785:37  
**conceded** [1] -  
1858:10  
**concept** [3] - 1785:17,  
1817:37  
**concern** [2] - 1802:27,  
1858:15  
**concerned** [11] -  
1788:29, 1789:4,  
1797:24, 1798:16,  
1803:26, 1809:33,  
1817:22, 1838:30,  
1838:32, 1855:36,  
1855:45  
**concerning** [2] -  
1789:6, 1795:22  
**concerns** [2] -  
1809:11, 1839:1  
**concertinaed** [1] -  
1831:35  
**concluded** [1] -  
1856:22  
**conclusion** [1] -  
1786:36  
**conditions** [1] -  
1822:10  
**conduct** [5] - 1785:8,  
1785:10, 1797:35,  
1797:40, 1800:24  
**conducted** [1] -  
1785:11  
**confident** [1] -  
1829:28  
**confined** [4] - 1785:6,  
1785:9, 1785:12,  
1785:22  
**confining** [1] -  
1827:16  
**confirm** [1] - 1814:17  
**confirmation** [6] -  
1809:9, 1809:15,  
1809:45, 1810:30,  
1812:6, 1813:22  
**confirming** [5] -  
1789:21, 1790:38,  
1791:4, 1791:21,  
1809:41  
**confiscate** [2] -  
1787:34, 1787:41  
**confronted** [1] -  
1788:9  
**confusing** [1] -  
1819:45  
**confusion** [1] -  
1788:39  
**connected** [2] -  
1824:19, 1840:6  
**conscience** [2] -  
1780:14, 1819:35  
**consent** [1] - 1788:7  
**consented** [1] -  
1798:30  
**consequence** [5] -  
1794:2, 1794:6,  
1794:30, 1795:2,  
1849:16  
**consequences** [1] -  
1793:25  
**consider** [2] -  
1798:43, 1852:20  
**considered** [1] -  
1801:46  
**consistent** [4] -  
1778:2, 1778:27,  
1778:42, 1796:23  
**consistently** [1] -  
1843:21  
**constant** [1] - 1817:4  
**constantly** [1] -  
1816:14  
**construct** [1] - 1787:6  
**consultation** [3] -  
1814:44, 1816:22,  
1816:24  
**consulted** [1] -  
1853:14  
**contact** [9] - 1784:44,  
1835:11, 1836:5,  
1836:14, 1839:12,  
1849:16, 1852:17,  
1852:41, 1859:6  
**contacted** [3] -  
1845:18, 1849:32,  
1854:25  
**contained** [1] -  
1829:16  
**contemplated** [1] -  
1794:11  
**contemplation** [1] -  
1794:45  
**contemporaneous** [3]

- 1816:31, 1829:5, 1829:9  
**contended** [1] - 1799:38  
**content** [3] - 1806:32, 1820:25, 1828:4  
**contents** [3] - 1802:32, 1831:46  
**context** [29] - 1778:9, 1778:12, 1778:14, 1779:4, 1784:27, 1784:28, 1784:30, 1785:18, 1789:28, 1797:28, 1798:23, 1798:43, 1804:46, 1805:28, 1807:5, 1807:6, 1807:20, 1813:11, 1815:8, 1816:8, 1816:45, 1817:24, 1826:12, 1826:29, 1828:32, 1829:31, 1829:34, 1831:33, 1854:6  
**contextualise** [1] - 1801:21  
**continue** [4] - 1810:31, 1812:34, 1852:15, 1856:33  
**continued** [3] - 1790:17, 1839:34, 1845:3  
**CONTINUING** [1] - 1776:30  
**continuously** [1] - 1843:21  
**contraception** [1] - 1780:39  
**contrary** [2] - 1778:20, 1826:21  
**convened** [1] - 1833:21  
**convenient** [1] - 1837:38  
**conversation** [47] - 1778:7, 1779:3, 1779:7, 1779:18, 1784:45, 1785:2, 1794:2, 1807:43, 1813:18, 1813:37, 1816:5, 1819:38, 1827:18, 1827:38, 1829:30, 1829:31, 1829:34, 1834:15, 1834:16, 1834:27, 1834:33, 1835:5, 1835:37, 1835:40, 1835:42, 1835:44, 1836:2, 1836:24, 1838:46, 1839:26, 1840:36, 1843:10, 1843:12, 1843:26, 1849:29, 1850:12, 1850:28, 1851:9, 1851:10, 1851:25, 1851:32, 1851:45, 1855:6, 1856:37, 1857:22, 1857:27, 1858:10  
**conversations** [17] - 1777:17, 1777:31, 1778:39, 1787:2, 1787:7, 1787:8, 1787:13, 1819:37, 1827:7, 1827:9, 1827:13, 1827:14, 1830:19, 1834:7, 1842:43, 1844:31, 1849:43  
**convey** [1] - 1798:32  
**conveyed** [2] - 1844:32, 1856:3  
**conviction** [4] - 1856:23, 1856:32, 1856:42, 1859:26  
**cooling** [1] - 1839:24  
**cooperate** [1] - 1814:9  
**cooperation** [2] - 1817:31, 1817:41  
**cooperative** [1] - 1815:22  
**copy** [4] - 1812:39, 1835:17, 1837:6, 1838:26  
**cordial** [1] - 1852:29  
**correct** [29] - 1776:12, 1777:29, 1777:30, 1778:31, 1779:38, 1779:45, 1781:44, 1785:31, 1797:21, 1798:2, 1800:44, 1804:44, 1805:21, 1805:27, 1805:43, 1807:21, 1807:29, 1811:34, 1813:34, 1814:38, 1820:8, 1825:42, 1826:8, 1827:25, 1828:8, 1828:14, 1833:7, 1855:37, 1856:19  
**corrected** [1] - 1822:47  
**correspond** [1] - 1819:7  
**correspondence** [13] - 1800:26, 1800:28, 1800:42, 1800:45, 1801:8, 1801:12, 1801:15, 1802:11, 1807:14, 1808:16, 1810:10, 1811:2, 1813:28  
**corresponding** [1] - 1800:43  
**cost** [1] - 1860:16  
**cough** [1] - 1851:29  
**council** [3] - 1834:8, 1835:1, 1850:25  
**counsel** [2] - 1814:42, 1853:10  
**Counsel** [1] - 1775:37  
**counselling** [6] - 1784:28, 1836:38, 1838:42, 1855:37, 1858:11, 1859:2  
**counsellors** [1] - 1816:19  
**country** [1] - 1793:14  
**couple** [10] - 1797:10, 1803:22, 1809:39, 1811:1, 1827:22, 1831:17, 1833:27, 1837:17, 1858:18, 1858:38  
**courage** [1] - 1859:37  
**course** [12] - 1780:42, 1789:32, 1805:2, 1822:15, 1823:23, 1823:40, 1837:47, 1838:24, 1843:20, 1847:22, 1859:33, 1860:33  
**court** [5] - 1841:25, 1859:41, 1859:45, 1860:24, 1890:13  
**Court** [2] - 1775:25, 1775:26  
**courthouse** [1] - 1841:28  
**courtroom** [2] - 1837:28, 1860:12  
**courts** [2] - 1785:14, 1821:12  
**cover** [1] - 1817:14  
**covers** [2] - 1822:7, 1844:21  
**coy** [2] - 1800:9, 1805:16  
**crack** [1] - 1831:40  
**crawled** [1] - 1856:36  
**created** [1] - 1854:17  
**credentials** [1] - 1818:35  
**cricket** [1] - 1852:29  
**criminal** [5] - 1815:47, 1816:9, 1817:12, 1841:42, 1842:1  
**critical** [6] - 1801:26, 1802:23, 1812:15, 1819:6, 1850:29, 1853:37  
**criticism** [4] - 1801:18, 1801:23, 1805:45, 1819:18  
**cross** [2] - 1791:6, 1820:34  
**crosses** [18] - 1787:41, 1787:43, 1787:45, 1788:1, 1788:4, 1788:9, 1788:17, 1788:25, 1788:32, 1788:33, 1789:11, 1790:8, 1790:25, 1792:46, 1795:24, 1795:31, 1796:6, 1798:5  
**Crown** [1] - 1775:42  
**cry** [1] - 1856:44  
**Cunneen** [1] - 1775:34  
**current** [1] - 1833:32

---

**D**

---

**daily** [2] - 1846:36, 1846:38  
**dangers** [1] - 1819:45  
**date** [6] - 1788:38, 1809:42, 1811:15, 1835:31, 1854:2  
**DATED** [2] - 1814:1, 1836:34  
**dated** [4] - 1776:20, 1801:33, 1811:10, 1811:12  
**dates** [1] - 1854:12  
**David** [1] - 1775:38  
**Davoren** [17] - 1854:8, 1854:13, 1854:17, 1854:21, 1854:34, 1854:35, 1854:45, 1855:2, 1855:7, 1855:8, 1855:13, 1855:22, 1855:31, 1855:36, 1855:44, 1856:2, 1890:18  
**day-to-day** [5] - 1779:42, 1780:10, 1780:20, 1781:35, 1782:35  
**days** [11] - 1780:45, 1803:6, 1803:15, 1803:23, 1819:10, 1827:22, 1831:15, 1833:27, 1835:45, 1857:26, 1858:19  
**deal** [16] - 1778:41, 1779:30, 1779:37, 1780:44, 1784:8, 1786:11, 1794:4, 1800:10, 1813:14, 1815:9, 1815:28, 1816:29, 1818:19, 1823:11, 1829:8, 1848:5  
**dealing** [8] - 1783:43, 1795:20, 1800:38, 1802:16, 1802:23, 1806:26, 1806:42, 1815:42  
**dealings** [5] - 1784:34, 1785:22, 1850:3, 1853:40, 1856:7  
**deals** [1] - 1796:3  
**dealt** [6] - 1799:29, 1806:22, 1810:5, 1810:42, 1823:38, 1829:29  
**decide** [1] - 1786:39  
**decided** [3] - 1809:25, 1841:32, 1858:15  
**decision** [16] - 1793:19, 1793:23, 1793:26, 1794:8, 1794:30, 1795:3, 1805:47, 1807:42, 1811:44, 1826:10, 1826:17, 1827:42, 1828:4, 1855:17, 1858:22, 1858:23  
**decisions** [3] - 1780:38, 1793:12, 1842:3  
**declaration** [2] - 1832:34, 1842:12  
**decree** [3] - 1788:7, 1788:21, 1788:40  
**defies** [1] - 1831:46  
**degree** [1] - 1801:45  
**deliberate** [5] - 1825:44, 1825:47, 1827:44, 1827:47, 1828:3  
**demanded** [1] - 1808:11  
**denials** [1] - 1798:1  
**denied** [1] - 1796:6  
**denies** [1] - 1788:30  
**DENIS** [2] - 1805:11, 1814:1  
**Denis** [4] - 1809:22, 1813:45, 1814:11, 1814:22  
**denote** [1] - 1788:5  
**departing** [1] - 1842:11  
**departure** [1] - 1809:43  
**depended** [4] - 1785:36, 1790:37,

1790:47, 1791:17  
**describe** [2] - 1807:18, 1852:25  
**described** [4] - 1783:9, 1800:9, 1805:15  
**describing** [1] - 1800:23  
**designated** [1] - 1824:12  
**desire** [1] - 1785:42  
**Desmond** [1] - 1861:1  
**DESMOND** [1] - 1861:4  
**desolation** [1] - 1859:39  
**detail** [8] - 1778:7, 1779:1, 1794:42, 1806:27, 1807:41, 1814:16, 1827:34, 1831:11  
**detailed** [2] - 1787:2, 1787:8  
**details** [2] - 1854:21, 1858:45  
**detain** [1] - 1859:23  
**detective** [2] - 1836:5, 1844:18  
**Detective** [15] - 1814:19, 1814:20, 1814:24, 1835:12, 1836:14, 1838:10, 1838:47, 1844:6, 1844:7, 1844:12, 1845:35, 1847:28, 1855:7, 1855:8, 1856:3  
**detention** [1] - 1785:14  
**determination** [1] - 1818:7  
**determine** [1] - 1841:47  
**deterrents** [1] - 1816:1  
**devastated** [1] - 1859:29  
**developed** [1] - 1817:46  
**developing** [1] - 1815:9  
**development** [2] - 1815:5, 1821:16  
**developments** [1] - 1844:23  
**devotion** [2] - 1853:3, 1853:22  
**devout** [2] - 1852:45, 1852:46  
**dialogue** [1] - 1817:29  
**diary** [1] - 1850:27  
**dictate** [1] - 1827:4  
**difference** [2] - 1787:47, 1813:8  
**different** [13] - 1780:15, 1781:38, 1781:39, 1785:16, 1789:32, 1797:26, 1800:28, 1800:40, 1805:28, 1807:22, 1822:11, 1836:15, 1853:43  
**difficult** [18] - 1793:29, 1793:35, 1793:37, 1793:39, 1793:43, 1794:33, 1794:36, 1794:41, 1794:42, 1794:43, 1794:46, 1795:5, 1815:27, 1815:31, 1842:25, 1844:42, 1845:14, 1854:41  
**difficulties** [1] - 1819:45  
**difficulty** [6] - 1778:6, 1781:32, 1784:10, 1810:39, 1815:41, 1848:13  
**dilemma** [7] - 1816:29, 1816:47, 1817:4, 1817:6, 1817:7, 1817:23, 1853:21  
**dilemmas** [2] - 1817:31, 1853:12  
**dine** [1] - 1799:14  
**dinner** [1] - 1852:33  
**Diocesan** [1] - 1796:16  
**DIOCESE** [1] - 1775:18  
**Diocese** [4] - 1808:9, 1808:11, 1808:20, 1809:4  
**diocese** [17] - 1791:41, 1792:3, 1792:9, 1792:30, 1798:32, 1804:19, 1804:21, 1804:27, 1804:28, 1804:37, 1809:10, 1809:23, 1809:46, 1810:25, 1810:31, 1828:47, 1838:20  
**dioceses** [1] - 1818:33  
**direct** [5] - 1810:13, 1816:36, 1841:7, 1841:11, 1850:3  
**directed** [1] - 1796:34, 1796:36, 1800:27, 1800:36, 1801:10, 1801:37, 1801:46, 1811:15, 1811:19, 1819:17, 1846:28  
**directing** [1] - 1833:47  
**direction** [5] - 1778:20, 1784:31, 1786:47, 1860:36, 1860:38  
**directions** [2] - 1781:2, 1796:25  
**directly** [4] - 1796:46, 1815:16, 1816:18, 1820:16  
**director** [2] - 1784:29, 1817:25  
**Director** [1] - 1796:17  
**disagree** [1] - 1790:43  
**disappeared** [1] - 1839:27  
**disaster** [1] - 1849:35  
**disclosed** [2] - 1806:28, 1806:33  
**disclosing** [2] - 1833:35, 1853:9  
**disclosure** [3] - 1803:11, 1818:46, 1833:34  
**disclosures** [1] - 1839:5  
**discount** [1] - 1787:15  
**discourage** [1] - 1778:3  
**discouraging** [1] - 1776:34  
**discourteous** [2] - 1791:27, 1791:28  
**discourtesy** [1] - 1830:8  
**discrete** [1] - 1818:20  
**discuss** [3] - 1817:6, 1825:19, 1850:42  
**discussed** [3] - 1786:42, 1786:44, 1787:15  
**discussing** [1] - 1817:7  
**discussion** [15] - 1784:16, 1784:30, 1786:33, 1786:45, 1787:1, 1787:11, 1817:29, 1826:12, 1826:16, 1836:38, 1842:35, 1842:37, 1843:40, 1845:44, 1858:11  
**discussions** [9] - 1789:29, 1816:25, 1817:19, 1817:20, 1818:4, 1824:40, 1844:5, 1846:47, 1853:13  
**dismissive** [3] - 1854:45, 1855:3, 1856:9  
**disobeyed** [1] - 1798:4  
**dispose** [1] - 1801:27  
**dispute** [4] - 1777:39, 1777:41, 1777:44, 1779:15  
**disseminate** [1] - 1782:25  
**distinction** [4] - 1796:37, 1819:26, 1819:42, 1820:5  
**distress** [1] - 1842:27  
**document** [16] - 1776:19, 1776:21, 1792:5, 1796:22, 1796:29, 1796:40, 1796:45, 1798:17, 1818:35, 1835:15, 1835:17, 1835:18, 1837:23, 1838:26, 1854:18, 1857:20  
**documentation** [1] - 1831:36  
**documenting** [1] - 1826:37  
**documents** [3] - 1827:23, 1837:18  
**done** [21] - 1778:30, 1781:8, 1786:17, 1787:3, 1789:6, 1801:3, 1806:19, 1813:39, 1816:35, 1820:1, 1821:25, 1826:39, 1831:2, 1831:3, 1831:5, 1831:10, 1836:4, 1836:10, 1857:43, 1858:3, 1859:34  
**door** [3] - 1794:44, 1844:28, 1847:45  
**doubt** [2] - 1807:25, 1859:28  
**down** [9] - 1778:16, 1779:25, 1799:10, 1826:46, 1829:33, 1830:1, 1850:30, 1856:4, 1859:44  
**Doyle** [1] - 1890:17  
**DPP** [1] - 1859:46  
**dramatically** [2] - 1778:39, 1818:30  
**draw** [5] - 1802:31, 1803:29, 1820:5, 1850:22, 1850:27  
**drawing** [1] - 1819:42  
**drawn** [1] - 1811:3  
**dress/act** [1] - 1796:13  
**dressed** [1] - 1791:40  
**drew** [1] - 1838:34  
**drinking** [1] - 1849:10  
**driving** [1] - 1786:37  
**drunk** [4] - 1834:13, 1834:35, 1849:38, 1849:44  
**due** [4] - 1786:36, 1800:7, 1805:2, 1839:40  
**Dungog** [8] - 1833:13, 1833:27, 1834:1, 1834:8, 1834:9, 1834:24, 1852:10, 1852:16  
**during** [9] - 1799:21, 1833:10, 1833:19, 1841:6, 1841:19, 1843:20, 1847:22, 1852:9, 1857:10

---

## E

---

**early** [14] - 1821:18, 1821:32, 1821:33, 1821:37, 1822:23, 1835:6, 1835:7, 1839:11, 1839:33, 1839:37, 1844:45, 1855:15, 1890:13, 1890:14  
**easier** [1] - 1842:4  
**easiest** [1] - 1842:7  
**East** [1] - 1841:28  
**Easter** [1] - 1839:47  
**easy** [1] - 1789:13  
**eat** [2] - 1780:45  
**educating** [1] - 1783:43  
**effect** [16] - 1776:5, 1776:42, 1784:47, 1786:17, 1788:31, 1795:20, 1800:12, 1804:5, 1812:19, 1812:46, 1824:31, 1831:44, 1834:27, 1841:46, 1846:47, 1850:36  
**effective** [1] - 1810:5  
**effective"** [1] - 1810:9  
**effort** [1] - 1794:1  
**eggs** [2] - 1847:45  
**either** [13] - 1777:17, 1792:8, 1804:12, 1805:37, 1805:42, 1811:32, 1812:13,

1836:19, 1838:33,  
1840:41, 1841:46,  
1852:8, 1855:7  
**elapsed** [1] - 1843:16  
**elderly** [1] - 1833:24  
**Elizabeth** [1] -  
1890:17  
**email** [2] - 1826:40,  
1854:17  
**embarrassing** [1] -  
1846:10  
**Emma** [1] - 1775:42  
**emotional** [2] -  
1785:34, 1785:37  
**emotionally** [1] -  
1844:20  
**emphasis** [1] -  
1826:37  
**enables** [1] - 1850:45  
**encourage** [1] -  
1778:3  
**encouraged** [1] -  
1852:40  
**encouraging** [1] -  
1776:35  
**end** [4] - 1816:23,  
1836:36, 1837:38,  
1859:33  
**enforce** [1] - 1808:29  
**enforced** [1] - 1796:24  
**Enforcement** [1] -  
1818:3  
**engage** [3] - 1780:15,  
1780:30, 1792:33  
**engaged** [1] - 1792:10  
**engagement** [1] -  
1838:42  
**England** [2] - 1796:16,  
1809:5  
**enormous** [3] -  
1780:14, 1859:39,  
1860:16  
**ensure** [2] - 1820:24,  
1825:35  
**enthusiastic** [1] -  
1782:18  
**entitled** [4] - 1801:4,  
1801:6, 1812:29,  
1836:47  
**ENTITLED** [1] -  
1837:15  
**episode** [1] - 1845:7  
**error** [2] - 1796:37,  
1819:1  
**escalated** [2] -  
1844:44, 1844:46  
**escalation** [2] -  
1846:5, 1846:8  
**essentially** [1] -  
1850:34  
**estimate** [2] - 1835:4,  
1843:13  
**estranged** [1] -  
1839:28  
**et** [2] - 1809:43,  
1839:40  
**event** [8] - 1790:28,  
1793:27, 1793:33,  
1794:31, 1843:32,  
1845:11, 1847:22,  
1849:31  
**events** [12] - 1814:20,  
1819:11, 1819:13,  
1819:19, 1835:3,  
1846:4, 1847:42,  
1849:5, 1849:31,  
1850:23, 1850:44,  
1851:14  
**eventually** [2] -  
1835:10, 1839:23  
**evidence** [74] -  
1776:4, 1776:32,  
1776:36, 1776:42,  
1777:30, 1781:42,  
1783:14, 1783:18,  
1786:9, 1786:15,  
1786:21, 1788:20,  
1788:35, 1788:36,  
1788:41, 1789:47,  
1791:46, 1793:18,  
1798:10, 1800:25,  
1807:30, 1810:13,  
1812:19, 1812:22,  
1812:25, 1812:26,  
1812:30, 1812:46,  
1813:8, 1813:9,  
1813:33, 1814:36,  
1814:40, 1816:28,  
1817:18, 1820:40,  
1823:38, 1823:41,  
1824:30, 1826:6,  
1827:21, 1828:10,  
1828:24, 1828:29,  
1828:39, 1828:42,  
1829:38, 1829:43,  
1829:47, 1830:4,  
1830:10, 1830:23,  
1830:46, 1831:24,  
1831:31, 1831:44,  
1832:11, 1832:45,  
1833:33, 1833:37,  
1838:41, 1842:18,  
1842:33, 1843:20,  
1844:3, 1847:16,  
1847:22, 1847:25,  
1850:3, 1853:3,  
1860:19, 1860:25,  
1860:33, 1890:17  
**evidence-in-chief** [1] -  
1842:18  
**evident** [1] - 1853:25  
**exact** [2] - 1821:17,  
1834:28  
**exactly** [1] - 1821:20  
**EXAMINATION** [11] -  
1795:16, 1811:7,  
1814:6, 1820:37,  
1824:28, 1832:39,  
1842:22, 1849:3,  
1852:5, 1853:33,  
1857:18  
**examination** [6] -  
1776:19, 1776:30,  
1818:10, 1820:10,  
1820:15, 1823:6  
**examine** [1] - 1812:29  
**examined** [1] -  
1796:46  
**example** [11] -  
1782:12, 1784:29,  
1791:35, 1791:36,  
1792:6, 1792:11,  
1792:38, 1793:46,  
1812:8, 1831:22,  
1847:27  
**excarnated** [2] -  
1804:17, 1804:19  
**exception** [1] -  
1785:10  
**exchange** [2] -  
1783:15, 1807:13  
**exchanged** [1] -  
1859:11  
**excited** [1] - 1820:16  
**excuse** [1] - 1825:24  
**excused** [6] - 1825:14,  
1825:20, 1832:7,  
1832:12, 1832:17,  
1860:19  
**executive** [1] -  
1817:24  
**exercise** [2] - 1811:31,  
1819:8  
**exercised** [1] - 1812:7  
**exercising** [3] -  
1809:47, 1810:26,  
1810:40  
**exhibit** [10] - 1776:24,  
1805:1, 1805:9,  
1805:14, 1808:33,  
1809:40, 1811:16,  
1813:46, 1836:32,  
1857:25  
**EXHIBIT** [5] - 1776:26,  
1797:4, 1805:11,  
1814:1, 1836:34  
**exhibits** [1] - 1848:11  
**expect** [6] - 1778:36,  
1783:21, 1783:22,  
1793:9, 1798:41,  
1801:44  
**expectation** [1] -  
1794:3  
**expectations** [3] -  
1815:30, 1815:31,  
1815:33  
**expected** [3] -  
1792:16, 1829:12,  
1859:38  
**experience** [5] -  
1779:24, 1780:11,  
1821:11, 1841:39,  
1844:3  
**experienced** [1] -  
1847:43  
**experiences** [3] -  
1786:3, 1837:1,  
1841:16  
**expertise** [1] -  
1823:29  
**explain** [3] - 1778:25,  
1787:4, 1790:41  
**explained** [3] -  
1826:1, 1827:33,  
1827:45  
**explaining** [2] -  
1803:1, 1846:10  
**explanation** [2] -  
1828:37, 1839:43  
**exploration** [1] -  
1778:28  
**explore** [1] - 1789:3  
**exploring** [3] -  
1778:47, 1784:25,  
1792:45  
**expressed** [2] -  
1838:43, 1856:2  
**expressing** [1] -  
1858:46  
**expressions** [1] -  
1802:47  
**extended** [3] -  
1809:25, 1813:18,  
1822:16  
**extensive** [3] -  
1814:18, 1814:36,  
1816:24  
**extensively** [1] -  
1814:18  
**extent** [12] - 1803:29,  
1808:27, 1810:32,  
1810:39, 1812:16,  
1822:6, 1850:34,  
1851:24, 1851:31,  
1851:39, 1851:45,  
1860:32  
**extra** [1] - 1800:47  
**extracts** [1] - 1823:8  
**extradition** [1] -  
1794:43  
**extraditions** [1] -  
1793:38  
**extraordinary** [1] -  
1841:34  
**extremely** [2] -  
1842:16, 1846:15  
**eye** [1] - 1831:7

## F

**face** [5] - 1778:10,  
1778:14, 1810:4  
**face-to-face** [2] -  
1778:10, 1778:14  
**facial** [1] - 1831:7  
**facilitate** [2] - 1814:9,  
1824:35  
**fact** [28] - 1777:24,  
1777:29, 1778:26,  
1778:34, 1778:36,  
1779:23, 1783:34,  
1783:41, 1785:4,  
1785:10, 1787:13,  
1788:5, 1793:28,  
1793:43, 1799:35,  
1812:15, 1817:2,  
1820:41, 1820:42,  
1822:25, 1828:32,  
1830:32, 1831:2,  
1831:33, 1831:36,  
1843:33, 1852:36,  
1858:3  
**facts** [1] - 1847:27  
**faculties** [13] -  
1787:43, 1790:36,  
1791:1, 1791:18,  
1795:19, 1795:23,  
1795:32, 1804:7,  
1808:21, 1809:4,  
1809:47, 1810:26,  
1810:40  
**fail** [1] - 1826:23  
**failed** [1] - 1814:8  
**failure** [1] - 1827:27  
**fair** [8] - 1801:20,  
1806:30, 1807:46,  
1827:32, 1834:26,  
1840:4, 1844:29,  
1853:20  
**fairly** [4] - 1800:11,  
1845:12, 1848:14,  
1852:30  
**fairness** [1] - 1786:27  
**faith** [4] - 1779:35,  
1782:17, 1782:31,  
1853:22  
**fall** [1] - 1853:22  
**falls** [1] - 1823:42  
**familiar** [2] - 1794:42,



1812:42  
**families** [1] - 1852:33  
**family** [25] - 1821:14, 1833:36, 1838:9, 1838:32, 1839:1, 1839:13, 1839:16, 1839:18, 1841:7, 1841:13, 1841:15, 1841:40, 1841:41, 1841:46, 1842:2, 1844:33, 1845:4, 1845:19, 1849:21, 1852:14, 1852:22, 1852:46, 1859:32, 1860:23  
**far** [15] - 1786:22, 1786:25, 1788:29, 1789:4, 1798:15, 1798:26, 1803:25, 1809:33, 1811:36, 1817:21, 1839:33, 1850:12, 1855:18, 1855:35, 1855:44  
**fashion** [1] - 1823:12  
**Father** [109] - 1776:2, 1776:3, 1776:4, 1776:8, 1776:13, 1776:19, 1776:32, 1779:37, 1779:40, 1783:22, 1783:27, 1783:37, 1783:47, 1784:6, 1784:8, 1784:16, 1784:34, 1785:22, 1786:9, 1786:12, 1786:18, 1786:24, 1786:40, 1788:7, 1788:8, 1788:16, 1788:24, 1789:6, 1789:18, 1789:19, 1789:20, 1789:35, 1790:35, 1790:38, 1791:21, 1791:40, 1793:13, 1794:26, 1794:33, 1794:39, 1794:41, 1795:3, 1798:16, 1798:42, 1799:12, 1800:17, 1800:20, 1800:22, 1800:27, 1800:41, 1801:19, 1802:18, 1802:46, 1803:33, 1805:46, 1806:20, 1807:34, 1814:11, 1814:22, 1819:38, 1823:45, 1824:14, 1824:17, 1825:23, 1830:8, 1832:11, 1832:17, 1834:2, 1834:12, 1834:16, 1834:21, 1834:22, 1834:32, 1834:34, 1834:41, 1840:32, 1842:35, 1842:37, 1842:40, 1843:12, 1843:15, 1843:23, 1843:25, 1843:31, 1843:39, 1843:41, 1847:23, 1849:16, 1849:20, 1849:26, 1849:29, 1849:32, 1850:4, 1850:13, 1850:35, 1851:1, 1851:15, 1851:32, 1851:44, 1852:10, 1852:15, 1852:20, 1852:34, 1853:15, 1857:38, 1858:16, 1861:1, 1890:16, 1890:17  
**father** [28] - 1778:41, 1780:7, 1780:34, 1781:41, 1786:32, 1791:47, 1794:14, 1794:25, 1811:9, 1811:23, 1812:19, 1814:8, 1818:14, 1820:39, 1824:30, 1824:39, 1825:28, 1826:6, 1828:23, 1829:27, 1829:38, 1829:43, 1830:3, 1830:22, 1833:6, 1843:6, 1853:10, 1858:27  
**fax** [1] - 1826:40  
**feasible** [1] - 1823:19  
**features** [2] - 1783:22, 1783:28  
**February** [3] - 1788:21, 1788:29, 1855:12  
**feedback** [2] - 1816:17, 1816:18  
**felt** [5] - 1807:38, 1839:28, 1859:26, 1859:39  
**female** [1] - 1841:28  
**few** [4] - 1780:4, 1815:25, 1853:43, 1857:26  
**fifth** [1] - 1808:24  
**FILE** [1] - 1836:34  
**file** [9] - 1788:22, 1795:46, 1827:4, 1827:5, 1836:25, 1836:29, 1836:31, 1845:45, 1857:21  
**finalisation** [1] - 1818:7  
**finally** [2] - 1798:15, 1859:37  
**fine** [2] - 1822:24, 1849:27  
**finish** [1] - 1830:7  
**finished** [3] - 1830:5, 1856:35, 1859:25  
**firmly** [1] - 1823:26  
**first** [18] - 1781:23, 1781:28, 1791:16, 1795:20, 1801:28, 1803:32, 1804:8, 1833:35, 1835:35, 1839:5, 1843:11, 1843:14, 1844:22, 1844:30, 1845:35, 1854:31, 1855:2, 1855:6  
**firstly** [3] - 1816:10, 1819:36, 1854:35  
**five** [1] - 1831:14  
**Fletcher** [20] - 1836:11, 1836:12, 1839:12, 1840:6, 1840:18, 1841:1, 1845:24, 1845:37, 1847:23, 1852:11, 1852:15, 1852:20, 1853:15, 1854:25, 1855:46, 1856:4, 1856:23, 1856:32, 1857:38, 1858:16  
**Fletcher's** [2] - 1840:42, 1841:24  
**flourishes** [1] - 1860:8  
**follow** [1] - 1853:14  
**followed** [4] - 1781:44, 1809:44, 1840:30, 1858:14  
**following** [5] - 1778:25, 1808:16, 1851:33, 1857:22, 1858:30  
**follows** [1] - 1800:8  
**foolhardy** [1] - 1801:2  
**foremost** [2] - 1781:23, 1781:28  
**foreshadowing** [1] - 1837:36  
**forget** [1] - 1817:35  
**forgetting** [1] - 1850:38  
**form** [11] - 1792:13, 1792:30, 1792:33, 1799:41, 1799:44, 1817:30, 1834:28, 1855:22, 1855:25, 1855:31, 1855:32  
**formal** [3] - 1792:3, 1792:14, 1792:47  
**formalise** [1] - 1860:31  
**formally** [2] - 1791:1, 1817:27  
**former** [2] - 1843:11, 1843:14  
**forum** [1] - 1796:13  
**forward** [7] - 1804:13, 1805:37, 1807:47, 1809:19, 1835:9, 1838:31, 1840:3  
**forwarded** [1] - 1855:22  
**foundation** [2] - 1783:30, 1819:18  
**four** [4] - 1833:2, 1833:6, 1839:18, 1853:4  
**fourth** [1] - 1808:6  
**Fox** [14] - 1835:12, 1836:5, 1836:14, 1838:11, 1838:47, 1844:6, 1844:7, 1844:12, 1844:18, 1845:36, 1847:28, 1855:8, 1855:9, 1856:3  
**Fr** [2] - 1801:33, 1809:22  
**fractured** [1] - 1859:31  
**frame** [1] - 1818:20  
**frequent** [1] - 1852:17  
**Friday** [1] - 1775:30  
**friend** [13] - 1783:16, 1787:17, 1799:47, 1802:10, 1802:12, 1806:19, 1820:21, 1820:26, 1823:22, 1842:34, 1845:19, 1846:26, 1852:11  
**friend's** [1] - 1818:10  
**friends** [2] - 1799:13, 1852:34  
**friends"** [1] - 1838:32  
**friendship** [3] - 1852:14, 1852:32, 1852:37  
**FROM** [2] - 1805:11, 1814:2  
**front** [2] - 1817:7, 1837:23  
**full** [2] - 1814:31, 1822:32  
**fully** [5] - 1805:46, 1810:8, 1815:41, 1822:33, 1823:26  
**fundamental** [1] - 1791:31  
**fundamentally** [1] - 1822:8  
**funerals** [1] - 1833:28  
**fuss** [1] - 1847:40

---

## G

---

**gain** [1] - 1829:35  
**garage** [1] - 1847:45  
**garb** [5] - 1792:23, 1792:46, 1793:6, 1798:6  
**general** [12] - 1781:35, 1781:37, 1784:9, 1795:2, 1822:30, 1828:31, 1828:43, 1830:10, 1830:18, 1831:16, 1831:25, 1853:20  
**generalisation** [2] - 1779:43, 1779:45  
**generally** [1] - 1821:14  
**generous** [1] - 1852:30  
**GERACE** [17] - 1776:30, 1776:32, 1776:39, 1783:24, 1783:30, 1783:40, 1787:21, 1787:28, 1788:3, 1788:44, 1789:1, 1789:15, 1790:10, 1790:14, 1790:24, 1794:25, 1795:8  
**Gerace** [10] - 1783:12, 1783:21, 1783:27, 1783:35, 1783:37, 1787:45, 1788:46, 1789:10, 1790:22, 1794:18  
**girls** [1] - 1856:44  
**gist** [3] - 1815:25, 1824:16, 1834:26  
**given** [32] - 1776:32, 1776:42, 1779:22, 1791:46, 1796:45, 1798:9, 1800:25, 1806:10, 1809:45, 1811:28, 1812:26, 1812:30, 1812:39, 1816:32, 1819:22, 1820:40, 1823:4, 1823:17, 1823:22, 1823:36, 1824:30, 1828:24, 1828:37, 1828:40, 1830:5, 1830:23, 1831:24, 1831:31, 1850:44, 1850:45, 1890:13  
**God** [3] - 1781:18, 1781:22, 1781:29  
**GOGARTY** [2] -

1852:5, 1852:7  
**Gogarty** [2] - 1852:12,  
1853:31  
**gossip** [1] - 1860:6  
**government** [1] -  
1852:38  
**graces** [1] - 1799:12  
**Graeme** [1] - 1814:20  
**grant** [1] - 1837:45  
**grapevine** [1] - 1860:8  
**grateful** [4] - 1789:1,  
1842:30, 1859:6,  
1860:25  
**gratitude** [1] - 1838:42  
**greater** [2] - 1812:13,  
1821:2  
**greatest** [1] - 1816:1  
**greet** [1] - 1839:25  
**greetings** [1] -  
1839:24  
**group** [2] - 1827:16,  
1839:45  
**groups** [6] - 1782:25,  
1782:26, 1782:27,  
1783:7, 1783:43,  
1833:21  
**growing** [1] - 1821:12  
**guidance** [10] -  
1779:29, 1779:36,  
1780:12, 1780:24,  
1780:38, 1780:43,  
1781:3, 1781:14,  
1781:17, 1784:7  
**guide** [4] - 1779:41,  
1780:9, 1780:19,  
1781:34  
**guidelines** [1] -  
1856:16  
**guilty** [2] - 1858:38,  
1859:34  
**gutted** [2] - 1856:35,  
1859:24  
**GYLES** [31] - 1788:12,  
1788:16, 1794:17,  
1794:22, 1795:16,  
1795:18, 1797:7,  
1799:38, 1799:44,  
1800:6, 1801:26,  
1802:15, 1802:23,  
1802:45, 1805:14,  
1806:14, 1806:19,  
1806:38, 1806:42,  
1806:46, 1807:37,  
1810:46, 1812:25,  
1812:32, 1848:5,  
1849:3, 1849:5,  
1850:7, 1850:12,  
1851:22, 1852:3  
**Gyles** [14] - 1788:14,  
1789:1, 1795:14,

1800:39, 1801:3,  
1801:6, 1802:21,  
1802:42, 1806:35,  
1806:44, 1807:33,  
1807:35, 1811:2,  
1848:3

---

## H

---

**half** [4] - 1796:10,  
1817:13, 1819:10,  
1834:44  
**halfway** [1] - 1799:10  
**hand** [1] - 1812:9  
**handle** [2] - 1834:45,  
1844:29  
**hands** [1] - 1841:26  
**handwriting** [2] -  
1835:19, 1838:4  
**hang** [1] - 1840:22  
**hang-up** [1] - 1840:22  
**happy** [4] - 1826:26,  
1839:45, 1850:7,  
1851:22  
**HARBEN** [3] -  
1857:18, 1857:20,  
1859:14  
**hard** [3] - 1831:40,  
1842:5, 1860:10  
**Harrigan** [1] - 1861:2  
**HARRIGAN** [1] -  
1861:4  
**harrowing** [1] -  
1779:24  
**harshness** [3] -  
1815:45, 1816:8,  
1817:12  
**Hart** [5] - 1789:7,  
1797:14, 1808:45,  
1809:20, 1809:45  
**head** [4] - 1778:16,  
1824:11, 1824:19,  
1854:23  
**headed** [1] - 1784:11  
**Healing** [3] - 1856:14,  
1857:2  
**health** [2] - 1799:8,  
1802:38  
**healthy** [1] - 1815:18  
**hear** [1] - 1778:25  
**heard** [11] - 1785:18,  
1786:22, 1787:37,  
1788:12, 1788:44,  
1789:37, 1790:24,  
1794:14, 1834:41,  
1843:47, 1851:15  
**hearsay** [2] - 1850:2,  
1850:4  
**heavily** [1] - 1853:26

**held** [1] - 1840:42  
**HELL** [1] - 1837:15  
**Hell** [1] - 1836:47  
**hell** [1] - 1837:12  
**help** [1] - 1859:38  
**helpful** [3] - 1828:33,  
1829:24, 1830:14  
**hence** [1] - 1828:35  
**hesitant** [1] - 1860:9  
**high** [4] - 1788:41,  
1792:40, 1810:26,  
1856:42  
**higher** [1] - 1815:40  
**highest** [3] - 1777:30,  
1788:25, 1813:14  
**himself** [7] - 1790:40,  
1792:29, 1809:25,  
1812:17, 1818:45,  
1839:12, 1846:35  
**hint** [3] - 1778:16,  
1778:17, 1793:30  
**historical** [8] -  
1816:30, 1816:31,  
1816:46, 1822:42,  
1823:4, 1823:8,  
1823:47, 1827:22  
**history** [1] - 1854:19  
**hmm** [1] - 1839:3  
**hold** [1] - 1838:41  
**holding** [1] - 1812:17  
**holidays** [3] - 1792:22,  
1801:31, 1836:19  
**Holy** [1] - 1836:47  
**HOLY** [1] - 1837:15  
**holy** [1] - 1837:12  
**home** [8] - 1783:8,  
1787:34, 1787:40,  
1787:46, 1787:47,  
1788:1, 1844:24,  
1852:28  
**honest** [1] - 1819:44  
**honestly** [1] - 1807:6  
**Honour** [1] - 1820:45  
**hope** [1] - 1859:22  
**hospitals** [1] -  
1785:15  
**hour** [1] - 1834:43  
**hours** [4] - 1819:14,  
1831:14, 1831:17,  
1858:38  
**house** [3] - 1785:1,  
1785:17, 1847:45  
**houses** [2] - 1785:6,  
1785:20  
**Hunt** [1] - 1775:39  
**HUNT** [25] - 1832:23,  
1832:39, 1832:41,  
1833:32, 1833:43,  
1836:29, 1836:36,  
1837:9, 1837:17,  
1837:36, 1837:42,  
1838:3, 1842:18,  
1846:20, 1847:3,  
1847:13, 1847:18,  
1848:10, 1850:1,  
1851:19, 1859:20,  
1860:21, 1860:31,  
1861:1, 1890:12  
**hunt** [9] - 1833:41,  
1842:20, 1842:34,  
1844:5, 1848:17,  
1850:32, 1850:40,  
1859:18, 1890:20  
**hurry** [1] - 1839:27  
**hurtful** [4] - 1831:47,  
1832:1, 1846:14,  
1846:15  
**husband** [11] -  
1834:10, 1834:22,  
1839:17, 1839:18,  
1843:11, 1843:14,  
1849:17, 1849:20,  
1849:23, 1849:32,  
1858:36  
**hypothetical** [5] -  
1782:44, 1789:45,  
1790:18, 1806:42,  
1829:21  
**hypothetically** [2] -  
1813:13, 1813:21

---

## I

---

**idea** [3] - 1834:39,  
1855:26, 1857:7  
**identification** [3] -  
1836:46, 1837:6,  
1837:10  
**identified** [7] -  
1844:10, 1845:6,  
1846:34, 1846:35,  
1847:37, 1857:21,  
1860:33  
**identify** [6] - 1790:39,  
1792:29, 1842:43,  
1842:46, 1843:42,  
1844:11  
**identifying** [1] -  
1837:32  
**identities** [1] - 1841:3  
**identity** [1] - 1837:28  
**II** [3] - 1782:26,  
1783:8, 1783:44  
**ill** [1] - 1802:42  
**illustrate** [1] - 1791:35  
**imagine** [2] - 1859:26,  
1859:35  
**imaging** [1] -  
1792:16  
**immediate** [2] -  
1858:22, 1858:23  
**immediately** [2] -  
1804:21, 1858:34  
**impact** [1] - 1841:39  
**implementation** [1] -  
1782:35  
**implied** [1] - 1801:18  
**importance** [2] -  
1808:41, 1826:37  
**important** [4] -  
1826:23, 1826:26,  
1836:20, 1859:46  
**impossible** [1] -  
1811:30  
**imprecision** [1] -  
1829:46  
**impression** [3] -  
1806:27, 1815:40,  
1846:17  
**impressions** [1] -  
1836:42  
**imprint** [1] - 1826:44  
**improved** [2] -  
1818:29, 1824:31  
**improvement** [1] -  
1819:6  
**improvements** [1] -  
1817:21  
**IN** [1] - 1775:16  
**inadequate** [6] -  
1798:40, 1800:10,  
1805:19, 1805:20,  
1806:21, 1807:19  
**inadmissible** [1] -  
1846:27  
**incardinated** [2] -  
1798:31, 1804:21  
**incardination** [1] -  
1804:36  
**incident** [1] - 1845:7  
**include** [1] - 1822:37  
**included** [1] - 1787:17  
**including** [4] -  
1788:17, 1788:38,  
1824:36, 1826:13  
**inclusive** [1] - 1848:12  
**incorrect** [1] - 1851:6  
**increase** [1] - 1845:29  
**increasing** [2] -  
1845:28, 1845:31  
**incumbent** [1] -  
1785:47  
**indeed** [3] - 1777:23,  
1788:32, 1814:30  
**independent** [1] -  
1855:30  
**indicate** [5] - 1833:32,  
1843:31, 1843:39,  
1848:10, 1890:12

**indicated** [2] - 1843:46, 1845:26  
**indicating** [1] - 1809:3  
**indication** [1] - 1838:10  
**indicative** [2] - 1803:10, 1803:33  
**indirectly** [1] - 1816:18  
**individual** [1] - 1826:18  
**indulgence** [2] - 1823:22, 1853:28  
**inform** [1] - 1809:42  
**information** [12] - 1777:22, 1777:36, 1778:33, 1786:6, 1798:29, 1798:33, 1807:3, 1807:39, 1823:25, 1825:36, 1829:13, 1836:18  
**informed** [1] - 1776:3  
**informing** [1] - 1801:14  
**initial** [3] - 1808:32, 1809:43, 1854:34  
**initials** [1] - 1835:24  
**innuendo** [1] - 1860:7  
**input** [3] - 1815:12, 1816:21  
**inquiries** [3] - 1807:11, 1807:14, 1855:45  
**inquiry** [3] - 1816:29, 1817:35, 1827:36  
**Inquiry** [1] - 1860:39  
**INQUIRY** [1] - 1775:12  
**inserted** [1] - 1835:24  
**Inspector** [2] - 1814:20, 1844:6  
**instance** [7] - 1779:23, 1782:26, 1785:37, 1792:13, 1792:22, 1808:44, 1829:41  
**instances** [1] - 1776:46  
**instigated** [1] - 1857:30  
**institutions** [3] - 1785:8, 1785:11, 1785:13  
**instructed** [1] - 1832:16  
**instructing** [1] - 1825:18  
**instructions** [1] - 1789:25  
**integrity** [1] - 1782:8  
**intelligence** [1] - 1817:47  
**intend** [1] - 1842:25  
**intended** [4] - 1801:24, 1833:37, 1842:28, 1859:10  
**intention** [2] - 1789:20, 1812:1  
**interactions** [1] - 1840:5  
**interchange** [1] - 1839:24  
**interest** [2] - 1852:27, 1853:18  
**interested** [1] - 1852:28  
**interests** [2] - 1820:29, 1842:28  
**internationally** [1] - 1793:43  
**interrupt** [3] - 1783:12, 1791:26, 1818:9  
**interstate** [2] - 1793:34, 1793:37  
**interval** [2] - 1843:12, 1843:15  
**interview** [6] - 1778:10, 1814:25, 1819:14, 1827:29, 1831:9, 1856:26  
**interviewing** [1] - 1815:42  
**interviews** [2] - 1825:45, 1827:43  
**intimate** [1] - 1778:13  
**INTO** [1] - 1775:14  
**intrastate** [1] - 1793:37  
**introduction** [1] - 1821:20  
**investigate** [3] - 1823:26, 1843:33, 1843:41  
**investigating** [1] - 1859:45  
**investigation** [9] - 1828:18, 1828:27, 1828:42, 1833:37, 1844:19, 1845:38, 1855:45, 1856:19, 1856:22  
**INVESTIGATION** [1] - 1775:14  
**investigations** [2] - 1814:9, 1814:22  
**invited** [2] - 1799:13, 1814:24  
**involved** [10] - 1782:34, 1793:19, 1816:2, 1833:35, 1833:36, 1834:7, 1837:1, 1837:2, 1839:7, 1841:15  
**involvement** [5] - 1789:19, 1814:21, 1815:12, 1825:6, 1841:8  
**involving** [2] - 1814:10, 1814:44  
**Ireland** [3] - 1808:10, 1808:22, 1809:27  
**Irish** [1] - 1830:32  
**irrational** [1] - 1849:41  
**irrelevant** [1] - 1837:5  
**isolation** [1] - 1807:8  
**issue** [16] - 1778:8, 1778:15, 1778:28, 1778:41, 1778:44, 1784:8, 1788:6, 1788:35, 1789:2, 1789:5, 1791:14, 1791:40, 1792:1, 1800:22, 1801:27, 1853:21  
**issues** [14] - 1780:12, 1780:13, 1780:14, 1780:21, 1789:6, 1790:47, 1799:8, 1814:43, 1815:9, 1816:12, 1817:14, 1821:34, 1821:41, 1823:28

---

**J**

---

**James** [2] - 1845:24, 1852:10  
**Jeffrey** [1] - 1814:19  
**Jessica** [1] - 1775:43  
**Jim** [4] - 1840:32, 1852:34, 1853:15, 1857:39  
**job** [1] - 1847:11  
**John** [1] - 1890:18  
**JOSEPH** [1] - 1776:28  
**Joseph's** [2] - 1856:43, 1857:1  
**journey** [1] - 1833:35  
**joys** [1] - 1833:28  
**Julia** [1] - 1775:37  
**JULY** [1] - 1890:26  
**July** [4] - 1775:30, 1776:20, 1776:24, 1810:41  
**June** [8] - 1809:45, 1835:38, 1836:26, 1836:31, 1845:33, 1845:40, 1845:41, 1846:1  
**jurisdiction** [1] - 1794:34  
**jury** [1] - 1859:27  
**justice** [6] - 1815:47, 1816:9, 1817:12, 1841:42, 1842:1, 1842:28  
**justification** [1] - 1788:40

---

**K**

---

**keep** [2] - 1850:7, 1852:8  
**keeping** [1] - 1793:35  
**Kell** [2] - 1775:38, 1802:26  
**kept** [2] - 1785:43, 1785:46  
**key** [1] - 1790:47  
**kick** [1] - 1816:37  
**kind** [2] - 1822:30, 1826:28  
**kinds** [5] - 1833:11, 1840:21, 1841:39, 1841:40, 1842:3  
**knocked** [1] - 1841:27  
**knocking** [1] - 1794:44  
**knowing** [1] - 1829:22  
**knowledge** [11] - 1786:45, 1788:8, 1814:21, 1816:36, 1816:42, 1838:34, 1850:3, 1855:28, 1855:29, 1857:5, 1858:25  
**known** [15] - 1778:37, 1780:40, 1783:4, 1783:22, 1792:42, 1794:37, 1798:35, 1800:25, 1800:31, 1805:26, 1826:14, 1846:11, 1849:20  
**Krypton** [1] - 1789:12

---

**L**

---

**label** [1] - 1844:11  
**lack** [1] - 1819:18  
**lacking** [1] - 1813:28  
**lady** [1] - 1841:24  
**laid** [1] - 1793:27  
**last** [7] - 1787:21, 1787:24, 1799:21, 1814:17, 1819:13, 1827:22, 1853:30  
**late** [2] - 1824:22, 1835:6  
**latest** [1] - 1852:29  
**law** [4] - 1823:11, 1826:30, 1826:39, 1826:40  
**lawyer** [7] - 1815:27, 1826:22, 1826:27, 1826:32, 1826:46, 1827:10, 1827:12  
**lawyers** [2] - 1816:21, 1826:13  
**lay** [1] - 1793:28  
**lead** [3] - 1786:36, 1839:46, 1850:2  
**lead-up** [1] - 1839:46  
**leading** [1] - 1852:45  
**leaning** [1] - 1853:26  
**learned** [9] - 1783:16, 1799:47, 1802:10, 1802:12, 1806:19, 1818:9, 1820:25, 1823:21, 1842:34  
**learning** [1] - 1858:21  
**learnt** [1] - 1808:9  
**least** [10] - 1799:27, 1803:10, 1803:25, 1804:11, 1804:31, 1810:6, 1818:1, 1819:5, 1820:41, 1849:33  
**leave** [6] - 1786:39, 1793:13, 1809:26, 1809:42, 1836:19, 1851:16  
**leaving** [1] - 1815:25  
**led** [4] - 1817:34, 1823:41, 1826:2, 1836:2  
**left** [2] - 1810:35, 1839:41  
**leg** [1] - 1840:30  
**legal** [3] - 1826:36, 1859:43, 1860:2  
**legislation** [4] - 1785:16, 1822:46, 1823:5, 1823:9  
**lengthy** [1] - 1787:2  
**lent** [1] - 1804:41  
**Lent** [2] - 1780:45, 1833:21  
**Lenten** [1] - 1839:45  
**LEO** [1] - 1797:4  
**less** [1] - 1782:17  
**letter** [9] - 1792:17, 1798:18, 1798:23, 1798:24, 1798:40, 1798:42, 1798:44, 1798:45, 1799:3, 1799:6, 1800:3, 1800:8, 1800:9, 1800:16, 1800:17,

1800:18, 1800:20,  
1800:41, 1801:9,  
1801:19, 1801:28,  
1801:32, 1801:36,  
1801:41, 1801:44,  
1802:4, 1802:6,  
1802:10, 1802:17,  
1802:32, 1802:33,  
1802:37, 1802:45,  
1803:20, 1803:29,  
1803:32, 1803:47,  
1804:13, 1804:47,  
1805:3, 1805:7,  
1805:15, 1805:16,  
1805:19, 1805:23,  
1805:24, 1805:27,  
1805:28, 1805:31,  
1805:32, 1806:4,  
1806:5, 1806:20,  
1806:23, 1806:25,  
1807:4, 1807:5,  
1807:7, 1807:11,  
1807:17, 1807:21,  
1807:31, 1808:6,  
1808:17, 1808:45,  
1809:3, 1809:35,  
1809:38, 1809:40,  
1810:27, 1810:41,  
1811:10, 1811:11,  
1811:15, 1811:20,  
1811:21, 1811:26,  
1811:42, 1812:13,  
1812:20, 1812:27,  
1812:47, 1813:5,  
1813:10, 1813:38,  
1813:41, 1813:44,  
1826:41, 1826:43,  
1853:44

**LETTER** [2] - 1805:11,  
1814:1

**letters** [5] - 1797:31,  
1797:43, 1809:34,  
1813:15, 1859:11

**level** [2] - 1813:15,  
1831:10

**LEWIS** [4] - 1832:25,  
1832:33, 1854:38,  
1859:16

**Lewis** [2] - 1832:28,  
1832:37

**liars** [2] - 1800:25,  
1800:31

**lieu** [1] - 1829:1

**life** [23] - 1779:42,  
1780:10, 1780:20,  
1780:30, 1781:23,  
1781:28, 1781:35,  
1782:21, 1783:7,  
1783:42, 1783:44,  
1833:10, 1833:12,  
1833:15, 1835:3,  
1836:43, 1840:24,  
1846:36, 1852:22,  
1853:12, 1853:21,  
1859:36

**life-long** [1] - 1783:44

**light** [3] - 1796:31,  
1804:46, 1805:23

**likely** [3] - 1786:19,  
1831:42, 1853:10

**limit** [1] - 1850:2

**limited** [2] - 1821:46,  
1822:15

**limiting** [1] - 1840:15

**limits** [9] - 1786:1,  
1786:23, 1786:29,  
1786:41, 1787:4,  
1789:17, 1789:18,  
1789:27, 1789:30

**linchpin** [1] - 1823:1

**line** [12] - 1789:42,  
1790:17, 1797:25,  
1797:29, 1798:22,  
1800:1, 1801:7,  
1801:20, 1802:28,  
1861:6, 1861:7

**lines** [1] - 1776:40

**link** [1] - 1778:5

**literature** [1] - 1821:24

**liturgical** [1] - 1833:21

**live** [2] - 1786:6,  
1793:14

**lived** [1] - 1844:28

**lives** [1] - 1781:18

**living** [2] - 1833:43,  
1835:2

**loath** [1] - 1860:22

**local** [2] - 1811:27,  
1833:26

**locally** [1] - 1794:44

**locate** [1] - 1794:36

**locating** [1] - 1794:32

**location** [1] - 1794:37

**locked** [1] - 1822:32

**lodged** [1] - 1809:2

**Lonergan** [23] -  
1775:37, 1788:18,  
1795:25, 1795:26,  
1796:32, 1797:23,  
1800:8, 1800:30,  
1800:47, 1801:24,  
1802:2, 1805:2,  
1805:7, 1806:30,  
1811:5, 1812:37,  
1820:32, 1823:15,  
1824:26, 1825:12,  
1825:16, 1832:5,  
1832:21

**LONERGAN** [41] -  
1776:1, 1776:18,  
1796:44, 1799:32,  
1799:41, 1799:47,  
1800:15, 1800:36,  
1801:6, 1801:41,  
1802:4, 1802:9,  
1802:26, 1805:5,  
1806:9, 1806:32,  
1807:29, 1811:1,  
1811:7, 1811:9,  
1812:29, 1812:34,  
1812:39, 1812:45,  
1813:41, 1816:4,  
1818:9, 1818:18,  
1820:28, 1822:30,  
1823:4, 1824:28,  
1824:30, 1825:10,  
1825:18, 1825:28,  
1828:6, 1828:10,  
1830:3, 1832:3,  
1832:16

**Lonergan's** [1] -  
1807:7

**look** [10] - 1780:12,  
1780:18, 1782:40,  
1787:41, 1814:41,  
1828:30, 1837:22,  
1838:15, 1853:2,  
1853:6

**looking** [6] - 1784:7,  
1786:12, 1818:5,  
1826:4, 1835:23,  
1835:35

**loud** [3] - 1843:46,  
1851:26, 1851:33

**loved** [1] - 1860:14

**loves** [1] - 1851:41

**LUCAS** [1] - 1776:28

**Lucas** [29] - 1776:2,  
1776:3, 1776:4,  
1776:8, 1776:19,  
1783:22, 1783:27,  
1783:37, 1783:47,  
1784:34, 1786:9,  
1786:40, 1789:6,  
1789:35, 1798:16,  
1798:42, 1800:17,  
1800:20, 1801:19,  
1802:46, 1806:20,  
1807:34, 1823:45,  
1824:14, 1824:17,  
1825:23, 1830:8,  
1832:11, 1832:17

**Lucas's** [4] - 1776:13,  
1789:19, 1800:22,  
1800:27

**LUNCHEON** [1] -  
1848:20

**M**

**madam** [2] - 1842:24,  
1857:20

**maintain** [1] - 1856:24

**Maitland** [8] -  
1800:44, 1804:19,  
1804:27, 1804:37,  
1804:43, 1825:35,  
1836:16, 1841:28

**MAITLAND** [1] -  
1775:18

**Maitland-Newcastle**  
[6] - 1800:44,  
1804:19, 1804:27,  
1804:37, 1804:43,  
1825:35

**MAITLAND-  
NEWCASTLE** [1] -  
1775:18

**major** [2] - 1808:39,  
1853:11

**Malone** [9] - 1835:38,  
1836:26, 1838:5,  
1838:47, 1845:45,  
1856:27, 1857:22,  
1858:31, 1859:12

**Malone's** [1] - 1858:16

**man** [2] - 1840:27,  
1852:30

**management** [1] -  
1791:32

**managing** [1] -  
1792:30

**mandated** [1] -  
1823:46

**mandatory** [15] -  
1816:37, 1821:21,  
1821:31, 1821:33,  
1821:37, 1821:42,  
1821:45, 1822:9,  
1822:14, 1822:23,  
1822:25, 1822:37,  
1822:41, 1823:28,  
1823:46

**manifest** [2] - 1839:21

**March** [6] - 1788:22,  
1795:46, 1797:1,  
1814:17, 1819:13,  
1839:46

**Margaret** [1] - 1775:34

**mark** [1] - 1839:39

**marked** [8] - 1776:24,  
1787:26, 1797:2,  
1813:46, 1836:32,  
1836:46, 1837:9,  
1837:13

**marking** [1] - 1837:6

**markings** [1] - 1837:5

**marriage** [1] - 1780:31

**married** [2] - 1833:5,  
1845:21

**Mary's** [1] - 1792:38

**mass** [9] - 1781:3,  
1792:11, 1792:40,  
1833:20, 1833:23,  
1833:25, 1839:35,  
1852:28, 1853:4

**material** [3] - 1837:32,  
1838:33, 1854:1

**maths** [1] - 1850:19

**matter** [20] - 1776:43,  
1777:25, 1779:2,  
1786:12, 1789:33,  
1793:12, 1795:21,  
1797:24, 1799:39,  
1801:14, 1801:47,  
1810:42, 1816:38,  
1823:37, 1823:42,  
1825:7, 1827:17,  
1831:25, 1841:42,  
1842:27

**MATTERS** [1] -  
1775:14

**matters** [26] - 1783:4,  
1783:31, 1783:40,  
1783:41, 1783:47,  
1785:5, 1786:26,  
1789:26, 1789:44,  
1791:16, 1794:4,  
1795:18, 1795:19,  
1814:10, 1815:43,  
1818:21, 1823:26,  
1824:32, 1825:19,  
1826:23, 1826:27,  
1826:38, 1827:3,  
1827:9, 1827:23,  
1828:11

**McAlinden** [86] -  
1779:37, 1782:41,  
1782:45, 1784:6,  
1784:8, 1784:16,  
1784:38, 1785:1,  
1785:22, 1786:12,  
1786:18, 1786:24,  
1788:8, 1788:16,  
1788:24, 1788:29,  
1788:31, 1788:32,  
1789:18, 1789:20,  
1790:7, 1790:35,  
1790:38, 1791:21,  
1791:40, 1793:13,  
1793:46, 1794:8,  
1794:26, 1794:33,  
1794:39, 1794:41,  
1795:3, 1795:22,  
1795:29, 1796:4,  
1796:6, 1797:34,  
1797:44, 1798:31,

1798:45, 1799:6, 1799:35, 1800:2, 1800:18, 1800:41, 1801:8, 1801:11, 1801:33, 1802:18, 1802:30, 1802:34, 1803:14, 1803:21, 1803:33, 1805:8, 1805:11, 1805:33, 1805:46, 1806:27, 1809:11, 1809:36, 1809:40, 1809:47, 1810:30, 1810:39, 1811:11, 1811:37, 1812:3, 1812:16, 1813:7, 1813:11, 1813:45, 1814:11, 1814:22, 1819:38, 1824:3, 1825:36, 1827:28, 1827:30, 1827:39, 1827:44, 1828:13, 1830:28, 1830:47, 1831:45

**MCALINDEN** [1] - 1814:1

**McAlinden's** [8] - 1788:7, 1800:24, 1800:32, 1802:38, 1804:4, 1804:11, 1809:22, 1824:40

**mean** [8] - 1778:34, 1791:27, 1815:46, 1819:26, 1830:8, 1841:32, 1844:27, 1846:42

**meaning** [1] - 1800:2

**means** [1] - 1827:28

**meant** [3] - 1821:31, 1833:23, 1842:40

**measure** [1] - 1785:34

**measures** [1] - 1790:37

**MEDIA** [1] - 1776:26

**media** [4] - 1776:2, 1776:20, 1776:23, 1848:11

**meeting** [10] - 1830:47, 1831:1, 1831:2, 1831:7, 1831:26, 1831:40, 1831:45, 1834:1, 1834:9, 1856:25

**meetings** [5] - 1803:38, 1827:27, 1831:13, 1831:34, 1831:37

**Megan** [1] - 1856:38

**member** [3] - 1793:9, 1842:2, 1848:12

**members** [4] - 1788:4, 1788:5, 1823:1, 1859:46

**memberships** [1] - 1839:30

**memorandum** [1] - 1818:5

**memories** [1] - 1819:36

**memory** [10] - 1797:33, 1819:18, 1819:26, 1819:29, 1819:43, 1820:6, 1822:39, 1823:18, 1850:46, 1853:36

**mention** [3] - 1778:15, 1779:12, 1845:23

**mere** [1] - 1778:34

**merely** [1] - 1792:10

**Merewether** [2] - 1856:43, 1856:44

**message** [4] - 1778:12, 1838:16, 1838:19, 1840:1

**met** [2] - 1826:18, 1840:27

**MFI** [1] - 1837:15

**MFI-11** [1] - 1837:13

**Michael** [8] - 1835:37, 1836:3, 1836:9, 1836:26, 1836:37, 1838:5, 1856:27, 1859:12

**might** [24] - 1779:23, 1779:35, 1782:40, 1784:7, 1786:6, 1788:12, 1789:26, 1792:20, 1802:30, 1803:16, 1806:4, 1815:45, 1817:31, 1818:15, 1819:27, 1819:31, 1820:6, 1825:14, 1832:7, 1838:24, 1848:14, 1850:47, 1853:45

**mind** [21] - 1796:34, 1796:36, 1800:12, 1800:22, 1800:37, 1801:1, 1804:4, 1804:11, 1807:2, 1807:25, 1811:11, 1819:30, 1819:33, 1819:35, 1823:10, 1827:37, 1837:31, 1837:44, 1838:41, 1841:43, 1846:20

**mind's** [1] - 1831:7

**minimising** [1] - 1812:12

**minister** [1] - 1833:23

**ministry** [12] - 1786:5, 1792:3, 1792:4, 1792:9, 1792:14, 1792:31, 1792:47, 1793:8, 1810:14, 1812:5, 1812:7, 1819:8

**minute** [3] - 1835:22, 1843:8, 1857:12

**minutes** [1] - 1843:18

**misreporting** [1] - 1776:1

**missed** [5] - 1804:8, 1843:47, 1851:27, 1851:28, 1851:34

**mission** [2] - 1824:11, 1824:19

**mistake** [1] - 1819:1

**mistaken** [2] - 1797:26, 1850:47

**mistakes** [5] - 1803:7, 1803:11, 1803:16, 1803:24, 1806:6

**misunderstood** [1] - 1798:12

**mmm-hmm** [1] - 1839:3

**modified** [1] - 1778:19

**moment** [4] - 1785:45, 1788:41, 1811:20, 1838:23

**momentous** [1] - 1847:43

**Monday** [2] - 1890:15, 1890:23

**MONDAY** [1] - 1890:26

**Monsignor** [9] - 1789:7, 1797:14, 1800:33, 1802:40, 1808:45, 1809:20, 1809:45, 1811:27, 1811:42

**month** [1] - 1795:31

**months** [2] - 1797:10, 1845:12

**moral** [3] - 1815:46, 1853:11, 1853:21

**morning** [5] - 1825:19, 1825:21, 1825:28, 1836:21, 1890:14

**most** [10] - 1780:4, 1787:3, 1790:38, 1791:26, 1819:6, 1821:16, 1826:39, 1831:42, 1837:28, 1859:46

**mother** [4] - 1833:2, 1841:32, 1852:31

**mother's** [1] - 1847:26

**motivated** [1] - 1840:5

**mouth** [1] - 1799:34

**move** [8] - 1807:47, 1818:12, 1818:22, 1835:9, 1841:41, 1850:7, 1851:22, 1890:16

**moved** [1] - 1852:15

**moving** [3] - 1818:32, 1840:3, 1845:26

**MR** [114] - 1783:11, 1783:33, 1787:17, 1787:24, 1788:12, 1788:16, 1789:37, 1789:41, 1790:4, 1790:12, 1790:16, 1794:17, 1794:22, 1795:12, 1795:16, 1795:18, 1797:7, 1799:38, 1799:44, 1800:6, 1801:26, 1802:15, 1802:23, 1802:45, 1805:14, 1806:14, 1806:19, 1806:38, 1806:42, 1806:46, 1807:37, 1810:46, 1812:25, 1812:32, 1814:6, 1814:8, 1816:7, 1818:12, 1818:27, 1820:10, 1820:14, 1820:20, 1820:24, 1820:34, 1820:37, 1820:39, 1821:45, 1822:6, 1822:18, 1822:22, 1822:36, 1822:44, 1823:17, 1823:21, 1823:33, 1824:3, 1824:11, 1824:16, 1824:24, 1825:14, 1827:47, 1829:45, 1832:7, 1832:23, 1832:25, 1832:33, 1832:39, 1832:41, 1833:32, 1833:43, 1836:29, 1836:36, 1837:9, 1837:17, 1837:36, 1837:42, 1838:3, 1842:18, 1842:22, 1842:24, 1846:20, 1846:26, 1847:3, 1847:5, 1847:13, 1847:18, 1847:20, 1848:1, 1848:5, 1848:10, 1849:3, 1849:5, 1850:1, 1850:7, 1850:12, 1851:19, 1851:22, 1852:3, 1852:5, 1852:7, 1853:33, 1853:35, 1854:38, 1854:43, 1857:16, 1857:18, 1857:20, 1859:14, 1859:16, 1859:20, 1860:21, 1860:31, 1861:1, 1890:12

**MS** [58] - 1776:1, 1776:18, 1776:30, 1776:32, 1776:39, 1783:24, 1783:30, 1783:40, 1787:21, 1787:28, 1788:3, 1788:44, 1789:1, 1789:15, 1790:10, 1790:14, 1790:24, 1794:25, 1795:8, 1796:44, 1799:32, 1799:41, 1799:47, 1800:15, 1800:36, 1801:6, 1801:41, 1802:4, 1802:9, 1802:26, 1805:5, 1806:9, 1806:32, 1807:29, 1811:1, 1811:7, 1811:9, 1812:29, 1812:34, 1812:39, 1812:45, 1813:41, 1816:4, 1818:9, 1818:18, 1820:28, 1822:30, 1823:4, 1824:28, 1824:30, 1825:10, 1825:18, 1825:28, 1828:6, 1828:10, 1830:3, 1832:3, 1832:16

**much-loved** [1] - 1860:14

**must** [6] - 1785:17, 1837:47, 1846:39, 1850:4, 1854:15, 1854:25

---

**N**

---

**name** [10] - 1796:15, 1796:16, 1814:31, 1832:41, 1835:28, 1837:30, 1837:47, 1845:23, 1860:32, 1860:33

**namely** [2] - 1796:3, 1805:31

**names** [1] - 1860:37

**National** [1] - 1817:25

**nature** [6] - 1784:15, 1816:34, 1822:31, 1828:41, 1830:18, 1847:43

**nearly** [2] - 1819:10, 1830:5  
**necessarily** [3] - 1801:12, 1801:13, 1829:47  
**necessary** [6] - 1792:24, 1804:4, 1823:42, 1832:33, 1847:15, 1850:8  
**need** [16] - 1791:47, 1792:1, 1792:15, 1792:37, 1797:33, 1806:7, 1812:4, 1817:45, 1822:40, 1827:38, 1828:31, 1831:24, 1832:18, 1842:26, 1854:6, 1854:18  
**needed** [7] - 1779:2, 1781:8, 1793:45, 1804:12, 1807:38, 1826:30, 1859:30  
**needing** [1] - 1789:29  
**needs** [5] - 1784:16, 1788:30, 1791:14, 1823:18, 1823:25  
**Nelson** [6] - 1833:44, 1834:11, 1835:3, 1849:6, 1849:23, 1849:32  
**neutral** [3] - 1776:34, 1778:3, 1778:11  
**never** [20] - 1776:8, 1777:44, 1785:18, 1786:25, 1786:42, 1786:44, 1787:37, 1814:13, 1825:38, 1825:40, 1825:41, 1827:34, 1827:37, 1829:39, 1829:40, 1830:12, 1831:1, 1840:26, 1856:8, 1857:14  
**New** [1] - 1814:45  
**new** [3] - 1824:45, 1825:2, 1825:31  
**NEWCASTLE** [1] - 1775:18  
**Newcastle** [11] - 1775:25, 1775:26, 1800:44, 1804:19, 1804:27, 1804:37, 1804:43, 1814:19, 1825:35, 1856:26, 1860:7  
**next** [8] - 1811:40, 1817:38, 1836:4, 1844:22, 1844:28, 1846:4, 1858:41, 1860:13  
**night** [11] - 1849:6, 1849:37, 1850:13, 1850:23, 1850:28, 1851:1, 1851:5, 1851:9, 1851:25, 1851:32, 1858:18  
**nine** [1] - 1844:42  
**no"** [1] - 1818:28  
**nobody** [2] - 1839:47, 1851:41  
**non** [2] - 1776:10, 1837:30  
**non-practising** [1] - 1776:10  
**non-publication** [1] - 1837:30  
**none** [1] - 1839:44  
**normal** [3] - 1804:2, 1807:15, 1846:44  
**normally** [1] - 1839:25  
**notation** [1] - 1836:37  
**NOTE** [2] - 1797:4, 1836:34  
**note** [36] - 1788:22, 1788:23, 1795:46, 1797:1, 1827:3, 1827:4, 1827:5, 1827:36, 1827:38, 1828:12, 1828:16, 1828:19, 1828:25, 1828:33, 1828:35, 1828:41, 1828:45, 1829:1, 1829:16, 1829:21, 1830:17, 1832:16, 1835:31, 1836:1, 1836:2, 1836:25, 1836:29, 1836:31, 1838:4, 1839:37, 1845:45, 1850:22, 1850:24, 1850:27, 1850:45, 1857:21  
**noted** [2] - 1776:12, 1835:40  
**notepad** [1] - 1829:32  
**notes** [14] - 1825:44, 1826:2, 1826:7, 1826:10, 1826:17, 1826:23, 1826:28, 1826:30, 1826:43, 1827:27, 1827:30, 1827:33, 1827:42  
**notetaking** [7] - 1826:19, 1826:21, 1828:20, 1828:34, 1829:23, 1830:11, 1830:20  
**nothing** [4] - 1789:31, 1840:22, 1845:21, 1859:16  
**notice** [5] - 1812:14, 1821:22, 1839:5, 1839:10, 1845:31  
**noticeable** [1] - 1846:8  
**noticed** [1] - 1839:11  
**November** [19] - 1798:18, 1802:4, 1802:11, 1802:17, 1805:14, 1805:25, 1805:28, 1807:4, 1807:12, 1808:1, 1811:10, 1811:12, 1812:21, 1812:47, 1813:44, 1853:41, 1854:3, 1854:8, 1854:13  
**NP2** [1] - 1831:19  
**NSW** [2] - 1775:26, 1814:32  
**nuclear** [2] - 1839:16, 1839:18  
**number** [15] - 1785:12, 1787:31, 1789:23, 1794:22, 1798:1, 1802:37, 1816:25, 1818:4, 1818:20, 1828:38, 1829:29, 1830:27, 1830:38, 1831:14, 1842:26  
**Number** [1] - 1775:26  
**nut** [1] - 1831:40

---

**O**

---

**o'clock** [3] - 1848:6, 1848:18, 1890:22  
**oath** [2] - 1830:14, 1831:6  
**object** [25] - 1787:17, 1789:41, 1789:43, 1789:46, 1790:18, 1790:19, 1794:17, 1799:32, 1799:33, 1806:9, 1807:29, 1812:25, 1816:4, 1821:45, 1822:44, 1823:21, 1823:26, 1827:47, 1829:45, 1846:20, 1847:3, 1847:13, 1850:1, 1851:19, 1854:38  
**objecting** [1] - 1801:9  
**objection** [8] - 1783:33, 1790:16, 1795:22, 1802:13, 1802:24, 1806:12, 1820:20, 1822:6  
**objections** [1] - 1846:22  
**obligation** [4] - 1818:45, 1821:42, 1821:47, 1822:26  
**obligations** [1] - 1822:23  
**observations** [2] - 1841:11, 1841:12  
**observed** [1] - 1860:10  
**observing** [1] - 1842:46  
**obtained** [3] - 1790:28, 1807:3, 1829:22  
**obtaining** [1] - 1859:25  
**obvious** [2] - 1787:4, 1837:26  
**obviously** [11] - 1778:10, 1783:11, 1786:29, 1794:36, 1807:42, 1808:17, 1810:9, 1818:14, 1826:47, 1831:1, 1831:34  
**occasion** [5] - 1830:12, 1830:16, 1831:26, 1844:6, 1854:22  
**occasions** [2] - 1799:14, 1816:28  
**occurred** [5] - 1828:11, 1843:4, 1843:33, 1854:20, 1855:21  
**OF** [6] - 1775:12, 1775:14, 1775:18, 1776:26, 1797:4, 1805:12  
**offend** [1] - 1824:4  
**offending** [2] - 1800:24, 1824:40  
**offered** [2] - 1801:42, 1855:36  
**offering** [1] - 1859:2  
**offers** [1] - 1838:11  
**Office** [10] - 1775:42, 1825:8, 1853:41, 1855:35, 1856:8, 1856:14, 1856:30, 1856:34, 1856:47, 1857:13  
**officers** [3] - 1817:36, 1818:5, 1859:46  
**official** [1] - 1833:18  
**officials** [5] - 1803:38, 1822:38, 1822:40, 1822:45, 1823:1  
**often** [2] - 1788:4, 1853:17  
**Ombudsman** [2] - 1824:20  
**omission** [1] - 1841:19  
**omissions** [1] - 1841:13  
**once** [6] - 1810:20, 1824:45, 1835:28, 1840:42, 1854:38, 1856:31  
**one** [44] - 1779:22, 1783:11, 1788:18, 1788:19, 1788:30, 1791:1, 1791:17, 1791:25, 1792:10, 1793:12, 1793:25, 1797:24, 1800:47, 1801:32, 1803:29, 1804:16, 1805:19, 1807:24, 1807:35, 1810:4, 1813:17, 1815:47, 1817:35, 1817:46, 1819:29, 1819:30, 1820:1, 1822:1, 1826:45, 1827:28, 1827:43, 1830:41, 1831:17, 1831:26, 1831:30, 1831:35, 1836:16, 1841:35, 1844:6, 1847:40, 1851:19, 1854:2  
**one's** [2] - 1819:29, 1819:32  
**ones** [3] - 1816:31, 1840:15, 1840:22  
**open** [1] - 1838:16  
**operation** [1] - 1776:11  
**operative** [1] - 1822:25  
**opinion** [3] - 1801:43, 1806:22, 1811:36  
**opportunity** [2] - 1796:44, 1817:29  
**opposed** [4] - 1813:28, 1819:23, 1819:27, 1819:36  
**optimum** [1] - 1860:5  
**option** [5] - 1804:20, 1804:32, 1805:42, 1813:17  
**options** [3] - 1803:22, 1804:13, 1811:26  
**order** [7] - 1781:9, 1784:14, 1786:32, 1837:30, 1837:37, 1837:38, 1890:15  
**ordered** [1] - 1788:21

**organisations** [1] - 1839:31  
**organised** [1] - 1845:20  
**ostracisation** [1] - 1842:6  
**ostracism** [4] - 1844:4, 1844:10, 1844:35, 1845:17  
**otherwise** [9] - 1780:39, 1788:6, 1790:37, 1801:43, 1806:11, 1820:24, 1826:17, 1838:25, 1848:14  
**ought** [5] - 1776:18, 1793:31, 1813:9, 1822:31, 1837:43  
**outcome** [2] - 1778:21, 1826:3  
**outside** [8] - 1793:7, 1818:22, 1843:32, 1843:34, 1843:36, 1843:41, 1851:11, 1851:15  
**overleaf** [1] - 1835:23  
**overnight** [1] - 1814:41  
**overseas** [6] - 1792:45, 1793:26, 1793:29, 1794:7, 1794:27, 1811:32  
**overt** [4] - 1839:23, 1839:43, 1844:38, 1844:39  
**overtone** [1] - 1828:1  
**own** [5] - 1841:38, 1841:45, 1858:26, 1860:32

---

**P**

---

**Pablo** [4] - 1798:32, 1804:21, 1809:23, 1809:41  
**paedophile** [1] - 1798:35  
**paedophiles** [2] - 1800:25, 1800:31  
**paedophilic** [1] - 1800:34  
**page** [17] - 1776:40, 1790:17, 1796:10, 1800:17, 1800:38, 1801:20, 1801:42, 1801:47, 1803:20, 1808:34, 1808:44, 1826:44, 1835:23, 1835:35, 1861:6, 1861:7  
**pages** [2] - 1790:5, 1812:40  
**painful** [2] - 1845:8, 1845:32  
**papal** [1] - 1845:20  
**papers** [7] - 1795:38, 1795:43, 1796:29, 1796:33, 1798:13, 1799:4, 1817:42  
**paragraph** [7] - 1799:10, 1801:28, 1808:6, 1808:24, 1808:46, 1809:35, 1811:24  
**pardon** [1] - 1829:4  
**pardons** [1] - 1851:17  
**parish** [17] - 1792:13, 1833:13, 1833:27, 1833:28, 1834:1, 1834:8, 1835:1, 1839:6, 1839:19, 1839:31, 1850:25, 1852:10, 1852:16, 1852:18, 1852:21, 1852:26, 1853:6  
**parishioner** [6] - 1779:28, 1783:42, 1784:4, 1833:10, 1833:13, 1833:19  
**parishioners** [2] - 1833:24, 1841:7  
**Parker** [1] - 1814:20  
**part** [21] - 1786:21, 1787:6, 1787:8, 1789:23, 1790:38, 1791:11, 1791:19, 1791:23, 1791:31, 1797:27, 1800:23, 1800:42, 1801:11, 1801:14, 1804:8, 1807:13, 1810:12, 1814:40, 1819:6, 1840:43, 1856:29  
**participant** [1] - 1818:6  
**participate** [2] - 1792:40, 1818:36  
**participation** [4] - 1782:17, 1792:11, 1792:34, 1792:36  
**particular** [13] - 1778:11, 1782:45, 1802:28, 1818:20, 1826:18, 1827:30, 1828:47, 1831:25, 1831:39, 1833:38, 1839:31, 1845:7, 1854:22  
**particularly** [6] - 1785:21, 1786:46, 1793:39, 1821:41, 1830:42, 1845:13  
**parties** [2] - 1823:35, 1852:31  
**partner** [3] - 1833:44, 1835:2, 1859:31  
**party** [1] - 1852:31  
**pass** [2] - 1786:6, 1838:11  
**passed** [1] - 1836:16  
**passport** [1] - 1818:34  
**past** [5] - 1803:6, 1803:11, 1803:15, 1803:23, 1806:6  
**pastor** [1] - 1780:16  
**pastoral** [13] - 1784:22, 1784:28, 1784:30, 1784:33, 1786:47, 1815:30, 1815:33, 1829:30, 1829:31, 1838:16, 1838:19, 1841:14  
**patent** [1] - 1837:26  
**path** [2] - 1778:17, 1779:25  
**Patrick** [1] - 1852:11  
**pattern** [1] - 1833:10  
**Pedro** [1] - 1808:7  
**pejorative** [1] - 1828:1  
**pending** [5] - 1793:46, 1794:8, 1794:11, 1794:27, 1794:31  
**people** [49] - 1780:15, 1780:29, 1780:32, 1780:38, 1781:3, 1781:7, 1781:17, 1781:27, 1781:38, 1781:43, 1781:47, 1782:16, 1783:8, 1783:43, 1785:9, 1785:12, 1785:15, 1786:3, 1786:46, 1787:9, 1789:8, 1808:9, 1809:10, 1815:44, 1816:1, 1816:11, 1816:12, 1816:16, 1816:26, 1817:19, 1817:20, 1817:21, 1818:14, 1822:1, 1823:40, 1824:41, 1826:14, 1836:15, 1837:42, 1839:26, 1840:5, 1841:30, 1845:3, 1846:11, 1846:17, 1852:41, 1853:2, 1860:15  
**perceive** [1] - 1846:28  
**perceived** [1] - 1814:30  
**perceptions** [2] - 1836:43, 1850:4  
**perfect** [1] - 1818:29  
**perhaps** [23] - 1777:27, 1778:15, 1782:3, 1782:31, 1789:18, 1789:29, 1790:41, 1791:35, 1800:32, 1810:13, 1812:13, 1813:18, 1813:20, 1818:1, 1819:17, 1821:18, 1821:19, 1821:36, 1823:37, 1823:41, 1833:18, 1848:13, 1852:14  
**period** [8] - 1776:9, 1804:42, 1833:19, 1833:22, 1844:19, 1844:43, 1845:6, 1845:26  
**periods** [1] - 1843:17  
**permissible** [1] - 1800:3  
**permission** [1] - 1811:30  
**permit** [2] - 1802:20, 1802:42  
**permitted** [3] - 1804:37, 1812:35, 1830:7  
**perpetrator** [2] - 1785:42, 1816:42  
**person** [16] - 1782:41, 1782:44, 1782:45, 1783:28, 1784:22, 1786:7, 1787:3, 1788:38, 1791:42, 1813:33, 1817:2, 1822:2, 1824:12, 1826:47, 1829:17, 1831:30  
**person's** [2] - 1838:31, 1838:32  
**personal** [4] - 1780:13, 1838:31, 1852:14, 1853:11  
**personally** [3] - 1818:6, 1818:46, 1853:25  
**persons** [2] - 1821:47, 1822:47  
**perspective** [6] - 1812:11, 1813:12, 1815:20, 1815:27, 1815:28, 1847:26  
**phenomenon** [3] - 1844:12, 1844:35, 1847:7  
**Philippine** [1] - 1799:13  
**Philippines** [35] - 1798:19, 1798:28, 1798:46, 1799:7, 1801:29, 1803:17, 1803:21, 1803:25, 1803:34, 1803:39, 1803:43, 1804:33, 1804:38, 1805:26, 1805:33, 1807:10, 1807:13, 1807:25, 1807:26, 1808:7, 1809:11, 1809:26, 1809:33, 1810:1, 1810:12, 1810:16, 1810:18, 1810:36, 1810:40, 1812:16, 1813:19, 1813:21, 1813:23, 1818:40  
**phone** [7] - 1783:14, 1807:27, 1834:32, 1840:18, 1844:16, 1844:18, 1853:44  
**phrased** [1] - 1802:27  
**physical** [2] - 1785:31, 1844:38  
**pick** [3] - 1839:38, 1849:33, 1856:24  
**picked** [6] - 1807:31, 1807:34, 1812:21, 1813:1, 1813:27, 1813:36  
**picking** [1] - 1778:12  
**place** [25] - 1781:18, 1784:16, 1785:5, 1786:6, 1789:30, 1791:16, 1792:9, 1792:12, 1792:15, 1804:6, 1808:29, 1813:25, 1817:23, 1817:30, 1818:23, 1819:11, 1824:45, 1825:2, 1831:8, 1831:9, 1844:24, 1852:21, 1857:10, 1860:7  
**placed** [4] - 1789:21, 1791:5, 1791:22, 1796:24  
**places** [2] - 1785:17, 1785:21  
**plainly** [1] - 1803:47  
**plan** [1] - 1844:21  
**play** [1] - 1801:7  
**played** [1] - 1833:14  
**pockets** [1] - 1845:3  
**point** [22] - 1781:32, 1783:26, 1785:20, 1786:22, 1788:22,

1789:3, 1789:15,  
1789:16, 1790:24,  
1792:26, 1792:29,  
1795:1, 1799:27,  
1803:34, 1808:39,  
1810:6, 1830:24,  
1832:19, 1843:47,  
1850:1, 1853:3,  
1855:17  
**pointed** [1] - 1802:10  
**Police** [5] - 1814:32,  
1814:45, 1815:13,  
1817:40  
**POLICE** [1] - 1775:14  
**police** [62] - 1776:33,  
1776:35, 1776:44,  
1777:3, 1777:18,  
1777:26, 1777:33,  
1777:40, 1777:45,  
1778:2, 1778:4,  
1778:9, 1778:16,  
1778:18, 1778:29,  
1778:36, 1778:38,  
1778:42, 1778:44,  
1779:1, 1779:11,  
1779:17, 1779:22,  
1779:24, 1785:44,  
1785:45, 1789:25,  
1793:27, 1814:9,  
1815:23, 1815:31,  
1815:42, 1817:1,  
1817:2, 1817:28,  
1817:47, 1818:5,  
1819:13, 1819:14,  
1824:32, 1825:4,  
1828:18, 1828:27,  
1828:41, 1831:3,  
1833:36, 1834:44,  
1836:7, 1836:15,  
1836:16, 1843:29,  
1844:16, 1845:42,  
1851:12, 1851:16,  
1855:14, 1855:18,  
1855:44, 1856:18,  
1856:22, 1859:45  
**policy** [2] - 1825:44,  
1825:47  
**position** [27] -  
1776:12, 1778:1,  
1778:3, 1778:26,  
1778:35, 1779:15,  
1780:43, 1782:40,  
1786:40, 1794:12,  
1806:3, 1807:47,  
1809:32, 1812:2,  
1813:36, 1822:32,  
1822:33, 1827:29,  
1827:44, 1831:15,  
1831:16, 1831:27,  
1831:39, 1834:19,  
1835:1, 1836:47,  
1838:40  
**positive** [2] - 1779:15,  
1803:25  
**positively** [2] -  
1777:39, 1777:44  
**possibilities** [1] -  
1805:41  
**possibility** [4] -  
1793:31, 1803:42,  
1803:44, 1815:19  
**possible** [9] -  
1788:39, 1797:19,  
1799:39, 1799:45,  
1806:24, 1806:32,  
1806:33, 1816:42,  
1819:27  
**possibly** [3] - 1804:32,  
1804:34, 1835:6  
**postdate** [1] - 1795:18  
**postpone** [1] -  
1825:20  
**postponed** [1] -  
1823:21  
**postulated** [1] -  
1854:2  
**power** [1] - 1787:39  
**powers** [1] - 1789:3  
**practical** [3] -  
1791:35, 1810:5,  
1839:21  
**practice** [14] - 1781:7,  
1781:13, 1787:13,  
1787:18, 1793:22,  
1807:15, 1826:1,  
1826:7, 1826:22,  
1826:32, 1826:36,  
1830:11, 1830:13,  
1830:18  
**practices** [2] -  
1780:44, 1782:8  
**practise** [2] - 1791:43,  
1826:39  
**practised** [1] - 1776:8  
**practiser** [1] - 1783:45  
**practising** [6] -  
1776:5, 1776:10,  
1786:29, 1826:27,  
1826:29, 1826:40  
**practitioners** [1] -  
1776:39  
**pray** [1] - 1840:47  
**praying** [2] - 1803:23,  
1840:47  
**preceded** [1] -  
1802:33  
**precedes** [1] -  
1800:16  
**precise** [4] - 1817:43,  
1818:19, 1819:42,  
1828:30  
**precisely** [5] -  
1777:43, 1786:3,  
1789:15, 1789:16,  
1801:28  
**precision** [1] -  
1813:29  
**precluded** [1] - 1788:1  
**predicament** [1] -  
1806:27  
**preface** [1] - 1822:40  
**preferable** [1] -  
1798:26  
**preference** [2] -  
1813:30, 1813:32  
**preferred** [4] -  
1804:20, 1804:31,  
1804:32, 1813:17  
**prepared** [2] -  
1829:17, 1835:18  
**PREPARED** [1] -  
1836:34  
**preparing** [1] -  
1802:16  
**presbytery** [6] -  
1834:9, 1839:44,  
1843:32, 1849:7,  
1849:23, 1849:29  
**prescribed** [4] -  
1821:47, 1822:2,  
1822:47  
**present** [5] - 1792:1,  
1792:43, 1811:29,  
1829:19, 1854:19  
**preserved** [1] -  
1820:22  
**pressure** [1] - 1785:32  
**presume** [3] -  
1780:32, 1794:43,  
1843:7  
**pretending** [1] -  
1803:33  
**pretty** [1] - 1838:27  
**prevaricate** [1] -  
1830:9  
**prevaricating** [1] -  
1830:4  
**priest** [51] - 1780:11,  
1785:6, 1785:37,  
1787:35, 1787:41,  
1787:42, 1787:45,  
1790:32, 1790:40,  
1791:33, 1791:41,  
1792:2, 1792:12,  
1792:22, 1792:24,  
1792:32, 1792:39,  
1792:41, 1792:45,  
1793:26, 1793:27,  
1793:28, 1793:34,  
1793:35, 1793:42,  
1796:13, 1798:30,  
1803:34, 1803:42,  
1812:17, 1814:12,  
1816:41, 1818:36,  
1818:43, 1818:45,  
1819:4, 1826:18,  
1828:17, 1828:26,  
1828:47, 1830:17,  
1831:39, 1836:6,  
1840:39, 1845:18,  
1845:23, 1852:20,  
1852:21, 1852:26,  
1852:36, 1852:41  
**priest's** [2] - 1787:34,  
1787:40  
**priesthood** [1] -  
1811:31  
**priestly** [6] - 1790:7,  
1792:23, 1792:46,  
1793:6, 1795:30,  
1798:6  
**priests** [23] - 1779:40,  
1780:8, 1780:19,  
1781:34, 1801:33,  
1818:32, 1823:47,  
1825:45, 1826:3,  
1826:16, 1827:7,  
1827:14, 1827:16,  
1827:28, 1827:43,  
1829:29, 1830:19,  
1834:38, 1842:41,  
1850:36, 1851:36,  
1851:46, 1853:13  
**priests'** [1] - 1790:25  
**primary** [1] - 1852:39  
**principle** [1] - 1791:31  
**probabilities** [1] -  
1799:28  
**problem** [7] - 1779:30,  
1809:23, 1810:5,  
1810:20, 1812:15,  
1820:28, 1849:34  
**problematic** [1] -  
1778:22  
**problems** [2] -  
1779:37, 1853:26  
**procedure** [1] - 1804:2  
**procedures** [2] -  
1818:32, 1821:46  
**proceed** [1] - 1826:26  
**proceeded** [1] -  
1829:30  
**proceedings** [1] -  
1838:25  
**process** [35] -  
1787:33, 1793:29,  
1793:35, 1793:40,  
1793:44, 1793:45,  
1794:32, 1794:40,  
1794:46, 1795:4,  
1804:6, 1810:4,  
1816:24, 1817:34,  
1840:3, 1840:7,  
1841:6, 1841:13,  
1841:42, 1842:1,  
1842:46, 1844:44,  
1845:16, 1854:30,  
1856:31, 1856:41,  
1858:30, 1859:24,  
1859:30, 1859:36,  
1859:41, 1859:43,  
1859:47, 1860:4,  
1860:11  
**processes** [2] -  
1782:13, 1837:2  
**produce** [1] - 1793:5  
**Professional** [13] -  
1817:25, 1822:7,  
1822:11, 1825:8,  
1853:41, 1855:35,  
1856:7, 1856:13,  
1856:30, 1856:33,  
1856:46, 1857:5,  
1857:12  
**professionalism** [1] -  
1860:1  
**professionals** [1] -  
1822:28  
**program** [1] - 1857:2  
**progressions** [1] -  
1818:39  
**progressive** [1] -  
1845:27  
**promise** [1] - 1796:12  
**promised** [1] -  
1796:15  
**prompt** [1] - 1828:12  
**propensity** [1] -  
1824:4  
**proper** [6] - 1793:22,  
1802:31, 1807:11,  
1807:14, 1823:6,  
1823:40  
**properly** [2] - 1811:3,  
1824:6  
**proposal** [3] - 1808:2,  
1856:3, 1890:13  
**proposals** [1] -  
1807:40  
**proposed** [2] -  
1836:45, 1837:29  
**proposition** [30] -  
1777:43, 1781:19,  
1781:24, 1781:30,  
1781:36, 1781:38,  
1782:16, 1784:9,  
1787:18, 1787:37,  
1788:12, 1788:16,  
1789:2, 1790:43,  
1790:44, 1791:7,



1791:10, 1795:2,  
1827:14, 1827:32,  
1828:23, 1828:28,  
1828:31, 1828:39,  
1830:12, 1830:37,  
1831:47, 1832:1,  
1834:26, 1852:44

**propositions** [7] -  
1788:30, 1791:15,  
1797:23, 1797:28,  
1830:27, 1830:38,  
1830:41

**protect** [1] - 1786:24

**Protection** [1] -  
1818:3

**protocol** [2] - 1808:28,  
1816:25

**protocols** [3] - 1815:5,  
1815:8, 1818:42

**proud** [2] - 1842:15,  
1842:16

**provide** [8] - 1780:23,  
1780:37, 1780:43,  
1781:17, 1806:20,  
1823:8, 1823:9,  
1835:17

**provided** [4] -  
1781:14, 1807:3,  
1810:35, 1829:13

**provisions** [1] -  
1816:37

**prudence** [1] -  
1792:40

**prudent** [1] - 1809:15

**prudently** [3] -  
1793:31, 1812:12,  
1813:14

**pseudonym** [1] -  
1832:46

**psychiatric** [1] -  
1785:15

**public** [4] - 1786:24,  
1793:9, 1796:13,  
1823:2

**publication** [2] -  
1832:44, 1837:30

**publicity** [1] - 1860:6

**published** [3] -  
1838:20, 1838:26,  
1860:37

**purely** [1] - 1813:21

**purpose** [5] - 1795:44,  
1803:20, 1805:32,  
1827:39, 1837:5

**purposes** [6] -  
1792:25, 1818:1,  
1832:18, 1832:44,  
1852:7, 1854:19

**pursuant** [1] - 1860:38

**pursue** [2] - 1801:7,  
1856:33

**push** [1] - 1841:27

**put** [61] - 1778:26,  
1781:22, 1781:27,  
1783:34, 1785:1,  
1786:27, 1786:35,  
1789:2, 1789:35,  
1789:45, 1790:6,  
1790:10, 1790:14,  
1791:16, 1796:31,  
1796:32, 1797:13,  
1797:23, 1797:28,  
1798:23, 1798:39,  
1799:41, 1799:42,  
1799:44, 1800:1,  
1800:7, 1801:18,  
1802:20, 1802:26,  
1802:42, 1804:6,  
1804:13, 1805:37,  
1806:9, 1806:11,  
1806:14, 1808:29,  
1810:27, 1812:14,  
1813:12, 1813:24,  
1813:25, 1815:39,  
1817:23, 1820:44,  
1821:40, 1822:26,  
1822:31, 1822:45,  
1823:10, 1824:45,  
1825:2, 1826:12,  
1828:23, 1830:27,  
1831:6, 1841:35,  
1842:26, 1854:43,  
1860:14

**puts** [1] - 1805:27

**putting** [16] - 1780:42,  
1782:42, 1782:43,  
1788:30, 1788:41,  
1799:34, 1804:31,  
1806:3, 1806:23,  
1807:33, 1813:21,  
1817:30, 1827:13,  
1830:11, 1830:37,  
1860:9

**puzzled** [1] - 1853:16

---

**Q**

---

**questioned** [3] -  
1798:22, 1814:18,  
1814:31

**questioning** [9] -  
1789:42, 1789:43,  
1790:17, 1800:1,  
1801:7, 1801:20,  
1801:47, 1802:28,  
1814:29

**questions** [35] -  
1777:12, 1784:20,  
1787:19, 1787:26,  
1788:18, 1789:16,  
1794:23, 1795:8,  
1795:10, 1795:24,  
1798:17, 1799:34,  
1805:21, 1807:7,  
1811:1, 1813:12,  
1814:25, 1814:26,  
1819:11, 1819:12,  
1819:17, 1820:35,  
1825:10, 1831:5,  
1831:32, 1832:3,  
1835:16, 1837:27,  
1842:34, 1844:4,  
1848:5, 1850:33,  
1852:3, 1854:20,  
1859:20

**quick** [2] - 1811:23,  
1820:30

**quickly** [1] - 1784:12

**quite** [7] - 1779:31,  
1782:42, 1790:2,  
1822:4, 1840:27,  
1859:11

**quote** [1] - 1811:26

---

**R**

---

**raise** [2] - 1779:23,  
1782:12

**raised** [7] - 1778:44,  
1786:25, 1789:23,  
1795:21, 1796:5,  
1803:43, 1809:11

**raising** [1] - 1784:5

**rammed** [1] - 1840:29

**ran** [3] - 1783:7,  
1785:12, 1833:21

**rang** [11] - 1834:23,  
1834:24, 1836:3,  
1836:20, 1839:47,  
1843:7, 1844:23,  
1846:1, 1854:8,  
1857:34, 1857:37

**range** [1] - 1826:14

**rare** [1] - 1831:28

**rather** [8] - 1793:35,  
1803:5, 1803:15,  
1813:37, 1829:31,  
1831:41, 1841:11,  
1841:18

**Raymond** [1] -  
1840:26

**re** [2] - 1816:20,  
1820:10

**re-examination** [1] -  
1820:10

**re-tell** [1] - 1816:20

**reached** [3] - 1793:12,  
1794:9, 1794:26

**read** [13] - 1787:21,  
1787:26, 1798:13,  
1801:42, 1801:43,  
1802:46, 1803:32,  
1807:4, 1811:20,  
1811:21, 1812:42,  
1842:11

**reader** [2] - 1811:23,  
1833:20

**readily** [1] - 1790:28

**reading** [3] - 1839:34,  
1839:40, 1854:17

**real** [4] - 1841:34,  
1841:35, 1860:23,  
1860:36

**realisation** [1] -  
1821:2

**reality** [1] - 1821:2

**really** [10] - 1785:44,  
1786:32, 1786:34,  
1822:44, 1823:28,  
1828:38, 1834:38,  
1836:17, 1842:39,  
1847:46

**reason** [5] - 1794:17,  
1819:3, 1827:33,  
1830:16, 1859:27

**reasonable** [3] -  
1810:41, 1812:9,  
1859:28

**reasons** [8] - 1777:4,  
1779:21, 1805:47,  
1807:41, 1811:44,  
1826:1, 1827:45,  
1847:37

**recalled** [1] - 1856:37

**recanting** [1] - 1830:4

**receive** [1] - 1822:7

**received** [3] - 1777:22,  
1810:41, 1813:20

**recently** [2] - 1843:3,  
1845:12

**receptive** [1] -  
1844:27

**recipient** [1] - 1806:5

**reciting** [1] - 1829:46

**recollect** [2] -  
1831:45, 1849:28

**recollection** [22] -  
1777:3, 1777:14,  
1777:21, 1797:11,  
1797:18, 1797:20,  
1798:10, 1827:21,  
1828:13, 1829:18,  
1830:46, 1831:6,  
1831:34, 1831:35,  
1834:6, 1838:12,  
1838:13, 1844:41,  
1850:23, 1850:35,  
1855:30, 1857:26

**recommendation** [1] -  
1792:17

**reconcile** [1] -  
1815:30

**reconstruct** [3] -  
1778:6, 1819:23,  
1819:46

**reconstruction** [4] -  
1819:27, 1819:30,  
1819:43, 1820:7

**reconstructions** [1] -  
1819:36

**record** [4] - 1776:12,  
1832:17, 1835:44,  
1860:21

**recorded** [4] -  
1836:25, 1842:37,  
1845:45, 1857:26

**recounts** [1] - 1854:19

**recovering** [1] -  
1808:39

**reference** [9] -  
1793:20, 1796:28,  
1809:35, 1817:36,  
1818:19, 1818:22,  
1836:10, 1838:8,  
1838:29

**references** [1] -  
1814:28

**referred** [11] -  
1805:31, 1807:18,  
1816:28, 1816:39,  
1817:1, 1817:23,  
1817:35, 1817:36,  
1818:2, 1838:9,  
1844:5

**referring** [6] - 1790:4,  
1796:41, 1802:9,  
1815:34, 1816:9,  
1817:14

**refers** [2] - 1797:34,  
1802:11

**refresh** [3] - 1822:39,  
1823:18, 1850:46

**refreshed** [1] -  
1797:34

**refused** [1] - 1810:22

**regard** [5] - 1818:15,  
1821:41, 1822:2,  
1837:19, 1843:10

**regarding** [6] -  
1797:39, 1811:1,  
1825:36, 1827:22,  
1830:28, 1855:45

**regards** [1] - 1809:22

**regularly** [1] - 1853:4

**relate** [1] - 1797:38

**related** [2] - 1821:33,  
1822:47

**relates** [1] - 1828:24

**RELATING** [1] -

1775:14  
**relating** [2] - 1821:34, 1821:41  
**relation** [12] - 1776:13, 1784:15, 1798:23, 1814:11, 1816:45, 1818:32, 1826:26, 1828:13, 1832:44, 1837:30, 1838:11  
**relationship** [7] - 1778:13, 1785:33, 1829:35, 1830:43, 1839:19, 1840:12, 1840:16  
**relationships** [2] - 1836:44, 1839:6  
**released** [1] - 1848:14  
**relevance** [2] - 1829:45, 1829:46  
**relevant** [8] - 1788:20, 1789:5, 1789:29, 1820:29, 1824:12, 1829:14, 1838:35  
**relevantly** [1] - 1823:42  
**religion** [1] - 1852:42  
**remained** [1] - 1804:42  
**remember** [15] - 1783:15, 1784:41, 1784:45, 1805:1, 1819:23, 1819:45, 1820:2, 1820:5, 1820:42, 1821:5, 1821:28, 1834:26, 1836:1, 1838:25, 1845:13  
**reminded** [1] - 1796:12  
**removal** [3] - 1795:19, 1795:23, 1804:7  
**remove** [1] - 1786:12  
**removed** [6] - 1784:43, 1790:29, 1790:36, 1791:1, 1795:32, 1809:4  
**removing** [2] - 1786:17, 1791:17  
**repeat** [2] - 1812:45, 1851:28  
**repeating** [1] - 1841:43  
**report** [8] - 1821:42, 1823:46, 1824:39, 1825:3, 1825:37, 1829:1, 1829:6, 1829:10  
**reported** [3] - 1824:6, 1838:1, 1860:34  
**reporting** [30] - 1796:35, 1816:37, 1817:37, 1817:38, 1817:47, 1818:2, 1818:7, 1821:21, 1821:32, 1821:33, 1821:37, 1821:46, 1822:9, 1822:15, 1822:23, 1822:26, 1822:37, 1822:41, 1823:28, 1823:47, 1824:31, 1824:36, 1824:46, 1825:3, 1825:5, 1825:7, 1825:30, 1837:31, 1837:42, 1858:3  
**reports** [1] - 1799:9  
**represent** [1] - 1832:26  
**representing** [1] - 1823:23  
**request** [4] - 1791:32, 1805:30, 1809:44, 1810:21  
**requested** [2] - 1809:10, 1809:46  
**require** [3] - 1792:17, 1792:41, 1809:1  
**required** [4] - 1792:20, 1793:1, 1804:1, 1819:4  
**requirements** [1] - 1822:10  
**requires** [2] - 1784:20, 1802:39  
**reside** [1] - 1785:26  
**resign** [1] - 1786:5  
**resiled** [1] - 1831:1  
**resistance** [1] - 1842:6  
**resolve** [1] - 1817:22  
**resolved** [1] - 1817:32  
**respect** [19] - 1778:39, 1779:31, 1783:13, 1786:36, 1793:46, 1800:7, 1805:24, 1817:30, 1817:31, 1820:16, 1822:41, 1822:42, 1826:19, 1826:24, 1827:32, 1844:10, 1852:27, 1859:45, 1859:47  
**respectful** [8] - 1788:19, 1788:42, 1800:4, 1802:31, 1812:35, 1818:21, 1822:9, 1823:12  
**respond** [1] - 1794:39  
**responded** [2] - 1794:35, 1814:25  
**responding** [1] - 1808:45  
**response** [17] - 1786:4, 1786:10, 1795:35, 1795:40, 1795:41, 1797:7, 1800:13, 1803:32, 1805:20, 1805:40, 1805:41, 1808:32, 1809:19, 1812:9, 1820:44, 1840:44, 1844:4  
**responsibilities** [1] - 1800:40  
**responsibility** [3] - 1804:24, 1804:28, 1804:42  
**rest** [1] - 1803:6  
**restatement** [1] - 1830:23  
**restrictions** [5] - 1789:21, 1791:4, 1791:22, 1796:23, 1808:28  
**result** [4] - 1817:18, 1835:9, 1859:25, 1860:5  
**results** [2] - 1804:6, 1817:46  
**resumed** [1] - 1890:17  
**RESUMPTION** [1] - 1849:1  
**retains** [1] - 1804:36  
**retired** [2] - 1803:5, 1803:23  
**return** [6] - 1794:26, 1795:4, 1801:31, 1808:22, 1809:5, 1855:25  
**returned** [2] - 1809:37, 1855:31  
**returning** [2] - 1810:1, 1810:6  
**revealed** [1] - 1831:36  
**review** [1] - 1827:23  
**revise** [1] - 1816:24  
**rights** [2] - 1820:22, 1823:23  
**ring** [7] - 1834:44, 1839:44, 1843:29, 1844:21, 1851:12, 1851:17, 1857:35  
**ringing** [1] - 1857:42  
**rise** [4] - 1808:16, 1808:32, 1809:45, 1818:9  
**rising** [1] - 1818:18  
**risk** [3] - 1812:8, 1812:10, 1812:12  
**Robert** [2] - 1834:2, 1890:16  
**role** [3] - 1784:33, 1800:37, 1833:15  
**roles** [2] - 1833:18, 1853:5  
**roll** [3] - 1776:9, 1776:10, 1776:11  
**room** [2] - 1841:29, 1841:30  
**Room** [1] - 1775:26  
**roster** [4] - 1839:34, 1839:35, 1839:38, 1839:39  
**rough** [1] - 1843:15  
**Royal** [8] - 1814:31, 1814:32, 1814:33, 1817:8, 1817:18, 1820:16, 1820:40, 1824:21  
**rude** [1] - 1818:18  
**run** [4] - 1782:25, 1782:27, 1785:15, 1823:37  
**rung** [3] - 1807:38, 1807:40, 1843:6  
**running** [1] - 1783:42  
**rushed** [1] - 1840:30  
**Ryan** [2] - 1817:41, 1856:25

**S**

**safe** [3] - 1785:1, 1785:5, 1785:17  
**safety** [2] - 1790:37, 1791:16  
**SAIDI** [2] - 1821:45, 1822:44  
**Saidi** [1] - 1822:4  
**San** [4] - 1798:32, 1804:21, 1809:23, 1809:41  
**satisfied** [1] - 1859:28  
**Saturday** [1] - 1836:21  
**saw** [3] - 1796:35, 1796:36, 1838:25  
**SC** [3] - 1775:34, 1775:37, 1820:45  
**scheduled** [1] - 1785:16  
**school** [8] - 1833:26, 1833:27, 1844:29, 1852:39, 1852:40, 1856:42, 1856:43  
**sciences** [1] - 1815:29  
**scores** [1] - 1852:29  
**script** [1] - 1842:11  
**search** [3] - 1787:33, 1787:40, 1853:23  
**searched** [1] - 1819:35  
**Searle** [30] - 1834:3, 1834:12, 1834:16, 1834:21, 1834:32, 1834:34, 1834:41, 1842:35, 1842:37, 1842:40, 1843:12, 1843:15, 1843:23, 1843:25, 1843:31, 1843:39, 1843:41, 1849:16, 1849:20, 1849:26, 1849:29, 1849:32, 1850:4, 1850:13, 1850:35, 1851:1, 1851:15, 1851:32, 1851:44, 1890:16  
**second** [5] - 1799:9, 1804:36, 1808:46, 1809:35, 1835:23  
**secondary** [2] - 1852:39, 1852:40  
**secondly** [3] - 1791:4, 1791:21, 1819:38  
**secrecy** [1] - 1858:6  
**section** [2] - 1832:34, 1860:38  
**secured** [2] - 1856:23, 1856:32  
**see** [48] - 1783:11, 1784:33, 1795:45, 1795:47, 1796:3, 1796:9, 1796:19, 1796:22, 1798:45, 1799:16, 1799:19, 1802:2, 1802:11, 1802:45, 1803:1, 1803:7, 1803:20, 1804:11, 1805:47, 1808:5, 1808:24, 1808:27, 1809:12, 1809:29, 1809:34, 1810:4, 1811:12, 1811:19, 1811:24, 1815:18, 1820:25, 1823:7, 1829:8, 1835:24, 1836:12, 1837:34, 1838:4, 1838:8, 1838:19, 1840:42, 1844:22, 1849:33, 1854:41, 1857:38, 1857:39, 1858:16, 1860:11, 1860:14  
**seeing** [3] - 1796:30, 1796:33, 1803:15  
**seek** [6] - 1784:25, 1809:15, 1832:25, 1832:34, 1837:9, 1853:10

**seeking** [7] - 1789:26, 1792:47, 1793:28, 1796:40, 1808:29, 1809:9, 1817:29  
**seem** [1] - 1781:32  
**send** [1] - 1793:26  
**sending** [1] - 1794:7  
**sends** [2] - 1809:34, 1809:37  
**senior** [1] - 1852:40  
**sense** [4] - 1785:32, 1815:46, 1829:35, 1853:20  
**sent** [5] - 1793:34, 1793:42, 1804:41, 1809:36, 1813:37  
**sentencing** [1] - 1858:30  
**separate** [1] - 1833:5  
**separated** [1] - 1845:12  
**Sept** [1] - 1799:21  
**September** [19] - 1798:46, 1801:34, 1801:37, 1802:6, 1802:17, 1802:33, 1802:38, 1805:8, 1805:23, 1805:27, 1805:32, 1807:5, 1807:17, 1807:21, 1813:6, 1813:10, 1853:40, 1854:3  
**sequence** [2] - 1817:43, 1851:14  
**Sergeant** [13] - 1814:19, 1814:24, 1835:12, 1836:14, 1838:10, 1838:47, 1844:7, 1844:12, 1845:36, 1847:28, 1855:8, 1855:9, 1856:3  
**series** [6] - 1797:23, 1797:28, 1801:11, 1801:15, 1811:2, 1813:11  
**serious** [1] - 1817:4  
**seriously** [3] - 1783:46, 1799:38, 1854:36  
**seriousness** [1] - 1821:23  
**servers** [1] - 1853:5  
**service** [1] - 1781:28  
**Service** [4] - 1814:32, 1814:45, 1815:13, 1815:14  
**session** [2] - 1831:17, 1831:18  
**set** [5] - 1783:30, 1824:35, 1825:3, 1836:47, 1850:4  
**several** [4] - 1816:28, 1818:5, 1819:14, 1853:30  
**sex** [6] - 1780:31, 1834:39, 1842:41, 1850:37, 1851:37, 1851:47  
**sexual** [10] - 1814:10, 1816:30, 1816:34, 1816:36, 1821:3, 1821:13, 1821:42, 1823:47, 1824:32, 1825:46  
**SEXUAL** [1] - 1775:16  
**sexually** [8] - 1797:35, 1797:39, 1812:3, 1827:8, 1827:15, 1828:17, 1828:26, 1830:33  
**shall** [1] - 1852:8  
**share** [1] - 1839:39  
**shared** [2] - 1833:28, 1833:29  
**shell** [1] - 1856:36  
**shield** [1] - 1858:25  
**shoes** [1] - 1803:30  
**shopping** [2] - 1839:25, 1840:26  
**short** [5] - 1776:9, 1783:14, 1823:38, 1823:41, 1858:35  
**SHORT** [1] - 1825:26  
**shorter** [1] - 1831:41  
**shortly** [3] - 1788:6, 1848:15, 1855:6  
**show** [5] - 1818:35, 1835:15, 1836:45, 1838:38, 1859:47  
**showed** [1] - 1838:36  
**showing** [1] - 1835:18  
**shown** [2] - 1813:6, 1857:20  
**sick** [1] - 1833:24  
**side** [3] - 1831:41, 1841:35, 1852:42  
**significance** [1] - 1821:22  
**significant** [8] - 1821:16, 1826:37, 1827:3, 1827:8, 1827:9, 1827:17, 1827:18  
**significantly** [1] - 1823:5  
**similar** [3] - 1789:42, 1819:13, 1841:16  
**simple** [3] - 1827:13, 1828:23, 1828:39  
**simply** [2] - 1792:32, 1796:39  
**simultaneously** [1] - 1818:4  
**sister** [3] - 1793:14, 1794:26, 1857:1  
**Sister** [1] - 1856:25  
**situation** [13] - 1778:38, 1779:28, 1806:42, 1807:46, 1814:14, 1814:29, 1816:32, 1818:47, 1823:36, 1826:2, 1828:47, 1840:35, 1841:47  
**skill** [1] - 1801:45  
**SKINNER** [21] - 1783:11, 1783:33, 1787:17, 1787:24, 1789:37, 1789:41, 1790:4, 1790:12, 1790:16, 1814:6, 1814:8, 1816:7, 1818:12, 1818:27, 1820:10, 1820:20, 1823:21, 1825:14, 1827:47, 1829:45, 1832:7  
**Skinner** [12] - 1783:38, 1789:39, 1790:21, 1791:13, 1814:4, 1816:5, 1818:18, 1820:12, 1820:15, 1828:3, 1830:5, 1832:9  
**slightly** [1] - 1842:11  
**slow** [1] - 1813:28  
**small** [3] - 1788:4, 1801:3, 1860:7  
**social** [2] - 1803:37, 1815:29  
**socialised** [1] - 1852:33  
**society** [2] - 1782:35, 1821:14  
**Solicitor's** [1] - 1775:42  
**solve** [1] - 1853:25  
**someone** [20] - 1778:33, 1779:22, 1781:41, 1782:12, 1782:20, 1782:24, 1782:30, 1782:34, 1782:39, 1783:45, 1784:18, 1784:28, 1784:30, 1789:17, 1793:7, 1793:40, 1796:36, 1819:1, 1859:38  
**sometimes** [4] - 1780:13, 1785:15, 1831:17  
**somewhat** [1] - 1805:28  
**somewhere** [12] - 1777:22, 1785:26, 1787:12, 1792:33, 1792:39, 1793:7, 1793:40, 1818:36, 1818:44, 1841:25, 1856:41  
**son** [31] - 1834:10, 1834:35, 1836:6, 1837:1, 1840:28, 1841:33, 1842:5, 1842:10, 1843:5, 1843:36, 1844:19, 1844:22, 1845:41, 1846:31, 1847:25, 1847:39, 1849:43, 1853:16, 1854:22, 1855:13, 1855:30, 1855:33, 1855:38, 1858:15, 1858:22, 1858:27, 1858:31, 1858:37, 1859:30, 1859:32, 1860:14  
**son's** [1] - 1860:32  
**sons** [5] - 1833:2, 1833:6, 1839:18, 1847:1, 1853:4  
**soon** [1] - 1857:42  
**sorry** [20] - 1784:10, 1784:12, 1791:26, 1791:27, 1799:32, 1804:8, 1810:16, 1816:7, 1818:16, 1820:14, 1824:44, 1825:23, 1826:29, 1831:9, 1832:1, 1845:8, 1845:31, 1851:28, 1856:37  
**sort** [11] - 1782:3, 1785:34, 1801:14, 1816:8, 1817:34, 1823:33, 1826:44, 1846:39, 1847:42, 1849:35, 1852:32  
**sorts** [6] - 1789:44, 1816:12, 1816:16, 1817:14, 1818:34, 1853:2  
**sought** [4] - 1780:26, 1780:28, 1810:30, 1848:11  
**sound** [3] - 1853:42, 1854:9, 1854:14  
**sounds** [1] - 1854:4  
**source** [1] - 1838:38  
**South** [1] - 1814:45  
**speaking** [5] - 1782:45, 1786:46, 1816:12, 1843:14, 1843:15  
**Special** [1] - 1860:38  
**SPECIAL** [1] - 1775:12  
**special** [7] - 1827:43, 1831:13, 1833:22, 1852:21, 1852:34, 1852:37, 1853:18  
**specific** [4] - 1777:4, 1788:3, 1831:18, 1850:33  
**specifically** [3] - 1790:5, 1793:21, 1814:10  
**specificity** [1] - 1829:16  
**specifics** [2] - 1850:41, 1850:42  
**speculate** [1] - 1802:29  
**speech** [1] - 1816:8  
**spending** [2] - 1803:6, 1803:23  
**spent** [1] - 1845:19  
**spirit** [1] - 1859:9  
**spiritual** [2] - 1784:29, 1786:47  
**Spiritual** [1] - 1796:17  
**spoken** [6] - 1807:27, 1815:44, 1816:11, 1830:42, 1850:47, 1855:8  
**St** [3] - 1792:38, 1856:43, 1857:1  
**stage** [6] - 1785:44, 1786:21, 1805:25, 1812:6, 1815:9, 1825:24  
**stand** [4] - 1780:8, 1822:46, 1823:24, 1830:28  
**standard** [2] - 1826:22, 1826:32  
**standards** [1] - 1822:1  
**Standards** [13] - 1817:26, 1822:7, 1822:11, 1825:8, 1853:41, 1855:35, 1856:8, 1856:13, 1856:30, 1856:34, 1856:46, 1857:6, 1857:12  
**standing** [9] - 1791:32, 1791:34, 1791:43, 1792:42, 1803:30, 1818:47, 1819:5, 1849:41, 1849:42

**Stanley** [1] - 1861:2  
**STANLEY** [1] - 1861:4  
**start** [4] - 1783:18, 1833:9, 1845:19, 1890:14  
**started** [2] - 1839:5, 1846:9  
**starting** [2] - 1797:29, 1839:31  
**state** [2] - 1785:14, 1813:19  
**statement** [3] - 1776:20, 1776:23, 1815:39  
**STATEMENT** [1] - 1776:26  
**states** [1] - 1817:28  
**stating** [1] - 1811:43  
**station** [3] - 1836:16, 1844:16, 1844:17  
**status** [1] - 1776:13  
**statutory** [1] - 1842:11  
**stay** [1] - 1809:22  
**step** [4] - 1802:12, 1812:30, 1817:39  
**steps** [4] - 1786:11, 1813:25, 1822:11, 1825:34  
**stewed** [1] - 1836:4  
**still** [6] - 1818:28, 1843:5, 1843:22, 1843:28, 1845:4, 1851:10  
**stood** [4] - 1779:41, 1781:34, 1823:11, 1856:4  
**stop** [4] - 1791:38, 1817:45, 1830:22, 1831:21  
**stories** [1] - 1816:20  
**story** [2] - 1791:11, 1853:9  
**straightaway** [1] - 1848:14  
**strategy** [2] - 1830:20, 1846:28  
**Street** [1] - 1775:26  
**streets** [3] - 1784:39, 1785:42, 1785:46  
**strength** [1] - 1853:30  
**stress** [1] - 1841:34  
**strongly** [1] - 1779:35  
**struck** [1] - 1852:32  
**structures** [3] - 1824:35, 1824:45, 1825:2  
**struggle** [1] - 1838:31  
**stuff** [6] - 1834:38, 1842:39, 1842:40, 1842:41, 1850:36, 1851:36  
**stunned** [1] - 1841:29  
**subject** [4] - 1818:23, 1821:25, 1835:16, 1846:21  
**subjective** [1] - 1837:1  
**submission** [10] - 1788:19, 1788:42, 1800:4, 1802:31, 1812:35, 1818:21, 1822:9, 1823:12, 1823:43, 1828:1  
**submitted** [1] - 1830:1  
**subsequent** [5] - 1827:39, 1828:46, 1829:10, 1829:13, 1831:33  
**subsequently** [3] - 1777:27, 1794:32, 1825:34  
**subtle** [3] - 1839:24, 1844:38, 1845:17  
**suddenly** [2] - 1839:26, 1846:12  
**suffered** [1] - 1816:20  
**sufficient** [2] - 1792:14, 1831:18  
**suggest** [24] - 1777:16, 1784:37, 1784:47, 1785:41, 1797:44, 1800:40, 1806:5, 1815:21, 1823:34, 1827:42, 1828:45, 1830:41, 1831:44, 1834:44, 1850:46, 1851:4, 1851:8, 1851:14, 1851:24, 1851:31, 1851:39, 1851:44, 1854:1, 1857:12  
**suggested** [5] - 1786:22, 1801:36, 1802:39, 1803:14, 1811:27  
**suggesting** [13] - 1777:2, 1777:9, 1783:46, 1793:18, 1801:6, 1803:22, 1817:27, 1820:24, 1823:33, 1823:45, 1827:2, 1827:12, 1851:35  
**suggestion** [4] - 1777:44, 1793:30, 1794:46, 1801:9  
**suggests** [1] - 1831:40  
**suit** [1] - 1789:12  
**suits** [1] - 1823:38  
**Sullivan** [1] - 1775:42  
**summary** [3] - 1809:19, 1809:39, 1811:9, 1813:42, 1837:24, 1838:3, 1838:15, 1854:18  
**summons** [1] - 1860:23  
**Sunday** [2] - 1792:11, 1792:40  
**sunglasses** [1] - 1846:9  
**Superman** [1] - 1789:12  
**supermarket** [2] - 1839:27, 1840:29  
**supervised** [2] - 1784:39, 1785:27  
**support** [7] - 1838:8, 1840:46, 1841:14, 1841:16, 1855:37, 1859:2, 1859:30  
**supporter** [1] - 1841:24  
**supporting** [1] - 1841:26  
**supposedly** [1] - 1808:10  
**suppressed** [1] - 1861:6  
**Supreme** [1] - 1775:25  
**surely** [1] - 1788:1  
**surgery** [1] - 1808:40  
**surrendered** [1] - 1790:32  
**surrounding** [1] - 1814:21  
**suspect** [1] - 1840:5  
**suspicion** [1] - 1816:36  
**sweets** [1] - 1852:29  
**sworn** [3] - 1776:28, 1832:31, 1861:4  
**Sydney** [1] - 1792:38  
**sympathetic** [1] - 1803:4  
**sympathy** [1] - 1856:2  
**system** [7] - 1815:47, 1816:9, 1817:12, 1817:46, 1818:39, 1825:31, 1860:2  
**summary** [3] - 1809:19, 1809:39, 1811:9, 1813:42, 1837:24, 1838:3, 1838:15, 1854:18  
**table** [3] - 1783:19, 1783:34, 1848:12  
**tabs** [1] - 1809:39  
**taught** [1] - 1833:26  
**tea** [3] - 1825:19, 1825:21, 1825:28  
**teach** [1] - 1781:7  
**teaching** [4] - 1781:4, 1781:24, 1783:8, 1844:29  
**teachings** [8] - 1780:28, 1780:34, 1780:37, 1781:43, 1782:25, 1783:44, 1783:46  
**technology** [1] - 1810:11  
**telephone** [21] - 1778:27, 1778:30, 1778:35, 1778:45, 1779:3, 1779:7, 1792:19, 1807:31, 1807:35, 1812:14, 1812:22, 1813:1, 1813:16, 1813:27, 1813:37, 1834:1, 1834:16, 1835:37, 1851:25, 1857:30, 1858:36  
**telephoning** [1] - 1858:2  
**ten** [3] - 1820:21, 1844:43, 1852:33  
**tended** [1] - 1778:20  
**tender** [9] - 1776:20, 1796:45, 1805:3, 1805:5, 1813:41, 1835:17, 1836:29, 1836:45, 1837:22  
**tendered** [1] - 1776:18  
**tendering** [1] - 1835:15  
**tends** [1] - 1819:30  
**tenor** [1] - 1806:4  
**term** [3] - 1819:22, 1819:23, 1839:30  
**terms** [28] - 1776:33, 1776:34, 1777:16, 1781:12, 1790:45, 1791:16, 1792:34, 1795:43, 1797:27, 1798:9, 1802:33, 1805:30, 1805:40, 1813:5, 1817:36, 1818:19, 1818:22, 1824:31, 1828:39, 1828:43, 1830:10, 1836:43, 1838:40, 1839:22, 1840:3, 1840:43, 1842:1, 1856:29  
**Terrace** [1] - 1840:26  
**terrible** [4] - 1860:1, 1860:5, 1860:11, 1860:13  
**test** [1] - 1853:36  
**that"** [1] - 1799:45  
**THE** [85] - 1775:14, 1775:16, 1776:16, 1776:23, 1783:21, 1783:26, 1783:37, 1787:45, 1788:14, 1788:46, 1789:10, 1789:35, 1789:39, 1790:2, 1790:21, 1794:20, 1795:10, 1795:14, 1797:1, 1800:30, 1800:47, 1801:23, 1801:39, 1802:2, 1802:6, 1802:20, 1802:36, 1805:7, 1806:16, 1806:30, 1806:35, 1806:40, 1806:44, 1807:33, 1811:5, 1812:37, 1812:42, 1813:44, 1814:4, 1818:25, 1820:12, 1820:32, 1822:4, 1822:14, 1822:20, 1822:28, 1823:15, 1823:31, 1823:45, 1824:8, 1824:14, 1824:26, 1825:12, 1825:16, 1825:23, 1828:3, 1828:8, 1832:5, 1832:9, 1832:14, 1832:21, 1832:28, 1832:36, 1833:41, 1836:31, 1837:12, 1837:34, 1837:40, 1837:47, 1842:20, 1846:24, 1847:15, 1848:3, 1848:8, 1848:17, 1850:10, 1854:41, 1859:18, 1859:22, 1860:18, 1860:27, 1860:29, 1860:36, 1890:20, 1890:25  
**themselves** [1] - 1815:23  
**therefore** [1] - 1804:24  
**thinking** [2] - 1834:19, 1834:47  
**third** [6] - 1791:7,

1791:10, 1791:25,  
1791:31, 1811:24,  
1837:19  
**three** [7] - 1788:23,  
1803:37, 1820:21,  
1831:36, 1833:38,  
1835:45, 1836:15  
**TO** [4] - 1775:14,  
1805:11, 1814:1,  
1890:26  
**to**" [1] - 1816:11  
**today** [6] - 1813:9,  
1832:18, 1845:3,  
1857:21, 1860:25,  
1860:34  
**today's** [1] - 1822:1  
**toilet** [2] - 1841:23,  
1847:24  
**toilets** [1] - 1841:28  
**took** [22] - 1778:19,  
1781:43, 1783:45,  
1784:31, 1789:11,  
1800:17, 1800:20,  
1801:41, 1807:7,  
1807:8, 1819:11,  
1826:30, 1829:17,  
1829:19, 1831:7,  
1831:9, 1833:18,  
1836:1, 1836:39,  
1852:27, 1854:35,  
1859:9  
**top** [1] - 1835:35  
**topic** [2] - 1796:3,  
1837:19  
**topics** [1] - 1833:39  
**totally** [1] - 1800:27  
**touches** [1] - 1820:29  
**Towards** [3] -  
1856:14, 1857:2  
**towards** [3] - 1816:23,  
1833:35, 1841:13  
**tragedies** [1] -  
1833:29  
**training** [1] - 1826:36  
**Transcript** [1] - 1861:6  
**transcript** [9] -  
1776:39, 1790:5,  
1795:25, 1797:25,  
1798:22, 1800:38,  
1812:42, 1814:43,  
1842:36  
**transient** [1] - 1782:3  
**transpired** [1] -  
1858:46  
**trauma** [1] - 1816:19  
**travel** [2] - 1809:24,  
1852:18  
**travelled** [2] -  
1836:11, 1836:12  
**travelling** [6] - 1792:5,

1792:23, 1792:32,  
1844:20, 1844:22,  
1844:30  
**treated** [1] - 1859:44  
**trial** [20] - 1840:3,  
1840:6, 1840:42,  
1840:46, 1841:1,  
1841:6, 1841:8,  
1841:13, 1841:15,  
1841:19, 1841:24,  
1844:46, 1845:2,  
1847:23, 1847:44,  
1857:10, 1858:30,  
1858:34, 1858:35,  
1859:24  
**tried** [5] - 1817:22,  
1829:39, 1829:40,  
1830:13, 1830:34  
**trip** [1] - 1858:16  
**trolley** [1] - 1840:30  
**trouble** [4] - 1840:29,  
1847:25, 1849:41,  
1849:42  
**true** [10] - 1782:13,  
1782:15, 1785:7,  
1785:27, 1786:24,  
1808:12, 1834:4,  
1835:13, 1840:8,  
1841:9  
**truly** [1] - 1784:14  
**truth** [3] - 1800:2,  
1806:10, 1860:15  
**truthful** [1] - 1802:41  
**try** [8] - 1815:29,  
1820:1, 1824:44,  
1834:36, 1836:5,  
1849:35, 1852:26,  
1853:35  
**trying** [5] - 1794:46,  
1816:7, 1819:30,  
1819:35, 1841:47  
**Tuesday** [1] - 1842:10  
**turn** [2] - 1791:33,  
1837:23  
**turned** [4] - 1791:40,  
1818:36, 1846:12,  
1849:6  
**turning** [1] - 1811:11  
**turnout** [1] - 1852:18  
**turns** [1] - 1792:37  
**twenty** [1] - 1843:18  
**twitter** [1] - 1837:43  
**twitter-verse** [1] -  
1837:43  
**two** [16] - 1787:19,  
1790:47, 1791:15,  
1795:18, 1795:31,  
1805:21, 1805:37,  
1805:40, 1806:16,  
1811:26, 1819:10,

1820:5, 1820:17,  
1843:8, 1843:16,  
1845:12  
**two-minute** [1] -  
1843:8  
**type** [1] - 1829:33  
**types** [1] - 1797:45

---

## U

---

**UK** [2] - 1810:1,  
1810:7  
**ultimately** [2] -  
1793:22, 1823:43  
**unable** [1] - 1833:25  
**unambiguous** [1] -  
1805:20  
**unambiguously** [2] -  
1808:1, 1810:22  
**unauthorised** [1] -  
1820:18  
**unbelievable** [1] -  
1853:30  
**uncertainty** [1] -  
1813:5  
**uncooperative** [1] -  
1856:8  
**under** [6] - 1804:42,  
1806:26, 1817:13,  
1818:42, 1821:47,  
1832:34  
**understandably** [1] -  
1847:26  
**understood** [14] -  
1786:28, 1804:9,  
1807:8, 1813:10,  
1821:40, 1822:33,  
1822:46, 1824:11,  
1826:14, 1835:11,  
1843:25, 1846:17,  
1857:42, 1859:9  
**undertake** [2] -  
1792:2, 1792:30  
**undertaken** [1] -  
1822:12  
**unfair** [2] - 1822:44,  
1823:12  
**unfairness** [1] -  
1823:33  
**unfold** [1] - 1835:3  
**unfortunate** [5] -  
1799:22, 1799:27,  
1799:28, 1803:1,  
1806:6  
**uniform** [2] - 1790:7,  
1795:30  
**unjust** [1] - 1815:39  
**unless** [2] - 1792:41,  
1860:23

**unlikely** [3] - 1778:43,  
1778:46, 1779:6  
**unnecessary** [2] -  
1787:28, 1791:38  
**unspecific** [1] -  
1788:38  
**unspecified** [2] -  
1788:38, 1803:11  
**untrue** [1] - 1777:4  
**unwilling** [2] -  
1785:38, 1795:3  
**up** [37] - 1778:12,  
1791:33, 1791:40,  
1792:38, 1807:31,  
1807:34, 1809:44,  
1810:6, 1811:11,  
1812:21, 1813:1,  
1813:27, 1813:36,  
1818:36, 1824:35,  
1825:3, 1833:10,  
1836:39, 1837:23,  
1839:33, 1839:39,  
1839:46, 1840:22,  
1844:46, 1845:47,  
1846:2, 1849:6,  
1849:33, 1849:41,  
1849:42, 1852:32,  
1852:45, 1856:24,  
1856:26, 1857:38,  
1857:39, 1858:8  
**UPON** [1] - 1849:1  
**upset** [6] - 1834:11,  
1834:36, 1840:32,  
1840:33, 1840:38,  
1859:32  
**upsets** [2] - 1853:15  
**upsetting** [1] - 1852:7  
**urgency** [1] - 1812:14

---

## V

---

**validate** [1] - 1799:35  
**value** [1] - 1823:7  
**variety** [1] - 1780:14  
**various** [9] - 1780:12,  
1780:29, 1780:44,  
1785:11, 1805:15,  
1824:40, 1825:7,  
1827:23, 1853:5  
**variously** [1] - 1834:2  
**Vatican** [3] - 1782:26,  
1783:8, 1783:44  
**verbal** [3] - 1829:1,  
1829:5, 1829:10  
**verdict** [1] - 1858:39  
**verification** [1] -  
1792:20  
**verified** [1] - 1792:18  
**verse** [1] - 1837:43

**version** [1] - 1860:9  
**vestments** [6] -  
1787:34, 1787:36,  
1789:11, 1790:25,  
1790:39, 1791:5  
**victim** [9] - 1778:13,  
1778:15, 1778:17,  
1778:20, 1778:21,  
1778:23, 1779:24,  
1856:15  
**victim's** [1] - 1784:15  
**victims** [13] - 1776:33,  
1776:35, 1776:44,  
1778:4, 1789:24,  
1789:31, 1794:12,  
1815:34, 1816:17,  
1816:19, 1830:42,  
1860:23  
**view** [6] - 1778:19,  
1807:22, 1813:4,  
1818:28, 1841:38  
**visa** [1] - 1809:24  
**visit** [3] - 1799:21,  
1833:24, 1858:22  
**visiting** [2] - 1792:39,  
1841:1  
**visualise** [1] - 1819:29  
**volume** [2] - 1795:44,  
1837:22  
**voluntarily** [4] -  
1794:4, 1794:35,  
1794:39, 1795:4  
**voluntary** [1] -  
1833:18  
**vouch** [1] - 1819:4

---

## W

---

**waiting** [1] - 1812:6  
**waived** [1] - 1823:22  
**Wales** [1] - 1814:45  
**walking** [4] - 1790:7,  
1793:6, 1795:29,  
1797:9  
**wants** [3] - 1777:40,  
1820:21, 1834:22  
**Wardle** [1] - 1775:43  
**warmer** [1] - 1799:8  
**warrant** [1] - 1827:3  
**Warwick** [1] - 1775:39  
**WAS** [1] - 1890:25  
**washed** [1] - 1841:26  
**waterpipe** [1] -  
1841:27  
**ways** [2] - 1833:5,  
1839:22  
**wear** [9] - 1787:35,  
1787:41, 1787:42,  
1787:46, 1788:5,

1790:39, 1791:5,  
1846:9  
**wearing** [10] - 1788:9,  
1788:17, 1788:25,  
1788:31, 1788:32,  
1790:7, 1795:24,  
1795:30, 1796:5,  
1798:5  
**week** [3] - 1801:31,  
1833:27, 1842:10  
**weeks** [1] - 1788:23  
**weird** [7] - 1834:38,  
1842:39, 1842:40,  
1842:41, 1850:36,  
1851:36, 1851:46  
**welcome** [1] - 1840:43  
**Western** [1] - 1830:33  
**whatsoever** [1] -  
1840:46  
**whereby** [1] - 1803:22  
**whilst** [1] - 1857:10  
**whirled** [1] - 1841:29  
**whole** [6] - 1778:38,  
1839:13, 1844:33,  
1850:24, 1859:31,  
1859:36  
**wholly** [5] - 1798:40,  
1800:10, 1805:19,  
1806:21, 1807:19  
**wide** [2] - 1816:22,  
1826:12  
**widened** [1] - 1822:37  
**wife** [2] - 1840:27,  
1840:30  
**willingly** [2] - 1814:13  
**willingness** [2] -  
1841:40, 1860:24  
**wish** [3] - 1809:1,  
1825:18, 1830:9  
**wished** [3] - 1792:2,  
1792:9, 1792:30  
**wishes** [12] - 1777:23,  
1784:15, 1784:17,  
1785:7, 1785:9,  
1785:12, 1785:23,  
1785:24, 1787:34,  
1787:40, 1818:43,  
1823:24  
**withdraw** [6] -  
1782:44, 1787:21,  
1787:28, 1802:13,  
1808:21, 1847:5  
**withdrawn** [2] -  
1787:43, 1822:12  
**WITHDREW** [2] -  
1832:14, 1860:29  
**wither** [1] - 1853:40  
**WITNESS** [4] -  
1812:42, 1828:8,  
1832:14, 1860:29  
**witness** [36] - 1788:7,  
1789:2, 1789:4,  
1789:27, 1790:14,  
1794:22, 1799:32,  
1800:1, 1800:7,  
1800:11, 1800:16,  
1800:24, 1800:39,  
1801:41, 1801:44,  
1802:29, 1802:32,  
1807:30, 1811:3,  
1812:39, 1822:22,  
1822:31, 1823:10,  
1823:17, 1832:26,  
1833:33, 1833:38,  
1844:42, 1850:2,  
1850:5, 1850:8,  
1859:20, 1859:23,  
1860:13, 1860:24  
**witness's** [7] -  
1799:34, 1800:37,  
1836:31, 1837:12,  
1837:47, 1851:20,  
1860:32  
**witnesses** [2] -  
1789:23, 1890:15  
**women's** [2] -  
1782:26, 1847:24  
**wondered** [1] -  
1845:18  
**Wood** [8] - 1814:31,  
1814:33, 1814:37,  
1814:42, 1817:8,  
1817:18, 1820:40,  
1824:21  
**word** [8] - 1776:2,  
1806:32, 1806:35,  
1810:8, 1820:30,  
1826:47, 1844:11,  
1845:27  
**wording** [1] - 1806:25  
**words** [19] - 1784:47,  
1797:8, 1797:36,  
1797:38, 1799:34,  
1805:46, 1806:21,  
1815:25, 1826:44,  
1828:30, 1834:27,  
1834:28, 1841:45,  
1850:33, 1850:35,  
1851:27, 1851:33,  
1851:34, 1860:14  
**worrying** [1] - 1817:4  
**worse** [1] - 1846:40  
**worth** [1] - 1819:5  
**wrecked** [1] - 1859:36  
**wrestling** [1] -  
1853:21  
**write** [5] - 1803:21,  
1817:27, 1826:46,  
1829:33, 1850:30  
**writes** [2] - 1801:29,  
1808:6  
**writing** [1] - 1803:47  
**written** [11] - 1797:43,  
1798:28, 1798:44,  
1798:45, 1807:31,  
1811:42, 1812:20,  
1812:47, 1813:15,  
1830:1, 1850:24  
**WRITTEN** [1] -  
1837:15  
**wrote** [11] - 1797:47,  
1800:13, 1812:21,  
1817:26, 1817:39,  
1818:3, 1836:47,  
1853:44, 1858:31,  
1858:42

## Y

**year** [7] - 1814:17,  
1819:13, 1821:17,  
1833:11, 1839:45,  
1839:47, 1845:13  
**years** [18] - 1776:11,  
1780:11, 1783:8,  
1816:47, 1817:13,  
1823:6, 1823:10,  
1827:35, 1827:39,  
1828:11, 1833:22,  
1844:43, 1845:21,  
1846:11, 1850:18,  
1850:44, 1852:44,  
1853:30  
**yelling** [7] - 1834:13,  
1849:13, 1850:36,  
1851:15, 1851:40,  
1851:41, 1851:46  
**yesterday** [28] -  
1776:5, 1776:19,  
1777:9, 1777:13,  
1789:43, 1790:6,  
1795:25, 1796:28,  
1796:32, 1796:34,  
1803:31, 1804:47,  
1805:24, 1807:6,  
1807:24, 1811:16,  
1812:19, 1812:22,  
1812:26, 1812:30,  
1812:46, 1813:2,  
1813:8, 1813:12,  
1814:28, 1817:15,  
1830:27  
**young** [2] - 1784:44,  
1835:2  
**yourself** [5] - 1806:3,  
1825:30, 1839:2,  
1840:15, 1850:47