

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 Tuesday, 2 July 2013 at 10.09am
(Day 2)

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 E McLAUGHLIN: Commissioner, I seek authorisation to
2 appear for Father Des Harrigan. I'm Ms McLaughlin.

3
4 THE COMMISSIONER: Thank you, Ms McLaughlin. I authorise
5 you to appear for Father Des Harrigan.
6

7 MS LONERGAN: Commissioner, I call Detective Chief
8 Inspector Fox.
9

10 <PETER RAYMOND FOX, sworn: [10.10am]

11
12 <EXAMINATION BY MS LONERGAN:

13
14 MS LONERGAN: Q. Is your full name Peter Raymond Fox?
15 A. Yes.

16
17 Q. You're a detective chief inspector in the NSW Police
18 Force?
19 A. Yes.

20
21 Q. You were attested a police officer in 1978?
22 A. Yes.

23
24 Q. You worked on criminal investigations generally up to
25 the time you were designated a detective in 1984?
26 A. Yes.

27
28 Q. You were promoted to detective sergeant in 1993?
29 A. Yes.

30
31 Q. In 2007, you were commissioned to the rank of
32 detective chief inspector?
33 A. Yes.

34
35 Q. And over the last six years or so, you performed
36 duties as a crime manager in three different Hunter Valley
37 commands?
38 A. That's correct.

39
40 Q. The duty of a crime manager is to oversight and direct
41 criminal investigations including complex criminal
42 investigations?
43 A. Lead, and all those sort of things, yes.

44
45 Q. Prior to taking on those roles as a crime manager, you
46 yourself were involved in a number of complex
47 investigations including investigations into child sexual

1 abuse?

2 A. Yes.

3

4 Q. Detective chief inspector, the structure of the
5 matters I'm going to take you to today are: first of all,
6 your role in what I'll term in short form the Watters
7 investigation of [AE]; second, I'll move to your very
8 substantial role in the James Fletcher investigation, go
9 through some questions about that matter; and then,
10 thirdly, I'll move to the matters that you commenced
11 looking into in 2010 with also some survey of matters that
12 arose in between the Fletcher investigation and your 2010
13 work.

14 A. Yes.

15

16 Q. And then some questions about the Lateline program,
17 and just to clarify points that you raised in that program?

18 A. Of course, yes.

19

20 Q. The emphasis, of course, with the questioning will be
21 confined to the second term of reference.

22 A. Yes.

23

24 Q. You have been in court for all the evidence in this
25 Special Commission of Inquiry so far?

26 A. Yes.

27

28 Q. You were in court yesterday for the evidence of
29 Detective Inspector Watters?

30 A. Yes.

31

32 Q. And you remained in court and listened to all of his
33 evidence yesterday?

34 A. Yes.

35

36 Q. You have engaged with the staff of the Special
37 Commission of Inquiry and provided detailed information
38 regarding matters of a nature that fall outside the terms
39 of reference, these terms of reference, so that that
40 information and that material can be provided to the Royal
41 Commission?

42 A. Yes.

43

44 Q. You have been informed by those who assist the
45 Commissioner that material that you have raised that falls
46 outside our terms of reference for this Special Commission
47 of Inquiry has indeed been provided to the Royal

1 Commission?

2 A. Yes, and I'm thankful to this Commission for that,
3 thank you.

4
5 Q. From the point of view of your evidence today and just
6 to assist those in the body of the court and members of the
7 press, it will be confined to your experience of the extent
8 to which officials of the Catholic Church facilitated,
9 assisted or cooperated with police investigations of
10 relevant matters, and that includes a consideration of,
11 amongst other things, any hindrance, obstruction and the
12 failure to report alleged criminal offences, or the
13 discouraging of witnesses to come forward or the alerting
14 of alleged offenders to possible police actions or the
15 destruction of evidence.

16
17 Again, just to reiterate perhaps for my benefit as
18 much as anybody's, "relevant matters" is confined to
19 matters relating.

20
21 *... directly or indirectly to alleged child*
22 *sexual abuse involving Denis McAlinden or*
23 *James Fletcher, including the responses to*
24 *such allegations by officials of the*
25 *Catholic Church (and whether or not the*
26 *matter involved, or is alleged to have*
27 *involved, criminal conduct).*

28
29 I am going to go on with a couple of definitions again for
30 the assistance of those in the court and mine as well.

31
32 The expression "Catholic Church" for the purposes of
33 our examination today includes, without limitation, the
34 church, a diocese of the church or an organisation operated
35 under the auspices of the church, and the expression
36 "official of the Catholic Church" is any person who acts as
37 a representative of the Catholic Church or an officer,
38 staff member or lay or assistant volunteer member of
39 Catholic Church and, of course, a member of the clergy or
40 any religious order of the Catholic Church.

41
42 I'm sure, Detective Chief Inspector Fox, you're
43 comfortable with all of those definitions, but it is
44 important that we confine our evidence to the matters that
45 directly or indirectly relate to those particular two
46 priests and the issues of assistance or otherwise with
47 police investigations.

1 A. I understand.
2
3 Q. Thank you. First of all, asking some questions about
4 the [AE] investigation, you were in court yesterday when
5 Detective Inspector Watters gave his evidence, and I just
6 want to clarify some matters with you. In October 1999,
7 what was your role in terms of any line management of
8 then - I think he was Sergeant Watters, was he, at that
9 time or --
10 A. Yes, it was Detective Senior Constable Watters. I was
11 a detective sergeant based at Maitland. Originally there
12 were three detective sergeants.
13
14 Q. Don't worry about that. I want to know your direct
15 supervisory role. That was to supervise Detective Senior
16 Constable Watters?
17 A. He was on the - the office was divided into two and
18 one of those halves, he fell under my supervision.
19
20 Q. Was the structure set up in such a way that, on
21 occasions, he was permitted to talk other senior officers
22 if he needed guidance about any particular matter?
23 A. Of course; that went on all the time.
24
25 Q. You had some conversations with him around late 1999
26 regarding [AE], on your recollection?
27 A. Yes, I did.
28
29 Q. Can you assist with what, in broad terms, those
30 conversations were, without going to the detail of [AE]'s
31 sexual assault itself, but what the nature of the
32 conversations were with then Detective Senior Constable
33 Watters?
34 A. In short, [AE] came to the station. I never met with
35 [AE] nor did I speak to her, but he did tell me that she
36 was making a complaint against Father Denis McAlinden, and
37 I've got to say Mark was probably the best detective I've
38 ever worked with and he --
39
40 Q. I'm going to stop you there. It is very important
41 that you answer the questions I ask and that it is limited
42 to conversations with Detective Senior Constable Watters.
43 I will give you an opportunity to talk about him as an
44 investigator or whatever else later, if relevant. But at
45 the moment just conversations between you and then
46 Detective Senior Constable Watters?
47 A. He told me that she had come in. I wasn't aware that

1 she'd come in with her husband, but he later told me that
2 she was prepared to provide a statement and I had no role
3 in taking that statement. Mark took that by himself.
4

5 Q. Was there a conversation to the effect that he was
6 going to take out a warrant for the arrest of McAlinden?

7 A. Yes. We spoke about it. Obviously, in that era it was
8 unusual. There weren't many briefs, if I can put it that
9 way, in respect to clergy, and for that reason I suppose
10 that the nature of this complaint aroused interest through
11 the general office.
12

13 Q. I'm going to stop you there. Did you have a role in
14 supervising or drafting the preparation of the warrant?

15 A. No. I discussed the warrant --
16

17 Q. No - a "Yes" or "No" answer?

18 A. No.
19

20 Q. Any discussion you had with Watters - I'm sorry,
21 Senior Constable Watters - at the time, was that about
22 taking out the warrant?

23 A. Yes.
24

25 Q. I'll get you to have a look at the warrant now.
26 That's probably the best way to go about it. It is in
27 tab 23 of volume 4, please.

28 A. Yes.
29

30 Q. Do you have that document?

31 A. Yes.
32

33 Q. Are you able to say whether you saw the warrant at or
34 around the time that it was prepared and or executed?

35 A. I don't remember.
36

37 Q. You'll notice, detective chief inspector, that the
38 warrant appears to relate to only [AE]?

39 A. Yes.
40

41 Q. Are you able to recollect now whether there was a
42 discussion about any other victims of McAlinden between you
43 and then Detective Senior Constable Watters prior to the
44 date of the swearing of this warrant, which is 1 December
45 1999?

46 A. I don't recall any discussion of that nature at that
47 time, no.

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Q. Do you recall any discussions with then Detective Senior Constable Watters regarding any suspension of the [AE] complaint?

A. I do recall, at some stage, a brief discussion. As was explained, periodically I would sit down with Detective Watters and discuss all of his cases and the progress of them. I do recall speaking to Mark a number of times in respect to this case and he did tell me that the victim was quite distraught and was having second thoughts about whether or not she wished to go through the legal process.

Q. Do you remember when the discussion about whether or not the victim felt she would go through with the legal process occurred?

A. It wasn't straight away. It was some time down the track, but I couldn't be precise. I want to be fair and not just rest on what Inspector Watters said yesterday, but my recollection was it was a considerable time after the initial complaint.

Q. That's no problem and, we appreciate the care with which you're dealing with recollection and matters of that nature. If you wouldn't mind, I'm sorry to have you have two folders open at once, but it will help us in the long run. Would you get out volume 7, please, and go to tab 499. That's the case report of [AE]'s matter.

A. I'll just mention I do apologise I have a dreadful head cold and hence my --

Q. That's fine. If you need a break, let us know. We'll persevere as long as we can.

A. I have that open now.

Q. Pour yourself a glass of water, detective chief inspector, if you can stand the hazard of having water and having two folders open at the same time. I'm going to ask you some questions about the case report and, in particular, your entries on it. Just focusing on the first entry which appears on page 1381 in the bottom centre there, there's some pagination.

A. Yes.

Q. To the right-hand side of an entry, there appears to be an entry with the date 8 October 1999 and the name Watters under it. You heard Inspector Watters' evidence yesterday to the effect he made that annotation on that

1 document?

2 A. Yes.

3

4 Q. Do you recognise his handwriting on it?

5 A. I've seen this document, and from what - what
6 Inspector Watters said, that certainly all appears
7 consistent.

8

9 Q. Are you able to say now at what point you first saw
10 this progressive creation of this particular case report?

11 A. I would have seen it around the time really from the
12 very start when Mark created it. As his supervisor, it was
13 part of my role to periodically open Detective Watters'
14 cases, and so I would have seen it from that stage, yes.

15

16 Q. In making that statement or giving that answer, you're
17 proceeding on the basis of your usual practice at that time
18 as opposed to any specific recollection of looking at this
19 document back in that time period 1999-2000?

20 A. That would probably be a fair comment, yes.

21

22 Q. Would you have look at page 1382. Look at the bottom
23 line on 1381, which appears to be part of Detective
24 Inspector Watters's first case narrative commencing:

25

26 *The Catholic Church at Newcastle has been*
27 *spoken to ...*

28

29 Q. Do you see that?

30 A. Yes.

31

32 Q. And over the page.

33

34 *... the priest is still alive and living in*
35 *the Newcastle area. He is currently out of*
36 *the country and due to return in the next*
37 *few weeks. He is not currently working as*
38 *a priest due to other alleged incidents*
39 *such this, but there has been no formal*
40 *complaint received by Police.*

41

42 Do you see that?

43 A. Yes.

44

45 Q. Do you remember discussing any of that with Watters
46 around about that time and please say no if you don't
47 remember?

1 A. I don't recall.
2
3 Q. You made some entries on this particular case report
4 at different times?
5 A. Much later on, yes, I did.
6
7 Q. So much later on, your first entry is October 2005; is
8 that a reasonable comment?
9 A. Yes.
10
11 Q. Just to explain how the document works, is it the
12 position that the date that you enter information into this
13 case report is the date that has been written on the
14 right-hand side by Detective Inspector Watters?
15 A. Yes. It all seems consistent with that, yes.
16
17 Q. We can cross-reference that to the "Administrative
18 action" list under the heading "Case history" on page 1383?
19 A. You should be able to, yes.
20
21 Q. Thank you. We're going to come back to that document.
22 Would you just leave that to one side and we'll try to keep
23 things going in a chronological order. My question to you
24 is: did you personally have any contact with any Catholic
25 Church official between 1999 and 2001 regarding [AE]'s
26 matter?
27 A. No.
28
29 Q. I'm not suggesting you should have, but just ruling
30 that out as a possibility. Did you have any contact with
31 any church official from the Maitland-Newcastle diocese
32 between 2001 and 2002 regarding [AE]'s matter?
33 A. I don't recall - I don't know whether I've said 2002
34 or 2003 in the past in respect to former Bishop Leo Clarke.
35
36 Q. We'll come to that. Did you have any contact with any
37 church official - I'm just going to ask the question a
38 little more broadly - between 1999 and the time you spoke
39 to Bishop Leo Clarke regarding [AE]'s matter?
40 A. No.
41
42 Q. Moving to Bishop Clarke, can you just outline in brief
43 terms why you went to see Bishop Clarke?
44 A. Yes. At that stage --
45
46 Q. There is no need to identify what other investigation
47 it was about, if it was about another investigation, if you

1 don't mind.

2 A. There were two other priests that I predominantly
3 wanted to speak to Bishop, or former Bishop Clarke about.
4 At this stage, Detective Watters had accepted a - well, a
5 promotion to a uniformed position down on the
6 Central Coast. My recollection is it was a phone call
7 I made to [AE] to simply introduce myself and explain that
8 Mark or Detective Watters had left the area and just to
9 give her a contact point.

10

11 Q. Can I ask you how do you know the date of that contact
12 that you made with [AE]? Is it evident in the case report?

13 A. No, it's not.

14

15 Q. So just from your recollection, you're going on this
16 evidence you've just given?

17 A. It is my recollection, just putting it together from
18 the time when I recall Inspector Watters taking the
19 promotion and the fact that I had also picked up another
20 investigation concerning the Catholic Church around that
21 time as well.

22

23 Q. You were going to see Bishop Clarke to talk to him
24 about these other investigations you were looking at?

25 A. Yes.

26

27 Q. You had a conversation with [AE]. Did something [AE]
28 say prompt you to then ask Bishop Clarke anything relating
29 to her matter?

30 A. Yes.

31

32 Q. What was it she said to you?

33 A. She told me that she had heard rumours that there
34 were - the church was aware of two of other victims.

35

36 Q. They were nothing more than rumours in terms of what
37 she told you?

38 A. No, that was the extent. It was volunteered - she
39 hadn't actually telephoned for Mark, sorry, Inspector
40 Watters, or myself. It was simply the fact, I suppose,
41 that I had made contact with her to simply let her know
42 that Detective Watters was no longer at Maitland, and
43 I think that she just felt that, "While I've got you on the
44 phone" --

45

46 Q. Don't worry about what she felt. We can't accept
47 evidence of what you think she felt.

1 A. Of course.
2
3 Q. In terms of your contact with her, was the status of
4 the investigation into her matter active?
5 A. No, it was suspended. I've got to say - it is only on
6 a small technical point. I disagree with a small part of
7 Inspector Watter's evidence yesterday in that he felt that
8 it should have been finalised. I don't believe that that's
9 correct. It was - the status should have been suspended,
10 which it was, and that was the correct status when a victim
11 is undecided whether or not they wish to pursue a matter at
12 that time.
13
14 Q. On page 1383, which is that case report document
15 we were looking at earlier behind tab 499, the entry of
16 2 February 2000, "Suspend case", is, in your view, an
17 appropriate reflection of the status of the investigation?
18 A. I have no doubt - that is the correct status that it
19 should have been.
20
21 Q. You did attend on Bishop Clarke?
22 A. Yes, I did.
23
24 Q. And you asked him some questions, did you?
25 A. Yes.
26
27 Q. Confining your question or questions regarding
28 McAlinden, what did you ask him, if anything?
29 A. I travelled down with Detective Senior Constable
30 Ann Joy. He was residing then at Valentine. When
31 I interviewed him on that day, after I'd discussed the
32 other two matters, I then put to him the rumour, if you
33 like, that had been passed on to me by - is it [AE] or
34 [AC]?
35
36 Q. [AE], yes. Are you able to assist with the precise or
37 as best possible way in which you framed the question to
38 him regarding that matter?
39 A. Yes. I said, "I've been told that you may have some
40 information relating to two other victims of the priest
41 Father Denis McAlinden."
42
43 Q. What was his answer, if anything?
44 A. He said - I want to get it as correct as I can. He
45 said, effectively - I can't remember the exact words, but
46 effectively, he said, "I'm sorry, I don't know anything
47 about that." I did ask him another question, I think,

1 along the lines of, "Are you aware if anyone in the church
2 would be aware of allegations of that nature?" And his
3 words were along the lines of, "I can't help you. You'll
4 have to ask Bishop Malone."
5

6 Q. In relation to the first answer that he gave that he
7 didn't know anything about rumours or other reports of
8 sexual abuse on the part of McAlinden, did you take a note
9 at the time of your question and his answer?

10 A. No. It was --

11
12 Q. Don't worry about why. No?

13 A. No.
14

15 Q. In relation to the question and answer regarding that
16 you should talk to Bishop Malone, did you take a note of
17 that question and answer?

18 A. No.
19

20 Q. Did you go and ask Bishop Malone specifically about
21 matters relating to McAlinden?

22 A. I made a telephone call, but I didn't speak to Bishop
23 Malone.
24

25 Q. So when you say you made a telephone call, you made
26 contact and left a message; is that what you mean?

27 A. I made inquiries at the diocese office. At that
28 time --
29

30 Q. I'm going to stop you there. Were the inquiries at
31 the diocese to Bishop Malone, personally?

32 A. No, no, they weren't.
33

34 Q. We'll come back to the inquiries at the diocese
35 office. To get a bit more detail about this meeting with
36 former Bishop Clarke he was then, wasn't he?

37 A. He was.
38

39 Q. He was retired. Are you able to say how old he was
40 approximately at the time?

41 A. Well, he was in a care facility.
42

43 Q. Sorry, he was or was not?

44 A. He was. It was a Catholic care facility at Valentine,
45 and I've got a feeling he may have been in his 80s. If
46 I put it around that bracket, I think it would be fairly
47 close.

1
2 Q. Did he appear to be mentally able to answer your
3 questions?
4 A. Yes. When we walked in, I recall he had a small
5 little office area set up. He had church documents spread
6 out along the length of his bed, all in neat little piles,
7 where he was still quite actively working --
8
9 Q. On your observation?
10 A. From my observations there. You know, he was quite
11 bright and right of mind, all that sort of thing.
12
13 Q. Present at the interview you talked about was also
14 another officer, Ann Joy?
15 A. Yes.
16
17 Q. She was a detective sergeant at the time?
18 A. No, she was a detective senior constable.
19
20 Q. Thank you. Did you observe her to take any notes of
21 her exchange with former Bishop Clarke?
22 A. No. It was - the interview was a very informal one.
23
24 Q. From that point of view, can we take it that there was
25 no caution given to former Bishop Clarke regarding the
26 matters you were raising with him?
27 A. No, no, there was certainly no caution. It wasn't
28 that sort of an interview. It was more so as to whether he
29 could assist us with any of these matters and, you know, we
30 went there on a very friendly basis. We certainly let him
31 know before we were coming and, you know, the interview was
32 really just to see whether he could assist us, primarily
33 with the first two matters, but I obviously took the
34 opportunity, seeing I was going to be talking to him, to
35 address this other matter in relation to Father McAlinden.
36
37 Q. So is it fair to say it was an informal chat rather
38 than an interview?
39 A. Yes, sorry, I realise there has been some controversy
40 about that, but, yes, just my terminology for it - but,
41 yes, interview, asking a few questions, yes.
42
43 Q. More like an informal chat than an interview?
44 A. Well, yes, I've called it an interview. You know --
45
46 Q. It wasn't a police interview in the sense that you --
47 A. I didn't have a tape recorder or typing questions and

1 answers, no, not a formal one in that sense. It was an
2 informal interview.

3
4 Q. I'm not being at all critical, I'm just trying to
5 clarify the substance of your evidence. Are you able to
6 time that discussion, given you don't have any notes of it,
7 by reference to other investigations you were doing or
8 matters of that nature in terms of months or year? I think
9 you suggested it was probably 2002 but may have been 2003?

10 A. I think it is more likely it was 2003, early 2003 -
11 certainly the first half of 2003. The reason I put it
12 around that time frame is that I do recall I had already
13 started to progress fairly well with the Fletcher
14 investigation and talking to a victim. It was also around
15 the time - and I'm not certain of the time Detective
16 Watters transferred to the Central Coast, but it was very
17 close to that time, which I think was also early 2003.

18
19 Q. The Fletcher investigation, from your point of view,
20 started some time mid-2002; is that a reasonable --

21 A. June 2002, yes.

22
23 Q. Thank you. I'm going to now move to a question about
24 when you next turned your mind to the [AE] investigation
25 and what information came to you or other matters that
26 prompted you to revisit the [AE] investigation.

27 A. The next thing I did, I did phone back, telephone
28 [AE], not long after that. I don't think it was - it
29 certainly wasn't the same day, but I do recall phoning her
30 that week or the following week, because - you know, to
31 give her results that I'd spoken to Bishop Clarke.

32
33 Q. Sorry to stop/start, but it is helping understand your
34 recollections and evidence.

35 A. Yes.

36
37 Q. Would you have a look at tab 499 again, which is
38 the case report. Would you draw my attention to any
39 entry there that reflects any investigative step you took
40 between --

41 A. There's no record --

42
43 Q. -- 1999, when it started and when you received certain
44 information in August in 2005?

45 A. I didn't record that matter in the case at all.

46
47 Q. Can I correct something I just said: I meant October

1 2005, I'm sorry.
2 A. Sorry.
3
4 Q. No, that's my fault. Have at look at 1381. Your
5 entry seems to be dated 28 October 2005; is that right?
6 A. Yes.
7
8 Q. Can we take it that, other than the conversation with
9 [AE], you didn't take any investigative steps or make any
10 entries in the case report in between - I'm sorry, prior to
11 that entry on 28 October?
12 A. No, I never.
13
14 Q. And the chats with [AE], were they in the nature of
15 further investigation obtaining statements or other details
16 about the matter, or were they simply chats of a more
17 social nature?
18 A. No, they were simply - I suppose it depends how you
19 want to term it - formal or informal contact with her over
20 the phone, just to simply let her know that, you know, we
21 hadn't forgotten her, the case was still there. And when
22 I telephoned her back, of course I wanted to just let her
23 know I had spoken to Bishop Clarke and I just wanted
24 her to - because it wasn't - the conversation wasn't
25 relayed to me along the lines that "I know this for a
26 fact." It was a rumour she had picked up third hand.
27
28 Q. And you conveyed back to her what you'd found out?
29 A. I said, "He doesn't know anything about it either",
30 and we - I accepted his word at the time.
31
32 Q. Did you take any active steps to investigate the
33 whereabouts of McAlinden at any time in 2002, 2003, 2004
34 and 2005?
35 A. No.
36
37 Q. Do you know if anyone else was attending to that task
38 on behalf of [AE] related to [AE]'s investigation, and by
39 "anyone else", I mean any other police officer?
40 A. I don't recall any other officer being allocated the
41 case, you know, and that would be understandable in that it
42 was suspended.
43
44 Q. Do you recollect any discussions with then Detective
45 Senior Constable Watters about PASS alerts and how that
46 could be used for this particular matter regarding
47 McAlinden?

1 A. Yes. I remember discussing it with Mark at a much
2 earlier time, you know, possibly 1999-2000.
3
4 Q. Did you have any role in preparing any documentation
5 about PASS alerts or checking on whether it had been acted
6 upon or anything of that nature?
7 A. No. The only role I had was just a general discussion
8 with him that we needed to put something like that in place
9 to grab him if he came back into the country.
10
11 Q. If you wouldn't mind looking at your entry that is
12 dated October 2005.
13 A. Yes.
14
15 Q. Is it the position that you received a phone call from
16 Ms Keevers?
17 A. Yes.
18
19 Q. Once you received that phone call, apart from making
20 an entry about it in the case report, did you talk to
21 I think he was then still a detective senior constable, was
22 he, in 2005, Watters? Did you --
23 A. No, no, he was a uniformed sergeant in 2005. By this
24 stage, Inspector Watters had transferred back into our
25 command from the Central Coast and was a uniformed sergeant
26 at Kurri Kurri. I was based at that time at Cessnock and
27 Kurri Kurri was a substation.
28
29 Q. Did you contact Mark Watters about what you'd found
30 out about McAlinden given that he had, at one time, had the
31 conduct of the matter.
32 A. Yes, I did.
33
34 Q. Did you make an entry about your contact with Watters?
35 A. Yes. The narrative on 26 September indicates that we
36 had spoken around that time.
37
38 Q. Do you see that that narrative entry is two years
39 later, though, isn't it?
40 A. I'm sorry, my apologies.
41
42 Q. I'm not suggesting that you necessarily would have
43 made an entry in the case report because you had a
44 discussion with a number of police?
45 A. No, but I did speak to - I do recall talking to Mark
46 simply because what --
47

1 Q. I'm going to stop you there. I don't want to know
2 about why just yet. Turn back to page 1382. You will see
3 there is an entry in the case report regarding Operation
4 Peregrine and that appears to be dated 28 July 2005, so
5 prior to your October entry. Do you recall seeing that
6 entry at the time you made your entry about the information
7 you got in October of that year?
8 A. I don't recall. You know, if I've opened the case -
9 I don't recall seeing it. I think I should have, but
10 I don't recall.
11
12 Q. But at that time you didn't have any particular line
13 supervisory role over Watters, did you?
14 A. No. Mark --
15
16 Q. Don't worry about. That's just a "Yes" or "No".
17 A. No.
18
19 Q. So you didn't have any professional requirement or
20 obligation to supervise or guide him through any processes
21 he had decided to pursue at that time, did you?
22 A. I did in some respects, yes.
23
24 Q. But not as his direct supervisor or the crime manager
25 of the local area command he worked at?
26 A. I was the detective sergeant for the command in which
27 he was working. Kurri falls under Cessnock and I was in
28 charge of the detectives' office that covered Kurri Kurri
29 and --
30
31 Q. In July 2005?
32 A. Yes.
33
34 Q. What steps did you take in entering the case report
35 regarding the further action that he should take - or you
36 didn't?
37 A. No. The nature of the conversation - if you would
38 like me expand on that. I actually rang him up and thought
39 I would be giving Mark news that he didn't know.
40
41 Q. And he already had the news?
42 A. Yes. I actually - he stole my thunder, if you like,
43 in some respects, and that I - I felt that we'd finally
44 found McAlinden as a result of what Helen Keevers had
45 passed on. And Mark then explained, and he said, "Well,
46 mate, I already know that. I've already sent the cops out
47 in Western Australia", and I said, "Well, so have I."

1 Unfortunately, the way it panned out we had both,
2 simultaneously without knowing, caused inquiries to be made
3 in Western Australia by West Australia Police.
4

5 Q. Where on the case report have you noted the inquiries
6 you sought to be made in Western Australia in 2005?

7 A. I haven't typed that in. I've obviously put in the
8 address and phone numbers and different things there, but
9 I actually hadn't made the notation at that time that
10 I'd caused the police to go and make inquiries.
11

12 Q. Do you see in the July 2005 entry made by Watters,
13 he's mentioned that he has been discussing the matter with
14 his crime manager? Do you see that, on page 1382?

15 A. Yes, I do, yes.
16

17 Q. He discussed the matter with his crime manager,
18 Humphrey. Do you see that?

19 A. Yes.
20

21 Q. Is that an appropriate approach to take to discuss
22 with your crime manager regarding this new information?

23 A. You need authorisation from a commissioned officer
24 to be able to - you know, for the costs to be able to travel
25 interstate. Even though I think, at the time, Inspector
26 Matthews would have been the duty officer at Kurri --
27

28 Q. No, we're getting off track.

29 A. That's fine.
30

31 Q. It was appropriate?

32 A. Yes.
33

34 Q. So you mentioned that you had contact with an officer
35 in Western Australia about McAlinden in October 2005?

36 A. Yes.
37

38 Q. Is that when you did so?

39 A. Yes.
40

41 Q. What was the name of the officer in West Australia you
42 contacted?

43 A. In 2007 I've got an entry --
44

45 Q. There's nothing there about the name of the officer in
46 West Australia that you contacted.

47 A. No, I don't know if it was the same officer. I know

1 I had the - I sent an officer out there, and my
2 recollection is I had a phone number and a contact number.
3
4 Q. You did that even though you'd been told by Watters
5 that he was attending to that?
6 A. No, sorry, no, no.
7
8 Q. You'd done that already?
9 A. I'd already done that, and then I rang Mark and
10 I realised that he'd already done the same thing.
11
12 Q. Did you ring the officer you contacted and said not to
13 worry because another officer is organising it?
14 A. That had already happened, so there was nothing
15 I could undo. He'd already got back to me and said,
16 "Listen, he is in the hospital over here." By that stage,
17 he wasn't living outside. He was actually in a facility.
18
19 Q. I'm going to stop you because we are getting away from
20 it - we are just focusing on police-to-police contact?
21 A. Yes.
22
23 Q. So you didn't need to ring the officer you contacted
24 in WA because he already knew, did he, that another officer
25 in WA was attending to the matter? Is that the position?
26 A. No. No. I contacted Western Australian Police before
27 I rang Mark Watters.
28
29 Q. Which station did you contact?
30 A. Subiaco police station.
31
32 Q. Is that Peter Gilmore, Sergeant Peter Gilmore?
33 A. I don't know if it was the same sergeant, but I've got
34 a feeling it probably was because I had a phone number, and
35 I later on rang the same number and it was Sergeant Peter
36 Gilmore that went back out to the hospital and confirmed
37 for us that Father McAlinden had, in fact, died because
38 obviously we needed confirmation of that at some stage.
39
40 Q. Can I ask you this: with the information you got from
41 Ms Keevers, had the police not already been on to finding
42 McAlinden, as recorded by Watters's note in July 2005, it
43 would have been helpful for the police to know the address
44 where McAlinden was?
45 A. Yes.
46
47 Q. So it was helpful for Ms Keevers to make that effort

1 and make the phone call and provide the information when
2 she did in October 2005?

3 A. Of course.

4
5 Q. Would you know why she provided it to you
6 specifically?

7 A. Yes. I had first met Ms Keevers, I believe, the
8 preceding year at one of the sentencing or appeal hearings
9 for Father Fletcher.

10

11 Q. Did you have any contact with any other official of
12 the Catholic Church in 2005 seeking information or
13 assistance regarding anything to do with McAlinden and or
14 the [AE] investigation?

15 A. No.

16

17 Q. Did you at any time have cause to ask for documents
18 about McAlinden relating to the [AE] investigation in 2005
19 or any earlier time - you personally?

20 A. Ask for documents as in --

21

22 Q. Yes, did you need to ask any official of the Catholic
23 Church for documents about McAlinden?

24 A. No, I didn't, no.

25

26 Q. I am not being critical about that --

27 A. No.

28

29 Q. -- that just wasn't something you needed to do given
30 your role in the investigation as described?

31 A. That's right.

32

33 Q. So your interface with any representative of the
34 Catholic Church in terms of your involvement in the [AE]
35 investigation was limited to the information Ms Keevers
36 provided you. Is that the only official of the Catholic
37 Church you dealt with, putting aside Bishop Clarke, of
38 course?

39 A. That's correct, yes.

40

41 Q. Putting aside Bishop Clarke, who we'll come back to,
42 is it your opinion or what's your opinion about the
43 assistance or otherwise you received from Ms Keevers?

44 A. I do recall the conversation briefly, and she
45 expressed some disappointment too that she realised, in
46 passing that on to me, that there was probably little we
47 could do because she had already assessed that his

1 condition was such that he probably only had weeks to live
2 and --
3
4 Q. Did you form an opinion that she had contacted you as
5 soon as possible?
6 A. Oh, yes, I've got no doubt that as soon as she became
7 aware of it, she relayed it to me. That was the nature of
8 the call.
9
10 Q. In terms of former Bishop Clarke, what's your opinion
11 regarding his assistance or otherwise with investigative
12 steps you were taking when you spoke to him in 2002 or
13 2003?
14 A. At the time, I didn't have any concerns; it was
15 simply a rumour that I was just wanting to clarify, and
16 my interpretation of that in 2002-2003 was he said, "Well,
17 I" - you know, effectively, "I've never heard that.
18 I don't know what you're talking about", and I thought,
19 "Well, that's - that put that rumour to bed."
20
21 Q. You took him at face value --
22 A. Of course, yes.
23
24 Q. -- because you thought he would be telling you the
25 truth?
26 A. Yes, I had no reason not to.
27
28 Q. I'm now going to turn to your investigation relating
29 to James Fletcher, so you can fold those up for the moment.
30 The position is that, in May 2002, you received a phone
31 call from a senior crown prosecutor?
32 A. Yes.
33
34 Q. Who told you that he had been advised that [AH] - you
35 have got a pseudonym list in the witness box there with
36 you.
37 A. I have.
38
39 Q. He advised you that [AH] may well need to discuss
40 matters with a police officer?
41 A. I think I know who [AH] is, yes.
42
43 Q. Is it fair to say that it took some time to complete
44 [AH]'s statement to the level where charges could be laid
45 against Fletcher?
46 A. Yes, it did.
47

1 Q. Early in the investigative steps that you were taking,
2 did you receive a call from [AH]'s mum where she told you
3 some things regarding information being passed around the
4 diocese?

5 A. Yes.

6
7 Q. By that stage, you hadn't yet commenced interviewing
8 [AH] - is that the position?

9 A. I'd started - well, I'd interviewed him insofar as
10 I had obtained sufficient - you know, a very - a summary,
11 if you like, in short, and sufficient to commence a COPS
12 event and start a case. But by that stage the interview
13 wasn't such that we'd gone into great depth about what had
14 transpired. We hadn't typed or put anything formally down
15 on paper.

16
17 Q. But did you consider your position to have been that
18 your investigation had started in about --

19 A. Yes, yes.

20
21 Q. Did you have enough information from [AH] to lead you
22 to believe that there was conduct that had been engaged in
23 by Fletcher that was likely to lead to criminal charges at
24 that point?

25 A. Yes.

26
27 Q. In the phone call you got from [AH]'s mum, what did
28 she say to you?

29 A. That was the first phone call where I'd spoken to
30 [AH]'s mum, and she was distraught in that she told me
31 that - I just want to be safe here with the names. Can
32 I mention the two clergy that travelled out to Branxton?
33

34 Q. Yes.

35 A. Yes. She told me that Bishop Michael Malone had
36 telephoned her and told her that he had travelled with
37 Monsignor Saunders to Branxton and they there met up with
38 Father Des Harrigan and Father Bill Burston - it may not be
39 in my statement, but I do recall that there were some
40 civilians there as well - and that Bishop Malone had spoken
41 to Father Fletcher and told him that a person had been in
42 to see the police and they had made a complaint of being
43 sexually abused by - sorry - a complaint of being sexually
44 abused by Father Fletcher, and she was most distraught
45 about the fact that Bishop Malone had also told Father
46 Fletcher the name of the alleged victim.
47

1 Q. [AH]'s mother had this information from being told by
2 Bishop Malone that that's what had occurred?
3 A. Yes.
4
5 Q. Did that cause you to make an appointment to see
6 Bishop Malone?
7 A. Yes, it did.
8
9 Q. And at that stage, did you raise this particular
10 matter with him?
11 A. I did.
12
13 Q. Did you formally caution him or was it a formal police
14 interview on any level?
15 A. I was still making my mind up about that. I certainly
16 did not caution him. I wanted to, at that stage, find out
17 exactly what had happened and why.
18
19 Q. Did anyone attend this appointment with Bishop Malone?
20 A. Yes. When I spoke to him, I spoke to him in the
21 chancery here at Hamilton in Newcastle.
22
23 Q. Yes.
24 A. His vicar general, Monsignor Saunders, was present
25 whilst we spoke, as was Detective Senior Constable Ann Joy.
26
27 Q. Did you make a note of your conversation with Bishop
28 Malone at the time?
29 A. I made - I actually - the conversation was of such a
30 nature that I actually typed it up shortly after I got back
31 to the office, I believe that day.
32
33 Q. On that day?
34 A. Yes.
35
36 Q. When you typed it up that day, did you convert it to a
37 formal statement?
38 A. Not that day. I did later on when requested to by the
39 Ombudsman's office.
40
41 Q. Why did you type it up as a note that day?
42 A. Because I was far from satisfied with much of what he
43 had told me. I was still contemplating whether or not
44 that - whether he had, if you like, overstepped the mark
45 and committed a criminal offence. And, you know, at that
46 stage, I hadn't got a statement at all from the victim, so
47 the investigation still had a long way to go, but this was

1 certainly a major disruption and a problem for me and I was
2 contemplating whether I would go back and visit that
3 particular issue and whether I'd contemplate criminal
4 charges as a result of what occurred.

5
6 Q. Why was it a major problem for your investigation.

7 A. For a number of reasons. It forewarned Father
8 Fletcher that the police were now looking at his matter. A
9 number of things transpired directly as a result of that,
10 I believe, where evidence was --

11
12 Q. We will come to that.

13 A. -- or potential evidence, if you like, was destroyed,
14 and it also made him aware of who the victim was that had
15 come forward with the complaint.

16
17 Q. Why is being aware of who the victim was who had come
18 forward with the complaint an impediment or problem with
19 your investigation?

20 A. At that stage, he did not know who the victim was.

21
22 Q. Who is "he"?

23 A. Sorry? Father Fletcher did not know who the victim
24 was.

25
26 Q. How did you know that?

27 A. Because he told me that in an interview when
28 I eventually interviewed him in 2003.

29
30 Q. So you base your statement that Fletcher did not know
31 who the victim was who had gone to the police on what he
32 told you in 2003 when you interviewed Fletcher?

33 A. I based that on many things. There was a lot of other
34 people that also told me that, both clergy and also lay
35 persons.

36
37 Q. It is the position, isn't it, that other people who
38 told you that can't have known if Fletcher knew who the
39 victim was or not. All they can do is say what they
40 understood Fletcher's position to be; is that a fair
41 summary - those other witnesses you are talking about --

42 A. They relayed to me what he had said to them.

43
44 Q. What they related to you was that he had said he
45 didn't know who the victim was?

46 A. That's true.

47

1 Q. We'll come back to those people shortly. In terms of
2 impediment or problems created with your investigation by
3 Bishop Malone going and talking to Fletcher, how soon after
4 you had been contacted did this visit to Fletcher occur
5 with Malone and Saunders and the other priests?
6 A. Sorry, can you ask that again?
7
8 Q. Yes. Do you know what date the visit occurred by
9 Bishop Malone to Fletcher in terms of when you were first
10 made aware of that?
11 A. From memory, I think it was 4 June 2002.
12
13 Q. Did you make a note of your phone call with [AH]'s
14 mother where she conveyed that material to you?
15 A. I don't know.
16
17 Q. Have you checked your duty books or police notebooks
18 for entries about that conversation with [AH]'s mum?
19 A. I may have made a notation about it in my duty book,
20 but I'm not sure.
21
22 Q. In relation to the discussion with Bishop Malone, did
23 you make a note in your duty book or your police notebook
24 regarding having met with Malone?
25 A. I believe I did. I typed up quite a lengthy and
26 detailed recollection of the conversation, but I think in
27 my duty book, I only - because of that, I only made a
28 shorter reference to the meeting.
29
30 Q. So you believe that your duty book for 20 June 2002
31 would show a short reference to the meeting only?
32 A. Yes.
33
34 Q. And no effort made at the time to include in the duty
35 book contents of your conversation with Bishop Malone? I'm
36 not being critical, but --
37 A. It may have. But, as I said, because I went back and
38 I felt the need to type it up in more detail, which, you
39 know, isn't my normal practice, I don't know whether
40 I would have gone into such as great a detail and - that
41 I would normally have done in my duty book at the time.
42
43 Q. I'm going to show you a document in a minute, but
44 I just want to ask you a few more questions about your
45 preparation of notes regarding your visit with Bishop
46 Malone. You noted there was another police officer
47 present?

1 A. Yes.
2
3 Q. Ms Joy?
4 A. Yes.
5
6 Q. Was she a detective sergeant?
7 A. Detective senior constable.
8
9 Q. Did she take notes of the meeting with Bishop Malone?
10 A. I don't think she did. My recollection was - is that
11 Ann had accompanied me that day because she had another
12 task that she wished to do. I suppose, had that not been
13 the case, I may have gone to the meeting alone.
14
15 Q. Was she tasked by you to take notes of the meeting
16 with Bishop Malone?
17 A. No.
18
19 Q. Did you make any notes during the meeting with
20 Bishop Malone where you recorded what the matters were that
21 you discussed?
22 A. No-one that was there, including myself, made any
23 written notes at the time, no.
24
25 Q. And you say today, do you, that you prepared on the
26 same day as your meeting with Malone a typed record of the
27 conversation?
28 A. Yes.
29
30 Q. Are you absolutely confident that that was when you
31 prepared the typed record of the conversation?
32 A. When you say "absolutely confident", no. If it wasn't
33 that day, it would have been the next, but it would have
34 been very close to it. I remember being concerned about it
35 to such a degree that I felt the need to type it down when
36 I did get back to the office and I kept it in an electronic
37 form, I suppose, in my system.
38
39 Q. In your system at your computer at work, at the police
40 station?
41 A. Yes.
42
43 Q. And what file title did you store it under?
44 A. I don't recall.
45
46 Q. How were you able to retrieve it?
47 A. It would have been something in relation to meeting

1 with Bishop Malone, or something like that, that would have
2 twigged with me, so I simply would have just gone in and
3 searched - you know, I think most people, when you have
4 loose documents, you put them under a title that would twig
5 when you read through your list of --
6

7 Q. You are unable to specify what title you stored it
8 under?

9 A. I have no idea.
10

11 Q. You're confident you prepared it on your work computer
12 and stored it on your work computer?

13 A. Yes.
14

15 Q. You're confident that you prepared it on the day of
16 your meeting with Bishop Malone or within a day or two of
17 your meeting with Bishop Malone?

18 A. Yes. Yes.
19

20 Q. Are you sure about that?

21 A. Yes.
22

23 Q. I'm going to show you a document and I have a copy for
24 the Commissioner. Just have a look at that four-page
25 document. Do you see it is in the form of specific
26 questions and answers between you and it doesn't identify
27 who, but do we take it that it is Bishop Malone? Yes, it
28 does identify on page 2.

29 A. Yes.
30

31 Q. There are also a couple of statements in there by
32 Father Saunders that you've recorded in this note?

33 A. Yes.
34

35 Q. And you say that this is a note that you prepared on
36 the same day or within a day or two of meeting with Bishop
37 Malone?

38 A. The "I said/he said", yes. Obviously, I've added the
39 title up there at some point just to simply make a
40 reference as to when it is. I don't know whether I did it
41 that day or sometime later, but the "I said/he said",
42 et cetera, I did do around that time.
43

44 Q. What was the bit you added later, sorry?

45 A. Just the first two lines on the front page. I don't
46 know whether I - I may have done that at the time, but just
47 reading it saying I made a general record in my duty book

1 and the COPS case.

2

3 Q. First of all, as I understand your evidence today, you
4 said you hadn't made any note in terms of a specific
5 conversation in your duty book. You just recorded the fact
6 that you'd gone and had a meeting with Bishop Malone?

7 A. Yes. It says there I made a general record of this --

8

9 Q. No, I'm not asking what it says there. I'm asking you
10 about your evidence today. You said today that you made
11 only a record in your duty book of the fact of the meeting?

12 A. No, I think I said I may have made some first-person
13 conversation, but it wouldn't have been as detailed as what
14 I normally would.

15

16 Q. You now say, do you, you may have included in your
17 note in your duty book some of the first-person
18 conversations?

19 A. I thought I said this earlier as well. I may have
20 been mistaken. I don't know - the fact is I don't
21 recollect how much detail I put in my duty book. I may
22 have put some of the first-person conversation in; I may
23 not.

24

25 Q. Did you check in your duty book for the purposes of
26 giving evidence to the Commission whether you still had
27 20 June 2002 material available? Your duty book that
28 covers 20 June 2002, did you check it?

29 A. Sorry, at which point of time?

30

31 Q. Did you check your duty book that covers 20 June 2002?

32 A. Before --

33

34 Q. I understand. Did you check your duty book that
35 covers 20 June 2002 for the purposes of giving evidence at
36 this Special Commission or preparing any papers for
37 provision to this Special Commission?

38 A. No, what I did was --

39

40 Q. I'm not asking what you did just yet.

41 A. No, I didn't have my duty book, no.

42

43 Q. You weren't able to access it?

44 A. No.

45

46 Q. Do you recall, on a previous occasion when asked about
47 this particular document that you have in front of you,

1 that you stated that you'd prepared it some month or two
2 after meeting with Bishop Malone?
3 A. No. My recollection was I made it very soon after I -
4 you know, obviously I don't have a specific recollection.
5 If I have said that, I've certainly pondered it very
6 heavily and I do recall actually checking - you know,
7 I suppose in the recollection process, I remember - whether
8 Ann Joy remembers, but I do recollect showing --
9
10 Q. No, I'm going to stop you. I'm not asking about
11 anybody else.
12 A. But if I had, my recollection now is I certainly made
13 it very close to the time. I can't be specific. If I did
14 say a month or two, that's probably too broad and I do
15 apologise for that, but --
16
17 Q. What I'm asking you and I am going to cut you off --
18 A. I don't recall saying it --
19
20 Q. No, I'm going to stop you.
21 A. -- but I may have.
22
23 Q. When I say "Stop", please stop, because otherwise
24 we're going all over the place and nobody is going to be
25 able to understand my question or your answer.
26 A. Okay.
27
28 Q. What I put to you was a proposition that, on a
29 previous occasion, you stated in sworn evidence that you
30 prepared this document a month or two after the events that
31 it describes. Do you recall saying that on your sworn
32 evidence previously?
33 A. Yes.
34
35 Q. Today, you would agree with me, you said that you
36 prepared this note the same day or within a day or two of
37 having the meeting with Bishop Malone?
38 A. Yes.
39
40 Q. Wait until I ask the question. Which answer is
41 correct?
42 A. The short explanation for that --
43
44 Q. No, I'm not asking for a short explanation. Which?
45 A. Both --
46
47 Q. No, which answer is correct - a day or two after or on

1 the same day or a month or two after?
2 A. Both.
3
4 Q. They can't both be correct?
5 A. No, they can't - but if I can explain --
6
7 Q. No, I don't want an explanation. Did you do it on the
8 day or a day or so after?
9 A. The "I said/he said" --
10
11 Q. No, you have to listen to my question. Did you
12 prepare a note on the day or a day or two after you had the
13 meeting with Bishop Malone?
14 A. The one we have here, this copy, may have been done
15 within a month or two.
16
17 Q. Did you prepare the content of the hard copy note
18 we're looking at, excluding the first two lines, on the day
19 or a day or two after your meeting with Bishop Malone?
20 A. Yes.
21
22 Q. Did you give an answer on a previous occasion to a
23 question about the preparation of the content of this
24 document that you prepared it a month or two after the
25 meeting with Bishop Malone?
26 A. I don't recall it. That's what I've said. I can
27 understand what you're asking. The "I said/he said" - and
28 I think when I have accessed it again at a later point of
29 time to go back into it, I've added that title just to
30 clarify what the document was, and that may have been done
31 a month or two later, but the "I said/he said" were done
32 within - certainly within days of the conversation.
33
34 Q. What do you say was the note or record from which you
35 were able to prepare the "I said/he said" parts of the
36 document?
37 A. That was an - I simply went back in a Word document,
38 electronically, on the police computer. I --
39
40 Q. No, I'm going to stop you. What was the note,
41 handwritten or otherwise, the information upon which you
42 were able to prepare the "I said/he said" part of this
43 document?
44 A. My recollection.
45
46 Q. Your recollection?
47 A. Recollection only, no written note at all.

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Q. Would you agree with me that if you prepared it on the day or a day or two after the conversation occurred, your recollection may well be adequate?

A. I was used to doing that quite regularly for matters, and I take your point. There may be a word or two that I've got that isn't absolutely spot on, but, generally speaking, that would be almost identical to the conversation.

Q. You're comfortable - sorry. Were you finished your answer?

A. Yes - no. In the whole, that conversation, as it flowed - and the other thing I did do when I made these notes, I do recall bouncing back off Detective Joy to make sure it also fitted in with her recollection and she was quite happy that it did.

Q. You provided this note, did you, in hard copy form or soft copy form to Ms Joy?

A. I don't recall. I remember speaking to her about it and I don't - I don't know whether I actually read it back to her. We worked in the same office.

Q. Do you recall providing a soft copy or a hard copy of this "I said/he said", part of this document to Ms Joy?

A. I don't recall, but I may have. But I don't recall.

Q. Did you show her this "I said/he said" part of the document in either soft or hard copy form or not?

A. I don't recall.

Q. How can you say that you ran it past Ms Joy to confirm the accuracy of its content?

A. Because I read it to her. I was reading extracts out of it to her and saying --

Q. Extracts out of it now, is it? You read extracts out of it to her?

A. Yes.

Q. To her?

A. I was reading and saying, you know, "This is that meeting we had with Bishop Malone the other day", and I've read it back and said, "Have I left anything out or does that accord with your recollection?" And she was fairly happy that it was pretty much what - you know, spot on what

1 was said.

2

3 Q. It is your evidence that she made no note of the
4 meeting with Bishop Malone, is it not?

5 A. No, no-one that was there made any note. The fact is
6 yes, I did do it from my recollection a day or two later
7 and, you know, as I said, if it is not absolutely spot on,
8 there may be a few words out, I concede that, but I think
9 the gist of the conversation, the vast majority of it is
10 accurate.

11

12 Q. Why is there no date on the document?

13 A. Because it was a question and answer format and
14 I wasn't preparing it for any reason other than - you know,
15 there would have been a date, I would imagine, on the
16 original copy in the police computer system and, as with
17 most documents, I was probably relying upon that in that,
18 you know, it would have said a date alongside it when
19 I opened the document.

20

21 Q. Where would the date appear on the document and why
22 isn't it on this copy that we have?

23 A. I don't - it just didn't print up. When you go
24 in and - I think most of us are aware that, with a Word
25 document, when you go through a scrolling list on the front
26 screen, it tells you the date that a document is created.

27

28 Q. I'm not asking that.

29 A. But it doesn't - I didn't type a date into here, no.

30

31 Q. Why not?

32 A. Because I had recollections of when the meeting
33 occurred and it was cross-referenced in my duty book, so
34 I didn't feel the need to put down the fact that this
35 conversation occurred on 20 June, but that's when it
36 happened.

37

38 Q. What purpose was this note to be used for in terms of
39 your police investigations?

40 A. I was actually contemplating, depending upon other
41 aspects of the Fletcher investigation, whether I may need
42 to go back and visit, accurately as possible, the
43 conversation I had with Bishop Malone on 20 June.

44

45 Q. As an investigating police officer of some years
46 experience, you are aware, are you not, that the date an
47 event occurs is an important detail to include in a

1 document you construct for the purposes of your police
2 duties?

3 A. Yes, but I didn't have any difficulties recalling the
4 date because my duty book would have reflected the time and
5 date and the car diary for that point.
6

7 Q. But the document you've prepared, therefore, isn't a
8 stand-alone document any more, is it; it relies on other
9 sources of information to inform the date of the events you
10 describe in it?

11 A. It does, and, you know, I concede that that's not a -
12 it, effectively, was a supplement because of the length of
13 it and, as you pointed out, it is four pages of typed
14 conversation. Had I written it up in my duty book
15 I probably would have spent a dozen pages or more writing
16 it up. It was simply more convenient to put it down in a
17 typed format because I wanted a more detailed record of
18 what was said with Bishop Malone, and it was just a case
19 that, you know, although I never used it for any criminal
20 process, and certainly it was never produced in evidence at
21 any stage, it did come in very handy for another purpose
22 early the next year.
23

24 Q. At the date where you prepare a document of this
25 nature where you are purporting to put details of a
26 conversation you had with Bishop Malone in this case, the
27 date of the creation of the document is a very important
28 matter, isn't it?

29 A. Yes. I haven't typed in here --
30

31 Q. I'm not asking you for detail. The date of the
32 creation of the document is a very important matter, isn't
33 it?

34 A. Yes.
35

36 Q. And that's because if it was close to the time a
37 conversation occurred, it may well be a reliable document?

38 A. Yes.
39

40 Q. That's right, isn't it?

41 A. Yes.
42

43 Q. If it is a document prepared a month or two later, it
44 may be less reliable in terms of the details of the
45 conversation you've recorded?

46 A. Yes.
47

1 Q. Certainly, a document prepared a month or two after a
2 conversation like this can't be described as a
3 contemporaneous note, can it?

4 A. Yes.

5

6 Q. Would you agree with me that a document of this nature
7 prepared a month or two later is unlikely to be entirely
8 accurate?

9 A. Yes.

10

11 Q. And it may well have elements of reconstruction in it
12 of the conversation that occurred, even created by you as a
13 reasonably experienced, by that time, police officer?

14 A. Yes.

15

16 MS LONERGAN: Is that a convenient time, Commissioner?

17

18 THE COMMISSIONER: Yes.

19

20 **SHORT ADJOURNMENT**

21

22 MS LONERGAN: Q. Detective Chief Inspector Fox, before
23 the morning tea adjournment I was asking you some questions
24 about a document that you, I hope, still have in the
25 witness box with you.

26

27 Commissioner, I note for the record, Mr Cohen is not
28 with us. I will sit down until he arrives.

29

30 THE COMMISSIONER: Yes. Thank you. I'm sure he won't be
31 long. Here he is now, Ms Lonergan.

32

33 MR COHEN: I am sorry to have caused you a problem.

34

35 THE COMMISSIONER: Not at all, Mr Cohen.

36

37 MS LONERGAN: Q. Detective Chief Inspector Fox, you were
38 asked some questions before the morning tea adjournment
39 regarding the note you have in the witness box with you?

40 A. Yes.

41

42 Q. Your answers were to the effect that it is your
43 recollection today that you prepared that document within a
44 day or two of the meeting with Bishop Malone?

45 A. Yes.

46

47 Q. I just want to check with you the date of the meeting.

1 I have been putting questions to you on the basis of the
2 meeting having taken place on 20 June 2002?
3 A. I believe that's when it was, yes.
4
5 Q. And if there's a document prepared by you that said
6 that the meeting took place on 2 June 2002, that must be an
7 error?
8 A. No, that's - that would be incorrect because 2 June,
9 sorry, is the - no, that's not correct.
10
11 Q. Thank you. So with regard to this meeting on
12 20 June - and I just want to check your recollection to
13 make sure I understand your evidence today - you did not
14 make detailed notes of the conversation with Bishop Malone
15 on 20 June 2002 whilst you were in that meeting?
16 A. No.
17
18 Q. And nobody else, to your observation, did so?
19 A. Not that I'm aware of, no.
20
21 Q. This document that you have in the witness box with
22 you, this four-page "I said/he said" document - excluding
23 the first two lines which are an introductory type of three
24 sentences - you say was prepared within a day or two of the
25 meeting with Bishop Malone?
26 A. Yes.
27
28 Q. If you said on a previous occasion on sworn testimony
29 that you had only prepared the question and answer part of
30 the document a month or two after, that's incorrect?
31 A. Yes.
32
33 Q. Is it?
34 A. Yes.
35
36 Q. And by preparing the question and answer part of the
37 document, by that I mean electronically recording your
38 recollection as the question and answers; so by that I am
39 including the process by which you typed or recorded the
40 conversation with Bishop Malone?
41 A. Sorry?
42
43 Q. Let me start that again. The process of actually
44 typing your conversation with Bishop Malone, you say
45 occurred a day or two after the conversation?
46 A. Either that day or a day or two later, yes.
47

1 Q. So, on a previous occasion, if you said, "The first
2 time I typed something down" - about this matter - "was a
3 month or two later", that was incorrect if you said that,
4 is it?

5 A. I'm probably referring to this document and I do
6 apologise. From the sound of that, that is misleading.

7

8 Q. You now say, do you, that evidence to the effect
9 or a statement by you to the effect that you first
10 committed your recollection regarding this conversation to
11 Bishop Malone to writing, albeit electronic writing, a
12 month or two after the events, is incorrect, an incorrect
13 statement?

14 A. Yes, and --

15

16 Q. If you only recorded this conversation a month or two
17 after the meeting with Bishop Malone, you would agree with
18 me, would you not, its reliability would be somewhat in
19 question?

20 A. Yes. The longer it would take, the more it would
21 diminish, I understand that.

22

23 Q. Is it the position that you are today saying that you
24 prepared the document a day or two after the meeting with
25 Bishop Malone or on the same day, because you wish to
26 suggest that this document is reliable?

27 A. No, I'm not saying it because of that. That's my
28 recollection. I recall it was fresh in my mind when I went
29 back and I remember - you know, I can't remember, I -
30 I obviously had other cases I was working on, but it was
31 something that I felt that I needed to type down. And, you
32 know, this document isn't something that is pre-formatted
33 or it's a standard process that police adopt; it was simply
34 a blank page of a Word document that I opened up and
35 decided to type, simply because of the length of the
36 conversation, and I thought, "Well, I'm going to make a
37 record of that", and I had conversations about it later and
38 I - at some point, I've put that title on it, which refers
39 back to it, but I didn't type it up as a formal statement
40 until the following year.

41

42 Q. I understand that, but you used this document, didn't
43 you, in your prosecution of Fletcher?

44 A. I don't know.

45

46 Q. You used it and converted it into a police statement
47 that you made dated 28 May 2003 in your prosecution of

1 James Fletcher?
2 A. I may have. I don't recall.
3
4 Q. I'm putting a proposition to you. You can reject it
5 or accept it. Is the reason today you are saying you
6 prepared it only a day or two after, that it was drawn to
7 your attention on a previous occasion if you prepared it a
8 month or two after, it doesn't qualify as a contemporaneous
9 note under the Evidence Act or any other consideration of
10 contemporaneity? Do you agree with that?
11 A. Yes, I'm - sorry, I'm still contemplating - I don't
12 know whether I did use this. I'm taking your word it was
13 used in the prosecution of Fletcher.
14
15 Q. I'll take you to it and I don't wish to confuse you.
16 A. Yes, sorry.
17
18 Q. I think my last question might have been confusing to
19 you. Let me put it fairly to you. What I want to suggest
20 to you is the reason today you are saying you prepared that
21 note a day or two later is because it had been drawn to
22 your attention on a previous occasion that preparing it a
23 month or two after the conversation would raise significant
24 questions regarding its reliability?
25 A. No, that's not the reason at all, no.
26
27 Q. I'm going to show you some pages of transcript from a
28 private hearing on 27 March 2013. I'll just hand up a copy
29 to you and the Commissioner.
30 A. Thank you.
31
32 MS LONERGAN: Commissioner, could you lift your
33 non-publication order over pages 65 to 67 inclusive of that
34 transcript.
35
36 THE COMMISSIONER: Thank you, Ms Lonergan.
37
38 THE WITNESS: Sorry, I'm just uncertain and I'm taking
39 your word.
40
41 MS LONERGAN: Q. I don't need you to say anything at the
42 moment. We'll come back to the issue of using it in a
43 police statement that you made. At the moment I just want
44 you to focus on the transcript of the private hearing that
45 we had on 27 March 2013.
46 A. Yes.
47

1 THE COMMISSIONER: I have previously directed that the
2 transcript of that hearing be not for publication, but
3 I lift that order with respect to pages 65 to 67 inclusive
4 of the transcript of 27 March 2013.
5
6 MS LONERGAN: I just want to make sure I'm being fair to
7 the witness.
8
9 THE WITNESS: Yes.
10
11 MS LONERGAN: Excuse me, Commissioner. I'm just looking
12 to whether the witness should also be provided with the
13 previous page. Yes, I form the view that he should be.
14 I'm just going to get a further copy done of page 64 of the
15 transcript.
16
17 Q. While that is coming, I'm just going to take you to -
18 you can put that down for a moment and I'll come back to
19 that.
20 A. Yes.
21
22 Q. This is on a related subject matter. I'm going to
23 show you your police statement. I've already asked you
24 whether you recollected preparing it. It is in tab 395 in
25 volume 5 of the tender bundle. Just turn that up, please.
26 Do you have that document, Detective Chief Inspector Fox -
27 395?
28 A. Yes.
29
30 Q. Do you see, on the face of it, it is a statement you
31 prepared for the [AH] allegation? Do you see that? Do you
32 see that on the first page of the document?
33 A. Yes.
34
35 Q. It is a statement by you dated 28 May 2003?
36 A. Yes.
37
38 Q. Do you see that, in paragraph 3, you've mentioned that
39 the note relates to a meeting on 2 June 2002 that was
40 attended by Detective Senior Constable Ann Joy and you with
41 Bishop Malone and Father James Saunders. Do you see that?
42 A. Yes.
43
44 Q. First of all, the date 2 June 2002 must be wrong?
45 A. Yes. It's not supposed to be a 2. It should have
46 been 20, the 20th
47

1 Q. You go on to say in the last sentence of that
2 paragraph:

3

4 *I recorded an electronic record of the*
5 *conversation on either Friday, the 3rd June*
6 *or Monday, the 6th of June 2002.*

7

8 Do you see that?

9 A. Yes.

10

11 Q. That must be wrong as well, must it not?

12 A. That's right. What I'm saying there it was made
13 virtually straight after the meeting, but the dates I've
14 got there are wrong because 2 June would have stuck in my
15 head because that was the date that the complaint initially
16 came in from the victim, and I've made an error in that
17 regard in that that's not correct.

18

19 Q. So all the dates in that paragraph are wrong, aren't
20 they?

21 A. Yes.

22

23 Q. As a result?

24 A. Yes.

25

26 Q. Is it your recollection that the meeting took place on
27 a Thursday?

28 A. Whatever 20 June 2002 was, that was the day. I don't
29 recall what day of the week.

30

31 Q. I'll just have that checked. What was the purpose of
32 you preparing this particular statement?

33 A. This was prepared at the request of the New South
34 Wales Ombudsman's office when I contacted them in relation
35 to concerns I had with Father Fletcher's continued access
36 to children.

37

38 Q. Why did you prepare it in the form of a police
39 statement?

40 A. Because I was requested by the Ombudsman's office to
41 do so. I'd earlier provided them with the other document.

42

43 Q. By "the other document", you mean a report outlining
44 some material or do you mean --

45 A. Sorry. No, I mean the other document we were just
46 referring to --

47

1 Q. That's the document, which I'll tender, just for the
2 sake of clarity. That's the four page document with the "I
3 said/he said" material on it without a date as to when the
4 event occurred?

5 A. Yes.

6
7 Q. And without a date as to when the document was
8 prepared?

9 A. Yes.

10
11 THE COMMISSIONER: Detective Chief Inspector Fox's
12 four-page document in relation to his conversation with
13 Bishop Malone will be admitted and marked exhibit 49.

14
15 **EXHIBIT #49 FOUR-PAGE TYPED DOCUMENT, BEING A CONVERSATION**
16 **BETWEEN DETECTIVE CHIEF INSPECTOR FOX AND BISHOP MALONE**
17 **PREPARED BY DETECTIVE CHIEF INSPECTOR FOX**

18
19 MS LONERGAN: Q. 20 June, I'm informed was a Thursday.
20 Does that assist with your recollection as to the date on
21 which you had the meeting with Bishop Malone?

22 A. Yes, and I am just working it out. Obviously, 18 days
23 between the 2nd and the 20th, so where I've got Thursday
24 the 2nd, obviously the 2nd wouldn't have been a Thursday.
25 It should have been Thursday, the 20th, and the other dates
26 would flow on from that. The Friday and the Monday should
27 read, obviously, the 21st or the Monday, which would have
28 been the, what, 24th.

29
30 Q. We'll just look a bit more closely at that police
31 statement for a moment. Did you produce with the hard copy
32 statement a disk? It says here under paragraph 3:

33
34 *I produce the disk on which that electronic*
35 *note was stored.*

36
37 What kind of disk was that? This is 2003?

38 A. I don't recall, to be honest. To be honest with you,
39 I actually forgot about that until I've read that here.
40 Obviously, I have prepared a disk of some sort that I have
41 provided - the Ombudsman's office, when I was in contact,
42 had requested this - because of a report I'd done earlier,
43 had requested a copy of the document that we've just
44 tendered that I've spoken about. After they got that, they
45 then contacted me and requested that I prepare a - that
46 same conversation in the format of a police statement and
47 put it down, which is how the police statement format has

1 come into being.

2

3 Q. Are you sure that you were asked to prepare it after
4 you provided your report to the Ombudsman? Have a look
5 behind tab 396. Do you see the date of your --

6 A. 29 May.

7

8 Q. -- police statement is 28 May 2003, but behind tab 396
9 the report of yours to the Ombudsman is dated 29 May 2003?

10 A. Yes. When I'm saying "my report to the Ombudsman",
11 there had been some earlier correspondence between the
12 Ombudsman's office and myself.

13

14 Q. I understand. With your report to the Ombudsman on
15 29 May 2003, why did you send that report?

16 A. That was again at the request of the New South Wales
17 Ombudsman's office because even though there had been some
18 exchanges between us, predominantly via the telephone,
19 I believe there may have been some also by email, I was
20 then requested if I can do a complete report outlining
21 everything on how it came about and also prepare - well,
22 actually, my recollection is that I did send some of it to
23 the Ombudsman and an electronic version of the "I said/he
24 said", at some stage before that. And the request was when
25 I did the report, if I could also provide the "I said/he
26 said", in a police statement format and that's how that
27 came into being.

28

29 Q. You have been given a copy of three pages of
30 transcript from the private hearing.

31 A. Yes.

32

33 Q. I'll now just add to that page 64 and a copy for the
34 Commissioner, please. I want to be fair to you and make
35 sure you have an opportunity to read all the material
36 leading up to a particular answer you gave on page 65
37 between lines 17 and 24. Could you read to yourself
38 page 64, from about line 14 through to the end of page 65,
39 at least in the first instance and then I'll ask you some
40 more questions.

41

42 THE COMMISSIONER: My previous non-publication in respect
43 of page 64 of the 27 March 2013 private hearing is lifted.

44

45 MS LONERGAN: Thank you, Commissioner.

46

47 THE WITNESS: Yes.

1
2 MS LONERGAN: Q. You've read to the bottom of page 65?
3 A. No, I haven't read to the bottom. Sorry, I thought
4 only between 17 and 24 of --
5
6 Q. Did you read of all page 64?
7 A. Yes.
8
9 Q. You did that, and down to line 24 on page 65?
10 A. Yes.
11
12 Q. Read to the end of page 65, or at least the end of
13 your answer at line 43, just for completeness, please?
14 A. (Witness does requested). Just to the end of 65?
15
16 Q. Yes, that's as far as you need to go. Turn back to
17 page 64. Do you see the question and answer that occurs
18 between line 15 and 29?
19 A. Yes.
20
21 Q. I asked you a question about an electronically
22 recorded disk --
23 A. Yes.
24
25 Q. -- provided with the hard copy statement. Do you see
26 that?
27 A. Yes.
28
29 Q. I was asking you about that and you answered along the
30 lines of you typed up an electronic version of the
31 conversation. Do you see that?
32 A. Yes.
33
34 Q. "But I never printed them out." Do you see that?
35 A. Yes.
36
37 Q. Then I go on to ask you about the disk and that it is
38 not an electronic recording of your interview with Bishop
39 Malone. You said:
40
41 A. *No, it would have been the direct copy*
42 *of the original electronic transcript of*
43 *what was said between Bishop Malone and*
44 *myself.*
45
46 Do you see that?
47 A. Yes.

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Q. :

Q. And the transcript was something typed by you?

I asked you that question and you said "Yes"?

A. Yes.

Q. And then I asked:

Q. And it was typed by you at about the time the Ombudsman's office was interested in these things, or earlier?

You answered:

A. No, I typed that much earlier. I can't recall the date, and I don't know if the Ombudsman - if they would still have it, if it would have the date imprinted on it. But the reason I attached it as a disk is I wanted them to be aware that I wasn't just preparing the statement totally off my own head nine months later --

Do you see how you say that there?

A. Yes.

Q. You make that distinction clear?

A. Yes.

Q. Then.

... that I actually had made notes of it electronically the year before.

A. Yes.

Q. So your answer is placing the preparation of the electronic document in 2002; is that a reasonable inference to make?

A. Yes, and I --

Q. I'll keep going through my process if you don't mind.

A. Yes.

1 Q. Then I asked you questions to try and fit it all
2 together and draw to your attention that you prepared
3 something for the Ombudsman in 2003 that appears to be the
4 conversation part of the document I've just shown you,
5 which is in the form of a police statement. That's the
6 document behind tab 395 that we've been looking at?
7 A. Yes.

8

9 Q. Then I ask you a question about that document and you
10 give an answer as follows, relevantly:

11

12 A. *I did prepare that much earlier --*

13

14 Sorry, let me put the question to you.

15

16 *... So if you look at paragraph 3 and*
17 *onwards, to the end, it appears to be a*
18 *direct copy of annexure B to your*
19 *statement --*

20

21 Which is that four-page copy you've got with you?

22

23 A. Yes.

24

25 Q. --:

26

27 *which you have already told me was prepared*
28 *in 2003?*

29

30 But then you clarify and say this:

31

32 *A. And I am sorry for that. I did prepare*
33 *that much earlier. That was certainly in*
34 *2002. The statement format I did not do*
35 *until requested by the Ombudsman.*

36

37 A. Yes.

38

39 Q. That's 2003:

40

41 *But I had prepared the transcript,*
42 *"I said", "He said", if you like, much*
43 *earlier in 2002, but I don't recall the*
44 *date. But it wasn't - I don't mean to say*
45 *that I did it the very day that I spoke to*
46 *Michael Malone; it was some time later,*
47 *maybe a month or two.*

1 A. Yes.

2

3 Q. So you now say that that answer you gave at your
4 private hearing was wrong?

5 A. Yes, obviously, I'm - what I've said today in relation
6 to typing up the "I said/he said", and I think it alludes
7 to that in the earlier part also in 64, and I can
8 understand the confusion reading through that myself now,
9 but when you go back to - I do make reference to the - you
10 know, and again for contemporaneous purposes, I understand
11 how that works and that's why I've made mention on line 26
12 of page 64, where I said.

13

14 *... I had prepared a contemporaneous note*
15 *electronically of what was had with*
16 *Michael Malone ...*

17

18 On that basis, I believe where I've mentioned a month or
19 two later, I'm talking about the printed-up document, which
20 is now tendered as an exhibit, later on and I - and somehow
21 the two have been confused in that conversation.

22

23 Q. That's not true, is it? It's not true to say that.
24 It was very clear. I'm putting this proposition to you:
25 it is very clear that what you said in your answers
26 contained between lines 17 and 24 of page 65 of the
27 transcript of your private hearing is that you prepared the
28 "I said/he said" electronic copy, electronic version, about
29 a month or two after the conversation with Michael Malone?

30 A. Can I just have a moment. There was something in here
31 I'm trying to find, if I may?

32

33 Q. All right.

34 A. (Witness reads document).

35

36 Q. What is it you're looking for, Detective Chief
37 Inspector Fox?

38 A. Sorry, just the conversations that I did have, because
39 what I was hoping I had made clear is the disk that I had
40 it on showed the date that I sent it down to the
41 Ombudsman's office that was imprinted on - I think people
42 understand that when you create a Word document, the date
43 is imprinted electronically, not actually on the surface
44 printed-up version of the document but on the electronic
45 indicator of that.

46

47 What I was saying at the start of page 65 is when

1 I sent that disk down to them, I stated that the reason
2 I attached it as a disk is I wanted them to be aware
3 I wasn't preparing the statement totally off my head nine
4 month later, that I've actually made the notes
5 electronically the year before. Even though it says the
6 year before, on page 64 where it talks about it being
7 contemporaneous, that was my recollection with the
8 Ombudsman's office is that I was saying to them, "No,
9 I didn't make this conversation months down the track or
10 nine months down the track. I made it at the time", and
11 I sent the disk down with that date which would verify what
12 I'm saying here today.

13
14 Q. What you're saying in the answer on page 64 that
15 you've just referred to is that you didn't prepare it
16 months after the event.

17 A. Yes.

18
19 Q. That's what you were trying to clarify with the
20 Ombudsman, weren't you?

21 A. Yes, I --

22
23 Q. Because you were having dealings with the Ombudsman in
24 March 2003 and you didn't want her to think that you'd only
25 just made the document then; is that the position?

26 A. Yes, yes.

27
28 Q. What you are saying in your answer on page 65, lines
29 18 to 24, is that you're making it clear that you didn't
30 prepare on any basis an electronic version or otherwise of
31 the "I said/he said", on the day the events occurred, but
32 that you prepared it sometime later, maybe a month or two?
33 I'm sorry. I'm sorry, I put a proposition that you were
34 dealing with the Ombudsman in March 2003. It is May 2003.

35 A. Yes.

36
37 Q. But the proposition that I want you to go back to and
38 answer, Detective Chief Inspector Fox, is what you were
39 making clear on page 65 in the answer t lines 18 to 24 is
40 that you didn't prepare a note of your conversation with
41 Bishop Malone on or around the date you had it, but that
42 you did it a month or two later?

43 A. No, I prepared the "I said/he said", within days of
44 that meeting --

45
46 Q. No, I'm not asking you what happened. I'm asking
47 about the answer you gave on 27 March 2013 to a question

1 I asked you on private hearing?
2 A. Yes. I might not have heard - you know, I
3 misunderstood your question. I agree that's how it reads.
4 But what I'm referring to here is the document, and I can
5 verify that in that I know that the date that was on the
6 disk that was --

7
8 Q. I'm not going to be distracted by dates on the disk.
9 I want you to focus on the answers you gave on your oath in
10 March 2013. Could you look at the next question I ask you.

11
12 Q. *A month or two. And why did you*
13 *prepare it a month or two later rather than*
14 *on the day or within a day of interviewing*
15 *him?*

16
17 Your answer is:

18
19 A. *I believed that Michael Malone would*
20 *have stood Jim Fletcher down from his*
21 *duties and removed him from contact with*
22 *children. It was after - I didn't do the*
23 *transcript before that, before I learnt*
24 *that he wasn't intending to remove him and*
25 *he expanded his parish. I remember*
26 *thinking at the time, "Okay, that's not*
27 *going to happen", you know?*

28
29 Do you see that answer that you gave?

30 A. Yes, I do.

31
32 Q. You didn't say, did you, "Oh, no, hang on. No, I did
33 prepare it a day or two after the conversation with
34 Malone"? Your answer, in effect, adopts and repeats that
35 you didn't do it until a month or two later.

36
37 MR COHEN: I object. There's a difficulty with that
38 question.

39
40 MS LONERGAN: I'll ask it again, Commissioner. I'll
41 withdraw that question.

42
43 THE COMMISSIONER: Thank you, Ms Lonergan.

44
45 MS LONERGAN: Q. Your answer does not say, "Oh, no,
46 I prepared a typescript or an electronic version of the
47 conversation within a few days. I only prepared a written

1 document a month or two later", does it?
2 A. No, it doesn't.
3
4 Q. Would you turn over and look at page 66 and read that
5 to yourself and, in particular, note the answer you gave
6 and my question on page 66, line 16 to line 18.
7 A. (Witness reads document). I agree with everything
8 you're putting to me there.
9
10 Q. Sorry?
11 A. Sorry, well, I've read that, first of all, yes.
12
13 Q. You're now saying what? You just said, "I agree with
14 everything you put to me"; is that what you said?
15 A. No. What I --
16
17 Q. No, I don't want to get you to expand on that. I just
18 want to know what it was you just said after you read
19 page 66.
20 A. Yes, sorry, what I'm saying is I'm agreeing with what
21 you're saying in respect to what - how I've responded to
22 that question, yes.
23
24 Q. Well, let me take you through it just so we're all
25 clear.
26 A. Okay.
27
28 Q. On page 66, line 16, I say to you:
29
30 *Q. You would agree that the file note is a*
31 *very detailed recollection to have a month*
32 *or two after the conversation?*
33
34 And you say - and have a look at the transcript.
35 A. Yes.
36
37 Q. Just have a look at the transcript. You don't have to
38 remember anything. Just look at what's recorded there.
39 You say:
40
41 *A. It is.*
42
43 That was your answer to my question, wasn't it? Do you see
44 that on the transcript there?
45 A. Sorry, what line?
46
47 Q. Line 16, page 66?

1 A. Yes.
2
3 Q. Do you see:
4
5 *Q. You would agree that the file note is a*
6 *very detailed recollection to have a month*
7 *or two after the conversation?*
8
9 And you say:
10
11 A. *It is.*
12
13 A. Yes.
14
15 Q. And then the next question:
16
17 *Q. You had absolutely no notes to work*
18 *from to construct this document?*
19 *A. No. That's as accurate - it is a month*
20 *or two later. I suppose it is like any*
21 *contemporaneous note, if someone is asked,*
22 *"Well, listen, can you type something*
23 *down?", a month or two later, after it*
24 *happened, there may be the odd word, or*
25 *something, but it is pretty well damn close*
26 *to what was actually said.*
27
28 A. Yes.
29
30 Q. Then I asked you, following that answer as follows:
31
32 *Q. You would agree with me that a month or*
33 *two later is not a contemporaneous note?*
34 *A. Not under the Evidence Act, no.*
35
36 Q. I suggest to you that the answers that you gave in
37 March 2013 at your private hearing were in fact accurate?
38 A. The answers I've given, I've read them there and
39 I understand - and it does appear misleading --
40
41 Q. No, no, I'm not asking you whether it appears
42 misleading?
43 A. Yes, there --
44
45 Q. No, stop. Was the evidence you gave on 27 March 2013
46 accurate or not?
47 A. I don't believe so.

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Q. So the evidence you gave to the effect that you took the file note a month or two after the conversation was untrue?

MR COHEN: I object to that, Commissioner.

THE COMMISSIONER: Why is that, Mr Cohen?

MR COHEN: That imputes to the answers at times a wilful lack of truth.

THE COMMISSIONER: Yes, but Ms Lonergan is entitled to ask with what mind it was untrue.

MS LONERGAN: Q. Did you deliberately seek to mislead those assisting the Commissioner that your "He said/I said" file note was prepared a month or two after the conversation you had with Bishop Malone?

A. No, no. I believe the explanation, if I may, of that --

Q. No, we'll come to an explanation.

A. Okay.

Q. I want to clarify and understand which is true. So what you said on 27 March 2013 is in fact untrue?

A. It's not correct.

Q. All right, it's not correct. Did you seek to deliberately mislead those who assist the Commission in March 2013 by telling us that a note you prepared was prepared later than when you in fact prepared it?

A. No, I didn't.

Q. What I want to suggest to you is it was drawn to your attention on 27 March 2013 by me that it wasn't correct to describe your note as a contemporaneous note if it was prepared a month or two later?

A. Yes.

Q. I suggest the reason you're saying today that you prepared it a day or it two after the events is that you want to suggest or have people believe that it is a more reliable note than it is?

A. No, I - and I would support that with referring back to the statement that I made to the Ombudsman on 29 May

1 where in 2003 --

2

3 Q. I'm going to ask you some questions about that. I'm
4 going to stop you there, because we'll come to other
5 matters relevant in a minute. What I want to suggest to
6 you is that the statement you prepared for the Ombudsman
7 that you gave to the Ombudsman in May 2003, where it says
8 that you prepared the "He said/I said" aspect of your
9 police station to the effect that it was prepared within a
10 few days of the conversation with Bishop Malone, is untrue?

11 A. No, that's true. You know, that statement is made in
12 2003 when all these events were, if I can put it that way,
13 10 years fresher than what they are today. I have given
14 those answers, and not intentionally misleading, to this
15 inquiry and there may have been some confusion in my mind.
16 That's all I can suggest when I gave the evidence earlier
17 this year in the private hearings. But the fact is my
18 recollection of it was that the notes, the "I said/he
19 says" were typed up within days, and I believe that the
20 statement that I made to the Ombudsman's office in 2003
21 supports that. And I think what would be conclusive, if
22 the Ombudsman's office still has the original disk,
23 hopefully they do somewhere in their files, which would
24 show that the date that that conversation was typed up was
25 within days, but I don't know what they do.

26

27 Q. What I want to suggest to you is that your stating to
28 the Ombudsman's office in your sworn police statement back
29 in 2003 that you had had prepared the note within a few
30 days of the conversation with Bishop Malone was designed to
31 have the Ombudsman's office accept that your conversation
32 as recorded in there was more likely to be correct than if
33 you'd recorded it a month or two later without the use of
34 any notes?

35 A. The purpose of that is to reflect --

36

37 Q. No, I'm not asking you that. I'm putting a particular
38 proposition to you.

39 A. Sorry.

40

41 Q. Do you accept or not?

42 A. No, I don't.

43

44 Q. You don't accept that?

45 A. No.

46

47 Q. I want to draw your attention to another part of the

1 evidence you gave on March 2013 on page 66. After the
2 questions regarding the note not being contemporaneous and
3 that it was taken a month or two later, this exchange
4 occurred:

5
6 *Q. Not even in ... common parlance, would*
7 *you agree?*

8
9 In terms of it not being a contemporaneous note?
10 You answered:

11
12 *A. No, it is some time after, but - you*
13 *know, I'm pretty confident that it's very*
14 *accurate. If it is out, it is only out by*
15 *a few words.*

16
17 Then I put this question to you:

18
19 *Q. And are you confident that the origin*
20 *of preparing this note wasn't tied to any*
21 *particular event that happened or contact*
22 *with a person or something of that nature?*

23 *A. No, I understand what you are saying.*
24 *No, the only thing I can tie it to is*
25 *I remember I typed it up in reaction to*
26 *learning that Fletcher wasn't going to be*
27 *stood down and his parish was going to be*
28 *expanded.*

29
30 *A. Yes.*

31
32 *Q. Do you see that?*

33 *A. Yes, I do.*

34
35 *Q. That answer suggests, does it not, that you had a*
36 *recollection in March 2013, that you only prepared the note*
37 *and typed up the conversations once you heard that Fletcher*
38 *wasn't going to be removed from his post?*

39 *A. No. What --*

40
41 *Q. Would you agree that's what your answer suggests, the*
42 *answer as recorded in page 66?*

43 *A. It could be interpreted that way.*

44
45 *Q. I want to suggest to you that James Fletcher wasn't*
46 *actually stood down until March 2003. Does that accord*
47 *with your recollection?*

1 A. Yes.
2
3 Q. And after that time, you had some liaison with the
4 Ombudsman's office, or was it before that time?
5 A. Before that time.
6
7 Q. I suggest to you that it was only when you learnt that
8 Fletcher wasn't going to be stood down from his position
9 where he could have access to children, that you prepared
10 an electronic version of your conversation with Bishop
11 Malone?
12 A. Which version, sorry?
13
14 Q. At all?
15 A. No.
16
17 Q. At all?
18 A. No. No.
19
20 Q. In May 2003 you took a formal statement from
21 Bishop Malone?
22 A. Yes.
23
24 Q. I'll just turn it up for you. It is tab 391. You can
25 just put those documents to one side.
26 A. Yes.
27
28 MS LONERGAN: Commissioner, did I tender the four-page
29 document?
30
31 THE COMMISSIONER: Yes, you did. That was exhibit 49,
32 Ms Lonergan.
33
34 MS LONERGAN: I'll tender those four pages of transcript
35 of the private hearing.
36
37 THE COMMISSIONER: The extract of pages 64 to 67 inclusive
38 of 27 March 2013 will be exhibit 50.
39
40 **EXHIBIT #50 EXTRACT FROM TRANSCRIPT OF THE PRIVATE HEARING**
41 **OF DETECTIVE CHIEF INSPECTOR FOX ON 27/3/2013 COMPRISING**
42 **PAGER 64 TO 67 INCLUSIVE**
43
44 MS LONERGAN: Q. I'm terribly sorry, I think I said 391.
45 It should be 390. Turn up tab 390 of volume 5 of the
46 tender bundle.
47 A. Yes.

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Q. Just leave that open for the moment. I need to go back to something I've been helpfully reminded of by Ms Sullivan. I took you briefly to the fact that you had prepared an Ombudsman's report in May 2003. By that I mean a report that you sent to the Ombudsman. It is behind tab 396. Could you just turn that up and have a look at it.

A. Yes.

Q. In fact, in fairness to you, you should read it in its entirety?

A. Okay. (Witness does as requested).

MS LONERGAN: While the witness is reading that particular document, may I inquire as to whether I tendered the police statement of Peter Raymond Fox dated 28 May 2003.

THE COMMISSIONER: No, you have not tendered that yet Ms Lonergan.

MS LONERGAN: I do tender that, Commissioner.

THE COMMISSIONER: Thank you. Detective Chief Inspector Fox's statement will be exhibit 51.

**EXHIBIT #51 STATEMENT OF DETECTIVE CHIEF INSPECTOR FOX
DATED 28/5/2003**

MS LONERGAN: Q. I just want to draw your attention to a matter that you raise on the second page of the report, which is 1051. It is the second paragraph on that page. I want to inquire whether what you have written in that paragraph assists you in placing in time when you first became aware that there was not an intention on the part of Bishop Malone to stand James Fletcher down from his duties. Do you see that second paragraph there on page 2?

A. (Witness reads document).

Q. Do you see it refers to contact you had with a Mr Davoren in --

A. Yes I do.

Q. -- September 2002? Does that assist with placing in time when you first became aware that Fletcher was not going to be stood down?

A. No, that doesn't, no, I don't think.

1
2 Q. Does anything in that report that you wrote in May
3 2003 assist you as to when you became aware that it was not
4 the intention of Bishop Malone to stand Fletcher down from
5 his duties?
6 A. Effectively, I was --
7
8 Q. I'm just asking about the document.
9 A. Sorry, in the report?
10
11 Q. Yes.
12 A. I don't want to waste the court's time and go back
13 through it reading it now. I wish I had applied that
14 question to my mind, but not off direct recollection out of
15 reading it, no.
16
17 Q. Can I ask you to do this: over the luncheon
18 adjournment I'll get you to re-read that and see if there's
19 anything there that assists you?
20 A. Yes.
21
22 Q. But you did start to volunteer some information as to
23 when - well, I hope it is relevant to the consideration of
24 when - you learnt that it was Bishop Malone's intention not
25 to stand Fletcher down from his duties?
26 A. That was certainly in late June. More or less - you
27 know, he didn't say it straight out at that meeting, but it
28 became quite apparent, I'm pretty certain, within the next
29 week or two at the very outside and probably within days,
30 maybe.
31
32 Q. That it became apparent to you because of things that
33 Bishop Malone said to you that he wasn't going to stand
34 Fletcher down?
35 A. No, no, I was in contact with - I'm sorry --
36
37 Q. [BH]'s mother?
38 A. Yes.
39
40 Q. I'm sorry, [AH]'s mother?
41 A. Yes.
42
43 Q. And she told you, what?
44 A. Well, I don't think it was just from her - I think it
45 was from a couple of other sources as well - that Fletcher
46 wasn't going to be moved out of the Branxton parish.
47

1 Q. Can I suggest to you the only person who could make
2 the decision of Fletcher being removed from the Branxton
3 parish was Bishop Malone?
4 A. I don't know. I accept that if that's what the
5 situation is.
6
7 Q. And Bishop Malone, did he tell you that he was not
8 going to stand Fletcher down from his position at Branxton
9 parish?
10 A. No. I think the situation, when I'd finished --
11
12 Q. No, I don't want any more information. Just did
13 Bishop Malone tell you that he was not going to stand him
14 down?
15 A. No, he did not.
16
17 Q. Can I suggest to you that it was early September 2002
18 when you heard from another source that there appeared to
19 be no intention on the part of Bishop Malone to stand
20 Fletcher down?
21 A. Yes, I may have heard - you know, it may have been
22 reinforced then, but that was three months later.
23 Obviously I was concerned much, much earlier than that
24 about his standing and I'm - I've got no doubt I made
25 inquiries way before then.
26
27 Q. I'm going to turn to the statement that you prepared
28 with Bishop Malone. It is behind tab 390.
29 A. Yes.
30
31 Q. In paragraph 11, Bishop Malone has addressed the
32 question of attending James Fletcher shortly after the
33 allegations had been made known to him. Do you see that?
34 Just read paragraph 11 to yourself.
35 A. (Witness reads document).
36
37 Q. Just paragraph 11 for the moment, Detective Chief
38 Inspector Fox.
39 A. Yes.
40
41 Q. The question I ask is: why did you have Bishop Malone
42 address this in a statement in May 2003 rather than closer
43 to the time of your meeting on 20 June 2002?
44 A. The reason I delayed getting the statement is that
45 I hadn't by that time obtained the statement from the
46 victim, and I wanted a complete story from the victim
47 to see what issues arose out of his statement that would be

1 pertinent to canvass when I got the statement from Bishop
2 Malone.

3
4 Q. Is it fair to say that after your conversation with
5 Bishop Malone on 20 June 2002 you didn't see any pressing
6 need to have Bishop Malone commit to a particular statement
7 regarding the events of earlier June 2002 in relation to
8 his contact with James Fletcher?

9 A. No, I was - at that time I was placing a fair degree
10 of emphasis on the victim and getting the victim statement
11 which - as has been explained, so I --

12
13 Q. I'm not being critical. I'm just trying to understand
14 your investigative process.

15 A. Yes.

16
17 Q. If you thought the events disclosed to you by [AH]'s
18 mother and combined with your conversation with Bishop
19 Malone on 20 June 2002 meant that your investigation may
20 well be further hampered by anything Bishop Malone did,
21 wouldn't it have been a good idea to take a statement from
22 Bishop Malone at that time?

23 A. No. What my view was, the whole purpose of my
24 attending his office on 20 June was to make my position
25 very clear, and I think I conveyed to him my feelings about
26 what had transpired to that date. I think that from that
27 time we were left in a very clear view of where we stood.

28
29 Q. Yes?

30 A. And there certainly were questions that I wanted to
31 canvass with Bishop Malone, but bearing in mind, at that
32 stage, I had no statements whatsoever from the victim, his
33 family or any other potential witnesses of how, where and
34 when the bishop may have been involved in certain aspects
35 of what transpired. You know, if I'd have started getting
36 statements from him, then I would dare say that it may have
37 been the case that I may have needed to get him back in a
38 number of times. So to alleviate that, I've left the
39 obtaining of his statement go until I'd completed the
40 victim's statement.

41
42 Q. In terms of your observation of Bishop Malone's
43 response to you raising the issues you raised with him in
44 the 20 June conference, did he indicate that he was not
45 prepared to take on board your concerns regarding the
46 contact with Fletcher?

47 A. In what respect? I --

1
2 Q. Well, you were in the meeting?
3 A. Yes. There is a lot of it --
4
5 Q. Did he say, "I don't care what you say. I'm allowed
6 to see my priest if I want to", or did he say, "I didn't
7 know that was a problem", or did he indicate any sort of
8 attitude to what you raised with him?
9 A. There were lots of components to it. Some of it I can
10 say that he was accepting of. Other aspects he was
11 apologetic; yet, in regard to my request, I felt that he
12 was - I don't know whether "defiant" is the right word, but
13 opposed to my view. I got --
14
15 Q. What request was that?
16 A. That is, to remove him from his parish and contact
17 with children at the schools.
18
19 Q. You're confident you made that request in that
20 meeting?
21 A. Oh, absolutely, no doubt in my mind whatsoever about
22 that.
23
24 Q. You say you don't think he was defiant in that request
25 or he was?
26 A. In fairness to him, he seemed unsure. I think
27 I probably should add that. I don't think you make an
28 absolute decision on anything. He listened to what I said
29 and we had, as is related in those notes, a bit of a
30 to-and-fro discussion about whether or not he should stand
31 Father Fletcher down. He asserted that he's innocent until
32 proven guilty, which is fine, and I think we all understand
33 how the law works in that regard. But I pointed out to him
34 that he also has a duty of care to his parishioners and
35 children within his parish as well to balance that with.
36 That's why I went through that lengthy conversation trying
37 to urge him to remove Fletcher from contact with children.
38
39 Q. In terms of being able to organise the meeting with
40 him, was that something that was easy to arrange or --
41 A. That was fine. There was no problem with organising
42 that whatsoever. He was very obliging.
43
44 Q. Did Bishop Malone appear to listen to what you had to
45 say and responded in a way that showed he was listening to
46 what you were raising with him?
47 A. The meeting was very cordial. It was very polite and

1 he was very obliging.

2

3 Q. Would you consider that interchange to have been in
4 the category of cooperation with your investigations,
5 looking at the meeting in its entirety, including the
6 discussions you had in it?

7 A. Yes. It's hard - because of the ambit of things that
8 were discussed, it's hard to sort of put a label on the
9 overall meeting, I think, for that. For the vast majority
10 of it he was very cooperative and certainly obliging.
11 I have - his attitude towards me was very welcoming and
12 I don't have any difficulty in saying that. Yet, there
13 were other aspects where I felt that he should have been
14 taking on board a number of aspects that I was suggesting
15 that he seemed, for whatever reason, reluctant to. Whether
16 it was - I don't know his reasons for that. I won't
17 speculate.

18

19 Q. One of the aspects you considered that he - "he" being
20 Bishop Malone - evidenced a reluctance about was to remove
21 Father Fletcher from his position in the parish?

22 A. Yes.

23

24 Q. Did you consider that to be a matter that impeded your
25 investigation?

26 A. It didn't impede my investigation. I was just
27 concerned for other kids. He was now aware of the
28 allegations concerning Fletcher, that it involved the
29 sexual abuse of a young boy at a school and yet, here he
30 was still being allowed access to a school and children.

31

32 Q. Did you form a view, based on anything that
33 Bishop Malone did or said, that his visit to James Fletcher
34 on or around 2 or 3 June was done to deliberately interfere
35 with your investigation?

36 A. I suppose when it boils down to it - and I know courts
37 examine that all the time - what was his intention and what
38 was going on in his mind? I as an investigator had some
39 and still to some degree have reservations about his motive
40 for that.

41

42 MR HARBEN: Commissioner, I object. It is not responsive
43 to the question. The question was anything he had done or
44 said and now we're inviting a response that calls for an
45 analysis of motive.

46

47 MS LONERGAN: I agree with Mr Harben. I did term that

1 question quite carefully.

2

3 THE COMMISSIONER: Yes.

4

5 MS LONERGAN: Q. Detective chief inspector, could you
6 focus on anything that Bishop Malone did or said to you
7 that led you to believe that there was a deliberate aspect
8 to the attendance on James Fletcher.

9 A. Yes.

10

11 Q. And what was it, or what were they?

12 A. I - reading through that conversation that I had with
13 him --

14

15 Q. I'm just going to stop you there to clarify for the
16 transcript what it is that you're reading through.

17 A. Sorry.

18

19 MS LONERGAN: The witness is reading exhibit 49.

20

21 Q. What is it in that transcript that you created that
22 supports the answer you've just given?

23 A. If you just bear with me, I'm just trying to find the
24 exact couple of --

25

26 Q. Sure. That's not a problem.

27 A. (Witness reads document). I don't want to go back
28 through and read the whole lot, but I think if you read
29 through the conversation, certainly halfway down page 1 and
30 running to page 2, and if I can summarise what is discussed
31 there, is I was asking Bishop Malone why he went --

32

33 MR HARBEN: I again object to this. It is just not
34 responsive to the question. He has been invited to address
35 the document. He has addressed the document. He said he
36 doesn't want to find out anything in particular and now
37 he's going to give an overview unsupported by reference to
38 any particular part of it.

39

40 MR COHEN: Might I be heard on that? With respect, the
41 witness did refer to the second half of page 1 and page 2
42 and identified that as the source of the --

43

44 THE COMMISSIONER: Yes, thank you, Mr Cohen.

45

46 Mr Harben, I apprehend the witness is going to address
47 the document.

1
2 Q. Is that right, Detective Chief Inspector Fox?
3 A. Commissioner, would it be safer if I read what I am
4 talking about rather than summarise it to be safe?
5
6 THE COMMISSIONER: Yes.
7
8 MS LONERGAN: Q. Perhaps we can do it this way to
9 proceed carefully. Could you identify what in that
10 document specifically you are relying on in the answer you
11 gave a few questions back to say that you thought, or
12 formed the impression, that there was a deliberate aspect
13 to the visit to James Fletcher?
14 A. Yes. What it was, is, in short, Bishop Malone was
15 saying --
16
17 Q. No, not in short.
18 A. Okay. I would have to read it, but --
19
20 Q. Refer to the parts?
21 A. If I could read those passages and then I think if I -
22 they need to lead up because I don't think just reading
23 that answer would explain it in isolation.
24
25 Q. We might be at cross-purposes, Detective Chief
26 Inspector Fox. I asked you a very specific question. You
27 said there are things in this document that support your
28 impression that Bishop Malone had a deliberate aspect to
29 going to see Fletcher on that night in June 2002?
30 A. Yes.
31
32 Q. Do you agree with me?
33 A. Yes.
34
35 Q. Could you just point to where in that document - no
36 introductions, no fanfare, nothing like that, just point to
37 where in that document there is material that informs that
38 view?
39 A. Okay. As I said, if you read halfway from page 1 to
40 halfway down page 2, and then I think that culminates in
41 the second half of page 2 and the early part of page 3
42 where I've - in short, he's - sorry, I don't know whether
43 you want me to say that.
44
45 Q. Well, all right, let's look at halfway down page 1.
46 Bishop Malone said:
47

1 Yes, I telephoned her after my meeting with
2 Father Fletcher to offer my sympathy and
3 the church's assistance through any
4 difficult times ahead. She welcomed my
5 offer of support and the church will be
6 organising some counselling for her.

7
8 How does that inform your view that Bishop Malone's
9 intention in visiting Fletcher in 2002 was deliberately to
10 interfere with your investigation?

11 A. Okay. What he says, and that leads on to his first
12 answer at the start of page 2 where he says, "Yes" --

13
14 Q. Hang on. I'm going to stop you. We're looking at
15 page 1?

16 A. Yes.

17
18 Q. You've cited from halfway down page 1 of this document
19 to the end of it is material that supports your position
20 that Bishop Malone deliberately visited Fletcher with an
21 intention to interfere with your investigation; is that the
22 position - yes or no?

23 A. No.

24
25 Q. So there's nothing on page 1, is there, that informs
26 your view from this document that Bishop Malone intended to
27 interfere with your investigation by visiting Fletcher on
28 that date in early June 2002?

29 A. Yes, there is, but it's the contradiction of what is
30 contained there when read in conjunction with what is said
31 in parts of page 2 and 3.

32
33 Q. I'm just reading it because I'm having trouble
34 following the logic of the answer you've just given. We
35 might have to do it in an agonisingly slow way.

36 A. Yes, I was hoping to avoid that as well, but --

37
38 Q. I can't see anything on page 1 that could inform the
39 view you have. It may be that I'm missing some subtlety in
40 your thought process --

41 A. I suppose what I --

42
43 Q. No, I don't wish you to volunteer anything. Let's do
44 it the slightly harder way. We've had the answer to the
45 effect that Bishop Malone had telephoned the mother of
46 [AH], who welcomed his offer of support and that the
47 church would be organising some counselling for her. We

1 have agreed that that's not one of the matters that you
2 would think informed a negative intention on the part of
3 Bishop Malone.

4
5 MR COHEN: I object. The response before this question
6 was led was very clear, that there is a contradiction
7 between page 1, which is now being examined and the
8 material on page 2 to 3. That is the proposition that was
9 put that. That is what needs to be examined.

10
11 THE COMMISSIONER: Yes, that's true, Mr Cohen.
12 Apparently there --

13
14 MS LONERGAN: I understand.

15
16 THE COMMISSIONER: -- is some interaction.

17
18 MS LONERGAN: Q. What is it about that statement by
19 Bishop Malone about providing sympathy and the church's
20 assistance that doesn't seem consistent with pages 2 and 3?
21 A. He said that he went to Branxton to offer pastoral
22 care or to console Father Fletcher because he was
23 distressed and quite anxious, of course, that he was
24 subject of a police investigation.

25
26 Q. Where does that occur on pages 2 and 3?

27 A. Because that's subject of part of the meeting, is what
28 I'm referring to.

29
30 Q. I'm sorry, I'm going on this document. I know it
31 seems painful, but you said there are things in this
32 document that informed your view. Let's locate them.

33 A. Yes.

34
35 Q. Where is that on page 2 and 3?

36 A. Okay. Page 2, I think if we get to the crux of what
37 I'm alluding to, is - it is the second last "I said", on
38 the bottom of page 2, which is marked 88.

39
40 Q. All right. So that's:

41
42 *In your conversation was*
43 *Father Fletcher ...*

44
45 That one?

46 A. Yes.

47

1 Q. You say you said:

2

3 *In your conversation was Father Fletcher*
4 *aware of a Police Investigation before you*
5 *raised the subject with him?*

6

7 Right. He said.

8

9 *No, I don't believe so.*

10

11 What is it about that led you to the view or leads you to
12 the view that Bishop Malone visited Fletcher to
13 deliberately create problems for your investigation?

14 A. When you read on from those ones, I said:

15

16 *In view of that would it have not been*
17 *wiser to not mention the investigation to*
18 *him?*

19 *He said: Sorry.*

20

21 Q. No, he said "Sorry" and then there is a question mark,
22 according to your note?

23 A. Yes, "Sorry", and a question mark.

24

25 Q. That's quite different, isn't it, than "Sorry" as
26 opposed to "Sorry?"; would you agree?

27 A. I'm sorry, I didn't put in the question mark.

28

29 Q. No. It does seem to be --

30 A. Yes, it does explain the tone, I suppose, in which he
31 said "Sorry".

32

33 Q. And would you agree with me that your note suggests
34 that what Bishop Malone was communicating there was that he
35 did not understand your question?

36 A. Yes, I would agree with that.

37

38 Q. Go on.

39 A. I said:

40

41 *If you had not told him that there was a*
42 *Police Investigation he may not have been*
43 *upset or distressed and therefore negate*
44 *any need for concern over his welfare in*
45 *the first place.*

46 *He said: I see what you mean. I did not*
47 *mean for that to occur, our concern was for*

1 *his welfare.*

2
3 Q. What is it about those answers that lead you to
4 believe that there was an intent to interfere with your
5 investigation on the part of Bishop Malone?

6 A. What it is, is that he was saying in one context that
7 he went out there to console Father Fletcher, who was upset
8 and distressed about a police investigation. Yet, that
9 isn't looking at the fact that he actually went out there
10 and told him there is a police investigation and then said,
11 "That's why I was consoling him." If he hadn't told him
12 there was a police investigation, he wouldn't have known
13 and he therefore wouldn't have been upset. So why did he
14 tell him there was a police investigation in the first
15 place, is what I was saying, and that part was what
16 hindered. There was no need for him to have told
17 Father Fletcher that there was a police investigation. If
18 he hadn't done that, he wouldn't have been upset in the
19 first place.

20
21 Q. From the answer that you've recorded there where
22 Bishop Malone said:

23
24 *I see what you mean. I did not mean for*
25 *that to occur, our concern was for his*
26 *welfare.*

27
28 You don't accept that answer or you didn't accept that
29 answer?

30 A. That then goes back to what he said again and it
31 doesn't make sense. "Our concern was for his welfare",
32 well, hang on, that's reverting to where he was in the
33 first place, and I'm saying, "But hang on, you shouldn't
34 have been concerned for his welfare because if you didn't
35 tell him, he wouldn't have been upset."

36
37 Q. I understand. Did you know at the time you spoke to
38 Bishop Malone, that is 20 June 2002, that James Fletcher
39 had already been accused, in effect, by [AH] or by a person
40 who phoned his presbytery and accused him? Can I put that
41 question again?

42 A. He had received a --

43
44 Q. Wait a minute. I put that badly. Let me put it
45 again. Did you know by the time you had the meeting with
46 Bishop Malone on 20 June that a call had been made to
47 Fletcher accusing him of sexually abusing children?

1 A. A call had been made to Fletcher accusing him of
2 abusing the caller, one child, not children.

3

4 Q. One child.

5 A. Yes.

6

7 Q. So you knew that when you spoke to Bishop Malone?

8 A. Yes, I did.

9

10 Q. I want to understand your answer. You formed the view
11 that Bishop Malone should have been aware that telling
12 Fletcher there was a police investigation would upset and
13 distress him, even though Fletcher had already been accused
14 by a person of sexually abusing that person?

15 A. No. I'm aware of the phone call that [AH] had made to
16 Father Fletcher on the night of the 60 Minutes program on
17 2 June. I accept that that would have caused Fletcher some
18 degree of upset, and he was being consoled, I think that
19 night, by Father Harrigan.

20

21 But we're looking at a number of days later here where
22 Bishop Malone and Monsignor Saunders travel out there and
23 specifically tell him, number one, that there is a police
24 investigation, which wasn't known to Fletcher before that
25 time, the caller never said that; and, number two, he then
26 discloses the identity of [AH] to Father Fletcher which he
27 also - that is Father Fletcher - did not know at that time.

28

29 Q. By "he" you mean Bishop Malone told him?

30 A. Sorry, yes, I do, yes.

31

32 Q. Your understanding is that Fletcher didn't know who
33 the caller was who made the call to him, being Fletcher?

34 A. That's correct.

35

36 Q. Could we just examine a little further down the page,
37 you say, "But that also" - this is after Bishop Malone
38 said:

39

40 *I see what you mean. I did not mean for*
41 *that to occur, our concern was for his*
42 *welfare.*

43

44 Then you said:

45

46 *Yes but that also had the effect of telling*
47 *Father Fletcher that there was a police*

1 *investigation. If someone like Richard*
2 *Carleton was to interview you I doubt that*
3 *he would be as accepting of that*
4 *explanation. It could be suggested that*
5 *the purpose of your visit had the effect of*
6 *warning Father Fletcher. Having been*
7 *forewarned, he then had the opportunity to*
8 *get his story sorted out before the Police*
9 *arrived to speak to him.*

10
11 A. Yes.

12
13 Q. You held the view that that was a part of your
14 investigation that had now been interfered with because you
15 didn't get the chance to freshly put the identity of the
16 victim to Father Fletcher?

17 A. And also the element of surprise. You know, that's a
18 legitimate investigative tool that police use. Those
19 things have been robbed from us by Bishop Malone's actions.

20
21 Q. You see that as a significant matter in terms of your
22 investigation of Fletcher that this event occurred where
23 Fletcher was forewarned about the police investigation?

24 A. And, as it turned out, a number of other things flowed
25 on from that. Yes, it did, yes.

26
27 Q. We'll come to those.

28 A. Yes.

29
30 Q. That was a significant one?

31 A. Yes.

32
33 Q. Bishop Malone says, doesn't he:

34
35 *I hope no one would view it in that way.*
36 *That was not our intention.*

37
38 A. That's what he says, yes.

39
40 Q. Did you accept that answer as a truthful one at the
41 time?

42 A. I had my - no, I still have my doubts about it. When
43 read in its entirety, that conversation, it's - it doesn't
44 appear logical.

45
46 Q. But did you, assessing his demeanour at the time it
47 was stated to you in the context of this interview, accept

1 that as a truthful statement, given your experience over
2 the years of assessing people telling you things as a
3 police officer?

4 A. I was still reserved on it. He did say that.
5 I suppose in the world of policing, you're always
6 assessing, when somebody says something to you, are they
7 genuine. As I said, I still have reservations about it and
8 I hadn't made my mind up whether he was absolutely telling
9 a lie or absolutely genuine. I probably felt that, you
10 know, I'll probably wait and see and have a little bit more
11 of a look before I make my mind up on this issue.
12

13 Q. You said:

14
15 *I understand what you're saying but can you*
16 *understand that this could be the*
17 *perception?*
18

19 Bishop Malone answered, according to your note:

20
21 *I'm sorry if that is how it is viewed.*
22

23 A. Yes.
24

25 Q. Again, you had some reservations about the genuineness
26 of that particular answer at the time?

27 A. Yes, you know - and I don't want to sound
28 uncharitable, but it was an apology after the event and it
29 seemed a fairly deliberate action by going out and telling
30 Father Fletcher that there was a police investigation, who
31 the victim was. If it was just to console him about the
32 fact that he'd had a nasty phone call a few nights before,
33 I would have accepted that in isolation, but when you add
34 these other elements to it, I was viewing it a bit more
35 sinisterly because I did not see why he felt the need to
36 expose those things to Father Fletcher at that time.
37

38 MS LONERGAN: Is that a convenient time, Commissioner?
39

40 THE COMMISSIONER: Yes, thank you, Ms Lonergan. We will
41 resume at 2 o'clock.
42

43 **LUNCHEON ADJOURNMENT**
44
45
46
47

1 **UPON RESUMPTION:**

2
3 MS LONERGAN: Q. Detective chief inspector, before the
4 luncheon adjournment, I was asking you some questions about
5 your "He said/I said" document, which is exhibit 49. We
6 were about halfway down the third page of that document.
7 We were looking at an exchange between you and Bishop
8 Malone. We got to the bit in the middle of the page where
9 Bishop Malone said:

10
11 *I am sorry if that's how it is viewed.*

12
13 Do you see that?

14 A. Yes.

15
16 Q. Under that you've recorded that you asked this
17 question:

18
19 *I will probably need to get a statement*
20 *from you at some stage in relation to your*
21 *conversation with Father Fletcher.*
22 *Whatever he told you is admissible at court*
23 *and may have to be given in evidence.*

24
25 A. Yes.

26
27 Q. May we take it from the answers you've given before
28 the lunch adjournment and the date of the statement of
29 Bishop Malone that I've already taken you to behind
30 tab 390, that the first time you took a formal statement
31 from Bishop Malone regarding these matters was May 2003?

32 A. Yes.

33
34 Q. I'm not being critical about that.

35 A. No, no --

36
37 Q. That's the way things panned out?

38 A. No, I understand.

39
40 Q. And was there any reticence that you observed in
41 Bishop Malone attending Maitland police station and
42 completing the statement in 2003?

43 A. No, I have no complaints about him there. He was very
44 cooperative.

45
46 Q. The answer you recorded to your suggestion about doing
47 a statement is attributed to Bishop Malone, accordingly:

1
2 *I understand and am happy to do that. Just*
3 *contact me when you need that to happen.*

4
5 A. That's correct.

6
7 Q. You still entertained the suspicions, despite that
8 professed cooperative attitude that Bishop Malone had in
9 fact attended to visit James Fletcher in June 2002, earlier
10 in that month, to interfere in your investigation?

11 A. I still wasn't satisfied or at all happy with what had
12 occurred nor his explanation. But that aside, you know, so
13 far as agreeing to come in for statements and that sort of
14 thing, there was no issue.

15
16 Q. Further down the page, you raise this question:

17
18 *Thank you. Just before we finish I would*
19 *like to discuss with you what is to occur*
20 *with Father Fletcher whilst this*
21 *investigation continues.*

22
23 A. Yes.

24
25 Q. You've attributed this answer to Bishop Malone:

26
27 *I was going to ask him to take a period of*
28 *leave.*

29
30 A. Yes.

31
32 Q. Did you consider that to be unreasonable?

33 A. No. I felt that that was a good response, if he could
34 convince him to do that. The main purpose was to remove
35 him from contact with children and if that was through
36 taking leave, I saw no issue with that.

37
38 Q. Then Bishop Malone asked a question about how long you
39 would expect that to take. You said:

40
41 *As I said earlier that could be a matter of*
42 *months. I cannot put a time on it at this*
43 *stage.*

44
45 And then Bishop Malone asked you this:

46
47 *Do you have concerns for other persons?*

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A. Yes.

Q. And you said:

I don't have any information that he is committing any offences at the present time. The allegations I am investigating are very serious and relate to when this complainant was a child. There may not be any further complaint now, but how would you feel if another incident arises during our investigation? Sometimes there is just the one victim but we know from incidents like Vince Ryan that there is often many victims.

You've noted your concern in that respect. Did you, at this point, specifically ask Bishop Malone whether he knew of any other complaints about Fletcher, that is, as at June 2002? You haven't recorded in this document that you did and I take it your position in this document is --

A. Yes, I don't recall him asking that at that stage.

Q. Then there's some further exchanges where Bishop Malone actually asked you:

You're saying you feel he should be relieved of his position?

That's on the fourth page?

A. That's correct.

Q. You say:

I would. I cannot force you to do that, I don't have the power but I would strongly suggest it to you. Ultimately it is a decision for you and the church to consider.

He then said:

There is a presumption of innocence until proven guilty.

A. Yes.

1
2 Q. You agreed with that and talked about a duty of care
3 to the community?
4 A. Yes.
5
6 Q. Did you, during this interview, ask Bishop Malone to
7 do any particular task to assist your investigation?
8 A. No, not at that stage, no.
9
10 Q. And can we take it from your earlier evidence that, at
11 that stage, there were no documents or matters of record
12 that you were pursuing at that point in time?
13 A. No.
14
15 Q. And at some point, you did pursue a search warrant,
16 did you, in this case?
17 A. I executed the search warrant on the diocese at a
18 later time.
19
20 Q. We'll come to that. Just put that document that we've
21 been looking at to one side. Around about the time you
22 took a statement from Bishop Malone, you also took one from
23 Father Saunders, which is behind tab 391?
24 A. Yes.
25
26 Q. In relation to Father Saunders, was he cooperative
27 when you sought for him to attend the Maitland police
28 station and assist you with a statement?
29 A. Yes.
30
31 Q. In terms of what he told you, did you form a view as
32 to the veracity of what he was telling you based on
33 anything he said to you or you observed about him when he
34 was completing the statement that's behind tab 391?
35 A. In the whole, I've got to say that he was cooperative.
36 From memory, I think he actually travelled down together
37 with Bishop Malone. I understand they worked in the same
38 complex.
39
40 Q. Yes.
41 A. And for the most part, I've got to say that it was a
42 very good and cooperative statement and again, I suppose,
43 talking from a detective's perspective, the only
44 reservation I had is that - and I accept that given that
45 this statement is taken some 11 months after the meeting at
46 Branxton with Father Fletcher, he had a fairly - sorry, not
47 a very good recollection whatsoever of the conversation

1 that was had with Father Fletcher and Bishop Malone and I -
2 you know, there maybe explanations for that but, as a
3 policeman, I suppose I felt that that would have been a
4 conversation that a vicar general would have really
5 committed to memory or had some recollection of.
6

7 Q. It is your understanding, is it, that Father Saunders
8 was the vicar general at that time?

9 A. Yes, he was.
10

11 Q. The area of focus for your statement from
12 Father Saunders was the revelation by Bishop Malone that
13 [AH] was Fletcher's accuser, wasn't it? Sorry let me
14 start again. Your area of focus for the statement from
15 Father Saunders was the conversation that Bishop Malone and
16 Father Saunders had - I'm sorry. I'll start again. Your
17 area of focus for your statement from Father Saunders was
18 the evening where Bishop Malone and he attended on Fletcher
19 early in June 2002 regarding the police investigation?

20 A. Yes.
21

22 Q. And a particular area of focus was the revelation by
23 Bishop Malone to Fletcher that the accuser of Fletcher was
24 [AH]?

25 A. Yes.
26

27 Q. Would you agree with me that, in paragraph 7 of the
28 statement that Father Saunders gave, he states clearly that
29 Malone told Fletcher of the identity of [AH] --

30 A. Yes.
31

32 Q. -- but he couldn't recall now the first person
33 conversation, but "I do remember that Jim was very upset
34 and immediately denied the allegations"?

35 A. Yes.
36

37 Q. What is the additional material that you sought from
38 Father Saunders that you feel was not forthcoming?

39 A. Again, as a police officer, I felt that he would have
40 recalled a lot more detail about that conversation or made
41 some records of it. Considering the nature of the meeting
42 and the allegation, it was - I would imagine that this was
43 not an everyday occurrence in the diocese and he would have
44 been more forthcoming with exactly what was said by the
45 parties and - you know, I'm not being overly critical, but
46 I did apply some degree of reservation about his clarity of
47 memory for the events.

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Q. Did you have reason to believe other significant matters regarding your investigation were discussed with Fletcher on this particular evening that Saunders was deliberately keeping from you?

A. I don't know.

Q. Did anything Bishop Malone say to you suggest that things were said when he - Bishop Malone - and Saunders visited Fletcher, that Saunders was deliberately refusing to state?

A. I don't know. I could only speculate. I wasn't there, obviously, and, as I've said, I would have thought it would be something that - you know, with something of such a serious nature, there would be a fairly good recollection of what transpired and I'm only basing it on that. I have nothing further than - to make that observation.

Q. Did you ask Father Saunders whether he made notes of the conversation in early June with Fletcher when he attended with Bishop Malone?

A. Yes. I telephoned - yes, I could probably surmise it and say probably a series of questions. I asked each of the clergy that were coming in, including Father Saunders, if they had any correspondence or notes about the thing if they could bring it in to help them make their statements. I think the only one that actually referred to anything was Bishop Malone, who brought his diary in, off recollection, and there was only brief notes in that, but none of the other clergy provided any written material or utilised it.

Q. You're proceeding on the basis of your usual practice as opposed to an exact recollection that Father Saunders was asked to bring in any notes that he had and failed to do so?

A. No, I'm fairly confident that I did ask that. You know, that would something that I would have - that I normally do ask in those sorts of scenarios and I would be most surprised - I have a recollection of asking that and I do recall Bishop Malone having a diary and I would assume that, yes, of course, that he brought it in as a result of my request.

Q. You took a statement from Father Des Harrigan or Desmond Harrigan behind tab 387?

A. Yes.

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Q. That was on 20 May 2003. Did you have any difficulty securing the attendance of Father Harrigan for an interview?

A. No.

Q. And to your observation, in terms of your interview with him that led to the statement on 20 May 2003, was Father Harrigan cooperative with your inquiries?

A. Yes.

Q. Did you form a view that Father Harrigan was keeping any relevant information from you when you interviewed him in and around 20 May 2003? For example, did you ask him a question and you didn't get an answer that was responsive?

A. From my personal perspective, I've got to say that Father Harrigan was probably the most forthcoming and helpful of the clergy that I took statements from.

MS LONERGAN: Commissioner, I tender the statements of Father Saunders behind tab 391, and also the statement of Father Harrigan behind tab 387.

THE COMMISSIONER: The statement of Father James Saunders of 21 May 2003, tab 391, will be admitted and marked exhibit 52. The statement of Father Harrigan, dated 20 May 2003, behind tab 387, will be exhibit 53.

EXHIBIT #52 STATEMENT OF FATHER JAMES SAUNDERS DATED 21/5/2003 (TAB 391)

EXHIBIT #53 STATEMENT OF FATHER DES HARRIGAN, DATED 21/5/2003 (TAB 387)

MS LONERGAN: Q. You, also on 20 May, interviewed Monsignor Burston or Father Burston, William Burston behind tab 386?

A. Yes. Sorry, and I do apologise, might I go back to the last question and answer?

Q. Yes.

A. The only thing that I do recall when I spoke to Father Harrigan - again, I only draw the Commission's attention to it because it seems an anomaly - is when [AH] telephoned Father Fletcher on the night of the 60 Minutes program on 2 June, and the nature of the conversation from both accounts - both [AH] and Father Fletcher - later, was

1 that it was quite heated, very vocal and quite a lot of
2 profanities used during that.

3
4 When I spoke to Father Harrigan about why he never
5 contacted police with that phone call, there didn't seem -
6 you know, that struck me as odd in that it was a couple of
7 days before they knew there was a police investigation and
8 here's this terrible phone call made to the clergy, but,
9 for whatever reason, Father Fletcher and Father Harrigan
10 didn't want to involve police or tell police of the nature
11 of that call. That was the only thing that I drew from his
12 statement.

13
14 Q. Are you suggesting that your expectation would be that
15 Fletcher would ring the police and complain about having
16 received a phone call accusing him of being a paedophile?

17 A. If had I got a phone call of that nature with the
18 detail, I certainly would have, and I would have expected
19 Father Fletcher to do the same, or anybody. It was quite
20 offensive and the allegations were quite concerning.

21
22 Q. What could he report if he didn't know who it was?
23 All he could do is say, "I received a phone call from
24 somebody saying I was a paedophile"; what would be the
25 purpose of --

26 A. It was offensive and a threatening phone call and we
27 could have done a phone trace and seen who the caller was.
28 But, for whatever reason, both he and Father Harrigan never
29 made a complaint to police about it.

30
31 Q. The fact that he - "he" being Fletcher - and
32 Father Harrigan didn't make a complaint to you about it,
33 did that hinder or impede your ultimate investigation of
34 Fletcher?

35 A. No, it didn't, but it just seemed something that was
36 out of place. You know, I remember my attention being
37 drawn, thinking, "Hmm, does that lend some weight to the
38 overall picture of what was going on?"

39
40 Q. Did it make you doubt the veracity of anything in
41 Father Harrigan's statement, the fact that the police had
42 not been notified a phone call of that nature had been made
43 to Fletcher?

44 A. He gave an explanation --

45
46 Q. That's paragraph 7 of his statement behind tab 387 -
47 that's Harrigan's statement?

1 A. Okay, yes. I don't know if it's there or somewhere
2 else, but he actually made reference, I think, somewhere in
3 his statement to the fact of - oh, I'd like to get it right
4 what he said, but it seemed that he and Des, sorry, and
5 Father Fletcher made a decision that they wouldn't notify
6 police. I think he did say - I've got a recollection, and
7 it may be in his statement somewhere - that he felt that
8 that was best left to Father Saunders, who he told some
9 days later. But still I suppose the question just arose in
10 my mind why would you not call the police straight away
11 when something like that happens?
12

13 Q. Have a look halfway down paragraph 8 or about
14 two-thirds of the way down.

15
16 *We did not discuss whether the Police*
17 *should be notified; we thought that was*
18 *probably best left to Jim Saunders ...*
19

20 A. Yes, that's exactly right.

21
22 Q. Did you assess that, at the time that statement was
23 made to you, to be untrue?

24 A. No, I just considered it unusual. I didn't accept
25 that to be untrue. I don't want to do him that injustice,
26 but it was something that I considered a little bit
27 unusual. Perhaps there might be a bit more to the story.
28

29 Q. But, generally, you formed the view that Father
30 Harrigan was doing his best to tell the truth in his
31 statement?

32 A. I've got to say yes.
33

34 Q. Going to Father Burston's statement behind tab 386,
35 again, Father Burston appeared to you to be content to
36 cooperate with the investigative process that you were
37 performing in taking a statement from him?

38 A. I had no difficulties in phoning and having him attend
39 the station, no.
40

41 Q. Did you have, by reason of anything Father Burston
42 said or did, any reason to doubt that he was telling you
43 the truth in his statement?

44 A. Yes, I did.
45

46 Q. And what was that?

47 A. I'm just --

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Q. I'll give you a moment to look at the statement. I don't want to rush you. Just read it for yourself.

A. I know what it is. I'm just finding the passage so that it assists as much as possible. Yes, halfway - well, paragraph 6 on page 2 is the passage I was looking for where he contradicted the evidence of the other three priests and --

Q. In what respect? Which bit are you mentioning?

A. Probably just after halfway down.

Q. You'll have to read the bit out to me?

A. Yes:

I said, "Do you have any idea who the caller was, Jim?" He said, "It sounds like [AH]." I said, "Why would he say something like this?" He said, "I don't know." Jim was finding it difficult to concentrate on my questions.

Et cetera, et cetera, but --

Q. The bit that you've just read out is Father Burston conveying to you what he observed of Fletcher when he arrived on the night of 2 June?

A. Yes, and --

Q. What was it about that that you --

A. What it was about is that all three clergy - and by that, I mean Bishop Malone, Monsignor Saunders and Father Harrigan - had all made it very clear, even though some of them couldn't recall the exact conversations, all three made it very clear that Father Fletcher had no idea whatsoever of the identity of the caller on the night of 2 June.

Q. Can I just examine that a bit further. When you say that, you formed the view based on what those three priests told you that Father Fletcher had informed those three priests or given them the impression that he had no idea who the caller was?

A. That is correct.

Q. I just want to clarify, to ensure that we're not talking about two completely different conversations, those

1 three priests as opposed to the one that Father Burston is
2 talking about in his statement.

3 A. Yes.

4

5 Q. Do you see in paragraph 6 Father Burston talks about
6 attending to see Fletcher? Do you see that?

7

8 *... to see Des and Jim Fletcher at*
9 *Branxton. I recall that when I arrived,*
10 *Jim was still pretty upset. He was*
11 *occasionally weeping and appeared to be*
12 *fairly lethargic.*

13

14 Do you see halfway down paragraph 6?

15 A. Yes, I'm with you now, sorry.

16

17 Q. He says:

18

19 *I greeted them both and said, "How are you*
20 *feeling?" Jim wasn't that coherent and*
21 *responded, "I have been better."*

22

23 I'm just going to stop there.

24 A. Yes.

25

26 Q. He seems to be referring to a conversation at which
27 Fletcher and - well, it's unclear - perhaps Father Harrigan
28 was present?

29 A. Yes. Yes.

30

31 Q. So that's not referring to the conversation where
32 Saunders and Malone were present?

33 A. No.

34

35 Q. Would you agree with me?

36 A. That's true.

37

38 Q. Was it some tension between those two different
39 conversations with Fletcher that you were seeing as a
40 reason to doubt the veracity of what Father Burston was
41 telling you in paragraph 6?

42 A. Yes. Might I add, to help clarify that, I think to a
43 further degree, [AH] told me that at no stage did he
44 identify himself and Father Fletcher kept asking who it
45 was. When I eventually interviewed Father Fletcher, he
46 also told me in his electronic interview that he had no
47 idea of the identity of the caller.

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Q. What I want to examine is why you doubted the veracity of Father Burston's statement simply because Fletcher told you certain things in his electronic recorded interview and [AH] had an impression about what Fletcher knew from the interview that he provided to you - why does that necessarily Father Burston's statement in paragraph 6 untrue?

A. It is inconsistent with the information provided by everything else. I suppose, in fairness, and I take your point, I can't say, sitting here, emphatically that it is untrue, but I cannot understand if Father Fletcher did know the identity of the caller why he would only confide in that to this one priest and tell everyone else, including civilians - and there were a number of those I spoke to as well - that he had no idea of who the caller was.

Q. But isn't it the position that what Father Burston is talking about in paragraph 6 is a conversation that he's trying to recount to the best of his recollection? He does preface it with, "I just cannot remember the exact" - it says "contest", but I believe that should be "content - " of this now", but doing the best he can, he records:

I said, "Do you have any idea who the caller was Jim?" He said, "That sounds like [AH]." I said, "Why would he say something like this?" He said, "I don't know." Jim was finding it difficult to concentrate on my questions that I didn't take that much further.

What I want to suggest to you is Father Burston may well be accurately recording a conversation that occurred and you're not able to assess whether the conversation occurred or not because you weren't present when it occurred?

A. That's true, I wasn't present, and there is always the possibility that that conversation may have occurred, but what --

Q. I'm just going to stop you there because I want to examine this. You've made statements that suggest you had a basis for not accepting Father Burston's version of events and, therefore, may we take it an impression that Father Burston was not assisting your investigation because he was making an untrue statement; is that the context of your comment about Father Burston?

1 A. Yes.

2

3 Q. What I want to suggest to you is what Father Burston
4 told you is, in effect, inculpatory, potentially, of
5 Father Fletcher, isn't it, that he did know who the caller
6 was?

7 A. I suppose there are a number of ways to look at it.
8 What I was looking at is that I had - and I'm just trying
9 to think here - three clergy, I think there were three
10 civilians, and Father Fletcher himself, all of whom would
11 be consistent and along the same line from beginning to
12 end, that Fletcher had no idea, nor did he have any guesses
13 at who the caller may have been. Yet, Father Burston, even
14 though he does preface it with the comment that he "cannot
15 remember the exact content", he did give some first-person
16 conversation, as best he could recall, and I felt that it
17 was a fairly important thing that he was asserting that
18 Father Fletcher had some idea of who the caller - [AH] -
19 had been, and I suppose I was a little bit suspicious of
20 that. Yes, I take your point. I wasn't there. I can't
21 say that that wasn't said, but certainly it was
22 inconsistent with some seven or eight other witnesses.

23

24 Q. To be fair to Father Burston, he may well have just
25 been conveying to you something that was said to him by
26 Fletcher, which may well have been untrue on the part of
27 Fletcher?

28 A. Oh, it may have been. None of us that weren't there
29 could really explain that and I concede I wasn't there.
30 All I'm able to do to for this Commission is to give my
31 interpretation of that. But it may well have been said.
32 I can't disprove that.

33

34 Q. Would you agree with me it's a bit harsh to assume
35 that that part of Father Burston's statements are not true
36 simply because other witnesses have given a version of
37 events that is different in terms of what they were told?

38 A. I'm not saying that it is not true. I can't make that
39 certification assertion. I can say there was a bit of a
40 question mark over it.

41

42 Q. You viewed it with suspicion because of its
43 inconsistency with what other people told you?

44 A. That's exactly correct.

45

46 Q. And the inconsistency with what other people told you
47 was inconsistency with a different conversation they had,

1 or different conversations that they had with Fletcher at
2 about the same time. Is that fair?

3 A. Yes.

4

5 Q. To be fair to those who provided statements in
6 May 2003, you would have expected more detailed and perhaps
7 lucid accounts if the statements had been taken shortly
8 after the events in question rather than a little under a
9 year later?

10 A. Yes.

11

12 Q. It may well be, in terms of the particular part of
13 paragraph 6 we've just been examining in Father Burston's
14 statement, that Burston reported something to you that
15 Fletcher had said to him that was the fact; that is, that
16 Fletcher did know it was [AH] who had called him?

17 A. Yes. I can --

18

19 Q. Putting aside the other things you know from others,
20 it may well have been that Father Fletcher did know who the
21 caller was?

22 A. I don't believe he did. There was never - never at
23 any stage did I get the impression from anybody that
24 Fletcher knew the identity of the caller until he was told
25 by Bishop Malone.

26

27 Q. Did you ask [AH] about whether he believed Fletcher
28 knew who he was when he called?

29 A. [AH], at the time, told me the only - I believe, if
30 I've got it right, the only reason that he felt that
31 Fletcher knew his identity is he believed that he was the
32 only victim, as is the case with a lot of victim of sexual
33 abuse. I now know, of course, as does the Commission, that
34 there are quite a number of other victims and the fact that
35 Fletcher kept saying over to the phone to him, "Who is
36 this?" And he is just saying, "You f...ing well know who
37 it is" --

38 Q. I'm going to stop you there. You're now recounting a
39 conversation that occurred between Fletcher and what [AH]
40 told you was the conversation, but you weren't a party to
41 the conversation?

42 A. Correct.

43

44 Q. I'm just going to paragraph 6 in that particular
45 statement in Father Burston's statement. Is it fair to say
46 that the conversation attributed to Fletcher by Burston
47 could be seen as consciousness of guilt on the part of

1 Fletcher and therefore it was a beneficial piece of
2 evidence or information for you to have as the
3 investigating police officer?

4 A. It was totally inconsistent with everyone else. You
5 know, I felt, maybe wrongly so, but I felt it was
6 attempting to be exculpatory of the fact that Bishop Malone
7 had, in fact, told Father Fletcher who the victim was and
8 who the caller was.

9

10 MS LONERGAN: I tender the statement of Father Burston.

11

12 THE COMMISSIONER: The statement of Father William Burston
13 of 20 May 2003 will be admitted and marked exhibit 54.

14

15 **EXHIBIT #54 STATEMENT OF FATHER WILLIAM BURSTON DATED**
16 **20/5/2003 (TAB 386).**

17

18 MS LONERGAN: Q. Before the luncheon adjournment, you
19 suggested that the statement you prepared for the
20 Ombudsman's office dated 29 May 2003 was prefaced by some
21 other correspondence for the Ombudsman's office?

22 A. Yes.

23

24 Q. Just have a look behind tab 389. It is a letter from
25 you to the Ombudsman dated 21 May 2003.

26 A. Yes.

27

28 Q. Do you see down the bottom of the first page that
29 you've quoted your conversation with [AH]'s mother about
30 Bishop Malone having visited Fletcher and alerted him to
31 what was going on? Do you see that? It's the last
32 paragraph on the first page of your report to the
33 Ombudsman?

34 A. Yes.

35

36 Q. And there you are quoting [AH]'s mother's distress
37 about events?

38 A. Yes.

39

40 Q. And also that she wasn't sure why Bishop Malone had
41 done that?

42 A. Yes.

43

44 MS LONERGAN: I tender that document, Commissioner.

45

46 THE COMMISSIONER: The letter sent by Detective Sergeant
47 Fox of 21 May 2003 to the Ombudsman will be admitted and

1 marked exhibit 55.

2

3 **EXHIBIT #55 LETTER SENT BY THEN DETECTIVE SERGEANT FOX**
4 **TO THE OMBUDSMAN ON 21/5/2003**

5

6 MS LONERGAN: Excuse me, Commissioner, I just want to make
7 sure I don't miss anything.

8

9 Q. Now, in late 2003, you had cause to attend and
10 conduct a further discussion, if not formal interview, with
11 Father Harrigan?

12 A. Yes.

13

14 Q. I'm going to show you an extract from your duty book.
15 With no disrespect to you, detective chief inspector, it is
16 very difficult to read. I will hand up extracts from your
17 duty book that are dated 29 and 30 December 2003 and get
18 you to read them to yourself and a copy for the
19 Commissioner.

20 A. Thank you. (Witness reads duty book).

21

22 MR GYLES: Might I indicate, Commissioner, that there is
23 one aspect of these questions which is of sensitivity which
24 may be the subject of a non-publication order. I take it
25 my learned friend would be aware of the general topic. Can
26 I respectfully submit that the appropriate way to deal with
27 that would be for you to make a non-publication order at
28 the moment with respect to the questions that are to follow
29 to be reviewed at the end of these questions as to what
30 parts ought to be allowed to be published and which parts
31 ought not be?

32

33 THE COMMISSIONER: Yes. It is a suggestion, but what do
34 you say, Ms Lonergan?

35

36 MS LONERGAN: It is a suggestion that's a little bit
37 premature depending on what the question is about.

38

39 MR GYLES: As long as my learned friend appreciates, and
40 I expect there may be a similar position taken by others,
41 that I'm flagging a concern about that topic and that it be
42 dealt with in a way which is practical.

43

44 MS LONERGAN: Commissioner, can we have articulated for
45 the record, just so we're all on the same page, the basis
46 for the non-publication order that's sought?

47

1 MR GYLES: It is a question of the effect that the
2 publication of the material could have on the reputation of
3 the person involved, and that's a matter of weighing up
4 that irreparable damage as against the public interest in
5 the disclosure of the information, its relevance to the
6 inquiry and the probative value of the evidence, which can
7 all be considered in due course.

8
9 THE COMMISSIONER: Thank you, Mr Gyles.

10
11 MS McLAUGHLIN: Commissioner, this is a matter that is
12 probably going to concern my client.

13
14 THE COMMISSIONER: Yes, I think I apprehend --

15
16 MS McLAUGHLIN: It is my view it is difficult to make a
17 comment or submission in relation to the prejudice that may
18 or may not flow before we have a sense of the evidence that
19 is going to flow from Detective Chief Inspector Fox. While
20 I appreciate what my friend is doing, until the evidence is
21 heard, it will be difficult to actually frame and make
22 submissions. Similarly, we will be making an application
23 under section 8 of the Act as to the strength or merit of
24 that.

25
26 THE COMMISSIONER: Thanks, Ms McLaughlin. I can see what
27 you might be anticipating.

28
29 MS LONERGAN: I should note for the record that these
30 pages that I'm about to take the witness to were provided
31 within the material served on all parties. I've just
32 extracted them in this form for ease of questioning.

33
34 Q. You have had an opportunity to read your duty book
35 extract for 29 and 30 December 2003?

36 A. Yes.

37

38 Q. Did you have cause to attend Father Harrigan because
39 of matters brought to your attention?

40 A. Yes.

41

42 Q. What were the matters?

43 A. I received a telephone call on 29 December 2003 from -
44 I don't know whether you wish me to name the gentleman.

45

46 Q. Yes, it's fine to name him?

47 A. A Mr Raymond Hanley. He indicated that, earlier that

1 year, he had been assisting Father Fletcher to move items
2 about in the presbytery at Lochinvar, to which Father
3 Fletcher's parish had been extended, and during the course
4 of that, he came across a number of pornographic homosexual
5 videos and magazines and --

6
7 Q. When you say that, you mean Mr Hanley told you he'd
8 come across it?

9 A. Yes, he did. He telephoned me to --

10
11 Q. You weren't present for any aspect of it?

12 A. I was not, no.

13
14 Q. Did you see this report of that particular information
15 as relevant to your investigation of Fletcher and, if so,
16 why?

17 A. I had already received some information, only verbally
18 at that stage, from a number of members of - I think it is
19 [AH], is it?

20
21 Q. [AH]'s family?

22 A. [AH]'s family.

23
24 Q. Yes.

25 A. That Father Fletcher may have been in possession of
26 some offensive literature which may have lent weight to
27 that investigation.

28
29 Q. I'm going to stop you there. Why would it have lent
30 weight to that investigation?

31 A. Because the victim and members of his family had
32 indicated that Fletcher was an individual that had a
33 tendency to be crude and offensive, to tell offensive
34 jokes.

35
36 Q. Why is that relevant to your police investigation of
37 Fletcher? Why was the pornographic material, if it
38 existed, relevant to your police investigation?

39 A. Because I think most people - although generally
40 pornography is not illegal, I think that most would accept
41 that it is - some people may vary, but I think it would be
42 suggested it's highly unusual that a member of the clergy
43 would have material of this nature.

44
45 Q. But it's not illegal to possess pornography, is it?

46 A. No, it is not.

47

1 Q. So how was the possession of pornography relevant to
2 the police investigation you were conducting of Fletcher if
3 it was in fact Fletcher's pornography?

4 A. Because the acts that had been described to me by
5 [AH] - and at that stage we were partly through his
6 statement - were of the most ugly homosexual nature of
7 sexual abuse in many respects, in many of the acts
8 perpetrated. This literature, being of a homosexual
9 nature, in my view, tended to add some degree of weight
10 to what the victim was saying that was - you know,
11 was perpetrated against him, but also showed that
12 Father Fletcher possibly had an interest in this type of
13 activity.

14
15 Q. And you formed the view as a police officer, of
16 however many years experience it was in 2003, that
17 homosexual pornography could be used as evidence in your
18 investigation and or charging of Father Fletcher; is that
19 the position?

20 A. In December 2003 that was my position. I - it was -
21 it became even stronger later on when I spoke to others.

22
23 Q. Let's just examine the material that you're dealing
24 with on 29 and 30 September. The information that came to
25 you from Mr Hanley was not able to identify, or was it,
26 that the pornography that he saw actually belonged to
27 Fletcher?

28 A. Fletcher told him that it belonged to the priest that
29 had previously resided at the presbytery. Unfortunately,
30 Mr Hanley didn't phone me straight away. I don't recall
31 now when he said that - although I don't say that he didn't
32 tell me at the time when he found this material, but it was
33 some time prior --

34
35 Q. All right. So your note in your duty book on 29
36 December does not identify the date on which Mr Hanley had
37 this exchanges with Fletcher regarding pornographic
38 homosexual videos and magazines?

39 A. No.

40
41 Q. It certainly wasn't within a short time frame of
42 Mr Hanley having this conversation that he contacted you?

43 A. No. He indicated to me that he had phoned me sometime
44 later because it had been disturbing him and on his
45 conscience for some time that he should have done more
46 about it at the time.

47

1 Q. You never saw the material Mr Hanley was referring to?
2 A. No, I did not.
3
4 Q. You remain unaware - other than suspicion - do you, as
5 to whether the pornography was owned by Fletcher or
6 possessed by Fletcher or used by Fletcher?
7 A. Yes.
8
9 MS LONERGAN: Excuse me Commissioner. I just want to take
10 some instructions. Thank you for that time, Commissioner.
11 It assisted with consideration of the particular matter.
12
13 Q. Just to clarify the position regarding the
14 pornographic material Mr Hanley told you about, you didn't
15 ever see that material yourself?
16 A. No.
17
18 Q. And it wasn't confirmed to you by Fletcher that it was
19 his?
20 A. No.
21
22 Q. Did you ask Fletcher whether it was his at some point
23 in your investigation or are you just not able to say now?
24 A. I would have to go through the ERISP interview, but
25 I don't know.
26
27 Q. All right. Can you indicate without any particular
28 identification whether you were informed by another person
29 that it was their own pornography?
30 A. Yes.
31
32 Q. Did you believe that other person?
33 A. No.
34
35 Q. In May 2004, detective chief inspector, it came to
36 your attention that there was another victim of Fletcher
37 who was directed to see you. Is that consistent with your
38 recollection?
39 A. Yes.
40
41 Q. Do you recall having any conversations with a Father
42 Glen Walsh about this new victim of Fletcher's having come
43 forward?
44 A. Yes.
45
46 Q. Did Glen Walsh tell you himself that there was a new
47 victim of Fletcher who had advised him of that fact?

1 A. He told me that there was another victim that he was
2 aware had been sexually abused. I don't know if he told me
3 in that first conversation that he had received that
4 information firsthand from the victim himself.
5
6 Q. I understand, yes. As far as you're concerned, a
7 priest of the Maitland-Newcastle diocese, Father Glen
8 Walsh, contacted you and conveyed information to you
9 regarding the existence of a further victim of Fletcher.
10 A. Yes.
11
12 Q. And that was in or around May 2004?
13 A. Yes.
14
15 Q. Having that information was of assistance to your
16 investigation of Fletcher?
17 A. Enormously.
18
19 Q. Why is that?
20 A. Because the information that was ultimately provided
21 by that second victim was very corroborative. Other police
22 that have given evidence have talked about evidence of
23 similar acts - that is, tendency and coincidence, where the
24 type of grooming and the nature and type of sexual abuse
25 and conversations with the offender - and parallels of
26 consistency are able to be drawn from those and used at
27 trial in a prosecution and that second victim that came
28 forward was invaluable for that purpose.
29
30 Q. I show you a document which is a statement of
31 Glen Walsh prepared on 10 June 2004. Father Walsh
32 preparing this statement for the Fletcher investigation was
33 helpful for the investigation generally?
34 A. Father Walsh was a breath of fresh air and very, very
35 helpful.
36
37 MS LONERGAN: I tender that statement of Father Walsh
38 dated 10 June 2004 Commissioner
39
40 MR SKINNER: Could I have a look at it, Commissioner?
41
42 THE COMMISSIONER: Yes, Mr Skinner.
43
44 MR HARBEN: Could I have a look at it also?
45
46 MS LONERGAN: It has been drawn to my attention that this
47 would have been in the material that was served, but I'll

1 certainly give my learned friend some time to absorb it.

2

3 THE COMMISSIONER: Thank you, Ms Lonergan.

4

5 MR SKINNER: I have no objections.

6

7 THE COMMISSIONER: Thank you, Mr Skinner.

8

9 MS LONERGAN: Did you mark that exhibit, Commissioner?

10

11 THE COMMISSIONER: I hadn't yet. I'm waiting on
12 Mr Harben's notification as to whether he has an objection.

13

14 MR COHEN: Commissioner, might I indicate, while that's
15 happening, in this part of the courtroom, the temperature
16 is lifting somewhat.

17

18 THE COMMISSIONER: Is it, Mr Cohen? I'm terribly sorry.

19

20 MR COHEN: I have checked with others who seem to accept
21 that.

22

23 THE COMMISSIONER: And yesterday it was freezing.
24 Mr Harben?

25

26 MR HARBEN: Can I deal with it in this way, Commissioner,
27 because I'm a little unclear about some matters: could
28 I indicate a qualified no objection at this stage, but
29 could I just check the contents of the document more
30 completely.

31

32 MS LONERGAN: I can defer the tender if that's helpful.
33 It could be given an MFI number.

34

35 MR HARBEN: There's a particular reason for it,
36 Commissioner.

37

38 THE COMMISSIONER: Yes. MFI8 will be the statement of
39 Father Glen Walsh of 10 June 2004.

40

41 **MFI #8 STATEMENT OF FATHER GLEN WALSH DATED 10/6/2004**

42

43 MS LONERGAN: Q. Do you have in the witness box with
44 you volume 6? You can close up whatever volume you've
45 got there. I'm sorry, before you do that, there's one
46 more question I need to ask you about that volume rather
47 than going back to it. Do you see behind tab 392, there is

1 a fax cover sheet that appears to have been signed by
2 Bishop Malone and a list of names?

3 A. Yes.

4

5 Q. Do you see in the fax cover sheet, Bishop Malone
6 states:

7

8 *Following our conversation last Wednesday,*
9 *21st May 2003, I enclose contact details*
10 *regarding personnel who may be of interest*
11 *to you.*

12

13 Do you see that?

14 A. Yes.

15

16 Q. What was the context of this provision of further
17 information from Bishop Malone?

18 A. It emerged at some point that there had been
19 indications to the diocese in the late 1990s, specifically
20 to Bishop Malone himself, by a Catholic teacher within the
21 diocese that he had developed some concerns regarding --

22

23 Q. All right. I'm sorry. Did Bishop Malone tell you
24 that that information had come to his knowledge?

25 A. I don't want to be unfair to Bishop Malone. I don't
26 think he withheld it at any stage. I don't think I heard
27 from him first. I think I received a phone call from the
28 teacher first, but I'm not sure.

29

30 Q. If you look at the text of the fax cover sheet from
31 Bishop Malone, would you agree with me that he appears to
32 be providing you with contact details --

33 A. Yes.

34

35 Q. -- regarding people who might be of interest to you,
36 and that is interest to you in your investigation of
37 Fletcher?

38 A. Yes.

39

40 Q. Did you follow through - I appreciate there has been
41 some redaction of addresses and phone numbers - those
42 chains of inquiry and speak to the people whose names
43 Bishop Malone had given you?

44 A. Yes, I did, but --

45

46 Q. I don't need the result of the investigation but just
47 whether you followed through those lines of inquiry?

1 A. Yes, one of those individuals had contacted me of his
2 own volition, though, I believe prior to that.
3
4 Q. Prior; all right. Is that Mr Callinan, is it?
5 A. No.
6
7 Q. Which is it?
8 A. Mr Roohan.
9
10 Q. Was it helpful to have these further people to speak
11 to about your investigation of Fletcher or not?
12 A. Yes.
13
14 Q. Could you now put that volume away and go to volume 6,
15 please, tab 426, and also have a look behind tab 427, which
16 relates to a search warrant you executed in June 2004?
17 A. Yes.
18
19 Q. That was part of your investigation of Fletcher?
20 A. Yes.
21
22 Q. The document behind tab 426 is a fax you sent to a
23 Debbie Grosskreutz?
24 A. Yes.
25
26 Q. Who was she?
27 A. She was an employee that worked at the Hamilton
28 complex of the Newcastle-Maitland Catholic diocese.
29
30 Q. The purpose of your fax was to let her know that you
31 were going to be serving a search warrant and needed
32 certain information gathered?
33 A. Yes.
34
35 Q. It refers to a telephone conversation that you had
36 with her prior to sending the fax?
37 A. Yes.
38
39 Q. Did you receive cooperation from Ms Grosskreutz in the
40 telephone conversation?
41 A. Yes.
42
43 Q. Did she facilitate your gathering documents pursuant
44 to the search warrant on 19 June?
45 A. Yes.
46
47 Q. Was she physically present at the Maitland-Newcastle

1 diocese offices when you executed the search warrant?
2 A. I don't recall.
3
4 Q. Did you personally attend the Maitland Newcastle
5 diocese premises to execute the search warrant or did
6 somebody else?
7 A. No, I did.
8
9 Q. You were provided with documents in response to the
10 search warrant?
11 A. Yes.
12
13 Q. Are you able to say what sort of volume of documents
14 you were given?
15 A. It wasn't a great amount. From memory, it was all
16 contained in a large A4-sized envelope.
17
18 Q. Yes. Nothing electronic?
19 A. No, no. It may have amounted somewhere in the
20 vicinity, from memory, of 25 to 30 pages.
21
22 Q. All right. Did you, at this stage, contact the
23 bishop's office as to whether the bishop's office had any
24 documents responsive to your search warrant?
25 A. I made it clear when I made the call that it was in
26 relation to all documents held by the diocese; so yes, the
27 bishop's office within the diocese, I would imagine would
28 include that as well.
29
30 Q. Are you able to say now whether the documents you
31 received included documents that were held in the bishop's
32 office or you're just not able to confirm or deny?
33 A. I don't know where the documents I obtained were
34 specifically located.
35
36 Q. Can we take it that you considered the search warrant
37 complied, to the extent that nobody from the diocese said
38 to you, "Oh, look, I can't give you all the documents", or
39 "I've been told not to give you all the documents", or
40 anything of that nature?
41 A. That's right. I never had any comments of that
42 nature.
43
44 Q. Can we take it you wouldn't have accepted that answer
45 had that been given by anyone from the diocese?
46 A. No, I would not.
47

1 Q. Could you have a look at tab 434.

2 A. Yes.

3

4 Q. That's an intelligence report that you prepared?

5 A. Yes.

6

7 Q. At the time you prepared this report, the charges
8 against Father Fletcher hadn't yet been heard?

9 A. No.

10

11 Q. Have a look behind tab 439.

12 A. Yes.

13

14 MS LONERGAN: Excuse me, Commissioner, I'm trying to
15 shortcut it so we don't refer to historical documents and
16 just deal with specific matters. I will go about it this
17 way.

18

19 Q. Were the charges that you laid against Fletcher
20 sustained and he was convicted of various offences
21 involving [AH]?

22 A. Are you able to assist with what number [AH] is?

23 Sorry, I see. Yes, I can assist with that. I think
24 initially I laid something in the vicinity of 60-something
25 charges against him. Through the general process of
26 consulting with the DPP, we brought that back to what we
27 considered to be the nine most serious and the jury
28 returned a guilty verdict for all nine charges.

29

30 Q. There was an appeal process on behalf of Fletcher
31 which failed?

32 A. There were two appeal processes and both failed.

33

34 Q. Obviously, therefore, it was a successful
35 investigation and successful prosecution?

36 A. Yes.

37

38 Q. Is there any matter or any incident of what you
39 perceive to be obstruction or hindrance on the part of
40 officials of the Catholic Church that affected the result
41 of your investigations?

42 A. In view that ultimately he was convicted, it may have
43 affected it, but to not such a degree that the prosecution
44 was unsuccessful.

45

46 Q. In what respects was your investigation and,
47 therefore, the prosecution, affected?

1 A. It would have been very handy to have had the
2 magazines and videos that were destroyed.

3
4 Q. If the magazines and videos were not owned by
5 Fletcher, that would be not a material matter, do you
6 agree?

7 A. If they were not owned by Fletcher I would agree with
8 that, but, as I said earlier, I - other information I have
9 indicates that - and I think that when I interviewed the
10 clergyman at Raymond Terrace that day, he also indicated
11 that he believed Fletcher was in possession of material of
12 that nature. It would not only have assisted in the
13 prosecution of the matters concerning [AH], and also in
14 connection with matters perhaps later on in connection -
15 more so in connection to another victim.

16
17 Q. Was the absence of acknowledgment that Fletcher
18 possessed or was in possession of homosexual pornography in
19 any way a negative factor in securing the conviction that
20 was secured?

21 A. That's a very difficult one to say. It would have
22 added weight, I've got no doubt, to the process.
23 Ultimately, I think the result shows that it didn't alter
24 what the ultimate outcome was, but perhaps we might be
25 sitting here, if he had been found not guilty, putting a
26 different perspective on the lack of that evidence.

27
28 Q. In relation to any hindrance or obstruction you say
29 you experienced on the part of any church official, did
30 you, at any stage, take a formal statement from any such
31 church official directed to any charges or matters of that
32 nature against any church official?

33 A. Did I charge any official with any offence --

34
35 Q. Did you take any statements directed towards potential
36 charging of any church official for obstruction or
37 hindrance in your investigations?

38 A. I would say yes. Yes.

39
40 Q. When you say "Yes", are you referring to a situation
41 where you warned or cautioned a particular church officials
42 that you were taking a statement from them --

43 A. Sorry, I misunderstood your question, sorry. No, in
44 that regard, no.

45
46 Q. So it is the position, isn't it, that you didn't
47 consider any conduct on the part of any church official to

1 be sufficient to explore any criminal charges against them
2 in terms of their cooperation or otherwise with your
3 investigation?

4 A. I did consider it as mentioned, particularly in
5 relation to the conduct of Bishop Malone, but ultimately,
6 at the end of the day, I elected to, for want of a better
7 term, give him the benefit of the doubt, and for that
8 reason, you know, in consultation with the DPP, I spoke to
9 Hamish Fitzhardinge from the DPP in that regard. We both
10 went through a number of statements that could have been
11 used for a dual purpose, I suppose, for that basis, and we
12 both came to the agreement that we wouldn't be pressing
13 charges in that regard.

14
15 Q. It is the position, isn't it, that the statements that
16 you referred to having looked at with Mr Fitzhardinge can't
17 be for a dual purpose if you haven't cautioned the person
18 who made the statement that the statement may be used in
19 relation to a prosecution of an offence?

20 A. Yes, sorry, I should clarify that again. The
21 statements that I'm talking about weren't necessarily those
22 by that particular clergyman. What I was talking about is
23 statements that were provided by witnesses and other clergy
24 around the periphery of that particular issue.

25
26 Q. In 2005, you prepared some reports to your superiors
27 regarding what you viewed to be a problem with paedophilia
28 amongst clergy in the Hunter and Newcastle region?

29 A. Yes, I did.

30
31 Q. What happened with those reports in terms of whether
32 you are able to produce a copy of them for the Commission
33 now?

34 A. No, I placed them - I submitted both those reports
35 when I was based at Maitland.

36
37 Q. Yes.

38 A. There is no record of what occurred to those reports.

39
40 Q. In terms of those reports, it was to alert your
41 superiors to what you saw to be a problem as opposed to
42 being the result of any particular investigation conducted
43 by you as at 2005?

44 A. That would be a fair comment, yes.

45
46 Q. In May 2010, certain information came to
47 your attention via newspaper articles written by

1 Joanne McCarthy. Is that a reasonable summary?
2 A. Yes.
3
4 Q. That material related to alleged offences and
5 associated matters regarding McAlinden?
6 A. Yes.
7
8 Q. Ms McCarthy sent to you, in a series of emails,
9 various documents that she had been provided with?
10 A. Yes.
11
12 Q. Did you understand that these documents had got into
13 the public domain having been provided by representatives
14 or a representative of the Maitland-Newcastle diocese to a
15 victim of McAlinden's?
16 A. I don't know how - I'm unaware of how they - you know,
17 I have heard some evidence here at the Commission, but at
18 the time I was unaware and wasn't told.
19
20 Q. You had some contact with a Ms Keevers towards the end
21 of 2005. Do you recall when we looked at the case report
22 for [AE] this morning there's some mention of a Ms Keevers?
23 A. Yes.
24
25 Q. You gave evidence you were already dealing with her or
26 having contact with her regarding [AH]'s investigation?
27 A. Yes.
28
29 Q. Did you ever conduct a formal interview with
30 Ms Keevers?
31 A. No. Sorry, it probably just depends what you mean by
32 "formal interview". Did I type one down or electronically
33 record it? No.
34
35 Q. But you did have a general interview with her; is that
36 what you're saying?
37 A. I've had a number of interviews with Ms Keevers over
38 the years.
39
40 Q. Where you've made notes of what you discussed with
41 her?
42 A. Sometimes, yes.
43
44 Q. Was she a witness in the Fletcher prosecution?
45 A. No. She - I first met Ms Keevers when she was working
46 with the diocese, I believe during one of the appeals at
47 the Downing Centre where she was supporting and assisting

1 some of the victims and families.
2
3 Q. Did Ms Keevers form any part of your investigation of
4 the Fletcher matter?
5 A. No. No.
6
7 Q. You have on occasion, however, sought information from
8 Ms Keevers about other matters?
9 A. Yes.
10
11 Q. Did any of those matters relate to McAlinden?
12 A. Yes.
13
14 Q. Don't worry about the content of the conversations at
15 this stage, but when did you have conversations with
16 Ms Keevers relating to McAlinden, apart from the one in
17 November 2005 which we looked at in the case report this
18 morning?
19 A. It was - we spoke a number of times over the years,
20 and I've got to say she was extremely helpful and I found
21 her a very likable individual to work with.
22
23 Q. You spoke to her when she was still employed by the
24 Catholic Church?
25 A. Yes. And I don't recall the specific date, but
26 I believe it was possibly early 2010.
27
28 Q. Did she, Ms Keevers, provide you with information that
29 assisted in any investigation you were performing at any
30 time you spoke to her?
31 A. Yes.
32
33 Q. When was this information provided to you that was of
34 assistance - what month and year, roughly?
35 A. You know, the reason I'm pausing, I'm trying to be as
36 accurate as possible. I have had a reasonable degree of
37 contact with Ms Keevers over a period of years. I know
38 I spoke to her early 2010 and also late 2010.
39
40 Q. All right.
41 A. The exact dates that she told me information, I'm just
42 unsure about.
43
44 Q. So it was sometime during 2010, other than the 2005
45 conversation we've already talked about?
46 A. Yes. Yes.
47

1 Q. Do you know, whether in 2010, Ms Keevers was still an
2 employee of the Catholic Church or the Maitland-Newcastle
3 diocese?

4 A. No. I believe her employment had been terminated by
5 that time.
6

7 Q. Was information she provided to you helpful to any
8 investigations that you were pursuing at or around the time
9 she spoke to you?

10 A. Yes.
11

12 Q. As a result of material provided to you by
13 Ms McCarthy, is it the position that you started your own
14 informal investigation of certain matters involving
15 McAlinden?

16 A. I don't know whether I would describe it as
17 informal. I started an investigation that I kept
18 predominantly to myself at that time, yes.
19

20 Q. One that you didn't log through formal police
21 channels?

22 A. That's correct.
23

24 Q. Is it the position if you are to interview a senior
25 church official, you need some sort of higher-up-the-chain
26 permission. So, for example, if you wanted to interview a
27 bishop, you would need a superior officer's permission?

28 A. I know when I first joined the police force, we needed
29 permission to charge any member of the clergy with any
30 offence.
31

32 Q. I'm not talking about charging.

33 A. I know that something changed there at some point in
34 time. As to whether we need permission to interview a
35 senior member of the clergy, I don't know. I would say no
36 but I may be wrong.
37

38 Q. In the investigative steps that you took relating to
39 the material provided to you by Ms McCarthy, did you, at
40 any stage, attempt to interview any official of the
41 Catholic Church, and that encompasses clergy, religious,
42 members of religious orders, people from the office of the
43 diocese or indeed the Archbishop of Sydney - did you
44 attempt to interview any?

45 A. I don't know if there's an objection coming or not.
46

47 MR GYLES: There is an objection. I am sorry, Detective

1 Chief Inspector Fox, for distracting you.

2

3 The point is this, Commissioner: what was made clear
4 yesterday when the Commission was opened on this aspect of
5 it is that there are four relevant investigations that are
6 being considered. As I would understand it, the
7 investigation that my learned friend is asking Detective
8 Chief Inspector Fox about now is not one of those
9 investigations.

10

11 MS LONERGAN: I won't pursue it, Commissioner.

12

13 THE COMMISSIONER: I think that true.

14

15 MS LONERGAN: I was anticipating the answer would be
16 helpful to my learned friend's client, but if you refer
17 I don't pursue that line I won't.

18

19 Q. On 21 September 2010, Detective Chief Inspector Fox,
20 you prepared a report for your superiors in the police
21 force and it is behind tab 498

22 A. Folder number?

23

24 Q. I'm sorry, folder number 7.

25 A. Yes.

26

27 MS LONERGAN: Commissioner, with regard to the documents
28 I've tendered, could I check whether I tendered the report
29 to Ombudsman dated 29 May 2003 authored by DCI Fox?
30 I thought I had.

31

32 THE COMMISSIONER: I'm fairly certain you have. I think
33 that was the last one, exhibit 55.

34

35 MS LONERGAN: No, I haven't tendered it. There was an
36 additional longer document, and I'll give you the tab
37 reference. I should tender that for completeness,
38 Commissioner. It is behind tab 396, which is in volume 5.
39 That's Detective Chief Inspector Fox's report to the
40 Ombudsman dated 29 May 2003, Commissioner.

41

42 THE COMMISSIONER: Very well, Ms Lonergan. That will be
43 admitted and marked exhibit 56. That's the report to the
44 Ombudsman by this witness dated 29 May 2003 from tab 396.

45

46 **EXHIBIT #56 REPORT TO OMBUDSMAN BY DETECTIVE CHIEF**
47 **INSPECTOR FOX, DATED 29/5/2003 (TAB 396)**

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MS LONERGAN: I want to make sure we have the exhibits straight, Commissioner. Exhibit 55 should be the Ombudsman's letter or short report of DCI Fox dated 21 May 2003.

THE COMMISSIONER: Yes.

MS LONERGAN: Exhibit 56 is the Ombudsman's report of DCI Fox, the longer document, dated 29 May 2003?

THE COMMISSIONER: Yes.

MS LONERGAN: The latter document appeared behind tab 396.

THE COMMISSIONER: Yes. Thank you.

MS LONERGAN: Q. The report you prepared on 25 November 2010 - or at least dated that date - was prepared by you because you wanted to investigate certain matters you thought needed to be investigated; is that the position?

A. Yes.

Q. Is it fair to say that at the time you prepared the report, you were not yet investigating those matters?

A. Yes. Sorry, I should correct that. Yes, I was, but I felt that - the purpose of the report was to mount something more comprehensive.

Q. All right. In this report you've made certain assertions regarding investigations that you say you carried out?

A. Yes.

Q. You commence with talking about the 1999 investigation of [AE]?

A. Yes.

Q. Can we take it from your evidence that you've given today that you were the officer responsible for that investigation for a period of it? Is that the position that you take?

A. Sorry, I'll just be sure of [AE].

Q. [AE] is the matter that Detective Watters commenced in October 1999 that I was questioning you about this morning, first thing this morning?

1 A. Yes.
2
3 Q. My question to you is: is it the position that you
4 were responsible for that investigation for at least some
5 of its life or not?
6 A. I had involvement with it, yes.
7
8 Q. Were you the officer responsible for it for any period
9 of its existence?
10 A. Yes.
11
12 Q. What period was that?
13 A. I consider from the time of Detective Watters leaving
14 the command for the Central Coast in, I believe, early 2003
15 until late 2005.
16
17 Q. You used the royal plural in the first paragraph of
18 your report saying that.
19
20 *We took the assurances --*
21
22 I'll come back to that --
23
24 *on face value and swore a warrant for*
25 *McAlinden's arrest.*
26
27 Are you suggesting there that you swore the warrant for
28 McAlinden's arrest with Watters?
29 A. No, "we" as in the police force.
30
31 Q. You say that you believed there was an assurance given
32 by the Catholic diocese that the police would be informed
33 on McAlinden's return from overseas?
34 A. Mark told me about that, and that's why I make that
35 comment. Inspector Watters, sorry.
36
37 Q. Is there a note of that in the case report, that an
38 assurance was given that the police would be notified on
39 McAlinden's return to Australia?
40 A. I don't know. I would have to look.
41
42 Q. That would be quite an important matter, wouldn't it?
43 A. Yes.
44
45 Q. In the next paragraph you mention that you commenced
46 an unrelated investigation of priests James Fletcher and
47 Desmond Harrigan. Do you see that?

1 A. Yes.

2

3 Q. You didn't commence an investigation of Desmond
4 Harrigan, did you?

5 A. No. Probably the fairer matter would be I commenced
6 inquiries. I did some more homework, and I don't believe
7 that he has committed any criminal offences.

8

9 Q. But there was no formal police investigation of
10 Desmond Harrigan?

11 A. No, I never created a case, no.

12

13 Q. You mention in the third paragraph about you learning
14 Bishop Malone had alerted Fletcher to the police
15 investigation and disclosed the identity of the alleged
16 victim and that this negatively impacted on the
17 investigation and was reported to the ODPP for
18 consideration of charges for hindering a police
19 investigation. Now, if you're reporting a matter as a
20 police officer to the Office of the Director of Public
21 Prosecutions for consideration of charges, wouldn't you
22 need a brief which included appropriately completed
23 statements for which a caution had been given to any person
24 who was the subject of the alleged offence?

25 A. No. My - the view I took is that with the material
26 that I had that was incorporated within the Fletcher
27 matter, I spoke to an officer at the DPP, with him having
28 read through that material, and in the office down here at
29 Newcastle, we had a discussion as to whether we should take
30 it further. It was my view, had he expressed a view
31 similar to mine, that we should pursue that further, that
32 I would then progress to that point that you are talking
33 about and that is conduct a - it wouldn't be a statement
34 but it would have been an electronic interview.

35

36 Q. In your report you mention "reported to the Office of
37 the DPP". You didn't report any charges of hindering a
38 police investigation in a formal sense to the Office of the
39 DPP, did you?

40 A. No. I thought it would be more comprehensive if
41 I actually sat down and went through the material firsthand
42 and --

43

44 Q. What you're referring to there is an informal
45 discussion with the officer from the Director of Public
46 Prosecutions who was dealing with the Fletcher matter,
47 aren't you?

1 A. Yes.

2

3 Q. Do you agree with me it is an overstatement to say
4 that you had, in effect, prepared a report to the ODPP for
5 consideration of charges?

6 A. It probably may be an understatement. I actually felt
7 that actually sitting there and going through the evidence
8 would have been more comprehensive than preparing a report,
9 but I agree. I've said in there "a report". I suppose it
10 was a verbal report, but it wasn't a paper one. It wasn't
11 designed to mislead, but simply my terminology. I felt
12 that it was more comprehensive to sit down with an officer,
13 to actually physically go through the statements and share
14 my thoughts and, at the end of the day, we came to the
15 consensus that we wouldn't be pursuing that matter.

16

17 Q. There was no formal report of a written nature
18 prepared?

19

20 A. No.

21

22 Q. In the next paragraph you say that Bishop Malone
23 refused a request by you to remove Fletcher from his parish
24 or restrain him from visiting schools. When was that
25 refusal communicated?

26

27 A. By his actions.

28

29 Q. You say:

30

31 *In defiance of my request Malone extended
32 Fletcher's parish to include [other
33 parishes].*

34

35 Did you contact Bishop Malone, after this step had been
36 taken by him and drawn to his attention, that it appeared
37 to be defiance of your request?

38

39 A. I make that comment on the basis that I think, reading
40 the conversation that I had with Bishop Malone on 20 June,
41 I couldn't have been stronger in my request to have him
42 removed, and it was a short time later that he publicly
43 announced that Fletcher's parish would be extended to
44 include neighbouring Lochinvar and the two schools there as
45 well.

46

47 Q. In the next paragraph you mention that you had
statements from Malone, Saunders, Harrigan and Burston.
You make the comment that those statements were remarkable
for their poor recollection of critical conversations and

1 that they smacked strongly of collusion and concealment.

2

3 First of all, in terms of collusion, you would agree
4 with me, would you not, that the statement of Burston was
5 not consistent with the statements of Bishop Malone and
6 Father Saunders in regard to a key conversation in which
7 you were interested?

8 A. Yes.

9

10 Q. At least to that extent, there could not have been
11 collusion involving Father Burston, would you agree?

12 A. To that extent.

13

14 Q. Were there other aspects of those statements by those
15 persons that you thought showed, or, as you term it,
16 smacked strongly of, collusion?

17 A. Yes. It probably goes back to what I said earlier.
18 Each of them was remarkable for their lack of recollection
19 of what one would have thought to fellow members of the
20 clergy would be a very memorable conversation with a priest
21 accused of paedophilia offences, and when I'm saying
22 "collusion", their recollections were all very similar you
23 know, if I can term it like this --

24

25 Q. I'm going to stop you there.

26 A. Yes, okay.

27

28 Q. It is just a statement of impression rather than
29 dealing with my proposition. In the next paragraph, you
30 say you intended to execute a search warrant for certain
31 pornographic images, but you didn't do so?

32 A. Yes.

33

34 Q. You assert that Fletcher removed a quantity of
35 homosexual pornographic videos and magazines before this
36 could happen. You had no basis to make that statement, did
37 you?

38 A. I believe I did.

39

40 Q. What was your basis?

41 A. The information I received from Mr Hanley and what
42 I was ultimately told by Father Harrigan.

43

44 Q. The information you received from Mr Hanley was simply
45 he had seen the pornographic material there?

46 A. Yes.

47

1 Q. Not that it had been removed?

2 A. No, no. No, he told me that --

3

4 Q. I'm not asking you that. Did Mr Hanley tell you the
5 material had been removed by Fletcher?

6 A. He didn't, no.

7

8 Q. Did Father Harrigan tell you the material had been
9 removed by Fletcher?

10 A. Effectively, yes,

11

12 Q. What do you mean "Effectively, yes"?

13 A. He told me that Fletcher had given it to him before he
14 destroyed it.

15

16 [Transcript suppressed from page 213, line 16 to line 31]

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Q. At the end of the paragraph, you say:

*Undoubtedly this happened directly as a
result of Malone and Saunders' forewarning.*

Why do you say that given Mr Hanley told you that the
material was still viewed by him or seen by him some time
after the Malone and Saunders' forewarning?

A. I don't know whether the time factor - again, I'm
unable to assist with that, but the fact that they were in
Fletcher's presbytery and Fletcher caused them to leave his
presbytery and go to a fellow priest, who ultimately
destroyed them --

Q. Your suspect was a result directly of Malone and

1 Saunders's forewarning: that's your impression.
2 A. I think that that's a fair conclusion. It just seems
3 unusual that why destroy them at all? If they've got them
4 and - I don't disagree. A priest is quite entitled to have
5 pornographic homosexual material if he so desires, there's
6 no criminal offence to that, but if they have it why
7 destroy it immediately when there's a police investigation
8 that they know is underway? That part of it - and
9 particularly when it --

10
11 Q. I'm going to stop you there. You don't need to
12 continue. Mr Hanley contacted you at the end
13 of December 2003 about reporting this incident?

14 A. Yes. Yes, he did.

15
16 Q. Did he tell you how long ago he'd seen the material at
17 the presbytery?

18 A. He did tell me at the time, I think I mentioned that
19 earlier, but I cannot recall now. It wasn't like it was
20 the day before; it was some time before.

21
22 Q. Was it the year before, are you able to say?

23 A. No, certainly not that. Fletcher had only moved into
24 that presbytery some time in the latter half of 2002, I'm
25 not sure of the date, and it was around that date, church
26 records may indicate it, but Mr Hanley indicated to me that
27 he came across the material during that movement process.

28
29 Q. But you're not able to say what month of what year?

30 A. No, I'm not. As I said --

31
32 Q. That's all right. Just stop --

33 A. -- he may have told me --

34
35 MS LONERGAN: I don't need you to restate your evidence:
36 just stop there.

37
38 [Transcript suppressed from page 214, line 38 to page 216,
39 line 10]

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MS LONERGAN: Q. In the third page of your report, the first paragraph, you make some comments regarding having been advised by the Catholic Church that McAlinden was critically ill in late 2005. Do you see that?

A. Yes.

Q. In the last sentence you say:

Despite the church knowing McAlinden's whereabouts for some time, I was not informed until his death was imminent.

What was your basis for making that statement regarding the church knowing McAlinden's whereabouts for some time?

A. I've seen other documentation since and I've also been - had information relayed to me that various members of the clergy, or a number members of the clergy, had knowledge --

MR GYLES: I object to this answer. It is obvious from the introduction to the question that it is based upon hearsay. It is not a matter of direct knowledge of Detective Chief Inspector Fox. He says "based upon documents". The relevant evidence is the documents. This is a question for you, Commissioner, as to whether or not the church had knowledge of such matters and hearsay evidence on this issue is not admissible in this Commission.

THE COMMISSIONER: The difficulty is, is it not, Mr Gyles, that to see whether there is any substance in the allegations of Detective Chief Inspector Fox, we have to ascertain what he has in support of his assertions in these reports.

MR GYLES: So long as to the extent this evidence is permitted it is not evidence of the fact and it rises no

1 higher than the evidence upon which it is based.

2

3 THE COMMISSIONER: Yes, that's right, Mr Gyles.

4

5 MS LONERGAN: I agree with Mr Gyles's position on that
6 matter, but in terms of it assisting you, Commissioner, it
7 is a statement that directly relates to a matter that you
8 need to examine and that is church cooperation with the
9 police investigation and I needed to examine whether that
10 statement had any basis that was one that we needed to know
11 about. I believe Detective Chief Inspector Fox's answer
12 may well have been cut off, so I'm not sure whether we're
13 going to get to documentary material or not.

14

15 Q. Did you have any documents, as at November 2005, that
16 you saw that suggested that the church knew McAlinden's
17 whereabouts in the period 1999 to October 2005?

18 A. Yes.

19

20 Q. What documents were they?

21 A. There was a document that I saw and I don't recall the
22 exact date but I believe it was around about not too
23 distant from when [AE] - sorry, I'm getting the right
24 initials here.

25

26 Q. [AE] is 1999, October 1999?

27 A. Okay. It was around the time that [AE] came in and
28 spoke to Detective Watters.

29

30 Q. What was the document that you saw?

31 A. It was a document that was provided through
32 Joanne McCarthy to myself.

33

34 Q. I'm asking you what the document was, not where you
35 got it. What was it?

36 A. It was correspondence from a member of the clergy
37 writing to Father Denis McAlinden. I would have to go back
38 through them to be more helpful, but I recall that there
39 was a specific address for Denis McAlinden that a member of
40 the Newcastle Maitland diocese wrote to him only a matter
41 of weeks before [AE] attended the police station.

42

43 Q. A matter of weeks before [AE] attended the police
44 station isn't, is it, between [AE] attending the police
45 station, that is, 8 October 1999 and October 2005?

46 A. No, but your question was from 1999 to 2005.

47

1 Q. I'm sorry, I should have made it very clear.

2 A. Yes.

3

4 Q. From the time [AE] came into the police station,
5 8 October 1999 to October 2005, what document, if any, have
6 you seen that suggests that the church knew McAlinden's
7 whereabouts?

8 A. In - it is not that I don't want to be helpful.

9 I don't know the date. It was around that time. It may
10 have been slightly before, it may have been slightly after
11 that date, but I do recall viewing correspondence from a
12 member of the Newcastle Maitland diocese to Father Denis
13 McAlinden in an address in England.

14

15 Q. It is your recollection, is it, that it was dated
16 1999? Is that your evidence?

17 A. That is my recollection, yes.

18

19 Q. But you don't know whether it was dated before
20 8 October 1999 or after?

21 A. That's true.

22

23 Q. Was there any other documentary evidence that you were
24 aware of in November 2010 that indicated the church knew
25 McAlinden's whereabouts between 8 October 1999 and
26 October 2005?

27 A. I'm aware of documentation but only through hearsay.

28

29 Q. I think perhaps my question wasn't clear enough.
30 Documents that you have seen?

31 A. I hadn't seen that documentation, no.

32

33 Q. Other than this letter that may have been dated before
34 8 October 1999, you have no other documentary evidence that
35 supports your assertion that the church knew McAlinden's
36 whereabouts for some time?

37 A. Not documentary that I've seen, no.

38

39 Q. And so other than the document that you referred to,
40 you base that statement in your report to your superiors on
41 hearsay, do you?

42 A. Sorry, what part of my report?

43

44 Q. The line we've been examining:

45

46 *Despite the church knowing McAlinden's*
47 *whereabouts for some time, I was not*

1 *informed until his death was imminent.*

2

3 A. No, I haven't mentioned documentation there and I base
4 that on --

5

6 Q. No, I am going to stop you. My question was apart
7 from the document that you mentioned that may well have
8 predated 8 October 1999, you base your assertion there on
9 hearsay; is that the position?

10 A. I based it on the document that I've referred to and
11 hearsay.

12

13 Q. If I suggest to you that there was a letter sent by
14 the diocese to McAlinden in England in August 1999 - and if
15 you have a look behind tab 306 --

16 A. If you're suggesting that, that may well be the case.

17

18 Q. Have a look because I want to see if we're talking
19 about the same document.

20 A. Sorry, document --

21

22 Q. Bear with me: volume 4.

23 A. Yes, that's the document and I accept that it is
24 written on the - it is dated 10 August 1999 which is prior
25 to October.

26

27 Q. Is that the document that you were thinking of that
28 you described as confirmation that someone from the church
29 knew where McAlinden was in the United Kingdom?

30 A. Yes.

31

32 Q. And it is dated?

33 A. 10 August.

34

35 Q. Thank you very much. 1999?

36 A. Yes.

37

38 MS LONERGAN: Is that a convenient time, Commissioner?

39

40 THE COMMISSIONER: Yes, thank you, Ms Lonergan. Yes,
41 Mr Cohen?

42

43 MR COHEN: There is just one matter before you rise.
44 There was yesterday a transcript correction that I wanted
45 to bring to the attention of the Commission.

46

47 MR SKINNER: I can't hear, I am sorry.

1
2 THE COMMISSIONER: Mr Cohen has raised the prospect of a
3 transcript correction from yesterday.
4
5 MR COHEN: Excuse me please, Commissioner, I just have to
6 find my note. I apologise. It was at transcript page 91.
7 I'm sorry I don't have a hard copy with me. You might
8 remember it, Commissioner.
9
10 MS LONERGAN: I am sorry, I can't hear.
11
12 MR COHEN: I am sorry. It was at transcript page 91 from
13 yesterday. You may recall that that was the last question
14 I asked in my cross-examination. There was an objection
15 but there was also an answer received and that answer has
16 not made it on to the transcript. The answer was a single
17 word "No". Indeed, you, Commissioner, made reference in
18 your remarks to the fact, in response to Mr Gyles, that
19 there was an answer. That was the answer.
20
21 THE COMMISSIONER: Yes, that's right. That was in
22 relation to whether there had been any phone call.
23
24 MR COHEN: Correct. I simply wish to raise that and have
25 that omission raised on the record.
26
27 THE COMMISSIONER: I think that's reasonable.
28
29 MS LONERGAN: I can't find the question and answer yet.
30 I'm just going to pass my learned friend a copy of page 91
31 from yesterday and if he can indicate where it is. It
32 appears on lines 4 to 5, the question. Yes, I recall that
33 there was an answer "No" given and then there was an
34 objection by Mr Gyles. I am uncertain of the status of the
35 answer given. There was an objection by Mr Gyles.
36
37 MR COHEN: My proposition is a simple one. There was an
38 answer. You noted it. As I recall - and I think the
39 transcript will disclose this - you did not rule it as
40 inadmissible.
41
42 THE COMMISSIONER: Yes, on the basis almost that it was
43 too late and --
44
45 MR COHEN: Possibly. It ought be there, in my submission.
46
47 THE COMMISSIONER: Yes. Mr Gyles, do you have a strong

1 objection to that course?

2

3 MR GYLES: I am not sure very much is going to turn on it
4 in any event, Commissioner.

5

6 MS LONERGAN: Commissioner, I confirm that you did rule on
7 the objection at line 15, so, in my respectful submission,
8 the answer should be --

9

10 THE COMMISSIONER: Yes. That "No" should be placed in
11 there. Thank you, Mr Cohen, for raising it.

12

13 MR COHEN: I am indebted to you, Commissioner.

14

15 THE COMMISSIONER: I thought you were going to propose a
16 uniform change for tomorrow in view of the heat.

17

18 MR COHEN: If you encourage that, Commissioner, I will
19 submit it.

20

21 THE COMMISSIONER: Are we resuming at 9.30 or 10 in the
22 morning?

23

24 MS LONERGAN: Ten o'clock, Commissioner.

25

26 THE COMMISSIONER: Ten o'clock it is.

27

28 **AT 4.03PM THE COMMISSION WAS ADJOURNED TO**
29 **WEDNESDAY, 3 JULY 2013 AT 10AM**

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