

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

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

On Friday, 5 July 2013 at 10.10am
(Day 5)

Before Commissioner: Ms Margaret Cunneen SC

Counsel Assisting: Ms Julia Lonergan SC
Mr David Kell
Mr Warwick Hunt

Crown Solicitor's Office: Ms Emma Sullivan,
Ms Jessica Wardle

1 MS LONERGAN: Commissioner, before we proceed with
2 Detective Chief Inspector Fox's evidence, there are a
3 couple of matters that need to be noted on the record.
4 First, in terms of the procedures for today, when Detective
5 Chief Inspector Fox's evidence is completed, we will then
6 call former Officer Brown, who will give some evidence
7 relating to certain matters and then we will be adjourning
8 until next Tuesday, Commissioner, at 10 o'clock, where we
9 will proceed with the evidence of Detective Filipo,
10 followed by Bishop Malone, and the witness order will be as
11 otherwise published.
12

13 Then I need to tender two documents. The first is a
14 letter dated 5 December 1995 by, apparently Denis McAlinden
15 directed to Bishop Malone. Copies have been placed on the
16 Bar table this morning for the benefit of my learned
17 friends. I tender that letter.
18

19 THE COMMISSIONER: May I see it, if there is a copy,
20 Ms Lonergan.
21

22 MS LONERGAN: Yes, Commissioner. I'm sorry, I thought one
23 had been placed on your seat.
24

25 THE COMMISSIONER: The letter, apparently in the
26 handwriting of Denis McAlinden to Bishop Malone dated
27 5 December 1995 and apparently written from Western
28 Australia will be admitted and marked exhibit 78.
29

30 **EXHIBIT #78 LETTER FROM DENIS McALINDEN TO BISHOP MALONE**
31 **DATED 5/12/1995**
32

33 MS LONERGAN: The second matter I need to tender,
34 Commissioner, is a letter from the Ombudsman of New South
35 Wales dated 4 July 2013 annexed to an email note timed
36 3.27am on 4 July 2013. The Ombudsman's letter is directed
37 to matters regarding the electronic version or computer
38 disk version of the "I said/He said" document that has been
39 referred to by Detective Chief Inspector Fox in evidence.
40 It was only received yesterday afternoon and has been made
41 available to my friend at the Bar table this morning.
42 I tender that letter and attached email.
43

44 MR COHEN: Before you do that, might I be heard on this
45 letter?
46

47 THE COMMISSIONER: Yes, Mr Cohen.

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MR COHEN: I have just seen this letter. I understand the reason why it has arrived as late as it has. I have some concerns about it being received on anything other than on the basis that it is the understanding of the author of the letter as opposed to a statement of fact. It is fair to say that, in its terms, it is hearsay piled upon hearsay. It can rise no higher than an understanding by this person on that footing.

THE COMMISSIONER: This is the first time I've seen it, and immediately my eyes are drawn to the penultimate paragraph of the main letter:

... we can say we can find no evidence that he did and, on the contrary, the evidence suggests he did not.

MR COHEN: I think you understand the concern, Commissioner.

THE COMMISSIONER: I do understand the point, Mr Cohen.

MR COHEN: I understand completely why counsel assisting wants to tender the letter. Counsel assisting has a ministerial function in this inquiry and has to expose all the materials. If it is accepted, and this is subject for you, my submission is that, if it be accepted at all, and I can see why there would be a need for some position to be understood, it should be accepted on no other footing than it is the understanding of this person, that it be limited at the most to acceptance, with that qualification, pursuant to section 136 of the Evidence Act.

THE COMMISSIONER: Thank you, Mr Cohen. It shows an inquiry has been made and that is the response, for what it is worth.

MS LONERGAN: It is what it is. In my respectful submission, it should be received into evidence.

THE COMMISSIONER: Yes. It will be admitted and marked exhibit 79. Thank you, Mr Cohen. Thank you, Ms Lonergan.

MR COHEN: Thank you, Commissioner.

MS LONERGAN: Thank you Commissioner.

1 EXHIBIT #79 LETTER FROM THE OMBUDSMAN OF NSW, DATED
2 4/7/2013, ANNEXED TO AN EMAIL NOTE TIMED 3.27AM ON 4/7/013
3

4 THE COMMISSIONER: Thank you. Detective Chief Inspector
5 Fox, I'm sorry you have been standing there for some time.
6

7 <PETER RAYMOND FOX, sworn: [10.15am]
8

9 <EXAMINATION BY MR GYLES CONTINUING:
10

11 MR GYLES: Commissioner, I have one further topic, which
12 I would hope might be able to be finished in half an hour
13 or so, subject to a horse walking into court this morning
14 and disturbing things.
15

16 Q. Detective Chief Inspector Fox, you were asked to make
17 an assumption yesterday by Mr Harben. You understand,
18 don't you, that I'm not asking you to agree with the
19 assumption; I'm just asking you to make it for the purpose
20 of the question?

21 A. I understand.
22

23 Q. I would like you to give two alternative assumptions.
24 They both proceed on the basis that Bishop Clarke, in 1995,
25 had knowledge of [AL] and [AK]. The two assumptions
26 I would like you to make are that, first, Bishop Clarke was
27 able to recall in 2003 that there were those two other
28 McAlinden victims known to the church. The second
29 assumption I would like you to make is that he could not
30 recall that fact as of 2003.
31

32 MR COHEN: I object. I raise this proposition, and this
33 will take a minute or two, Commissioner. Section 135 of
34 the Evidence Act expressly provides for a situation where,
35 if it is perceived by the trier of fact, in this case you,
36 that there is a prejudice that substantially outweighs the
37 probative value of the evidence, the placita in section 135
38 talk, amongst other things, about undue delay or confusion.
39

40 Having regard to the fact that this is seeking to set
41 up two assumptions and test whether or not those
42 assumptions go anywhere, in my respectful submission, it
43 falls foul of section 135, given this is an inquiry that
44 seeks to elicit facts, not assumptions, about what the
45 circumstances were in this term of reference in relation to
46 whether or not there was hindrance or facilitation of
47 inquiries.

1
2 This line of approach - and indeed it is why it
3 elicited my objection yesterday in respect of Mr Harben was
4 endeavouring to do - does not assist you and can never take
5 this more than into the realm of Heisenberg uncertainty
6 with regard to these matters. Accordingly, I submit this
7 approach should not be permitted. Hence the objection.
8

9 THE COMMISSIONER: Is it not legitimate for a party such
10 as Mr Gyles to ask a witness to assume certain things and
11 what then may have flown from that? To whom is the then
12 prejudice likely to flow?
13

14 MR COHEN: The prejudice is this - it requires a series of
15 assumptions to be put and then hypothetical responses to be
16 given on a footing that there does not seem to be any
17 underlying expert basis that is being either identified or
18 relied upon. It is simply asking, for these purposes, a
19 lay witness to give an impression about assumptions when
20 there are facts that are before the Commission that
21 properly ought be identified and tested. That is the
22 undue delay or confusion that may arise because it goes off
23 on a tangent.
24

25 THE COMMISSIONER: The trouble is we don't have all the
26 facts, Mr Cohen.
27

28 MR COHEN: We certainly do not. Those facts that we do
29 have, in my submission, are not assisted by a voyage into
30 the uncertain or the speculative. That is the basis of my
31 objection.
32

33 THE COMMISSIONER: I don't know that it's entirely
34 speculative, Mr Cohen, and I don't even remember hearing
35 the whole of the question.
36

37 MR GYLES: I propose to ask three questions based on these
38 assumptions, two in respect of the first and one in respect
39 of the second. It might be an undue waste of time to deal
40 any further with the objection if that's the extent of the
41 evidence, Commissioner.
42

43 Q. I would like you to make the first assumption, please,
44 Detective Chief Inspector Fox, the first assumption being
45 that, when you went to see former Bishop Clarke in 2003, he
46 could recall that --

47 A. Sorry, did you say could or could not?

1
2 Q. He could recall that there were two other McAlinden
3 victims named at the church. Can I suggest to you that the
4 question you asked and the response, was the question as
5 recorded in your report at tab 498, to this effect, where
6 you say to Bishop Clarke, former Bishop Clarke:

7
8 *An alleged victim of Denis McAlinden has*
9 *told us that she believes the church is*
10 *aware of at least two other alleged sexual*
11 *assault victims of this priest. Do you*
12 *have any knowledge of that?*

13
14 His response being:

15
16 *No. You would have to ask Michael Malone*
17 *about that.*

18
19 I suggest to you that it is entirely possible that
20 Bishop Clarke, in responding in that way, was saying to
21 you, "I am not disputing that", ie, "I'm not disputing that
22 the church had such knowledge, but I do not have any
23 information among the papers I have here about that and you
24 would need to speak to Michael Malone about that." I'm
25 putting that to you as a possible construction of the
26 meaning of what he was saying to you and I am giving you an
27 opportunity to say whether you agree with it or whether you
28 don't agree with it?

29 A. No, I don't.

30
31 Q. Thank you. Would you agree with this proposition: if
32 the intention of former Bishop Clarke was to try to cover
33 up information that the church had in connection with those
34 two McAlinden victims, the response would have been likely
35 to be quite different, ie, he would have said, "No, that
36 rumour is not true. This is the first I've heard of any
37 such allegations."

38 A. When he --

39
40 Q. Would you agree that if one's objective in answering
41 your question was to cover up information known to the
42 church, that would have been a far better way to achieve
43 that - to make good that intention?

44 A. I thought he made it very clear in his one-word answer
45 "No".

46
47 * Q. I would like you to make the second assumption,

1 please, which is that he could not recall this information
2 when you spoke to him in 2003. You would agree that, on
3 that assumption, the criticisms you've made of him would be
4 grossly unfair, wouldn't they?

5
6 MS LONERGAN: I object.

7
8 MR COHEN: I object.

9
10 MS LONERGAN: This is not a proper assumption for this
11 witness to be asked to make, as Mr Gyles cannot be
12 instructed as to what Bishop Clarke recalled or didn't
13 recall. It is an assumption that ought not be put to this
14 witness because it has to be without appropriate
15 instructions.

16
17 MR GYLES: With all due respect to my friend, that is a
18 staggering objection to take in circumstances where one
19 doesn't know what Bishop Clarke's state of mind was and if
20 that's indicative of prejudgment in this issue, that's a
21 concern to me.

22
23 THE COMMISSIONER: It may be that you have
24 incontrovertible evidence, Mr Gyles, that Bishop Clarke was
25 suffering from some mental impediment at that time.

26
27 MS LONERGAN: Perhaps I'll put the objection without a
28 further rider, which I thought would have been evident from
29 the documents that were tendered yesterday and the day
30 before. The weight of the evidence already tendered in
31 this Commission suggests that Bishop Clarke well knew that
32 there were other victims. To put an assumption to this
33 witness along the lines of "assume Bishop Clarke didn't
34 know", in my respectful submission, is against the weight
35 of the evidence.

36
37 THE COMMISSIONER: I rather thought that the assumption
38 Mr Gyles was putting was: whether or not Bishop Clarke had
39 ever known, he did not, in 2002, remember.

40
41 MR GYLES: That's right.

42
43 MS LONERGAN: That's a completely different matter,
44 Commissioner. We went to this yesterday. The only
45 evidence, as I understand it, that my learned friend has on
46 that issue is medical certificates in 2006 and no evidence
47 about the state of memory or recollection of Bishop Clarke

1 or any impairment to his mental faculties or memory in
2 2003. If that evidence exists, we would like to see it.

3
4 MR GYLES: I am proposing to tender the medical report
5 from 2006, but at the moment --

6
7 MS LONERGAN: I object to that, Commissioner, because it
8 is irrelevant.

9
10 MR GYLES: Could I finish what I'm saying. This inquiry
11 is at the moment, Commissioner, dealing with a whole lot of
12 evidence. In due course you will need to, with the
13 assistance of counsel assisting and the submissions of
14 parties, come to a view about what that evidence amounts
15 to. One of the things you'll need to deal with is what the
16 state of mind was of the former Bishop Clarke when
17 Detective Chief Inspector Fox went to see him.

18
19 THE COMMISSIONER: Yes.

20
21 MR GYLES: That, like all of the facts that are relevant
22 to this inquiry, is something that needs to be considered
23 in the fullness of time based upon all of the evidence and
24 having regard to questions of natural justice, having
25 regard to the interests of people who are now dead and not
26 in a position to speak for themselves.

27
28 In due course my learned friend might be right in her
29 submission to say that the weight of the evidence is that
30 he may have had such a recollection. Commissioner, you
31 might take a different position about that. Certainly, the
32 parties would be entitled to be heard on that issue based
33 upon all the evidence in the inquiry.

34
35 I am putting a factual assumption, which may or may
36 not be made out, like all factual assumptions in all cases,
37 and it is entirely improper, where there is some
38 possibility that that was the position, that I'm prevented
39 from putting to this witness a question based on that
40 assumption. That is prejudgment in the classic sense,
41 which is the very thing you, Commissioner, I'm sure, would
42 not be proposing to deal with any issue in this inquiry in
43 this way.

44
45 MR COHEN: Might I be heard?

46
47 THE COMMISSIONER: Yes, Mr Cohen.

1
2 MR COHEN: There is a vice in this approach. I've already
3 invoked section 135. Could I refer to it, rather than from
4 memory, directly:

5
6 *The court may refuse to admit as evidence,*
7 *if its probative value is substantially*
8 *outweighed by the danger that the evidence*
9 *might:*

10 *(a) be unfairly prejudicial to a party --*

11
12 I think there is a chance here, at least to my client, or
13 that it might --

14
15 *(b) be misleading or confusing, or.*

16 *(c) may cause or result in undue waste of*
17 *time.*

18
19 The proposition I advance with that in mind is that
20 there is material that has not been tendered or led
21 directly before the Commission but, nonetheless, has been
22 served on all parties, particularly being an affidavit of
23 Detective Chief Inspector Fox of 24 April this year, which,
24 in paragraph 25, directly relates to this material and
25 could not possibly allow that assumption to be put on a
26 fair basis. That is the basis of my objection. On that
27 footing, the question ought be rejected.

28
29 MR GYLES: I don't want to waste time over this. Could
30 I just say it is not a matter for me during
31 cross-examination to make good the factual assumptions that
32 I'm putting, which I would seek the witness to make.

33
34 MS LONERGAN: It is, in my respectful submission, in
35 circumstances where no witness can be called to give
36 evidence about his state of mind at the time he had the
37 conversation with Detective Chief Inspector Fox. The
38 problem with the assumption that my learned friend is
39 putting is that the weight of the evidence is that
40 Bishop Clarke knew about previous victims of McAlinden.

41
42 THE COMMISSIONER: Or knew at some time.

43
44 MS LONERGAN: There is an absence of evidence as to a
45 reason why he was so impaired in 2003, in terms of
46 recollection or mental state, to be able to truthfully
47 state his knowledge. If there is evidence that shows that

1 in 2003 that there was a problem with memory or dementia or
2 matters of that nature I would absolutely not be standing
3 up to make the objection.
4

5 I have already had a discussion with my learned friend
6 about the 2006 document and expressed the view that
7 I considered it to be irrelevant and would not be tendering
8 because it is too far after the conversation to be of
9 relevance. That position hasn't changed, Commissioner.

10
11 MR SKINNER: May I be heard?

12
13 THE COMMISSIONER: Yes.
14

15 MR SKINNER: I'm flying somewhat blind in that I don't
16 know the documents that Mr Gyles was referring to or
17 Ms Lonergan just did, but as a matter of principle I would
18 support Mr Gyles's submission, if I may. Perhaps I can add
19 this: in the Evidence Act you would be well aware,
20 Commissioner, that one-sided versions of conversations with
21 people who are now dead are labelled as prima facie
22 unreliable. It is a category of unreliable evidence
23 referred to.
24

25 My learned friend Ms Lonergan speaks of the weight of
26 the evidence at the moment. Really, that should not stand
27 in the way of other evidence that might weigh on the other
28 scales, particularly in relation to a category of evidence
29 that has been recognised in the common law, and again now
30 by the Evidence Act by parliament as to notoriously
31 unreliable.
32

33 THE COMMISSIONER: Mr Skinner, the conversation - that is,
34 what was said by Detective Chief Inspector Fox and former
35 Bishop Clarke - may not be unreliable, but this goes to
36 Bishop Clarke's state of mind at the time that it took
37 place.
38

39 MR SKINNER: That is so. My client's specific interest is
40 that Bishop Clarke says things in letters. Exhibit 67 is
41 the gift that keeps on giving to the media. It has been
42 reported since about 2010, in article after article after
43 article, and again this week, where Bishop Clarke said
44 things relating to Father Lucas. Commissioner, you would
45 be aware, on the weight of the evidence, this was two and a
46 half years after Father Lucas was involved. Whether or not
47 Bishop Clarke's writing was contemporaneously in 1995 or

1 discussions with Detective Chief Inspector Fox in 2003 are
2 reliable or not impinges on the effect of that evidence
3 against my client as well. In my submission, all evidence
4 that bears on the reliability or not of Bishop Clarke's
5 statements and writings should come in.
6

7 MS LONERGAN: Commissioner, evidence relevant to the state
8 of mind or the state of mental health of Bishop Clarke at
9 the time he made certain statements or wrote certain
10 letters is, of course, relevant. My understanding is the
11 only document that goes to that is a 2006 report or two
12 2006 medical reports and assessments as to care needs for
13 Bishop Clarke.
14

15 The matters Mr Skinner raised are a distraction at the
16 moment. We're dealing with a particular assumption being
17 put regarding the state of mind in 2003 when there is no
18 way that this Commission can deal with the suggestion that
19 Bishop Clarke didn't know or was unable to be cognate
20 about the matters he was discussing with Detective Chief
21 Inspector Fox and what we do know is that there's multiple
22 letters showing very clearly that Bishop Clarke knew there
23 were other victims of McAlinden.
24

25 THE COMMISSIONER: Yes. Mr Gyles, in the circumstances
26 where you're unable to produce any evidence covering Bishop
27 Clarke's mental acuity at the relevant time, I don't
28 propose to permit you to put that assumption to the
29 witness.
30

31 MR GYLES: Despite the fact we have an 82-year-old man in
32 a nursing home might be, prima facie, some reason for
33 suspicion, I don't wish to take it any further, although
34 I would, in due course, like to have reasons why that
35 question has been not permitted.
36

37 THE COMMISSIONER: Is it not possible - is there nothing
38 in the way of medical records that you can put before this
39 inquiry that?
40

41 MR GYLES: We will put all medical records in. My
42 understanding of the position is we know he died in June
43 2006. We know that, in early 2006, he was being treated
44 and had been diagnosed with dementia related to
45 Alzheimer's.
46

47 THE COMMISSIONER: I don't know that actually, and

1 I haven't seen that.

2

3 MR GYLES: I will propose to tender that document. Apart
4 from that, we have, as I say, an 82-year-old man in a
5 nursing home, who he had been retired for seven years. I'm
6 not seeking to prove that he was not of sound mind at the
7 time of this conversation. Our submission is, on the
8 evidence as it sits at the moment, that that is a real
9 question as to whether or not he may not have been able to
10 recall. We need to be fair to this man, don't we?

11

12 THE COMMISSIONER: Yes.

13

14 MS LONERGAN: Commissioner, this is a matter for
15 submissions. This is a matter of the weight that this
16 evidence should be given. It is not a matter of
17 admissibility of a question that assumes facts that we know
18 from other evidence must be untrue in the absence of
19 medical evidence to the extent that Bishop Clarke was
20 dementing or had such memory problems that he gave
21 incorrect information to this officer.

22

23 THE COMMISSIONER: Ms Lonergan, perhaps to meet the
24 contingency that Bishop Clarke's dementia was underway, or
25 it was somehow affecting him at the time of the
26 conversation, is there any vice in permitting Mr Gyles to
27 put the question?

28

29 MS LONERGAN: Yes, because it is proceeding on the basis
30 that there's an assumption that Bishop Clarke did not know
31 about other victims. That's the problem.

32

33 THE COMMISSIONER: No, the assumption was that he did not
34 remember that he knew.

35

36 MS LONERGAN: No, the question was that he did not know.

37

38 MR GYLES: I've made clear, Commissioner, that the
39 question I'm putting is that these questions proceed on the
40 basis that he knew in 1995.

41

42 MS LONERGAN: Could the question be read back because.
43 I distinctly recall an element of being asked to make an
44 assumption that Bishop Clarke did not know.

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46 THE COMMISSIONER: I thought the assumption was that he
47 had no recollection.

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MS LONERGAN: Could the question be read back and we can re-examine it.

THE COMMISSIONER: Yes.

(Question on page 465 marked * read)

MS LONERGAN: I stand corrected on the question of "did not recall", but my objection remains that, in the absence of medical evidence showing there was a reason, or medical basis that can be tendered in proper evidentiary form acceptable for this court, why the bishop did not recall, the assumption has some problems with it.

THE COMMISSIONER: I will allow it, Mr Gyles. I will allow you to put the question.

MR GYLES: Q. You heard the question. That would be grossly unfair?

A. So, just to get my head around it, and I want to give a --

Q. If the former bishop, despite the fact of knowing that information in 1995, was not able to recall it at the time you spoke to him, the ways in which you have criticised him in various reports and statements in the press would be grossly unfair, wouldn't they?

A. No, if he could not recall, I would have thought he would have said to me "I cannot recall." He didn't say that. He said, "No."

Q. All right, thank you. Detective Watters, you've told us was, the best detective you've ever worked with; that's right, isn't it?

A. In many respects, yes. He has a lot of qualities that I observed over the years that would place him right up there.

Q. You told us at transcript page 112, "Mark was probably best detective I've ever worked with." That was your evidence, wasn't it?

A. Yes.

Q. Thank you. You were asked some questions by Ms Lonergan dealing with a hypothetical scenario which was that when you had gone to see Bishop Clarke, instead of

1 answering the question the way that he did, he had answered
2 the question "Yes".

3

4 MR COHEN: I object. I don't recall Ms Lonergan putting
5 questions. It possibly was Mr Harben of senior counsel.

6

7 MS LONERGAN: I put that question.

8

9 MR COHEN: I stand corrected. I apologise.

10

11 MR GYLES: Q. You told us of a number of things you say
12 you would have done had Bishop Clarke, or former Bishop
13 Clarke, answered your question "Yes". You recall that
14 evidence, don't you?

15 A. Yes.

16

17 Q. At transcript 276, line 9, having gone through a
18 number of the things that you say you would have done and
19 put in train, you tell us.

20

21 *... I would imagine that at that time, had*
22 *all of this become available ... it would*
23 *have required a team of investigators to*
24 *explore all those avenues and make all*
25 *those inquiries.*

26

27 Do you recall that?

28

29 A. Yes.

30

31 Q. What sort of team are we talking here - 10, 20? How
32 many people? Or are you not able to say?

33

34 A. The reason I'm hesitating is it probably needs to be
35 defined as to how much of that information he was
36 forthcoming with. Of course, today we are aware of
37 numerous documents and numerous allegations over many
38 years.

39

40 Q. Could I cut you off, please, Detective Chief Inspector
41 Fox. You told the Commissioner on Tuesday that it would
42 have required a team of investigators?

43

44 A. Yes.

45

46 Q. What I'm asking you is the team of investigators that
47 you told the Commissioner on Tuesday you would have put
48 together, how many were you talking about? Are we talking
49 10, 20?

50

51 A. Oh, nowhere near those numbers, no. It may have

1 varied over a period of time, but I would be probably
2 thinking in the area of three or four.

3

4 Q. Thank you. Among the things that you say you would
5 have done, you tell us, would have included getting
6 documents from the Holy See. This is at 271?

7 A. Did I say that?

8

9 Q. Yes, you did.

10

11 MS LONERGAN: I object.

12

13 MR GYLES: Is this challenged, that this evidence was
14 given?

15

16 MS LONERGAN: I just want to make sure that my learned
17 friend is putting the full proposition. It wasn't "getting
18 documents from the Holy See", as I read the answer on
19 page 271, lines 31 to 35; it is.

20

21 *... I would have been desirous of obtaining*
22 *any documentation, whether it be from the*
23 *Maitland-Newcastle diocese, whether it be*
24 *in the Vatican or whether be initiated by*
25 *Father McAlinden in any part of those*
26 *processes ...*

27

28 MR GYLES: It then goes on. He was asked questions about
29 whether there was a mutual assistance treaty with Italy and
30 Detective Chief Inspector Fox told us that there was a
31 difference between Italy and the Vatican. He was asked:

32

33 *Q. Did you know in 2003 what the status*
34 *was in terms of being able to obtain*
35 *documents from the Holy See?*

36

37 And he answered a question about that.

38

39 MS LONERGAN: The answer he gives is important. Detective
40 Chief Inspector Fox makes the point, on page 272:

41

42 *A. I did, and it wasn't always as helpful*
43 *as it has been from other countries.*

44

45 MR GYLES: Q. Would you just tell me what your position
46 is on this? Do you say, as part of the investigations you
47 would have made if Bishop Clarke had said "Yes", would have

1 included seeking to get documents from the Holy See or not?

2

3 MS LONERGAN: I object. This witness has already been
4 asked, and has answered, questions regarding exactly that.
5 The evidence I have read on to the record was his evidence
6 about it. I don't understand what the purpose is of mining
7 again the evidence he has already given, which is "I would
8 have been desirous", and he's also noted that it may have
9 been difficult to get that, but there were other avenues he
10 would have pursued to try to get the material.

11

12 THE COMMISSIONER: No doubt, Ms Lonergan, Mr Gyles wishes
13 to explore what types of documents the witness may have
14 sought to get. Is that right Mr Gyles?

15

16 MR GYLES: At the moment I had read his evidence to be
17 that one of the things he would have looked at doing was
18 getting documents from the Holy See. Perhaps I'm not
19 reading it correctly.

20

21 THE COMMISSIONER: That seems to be a fair summary,
22 I would have thought.

23

24 MS LONERGAN: Yes, "desirous"; not that he would have.
25 The proposition that was put was, "You would have got
26 documents from the Holy See"; but the witness's evidence is
27 he would have been desirous of getting documents.

28

29 THE COMMISSIONER: Perhaps you could put "would have tried
30 to get", Mr Gyles.

31

32 MR GYLES: Q. That was something you identified as being
33 a possible line of inquiry, wasn't it?

34

35 A. Yes.

36

37 Q. Had you thought it necessary as part of your
38 investigations, you would have done everything you could to
39 take up that line of inquiry, wouldn't you?

40

41 A. Yes.

42

43 Q. Another line of inquiry you tell us about at
44 transcript page 254 is you would have got canon lawyers
45 involved and had a good look at what the Australian Bishops
46 Conference was doing in matters referred to in one of the
47 letters that Ms Lonergan took you to?

48

49 A. Sorry, is that my exact words, that I would have got
50 canon lawyers involved, or is that a --

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Q. We can go through it in detail, if you like, sir.

A. I just don't remember using those terms and saying in that way, that's - the same as I never use the term "Holy See", and that's what's creating some confusion because I don't recall using those terms. But when it was explained by Ms Lonergan, I understood what you were getting at. I'm just wondering how that terminology was used in that context.

Q. All right. You were asked:

Q. Are those matters that would have led you to carry --

MS LONERGAN: Where are we looking at?

MR GYLES: I am sorry, this is at transcript page, 254, line 5:

Q. You were asked:

Q. Are those matters that would have led you to carry out any investigative inquiries?

A. Yes, they would have.

Q. What would they have been?

A. I'm ware of not only of civil law but also canon law or --

Q. I'm going to stop you there. It has to be what investigative steps would you have taken --

Et cetera:

A. Yes. In 2003, I would have looked for the law in both those codes that would have been applicable at the time to gain a full understanding of what those processes are that are made clear there ... also, of course, a copy of the notes or the minutes that would have been taken at that particular Australian Bishops Conference in respect to all that.

That's your evidence?

A. Yes. Yes.

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Q. So you would have been - whether or not you engaged canon lawyers --

A. I don't think I would have done that and that's why I was hesitant in answering that question. I --

Q. You would have looked into that yourself, would you?

A. No. But I wouldn't have - you know, generally most canon lawyers, I think, of course, are clergy within the Catholic Church. I realise there's been studies done of it externally, but I'm not suggesting that I would have gone within the church to, you know, recruit the assistance of a canon lawyer.

Q. You tell us that in respect of an address, if it were given to you, an address in the Newcastle area would have caused you - this is at transcript 258, line 28 - to make inquiries through Interpol with Scotland Yard police to attend that address to find out if McAlinden was there and, if that was the case, to organise for a provisional warrant and potential extradition proceedings to commence. Do you recall that?

MS LONERGAN: I object. The questions were relating to two addresses mentioned on a particular document, one was in Newcastle and the other was an overseas address.

MR GYLES: I'm sorry. I'm grateful to my learned friend for correcting that.

Q. One of the addresses you had been referred to was in the UK; that's right, isn't it?

A. Yes.

Q. And what you say would you have done was, through Interpol, make inquiries about that UK address; that's what you say, isn't it?

A. Yes.

Q. You told us at transcript 260, at about line 40, that one of the documents that you were provided with would have caused you to contact Reverend Bantigue in the Philippines?

A. Sorry, this in relation to a - this is a totally different question, I gather, in relation to a different area.

Q. Yes. It is in relation to a different letter.

1 A. Yes, I think I did qualify that. Of course, you know,
2 I understand the passage of time and I think I made the
3 comment, "if he's still alive."
4

5 Q. You also tell us that you would have had police in the
6 Philippines make inquiries as to the children that he - ie,
7 McAlinden - may have had contact with during his time
8 there. Do you recall giving that evidence, and this is at
9 transcript 262, line 31?

10 A. Yes.

11
12 Q. You would have made inquiries, you say, of the papal
13 nuncio. That is evidence you gave at transcript 265,
14 line 1?

15 A. Yes, and again, in relation to a different aspect
16 again, I - I just want to qualify my answer in saying that
17 I understand that these are totally separate issues
18 relating to different areas of different documents. In
19 respect to my earlier response to that question it was
20 directly in relation to a document that tends to indicate
21 that the papal nuncio's assistance was being requested,
22 yes.
23

24 Q. You also told us, didn't you, at transcript 270 and
25 271, that you were prepared yourself to pursue all of these
26 inquiries overseas and that that was something you'd done
27 many times before?
28

29 MS LONERGAN: Commissioner, perhaps it could be pointed
30 out specifically what the evidence is.
31

32 MR GYLES: If there's any difficulty, I'm content to be
33 fair to the witness to read out the evidence that he gave.
34

35 Q. The question Ms Lonergan asked was:
36

37 *Q. And is it a practical reality or was it*
38 *a practical reality in 2003 that you as a*
39 *New South Wales police officer, would have*
40 *been able to pursue documents overseas, as*
41 *in pursue and obtain documents overseas, or*
42 *not necessarily?*
43

44 Your response was:
45

46 *A. No. I've done that many times before.*
47 *I've travelled over overseas, so that's not*

1 *a difficulty.*

2
3 A. Yes, I recall that, yes.

4
5 Q. That was one of the things you were contemplating as
6 part of this hypothetical investigation you were going to
7 conduct if Bishop Clarke had said "Yes" when you went out
8 to see him in 2003?

9
10 MR COHEN: I object. That does not follow. The questions
11 that were put were about the documents and what
12 investigation.

13
14 THE COMMISSIONER: There were perhaps some steps in
15 between.

16
17 MR COHEN: Not from what Bishop Clarke said.

18
19 MR GYLES: I'm content with the evidence that's on the
20 transcript.

21
22 Q. You would agree that the investigation you contemplate
23 and the answers that you've given - this was a very
24 extensive investigation that you say you would have
25 undertaken; that's right, isn't it?

26
27 MR COHEN: I object. This would be five or six separate
28 investigations, with respect, and that should be put with
29 clarity.

30
31 MR GYLES: Q. Do you recall the evidence you gave on
32 Tuesday, which was outlining a number of steps you would
33 have taken had Bishop Clarke said "Yes" when you went to
34 see him in 2003?

35 A. Yes.

36
37 Q. Would you agree that with those steps you identified,
38 it would be a fair description of them, put together, to
39 say that would involve a major and thorough investigation?

40 A. Or - yes, investigation or investigations. In
41 response to that, I think it needs to be made clear that
42 those propositions were put to me individually in respect
43 to each of the documents that I was shown and my response
44 in regard to what I would do in respect to each of those.

45
46 The proposition you're putting to me is, I take it, on
47 the presumption that Bishop Clarke made available and

1 disclosed in 2003 all of those documents and all of those
2 victims and all of that correspondence.

3
4 Q. Let's make that assumption that you had obtained those
5 documents. That would be, would you contemplate, an
6 extremely thorough investigation, or investigations, would
7 it not?

8 A. I think something substantive would have been
9 initiated, yes.

10
11 Q. It wouldn't have been a cheap investigation, would it?
12 At the moment you're contemplating all sorts of
13 inquiries --

14 A. I would hope --

15
16 Q. -- with overseas countries?

17 A. I would hope that the cost of such an investigation
18 was never a consideration in something of this nature.

19
20 Q. You accept it would have been substantial?

21 A. I don't know what it would have been. It would have
22 depended upon a lot of things, how much assistance we could
23 have elicited through Interpol, with overseas police forces
24 in England, or the Philippines, if they were able to do a
25 lot those functions, or whether they said, "No, listen, we
26 can't do that. Fly a couple of your police over and do
27 it." There's a lot of hypotheticals and maybes and maybe
28 nots. So the cost of it overall, all we're talking about
29 is some airfares. Police get paid their wages daily
30 regardless of what we're investigating. I don't think it
31 would have been any sort of astronomical or out-of-the
32 question expenses.

33
34 Q. It would have certainly required approval from people
35 senior to you for those investigations to be carried out;
36 that's the case, isn't it?

37 A. Yes.

38
39 Q. You went to see Bishop Clarke in respect of other
40 matters, but while there, you asked him two questions
41 concerning the [AE] investigation; that's right, isn't it?

42 A. That's right.

43
44 Q. At that time you knew, didn't you, that the [AE]
45 investigation had been suspended?

46 A. I don't recall.

47

1 Q. You've been sitting in court for the whole of this
2 part of the inquiry, haven't you?

3 A. Sorry, in respect to that, I was aware that the case
4 status was suspended, but to suggest that police were no
5 longer interested in that they --
6

7 Q. I'm not suggesting that for a moment.

8 A. Sorry. The case status was suspended, yes.
9

10 Q. It is not an inaccurate statement to say that the [AE]
11 investigation had been suspended at that point, is it;
12 there's nothing wrong with that description?

13 A. Not if it doesn't apply - that it just means that
14 everything had come to a halt. I understand what you're
15 saying. I agree with you that the case status, the
16 electronic case, the official file in the police department
17 had been classified as suspended, but I think the evidence
18 that Detective Watters gave, and my understanding of it, is
19 even though matters may be classified as suspended, it is
20 not uncommon and it is quite regular that --
21

22 Q. Could I cut you off there --
23

24 MS LONERGAN: I object. The witness was asked about
25 whether "case suspended" was different to "investigation
26 suspended" and the witness is explaining how, in practical
27 terms, that works. He shouldn't be cut off. The answer is
28 responsive.
29

30 THE COMMISSIONER: Q. Could you finish your answer, sir?

31 A. Not just in relation to clergy, but in relation to
32 many matters, mostly sexual assault but also other matters,
33 it is not uncommon that victims are hesitant and, on a
34 regular basis, even though the case is suspended, police
35 will contact them to see, you know, hopefully, how their
36 welfare is but also how their position is as to whether or
37 not they wish to reinitiate the legal process in the
38 investigation. Even though it is classified as suspended,
39 it basically means that it is in a state where it can be
40 reactivated at any time and police need to be mindful of
41 that and continually check back and just ascertain how the
42 victim wishes for that matter to be held.
43

44 MR GYLES: Q. Without being critical of you, you saw it
45 as part of your role to contact [AE] in about 2003 in
46 connection with that investigation?

47 A. Yes.

1
2 Q. Or did she contact you?
3 A. No, my recollection is I rang her up to let her know
4 that Detective Watters had been transferred to another
5 area. Had she tried to ring him, obviously he wouldn't
6 have been there and I wanted her to have a contact --
7
8 Q. I'm not being critical at all of you passing that
9 information on. It was in the course of that conversation
10 that you were told about this rumour about the possibility
11 of the church having knowledge of two other McAlinden
12 victims; that's right, isn't it?
13 A. That was the question I put to Bishop Clarke, but my
14 answer in relation to what she told me wasn't that the
15 church had knowledge. She was very specific.
16
17 Q. Leaving aside the specifics of it, as a result of
18 what she said to you about the possibility of there being
19 two other McAlinden victims, while you were speaking to
20 Bishop Clarke about other matters, you chose to ask him
21 questions on that topic, didn't you?
22 A. Yes.
23
24 Q. The position in 2003 was, wasn't it, that there were
25 two difficulties with the [AE] investigation. The first
26 was that [AE] had withdrawn her complaint?
27 A. I understand - yes, I think Mark Watters said that
28 there was a retraction.
29
30 Q. You were sitting here and you heard his evidence?
31 A. Yes.
32
33 Q. The second difficulty was you didn't have a
34 perpetrator, because McAlinden couldn't be found?
35 A. We couldn't find him, yes.
36
37 Q. Detective Watters told us - a man you regard as the
38 best detective you've ever worked with - that that meant,
39 from his point of view, until McAlinden was able to be
40 found, he, in effect, was leaving the case in abeyance;
41 agreed?
42 A. I don't know whether that was the meaning of what he
43 said. You know, I --
44
45 Q. I don't want to further delay that. I'll move on to
46 another question.
47 A. Okay.

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Q. You obviously considered that you had authority when you went to see Bishop Clarke to be asking questions about the [AE] investigation, to follow up the rumour that [AE] told you about; that's right, isn't it?

A. Yes.

Q. Would you regard that as reopening or reigniting the investigation? You used a word of that type a couple of answers ago?

A. I think, had he given a different answer, I would absolutely agree with that. Of course it would have reopened it in so many ways and probably expanded it, depending upon what had been forthcoming from Bishop Clarke.

Q. Could I stop --

A. But the fact that - but relying --

Q. Please stop. You don't need to --

A. Yes, sorry.

Q. I was asking you whether that was a description you'd given. If it wasn't, I'm content to move on. When you went to see the former Bishop Clarke in 2003, what steps did you take to familiarise yourself with the progress that Detective Watters had made in respect of the [AE] investigation?

A. Around the time that Mark left - and I don't recall exactly, but on the basis of what I and most detective sergeants do, we usually sit down and debrief staff that are leaving or coming into a command. I do have some recollection of talking to Mark, and I did that quite regularly, about his cases, and what would have needed to happen with any cases that he had carriage of at that time, and, of course, the [AE]-McAlinden case would have been subject of part of that discussion.

Q. Would you have read the COPS event reports in relation to that case --

A. I don't recall --

Q. -- during the course of these regular discussions?

A. I don't recall. I may have. It wouldn't be unusual for that, but I don't recall doing so.

Q. At about the time you went to see former

1 Bishop Clarke, did you read the COPS event reports in
2 respect of --

3 A. I don't believe I did, no.

4

5 Q. When [AE] told you about this rumour, did you get on
6 the phone to Detective Watters and ask him what he knew
7 about that?

8 A. No. The reason I did not is that - well, the answer
9 is no.

10

11 Q. Did you make inquiries on the police system as to
12 whether there were other possible McAlinden investigations
13 taking place as at 2003?

14 A. I don't recall.

15

16 Q. The relevance of the rumour to the [AE] investigation,
17 the rumour passed on to you by [AE], meant it was possible
18 that there were other victims out there making similar
19 complaints - that's the relevance of it, isn't it
20 because --

21 A. No --

22

23 MS LONERGAN: I object as to the context. There's no
24 suggestion that the material passed on to this witness was
25 that there were other people out there making similar
26 complaints in any sort of contemporaneous sense.

27

28 MR GYLES: I'm happy not to waste time.

29

30 THE COMMISSIONER: It is just the possibility, though,
31 isn't it?

32

33 MR GYLES: Q. Can I put this to you: what piqued your
34 interest in the rumour that [AE] had passed on to you was
35 that there may be other McAlinden victims; that's the case,
36 isn't it?

37 A. Yes.

38

39 Q. To the person investigating this case and potentially
40 preparing a brief for prosecution, the relevance of other
41 McAlinden victims would be that if there were, if those
42 victims were out there and were making similar complaints
43 about the conduct of McAlinden, that may have tended to
44 support the truth of [AE]'s version of events; that's the
45 case, isn't it?

46 A. Yes.

47

1 Q. That was sort of material that you obtained in the
2 Fletcher investigation which was helpful in terms of
3 supporting that prosecution; that's right, isn't it?

4 A. Yes.

5

6 Q. Can we take it that, in 2003, when you went to see the
7 former bishop, you were not aware that there were other
8 McAlinden victims?

9 A. Yes.

10

11 Q. Can we take it from the evidence you've given about
12 what you would have done if Bishop Clarke had answered the
13 question "Yes" and confirmed the existence of other
14 McAlinden victims, that you would have undertaken the sort
15 of exercise you say you would have undertaken had that
16 information become available to you?

17 A. Yes.

18

19 Q. Do you have volume 4, tab 311 there? The importance of
20 the information, I think you've agreed in terms of the [AE]
21 investigation, was the presence of other McAlinden victims;
22 that's right, isn't it?

23 A. Yes.

24

25 Q. That - in other words, the possible existence of those
26 victims - was something you were not aware of when you went
27 to see Bishop Clarke?

28 A. That's correct.

29

30 Q. Your point is that, because of the manner in which
31 Bishop Clarke answered your question, you took that to mean
32 that he was telling you that there were no such victims;
33 that's the case, isn't it? That's really your complaint
34 about that conversation, isn't it?

35 A. I took that to mean that he had no knowledge of such
36 victims.

37

38 Q. You said you weren't certain whether you read this
39 COPS report in respect of the [AE] investigation. Can we
40 take it that before you embarked upon - assuming that
41 Bishop Clarke had answered the question "Yes", can we take
42 it that before you embarked upon any of the sorts of
43 inquiries that you say you would have undertaken, you would
44 have taken the time to read the COPS entry?

45 A. Quite likely, yes.

46

47 Q. Before you undertook those sort of inquiries, whether

1 you describe them as extensive or otherwise, you certainly
2 would have spoken with Detective Watters, wouldn't you?

3 A. Yes.

4
5 Q. One of the questions you would have asked Detective
6 Watters is: "I have just been informed that there are
7 McAlinden victims. We should be looking into that." That
8 is the sort of thing you would have said to him; that's
9 right, isn't it?

10 A. Something along those lines.

11
12 Q. That's a matter you considered to be of significance
13 in the investigation?

14 A. Yes.

15
16 Q. In the document I've taken you to, if you go through
17 to the second page, page 771 at the bottom, a cursory
18 reading of this document would have indicated to you,
19 wouldn't it, that when this investigation was commenced,
20 Detective Watters had been informed by the diocese that
21 there were other alleged incidents such as this?

22 A. If I may just take a moment to read it, Mr Gyles.

23
24 Q. Could I direct your attention to two-thirds of the way
25 down, particularly the sentence, "He is not currently
26 working as a priest" with emphasis on the words "due to
27 other alleged incidents such as this" - do you see this?

28 A. (Witness reads document). Yes, I do.

29
30 Q. That was a pretty important piece of information,
31 wasn't it, for two reasons? The first was that there were
32 other victims which needed to be followed up to see if
33 tendency evidence could be obtained from them; that was
34 important, wasn't it?

35 A. In fairness, trying to answer that, and I'm reading
36 that passage there, I don't know whether that comment is as
37 strong as what you're suggesting. I feel that it is
38 ambiguous in a number of respects and it doesn't
39 specifically say they know of other victims.

40
41 Q. Are you seriously saying that a man with your
42 experience in investigation does not read that sentence as
43 being an indication by the church to the investigating
44 officer that there are other alleged incidents such as
45 this?

46 A. Well, what we're talking about, sir, is that
47 Detective Watters, in his narrative, has gone through and

1 recorded sexual abuse in respect to Father McAlinden upon
2 [AE]. It then says - it leads on, directly from that, to
3 say that McAlinden has been suspended due to other
4 incidents such as this. I'm not trying to be unhelpful.
5 It may mean what you're suggesting, but it also may mean
6 that the church was aware of [AE], which I believe is the
7 situation, and not just the specific incident recorded
8 there by Detective Watters, but "other incidents such as
9 this" may have been other incidents in respect to [AE].

10
11 Q. You are reading this document, doing the best you can
12 to read it in a way which is unfavourable, isn't it, to the
13 church in terms of the disclosure made? That's what you're
14 trying to do, isn't it?

15 A. Mr Gyles, I agree with you in saying that it could be
16 interpreted that way, and I understand what you're saying.
17 I suppose - I know we are sitting on other sides of the
18 bench here and I think that most people would expect you to
19 read it in a positive light in view of your client. I'm
20 not trying to be totally opposed to that view, but what I'm
21 saying is the way Detective Watters has recorded that, it
22 doesn't necessarily support what you're suggesting, and I'm
23 not saying that simply to be argumentative because of our
24 different positions in this room. I'm just saying that as
25 a statement of fact that that's how I would interpret it.

26
27 Q. Detective Chief Inspector Fox, you were in court when
28 the best detective you've ever worked with was giving
29 evidence and when he was asked - first of all, you knew he
30 was very complimentary, didn't you, of the diocese in terms
31 of its disclosure of information about McAlinden victims?
32 You heard that evidence, didn't you?

33
34 MR COHEN: I object.

35
36 MR GYLES: If there's some challenge to it, I won't press
37 the question.

38
39 Q. His evidence was that it was helpful to him to have
40 got information back in 1999 that this perpetrator may also
41 have had similar offences, at least known to the Catholic
42 Church although not to the police, and his answer was
43 "Yes"?

44
45 MS LONERGAN: I object. Could we have the transcript
46 reference to properly examine the context of the question
47 and answer?

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MR GYLES: I don't press the question.

THE COMMISSIONER: If you wish to pursue this, is it a matter of taking time to find the transcript reference?

MR GYLES: I know the transcript. We can go through it all. It is all sitting there, Commissioner.

MS LONERGAN: If a proposition of evidence from another witness is to be put to this witness, it is appropriate to refer to the evidence in context so that there's no misunderstandings as to the proposition.

THE COMMISSIONER: Thank you, Ms Lonergan. Do you wish to do that, Mr Gyles?

MR GYLES: I don't want to take undue time over this.

Q. Can I put to you, Detective Chief Inspector Fox, that it was obvious from a cursory reading of this document that the church had made known to Detective Watters in 1999 that, should he be interested in it, there were potentially other McAlinden victims who were out there?

MS LONERGAN: I object. That's not what the entry says. The entry says "other alleged incidents such as this." It doesn't say, "There are other victims" and there is a distinction.

THE COMMISSIONER: Yes. Would you fix the question up to that extent, please, Mr Gyles.

MR GYLES: Q. You would accept that the sentence I've taken you to was something that would have been very, very relevant, wouldn't it, to know if you were considering the question as to whether there may be other McAlinden victims who may be able to give evidence supporting the [AE] prosecution?

A. Sorry, I'm just processing that. Could you just ask that again?

Q. Would you agree with me that the information contained in the sentence I've taken you to would have been very, very relevant to an investigating officer considering the question as to whether there may be other McAlinden victims who may be able to be - whose evidence may be able to be

1 obtained to support the [AE] prosecution; that's right,
2 isn't it?

3 A. No, that's not - because that's not what that sentence
4 says.

5
6 Q. Any detective worth his salt, Detective Chief
7 Inspector Fox, would have followed up this information,
8 wouldn't they?

9
10 MR COHEN: I object.

11
12 THE COMMISSIONER: I will allow it.

13
14 THE WITNESS: The way it is recorded there, yes, it is a
15 difficult question for me to answer and perhaps a question
16 that perhaps should have been asked of Detective Watters,
17 because I wasn't the one receiving that information. All
18 I'm doing is reading one line, or part of one line, of a
19 narrative that another officer recorded. You know, I
20 understand you're asking me whether anyone else worth their
21 salt would have pursued that. It is dependent upon exactly
22 what he was told to record that. Me reading it, as I said,
23 I read that as flowing on from "there are allegations
24 recorded of crimes committed by Father McAlinden against
25 [AE]", and that is immediately above the comment that
26 you're reading back to me that "due to other alleged
27 incidents, such as this." Now, I'm reading "such as this"
28 as in other incidents relating to [AE].
29

30 I may be reading that incorrectly. I can see - I can
31 understand where you're reading it and saying, to you, it
32 means that there were more victims. I don't want to argue
33 with that, I can understand how you would come to that, but
34 me reading it, that's how I read it. I would have imagined
35 that someone like Mark Watters, had he been told the names
36 of other victims and said, "Listen, we've got more",
37 I would be very surprised if Mark had not gone on with a
38 great narrative, saying, "Look, here's the other names,
39 here's the other people, here are the other inquiries that
40 I'm going to make." He doesn't. He only records part of
41 one line, which leads me back to my conclusion, my
42 interpretation, sir, and I understand we're going to differ
43 on that, which is that all he was saying is "other
44 incidents in respect to [AE]".
45

46 MR GYLES: Q. It seems very difficult for you, Detective
47 Chief Inspector Fox, to form or make an interpretation of

1 any document in any way which is favourable to the church;
2 that's right --

3

4 MR COHEN: I object. That is not a fair question.

5

6 MR GYLES: I don't press the question.

7

8 Q. In this very sentence, it says that there are other
9 alleged incidents such as this, but there has been no
10 formal complaint received by the police. That is
11 distinguishing, isn't it, this victim, [AE], from the other
12 victims which are referred to because they are victims who
13 have made no formal complaint to the police, and that is
14 why, can I suggest to you, the church was telling Detective
15 Watters about it. Detective Watters knew about [AE],
16 didn't he?

17 A. And again he would have to answer that. I understand,
18 I agree with what you're proposing, but I also suggest that
19 there is another interpretation. I'm not saying it to lock
20 horns with yourself or your client, but what I'm saying it
21 along the lines of is it appears to be the case that Mark
22 has gone in - you know, from that comment - and said,
23 "Well, listen, we've got no other record. The church
24 hasn't reported to us any other victims."

25

26 That could also, in my view, lead me to even more
27 strongly suggest that his comment relates to other
28 incidents in relation to [AE], because had the church had
29 other information in relation to other victims and reported
30 that, there would have been a record on our system and Mark
31 would have indicated in that entry, "I have checked -
32 followed up on what the church said and here are the other
33 victims and the church has reported it." But he's saying -
34 my interpretation of reading that now is that he's
35 suggesting that the "other incidents" may relate to [AE].

36

37 Only talking, I suppose to Detective Watters, and
38 asking him exactly what was said, would clarify that.
39 I don't recall him expanding any more on that to me beyond
40 what you and I are reading here, and I'm not trying to say
41 it along a particular line of thought, but I would be
42 surprised if he didn't pursue that further if he'd been
43 given names and details to pursue.

44

45 Q. Let's be fair to Detective Watters here, shall we? To
46 be fair to him, his position was that these were relevant
47 leads, but he didn't think - it wasn't his usual practice

1 to follow up such leads until he had a perpetrator, ie,
2 until McAlinden had been found. I'm not asking you to
3 comment whether that's a good or bad thing from the best
4 detective you've ever worked with, but let's assume that's
5 his position; right?

6 A. I'll assume he's the best detective I've ever worked
7 with and we don't need to continue to reinforce it, but --
8

9 Q. So you'll assume that he took up those leads in August
10 2005 in connection with the extradition application to
11 McAlinden?

12 A. So I'm to assume he took up these leads in 2005?
13

14 Q. Yes.

15 A. When you say "took up these leads", as in what leads,
16 sorry?
17

18 Q. Can you assume that the evidence of Detective Watters
19 is that once the location of McAlinden became known, he
20 then went about preparing the extradition application;
21 right?

22 A. Yes.
23

24 Q. In connection with that, can you assume that he
25 emailed the Professional Standards Office on 1 August 2005
26 and he said this to them - it is in tab 467; you don't need
27 to go there. He said this:
28

29 *This matter dates back to 1953, when a lady*
30 *came and saw me in 1999 to make a complaint*
31 *against Denis.*

32 *On our police intelligence system, it says*
33 *there were some other complainants that the*
34 *Catholic Church were aware of and had files*
35 *if required.*
36

37 A. Right. Okay, I accept that, yes.
38

39 MS LONERGAN: The date of the email exchanges should be
40 made clear to the witness.
41

42 THE COMMISSIONER: Thank you, Ms Lonergan. What's the
43 date, Mr Gyles?
44

45 MR GYLES: Didn't I say 1 August 2005?
46

47 MS LONERGAN: I apologise.

1
2 MR GYLES: Q. As far as the police intelligence system
3 is concerned, we can assume, can we, that the relevant
4 information in respect to this complaint was the COPS event
5 report in respect of this investigation; that's right,
6 isn't it?
7 A. The COPS event system is - even though it's on COPS
8 which is the overall management system, events are a
9 different component to intelligence reports. Events only
10 record crimes. Intelligence obviously records
11 intelligence.
12
13 Q. What he's telling the Professional Standards Office,
14 isn't he, is that there were other complainants that the
15 church is aware of; right?
16 A. Right, yes.
17
18 Q. And because he knows that and the police intelligence
19 system has told him that, and because they are complainants
20 that the church is aware of, I think we can assume, can't
21 we, that the source of that information was the church?
22
23 MR COHEN: I object to this. This is of such
24 particularity that the witness ought be taken to the
25 document.
26
27 THE COMMISSIONER: That can be done, Mr Cohen. The
28 question is otherwise unobjectionable.
29
30 MR GYLES: It is tab 467. I think I said that.
31
32 THE COMMISSIONER: Tab 467, isn't it?
33
34 MS LONERGAN: It is volume 6.
35
36 THE WITNESS: There are a number of documents under that
37 tab, Mr Gyles.
38
39 MR GYLES: Q. I'm just directing your attention to what
40 Detective Watters said to the Professional Standards
41 Office.
42 A. Sorry, the page may assist me further; it is just that
43 there are a number of documents there.
44
45 Q. Page 1239?
46 A. 1235?
47

1 Q. 1239.

2 A. (Witness reads document).

3

4 Q. Now, this indicates, doesn't it, that when
5 Detective Watters made this inquiry on 1 August 2005,
6 by reference to the police intelligence system, he was
7 able to ascertain that there were other complainants - ie,
8 McAlinden complainants - that the church was aware of and
9 had files, if required?

10 A. Yes.

11

12 Q. Would you agree with me that that indicates (a) that
13 the information in respect of those complainants had come
14 to the police intelligence system from the church? That
15 must be the case, mustn't it?

16 A. That's the most likely interpretation. There are
17 others, but that is the most likely.

18

19 Q. And it also indicates, doesn't it, that the church had
20 indicated that if the files were required, in other words,
21 if information in relation to those other complainants was
22 required, they were happy to provide it?

23 A. That's what it says, yes.

24

25 Q. I'm not asking you to agree with this; I'm you to
26 asking you assume it. If you could assume there was no
27 relevant communication between Detective Watters and the
28 church going beyond the initial inquiries made at or about
29 the time of the COPS entry in 2009 --

30

31 MS LONERGAN: 1999.

32

33 MR GYLES: Q. I'm sorry, in 1999 - I am grateful to
34 Ms Lonergan - that gives us a pretty good indication,
35 doesn't it, as to what Detective Watters' understanding was
36 of the information that the church had given him in 1999 at
37 the commencement of the [AE] investigation?

38 A. I think there are so many interpretations from what
39 this Commission and I now know that can be interpreted
40 there, sir. Like, I don't know if in 1999 Detective
41 Watters was aware of the matters in Western Australia. It
42 may well be that the church was simply saying, "Listen, we
43 were aware of other matters such as" --

44

45 Q. I'm not asking you to make a speech, Detective Chief
46 Inspector Fox.

47 A. I can't give you one specific answer in relation to

1 the one scenario you are presenting and say that that has
2 to be the obvious conclusion.

3

4 Q. You're simply incapable, aren't you, of drawing an
5 inference which is, in some way, favourable to the
6 provision of information by the church to the investigating
7 officer in respect of the very case that you were involved
8 in?

9

10 MR COHEN: I object. My submission is this: the fact
11 that this witness provides what he identifies as a number
12 alternative interpretations cannot be a basis for saying
13 that he declines to provide anything favourable in the case
14 of the church. In my respectful submission, the question
15 is not a fair one.

16

17 THE COMMISSIONER: He hasn't offered any alternative
18 interpretations. He said there may be some.

19

20 MR COHEN: He hasn't been allowed to offer them, with
21 respect, Commissioner.

22

23 MR GYLES: He spoke about a whole - he's making a speech
24 about a whole different issue.

25

26 Q. Could I, just very briefly on this topic, take you to
27 one additional document.

28

29 THE COMMISSIONER: Before we leave that, Mr Gyles.

30

31 Q. Detective Chief Inspector Fox, that line there by
32 Detective Watters says:

33

34 *.. on our police intelligence system, it*
35 *says there were some other complainants*
36 *that the Catholic Church were aware of and*
37 *had files if required.*

38

39 If the Catholic Church had files, you would assume that
40 that was more New South Wales than Western Australia,
41 wouldn't you?

42 A. Only in respect of the Catholic Church, I'm aware that
43 the diocese where a priest would reside would maintain his
44 files, so - it may be New South Wales, it may have been
45 Western Australia, it may actually even be overseas, but
46 I understand that the diocese would control his files,
47 but --

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Q. That's clearly not files about McAlinden. It is files about these other complainants complaining about McAlinden, isn't it?

A. Yes, and it may be - of course, I'm aware of the other matters you are referring to. I don't disagree with that. It may well be other complainants in New South Wales that they're referring to, but I can't give an emphatic answer to say that.

MR GYLES: Q. Detective Chief Inspector Fox, the important point here is that what this is indicating to us is that there had been a disclosure made to Detective Watters at the commencement of the [AE] investigation which was precisely the same content of the rumour that you put to former Bishop Clarke, namely, that there were other McAlinden victims that the church knew about?

A. No, it doesn't say that. The entry in 1999 makes no mention of other victims. That's why I can't agree with that, sir

Q. You are seriously contending, are you, Detective Chief Inspector Fox, that the words "but there has been no formal complaint in relation to those other incidents" does not distinguish those from [AE], who had made complaints?

A. I agree - you know, it may be the case that you are correct, sir. I'm not saying you're not, but what I'm saying is it is ambiguous; it can interpreted in a number of ways, but --

Q. It seems pretty clear, doesn't it, that Detective Watters has the same reading of it as I do, from the document that he sent to the --

A. He is aware of a lot more information, of course, than what I am aware of. I accept, if that's his response to you, sir, I can understand that.

MR GYLES: I see the time, Commissioner. I'm sorry this has taken longer than I hoped. I'm doing the best I can.

THE COMMISSIONER: Thank you, Mr Gyles. I will adjourn.

SHORT ADJOURNMENT

MS LONERGAN: There has been a request for exhibits to be released to the media. They are exhibits 78 and 79, as well as the statement of Father Burston that was added to

1 exhibit 54 yesterday. Could the legal representatives let
2 staff of the Commission know by the end of the luncheon
3 adjournment as to whether they have any objections to
4 release of those documents.

5
6 THE COMMISSIONER: Yes, Ms Lonergan.

7
8 MR GYLES: Q. Detective Chief Inspector Fox, could we
9 perhaps try to short-circuit things a little bit. You are
10 aware, aren't you, that an extradition application was made
11 in respect of McAlinden, under the responsibility of
12 Detective Watters in 2006 - I'm sorry, 2005?

13 A. Yes. I wasn't aware of it before this Commission, but
14 I'm aware of it since, yes.

15
16 Q. You know, don't you, at the time of the preparation of
17 that extradition application, that Detective Watters was
18 obviously aware that [AE] was an alleged McAlinden victim?

19 A. Yes.

20
21 Q. And that [AC] was an alleged McAlinden victim?

22 A. Yes.

23
24 Q. And that each of [AE] and [AC] were used by Detective
25 Watters in providing evidence in support of the extradition
26 application to McAlinden?

27 A. I haven't looked at the application, but I don't
28 disagree. I think that was his evidence, yes.

29
30 Q. You know, don't you, that, by 2005, Detective Watters
31 was aware that there were two other victims, [AL] and [AK],
32 although they did not want their complaints to be pursued
33 by the police at that point?

34 A. I don't know that, no. I can't assist - I'm unaware
35 of that.

36
37 Q. You say you are unaware of Detective Watters'
38 knowledge of [AL] and [AK] as at 2005; is that right?

39 A. Yes, that's correct.

40
41 Q. All right.

42 A. I'm not saying that he didn't have knowledge. I'm
43 just saying that I'm unaware if he did.

44
45 Q. You don't dispute, do you, that Detective Watters'
46 knowledge of [AC] came about by way of disclosure --

47 A. I don't know, but I wouldn't dispute that if, in fact,

1 that's what occurred.
2
3 Q. You don't dispute --
4 A. I don't know how he came into that knowledge.
5
6 Q. You don't dispute, do you, that [AE] was encouraged by
7 the church to go to the police and did so within two days
8 of making a complaint to the church?
9 A. Yes, that's my understanding.
10
11 Q. You don't dispute that?
12 A. I don't dispute that. I can finally give you
13 something that we're both happy with.
14
15 Q. Hallelujah. At the time you went to see
16 Bishop Clarke, were you aware that there was a separate
17 police investigation going on in respect of another
18 McAlinden victim?
19 A. No.
20
21 Q. Would you agree with me that the existence of that
22 investigation and a COPS report or event report in relation
23 to that investigation was information that could have been
24 obtained by you if inquiries were made of the police system
25 as at 2003, assuming it was in the system?
26 A. If it was in the system and I interrogated it, I would
27 have come across that. I agree with that, yes.
28
29 Q. Do you have volume 5, tab 333? Do you see tab 333?
30 A. Yes.
31
32 Q. Do you recognise that as being the ordinary type of
33 COPS event report?
34 A. It is a COPS crime report, yes.
35
36 Q. We see that the person of interest indicated on the
37 COPS report is Father Denis McAlinden?
38 A. Yes.
39
40 Q. You can say, by having looked at this document now,
41 that had inquiries been made by you at or about the time
42 you went to see the former Bishop Clarke, that this
43 provided a means by which another possible supportive
44 victim of the [AE] investigation would have become known to
45 you?
46 A. Had I looked at it, yes.
47

1 Q. It wouldn't have been a difficult search to make,
2 would it, given that McAlinden is named as a person of
3 interest with respect to the investigation?
4 A. It would have. I think just looking at it - and it is
5 absolutely no fault of the church; it is only a fault of
6 the police officer - where the person's name has been
7 recounted as Father Denis McAlinden, on a search for
8 Denis McAlinden, unfortunately, because she has placed it
9 as Father Denis McAlinden, the system would have recorded
10 "Father" as a Christian name, which would have thrown that
11 off. But that's not the church's fault and I want to make
12 that very clear.
13
14 Q. You're not suggesting, are you, that you did in fact
15 make an inquiry in 2003 where you used the search term
16 "Denis McAlinden" rather than the term "Father McAlinden"?
17 A. The difficulty with the system the police -- -
18
19 Q. No, just answer the question.
20 A. Sorry.
21
22 Q. You're not saying, are you, in 2003 you made a search
23 of the police information system?
24 A. I don't recall.
25
26 Q. You accept that it was what might be seen to be very
27 relevant information to the [AE] investigation, given that
28 it looked like there was, on the face of it, another
29 possible complainant; agreed?
30 A. On the face of it, it does appear to be another
31 complainant.
32
33 Q. You can put that to one side. Can I put this
34 proposition to you, Detective Chief Inspector Fox: you've
35 told the Commissioner that if former Archbishop Clarke
36 answered the question "Yes" rather than in the way that he
37 did answer it, you would have undertaken a whole lot of
38 inquiries and investigations; that's right, isn't it?
39 A. Yes. Yes.
40
41 Q. Can I suggest to you that had the question been
42 answered "Yes", there would have been some more preliminary
43 inquiries that would have been made before embarking on
44 that extensive list of things; agreed?
45 A. Of course, yes.
46
47 Q. The first thing you would do would be to speak to the

1 investigating officer, Detective Watters?
2 A. I would have spoken to Detective Watters. I probably
3 should make this understanding. Detective Watters had
4 accepted a promotion to a uniformed sergeant's position on
5 the Central Coast. It would probably have been unlikely
6 that his command on the Central Coast would have allowed
7 him to return even though he and I probably would have both
8 been desirous, but --
9
10 Q. My question is: you would have made inquiries of him,
11 ie, you would have rung him up and said to him, "Look, I've
12 been told " --
13 A. I would have done that, yes.
14
15 Q. You would have said, "The former bishop has confirmed
16 a rumour that there are two other McAlinden victims."
17 A. Yes, I would have done that because of Mark's earlier
18 involvement, and obviously he would have had some degree of
19 interest in the case, yes.
20
21 Q. And obviously you would have regard to the response he
22 would have given to you in terms of his knowledge of that
23 matter?
24 A. He may have been able to tell me something further
25 about it, yes, sir. I don't know.
26
27 Q. You would have undertaken a search of the police
28 investigation system to see whether that was another means
29 by which a supporting victim could be identified?
30 A. In all likelihood, yes.
31
32 Q. Assuming that, as a result of your inquiry of
33 Detective Watters, he had said to you, "At the time of my
34 initial inquiries with the church, they told me about other
35 victims" - right?
36 A. Assuming that, yes.
37
38 Q. Assuming that - presumably you would have followed
39 that up with the church?
40 A. Yes.
41
42 Q. You would have asked them for the names of those
43 people so you could speak to them?
44 A. Yes.
45
46 Q. To see if they were willing to put on statements which
47 would have been helpful to you in the [AE] investigation?

1 A. Yes.
2
3 Q. Equally, if you'd become aware of [AF], by way of your
4 police - [AF] being the Filipino victim?
5 A. [AF]?
6
7 Q. [AF] being the complainant in respect of the
8 investigation that Detective Sergeant Filipino was doing that
9 I've just taken you to?
10 A. Sorry, no, that was - the one you took me to was a
11 different victim, I think, was it not? I thought you took
12 me to [AC] in this document.
13
14 Q. In any event, you can assume that the subject matter
15 of the other investigation you didn't know about, which was
16 being conducted by Detective Sergeant Filipino, concerned
17 [AF]; right? Make that assumption.
18 A. Sorry, I'll just look.
19
20 Q. It was tab 333. There's no need for you to go to it.
21 What I would like to put to you is that you would have
22 followed it up, presumably through Detective Sergeant
23 Filipino, to go and see [AF] to see whether she might be in a
24 position to provide a statement in support of [AE]'s
25 possible prosecution?
26 A. We may be on different pages, Mr Gyles. Sorry, it
27 does say [AF] there, sorry. When you originally directed
28 me to that, you indicated it was in relation to [AC]. It
29 does say in that entry, I can see, [AF]. I haven't looked
30 up who [AF] is. Yes, I later spoke to [AF] at some point
31 in time.
32
33 Q. Thank you. Can I suggest to you that the result of
34 those inquiries, ie, your speaking to Detective Watters and
35 Detective Sergeant Filipino would have given you what you
36 needed; namely, it would have given you the possibility
37 of some other victims able to give evidence to corroborate
38 and, by way of tendency evidence, to support the McAlinden
39 prosecution?
40 A. Yes.
41
42 Q. So it wouldn't have been necessary, once you
43 identified those individuals, to have embarked upon the
44 sort of investigation you contemplated when giving evidence
45 on Tuesday as to what you would and wouldn't have done?
46 That must be right, must it not?
47 A. Yes. The two matters that you've drawn me to in

1 respect to [AF] and [AC], I don't know if they fall - if
2 they are subjects of the documents I was shown on Tuesday.
3 I'm not disputing that they obviously would have led to
4 inquiries, and obviously from what you were saying, there
5 were already investigations and inquiries being conducted,
6 but I just don't know whether I can marry them in with
7 documents --

8
9 Q. What I'm saying to you is this: the purpose of those
10 inquiries was trying to get information which assisted you
11 in the investigation of [AE] to lead ultimately to a
12 prosecution, as, thankfully, happened with Fletcher.
13 Agreed?

14 A. That's probably a secondary aspect. Obviously, the
15 primary aspect would have been the fresh allegations and
16 the fresh investigations of additional crimes.

17
18 Q. Quite, but that's --

19 A. Yes, but, as I said, I agree with you. It would have
20 been secondarily of assistance in [AE]'s matter - possibly.

21
22 Q. One of the issues we had, for example, with [AC] is
23 that she didn't want to pursue a complaint herself, but she
24 was happy to assist in where there was another complaint?

25 A. I have heard evidence to that effect, yes.

26
27 Q. What I'm saying to you is that the purpose of your
28 extensive investigations that you outlined on Tuesday was
29 to be able to find these witnesses who might be able to
30 support you in the [AE] investigation?

31
32 MS LONERGAN: I object. That wasn't the only reason.

33
34 MR GYLES: Who is giving the evidence here, with all due
35 respect?

36
37 MS LONERGAN: What was put to this witness was the reason
38 why those documents were helpful was "so that you could
39 find the victims." There was more than one reason.

40
41 MR GYLES: The purpose.

42
43 MS LONERGAN: The purpose, I am sorry.

44
45 THE COMMISSIONER: The purpose was to be able to find the
46 victim.

47

1 MS LONERGAN: The purpose, I am sorry.
2
3 THE COMMISSIONER: That must be the purpose, must it not?
4
5 MS LONERGAN: It was "the purpose". The proposition that
6 was put was "the purpose" was that.
7
8 MR GYLES: That is what I am putting. I am putting it.
9
10 THE COMMISSIONER: That is, whether or not it is of
11 primary or secondary assistance to a prosecution. Yes,
12 I will allow the question.
13
14 MR GYLES: Q. The matter you have identified as
15 something that was important to you in respect of the [AE]
16 investigation and prosecution was to find some other
17 victims, if they were out there, who would be able to
18 support that prosecution: that's the case?
19 A. It would have been one of the considerations for doing
20 so, yes. I understand what you're saying and I agree.
21
22 Q. It is not one of the considerations. That was the
23 whole purpose of it, wasn't it?
24 A. No. No. No, sir, you've taken the wrong view there.
25 The primary thing - if another victim came forward and
26 said, "Listen, I have been sexually abused by
27 Father McA Linden," the logical thing is not to sort of
28 place that person in a position where you're saying, "Well,
29 listen, I just simply want to use you as a corroborating
30 evidence witness in [AE]'s investigation."
31
32 Q. I am not for a moment thinking that each of those
33 individuals were not important in themselves in terms of
34 their own - if they wished to pursue that with the police.
35 A. Yes.
36
37 Q. Obviously, that was highly important.
38 A. Yes.
39
40 Q. But you were there in connection with the [AE]
41 investigation and the relevance to the [AE] investigation
42 was that they were a recourse or a means for you to improve
43 the prospects of that prosecution succeeding?
44 A. Yes. There's a lot of aspects of course to have gone
45 through and, as I learnt with the Fletcher matter, one
46 victim was able to assist in that trial. The other one,
47 the judge made a decision that he would not allow to give

1 corroborative evidence. It would have been the same
2 process again here. The primary focus, I would imagine for
3 any detective, would be to investigate, first of all, the
4 allegations by any new victim that would come forward in
5 respect to that new victim and then it would be a decision
6 for that victim and also for the prosecution to make a
7 decision whether, number one, the victim was willing and
8 number two, if --

9
10 THE COMMISSIONER: Q. The point is, sir, isn't it, to
11 find the victim? The purpose was to find the victims?

12 A. Yes.

13
14 MR GYLES: Q. I think we're all on the same page here.
15 My point is whether one was identifying that victim in
16 order to enable them to bring the perpetrator to justice or
17 whether it was to assist [AE] to bring the perpetrator to
18 justice, what you needed access to was the person?

19 A. Sorry, yes, I agree totally with that.

20
21 Q. For those dual purposes, the process of speaking with
22 Detective Watters, making your COPS investigation meant
23 that you found those people and would have been able to
24 speak to them? That's the case, isn't it?

25 A. Sorry, I've just lost track of your proposition there.
26 So if I had telephoned Detective Watters - if Bishop Clarke
27 had said to me, "Yes", if I'm to assume that --

28
29 Q. Yes.

30 A. -- and, as a consequence of that, I then telephoned
31 Detective Watters to tell him of this new development in a
32 case that he had previously had interest in and Detective
33 Watters, you're now suggesting, told me that he knew of
34 these other matters, that I would be able to locate these
35 other victims then that could have provided further
36 assistance with [AE]'s matter - have I encapsulated that?

37
38 Q. Yes. When Detective Watters wanted to identify those
39 persons to assist in the extradition matter, he was able to
40 find them, wasn't he, and he used [AC] to support [AE]'s
41 application?

42 A. Yes. I know he did that in 2005. I don't know what
43 his knowledge was as of 2003, but certainly in 2005,
44 I agree with you.

45
46 Q. Can I perhaps try to short-circuit this again. The
47 position is this - you needed to find people so you could

1 speak to them, first, to encourage them to take their own
2 recourse as they wanted?

3 A. Yes.

4
5 Q. And, as an ancillary benefit to you as the
6 investigator on the [AE] investigation, they would provide
7 help in respect of that as well?

8 A. Yes.

9
10 Q. If so, if you had the people, you would not need to go
11 and be having Interpol and going to the Philippines and
12 going to the Holy See and going to all these places - you
13 would have achieved your purpose?

14 A. Oh, no, no, not in any way whatsoever. All those
15 other documents that I was shown totally, completely
16 different areas of investigation --

17
18 Q. That was an investigation further to your campaign
19 against the church, wasn't it?

20
21 MR COHEN: I object. This all arises from counsel for the
22 Commission putting to the witness that there were a series
23 of documents and inviting "Was it or was it not of
24 assistance?" Answer, "Yes it was." "What would you have
25 done?" "This is what I have done." That can hardly be
26 characterised fairly --

27
28 MR GYLES: I'll withdraw the question. I won't waste time
29 with it.

30
31 Q. Can I put this basic proposition to you. A lot of the
32 inquiries which you identified were not truly with respect
33 to the [AE] investigation, they were with respect of
34 matters concerning information about possible concealment
35 by the church and had nothing to do with [AE]?

36 A. And other victims, of course, yes.

37
38 Q. You gave some evidence as to what you would have done
39 if you had been given an address, or two addresses, one in
40 this area and one in Lincolnshire, in the UK, as to what
41 you would have done in 2003 if you'd obtained that
42 information. Do you recall that evidence?

43 A. Yes. Sorry, I do apologise. I need to just go back
44 to my last answer. I said, "Nothing to do with [AE]."
45 I think some of the documents on Tuesday, of course, did -
46 are suggestive that it may have involved [AE]. I do
47 apologise.

1
2 Q. I'm not saying some of them don't. What I'm putting
3 to you is that, as far as [AE] was concerned, you needed to
4 get to the people and it was very easy to get to those
5 people by basic steps that a detective would take without
6 recourse to all of those things that you said you'd do?
7 A. I don't know if [AF] and [AC] were included - their
8 allegations were included within the material that I was
9 shown on Tuesday. I'm not saying they weren't, but I think
10 the vast majority of it was suggestive of others, was it
11 not?
12
13 Q. Your basic inquiries, for example, on the COPS system
14 would have meant that you were aware of [AF]; right?
15 A. Yes.
16
17 Q. Thank you. In terms of the address, can you go to
18 tab 353, please, which is in tender bundle volume 5. This
19 is a document which you'll see contains the relevant
20 address or the addresses, the second one being the one in
21 Lincolnshire.
22 A. Yes.
23
24 Q. Let's assume that the information contained in
25 handwriting on the document is correct, that it was advised
26 to the investigating officer in respect of the [AF]
27 investigation, Detective Sergeant Filippo, on 26 September
28 2002; right? It is the bottom entry on 353.
29 A. On 353, page - sorry, yes. There's only one page.
30 Yes, it's --
31
32 Q. What I'm asking you to assume is that that entry
33 is correct; ie, that this information - being those
34 addresses - was informed by the church to Detective
35 Sergeant Filippo at Charlestown on 26 September 2002. Do
36 you see that?
37 A. Yes.
38
39 Q. First of all, you would obviously expect that
40 Detective Sergeant Filippo would have done what she could to
41 follow up these leads as to McAlinden's whereabouts at that
42 time?
43 A. I can assume that, yes.
44
45 Q. There's no reason to believe, is there, that Detective
46 Sergeant Filippo would not have used that information as
47 best she could to try to ascertain the whereabouts at that

1 point of Denis McAlinden --
2
3 MR COHEN: I object. There's no evidence yet that Senior
4 Constable Filippo got this information. It is asserted.
5
6 MR GYLES: Q. Could we go forward, please, to tab 361.
7 Can you assume, for the purpose of my question, consistent
8 with the entry on the top of the document at page 96, that
9 this is the duty book of Detective Sergeant Filippo?
10 A. A notebook, I think. A duty book is a much larger
11 volume.
12
13 Q. Thank you. I'm grateful for that. What it indicates
14 is that, on 28 October 2002, at 11.30, there's an entry,
15 which is the address in the UK, which is on the previous
16 document I've taken you to?
17 A. Sorry, could you give me a very brief moment? I'll
18 have a quick read through it, sir.
19
20 Q. Yes.
21 A. Yes, sorry.
22
23 Q. It is pretty obvious, isn't it, from that file note,
24 that Detective Sergeant Filippo followed up that lead in
25 terms of attempting to locate where McAlinden was at this
26 time?
27 A. She has made notes about it, but it's - you may be
28 able to take me to a part that shows me what she has done.
29 I agree that she - she has made a record, yes.
30
31 Q. You're not suggesting that this is a fictitious
32 record?
33 A. No, not at all, but --
34
35 Q. What I was putting to you was that --
36 A. I don't understand what it means; that's all I'm
37 saying.
38
39 Q. What I'm putting to you, and you can either say you
40 agree or disagree, is that it is obvious, isn't it, from
41 this entry in the - was it the duty book or the notebook?
42 A. The notebook.
43
44 Q. Sorry, the notebook - that this was a lead, namely,
45 the UK address, that she followed up?
46 A. If I'm to assume [UR18] address is, sorry, the London
47 address, that's correct, is it?

1
2 Q. No. That is the address, that is the local address.
3 A. Sorry, okay.
4
5 Q. Right?
6 A. "Stays in" - again, part of it is I'm just having
7 difficulty reading the handwriting.
8
9 Q. What I'm putting to you is that this document
10 indicates, doesn't it, that after receipt of the document
11 that I took you to previously, which disclosed two
12 addresses, possible addresses of McAlinden --
13 A. Yes.
14
15 Q. -- that Detective Sergeant Filipo then turned her mind
16 to following up those leads?
17 A. It appears from what you're saying that she has made
18 some inquiries with the address in Newcastle, yes.
19
20 Q. That's on the basis of information apparently provided
21 to her by the church as to that matter at that time?
22 A. I would assume so, yes.
23
24 Q. Thank you. It is fair to say, isn't it, that in the
25 report that you've been taken to by both Ms Lonergan and my
26 learned friend Mr Harben, which is at tab 498, and in, for
27 example, your Lateline interview, you've been very - I'm
28 sorry, go on.
29 A. What volume, Mr Gyles?
30
31 Q. No, you don't have to go to it. I'm sure you're very
32 familiar with the document.
33 A. I don't know which document you're talking about.
34
35 Q. I'm sorry, it is your document which is --
36
37 THE COMMISSIONER: Exhibit 69.
38
39 MR GYLES: Q. -- exhibit 69, "Allegations of child
40 sexual abuse and cover-up within the Maitland-Newcastle
41 Diocese"?
42 A. My report of 25 November?
43
44 Q. That's right.
45 A. Yes.
46
47 Q. That is a document you are well familiar with?

1 A. Yes.
2
3 Q. And which we've spent a fair bit of time on?
4 A. Yes.
5
6 Q. You would agree with me, wouldn't you, both in that
7 report and the information you passed on in your Lateline
8 interview, that you've been very quick to speak about
9 matters such as cover-ups and hindrance of police
10 investigations and matters of concealment and the like.
11 A. Yes.
12
13 Q. Haven't you?
14 A. Yes.
15
16 Q. Do you think you've done that in a way which is fair?
17 A. Yes.
18
19 Q. Is there some reason you didn't tell Mr Jones on
20 Lateline that the church, in 1999, had given information
21 highly relevant to the [AE] investigation to the police?
22 A. I don't think that changes anything --
23
24 Q. The question is: did you --
25 A. There are many, many things about - you know,
26 positive, negative that weren't mentioned on that.
27
28 Q. But the question is: did you tell Mr Jones of that
29 fact; ie, that the church in 1999 had given highly relevant
30 information to the police to assist in the [AE]
31 investigation?
32 A. No.
33
34 Q. Did you tell Mr Jones that, in 2005, the church had
35 given the investigating officer in respect of the [AE]
36 investigation additional information concerning another
37 victim, which enabled the experience of that victim to be
38 used in support of the extradition application for
39 McAlinden from Western Australia?
40 A. The 2005 related to [AC]?
41
42 Q. Yes.
43 A. Did that COPS event not say that that victim came
44 forward to police?
45
46 Q. My question is this: did you tell Mr Jones that the
47 church, in 2005, had given the police that additional piece

1 of information, the name of another victim, which was used
2 by him to support the application to extradite McAlinden
3 from WA?
4 A. I didn't think that's what that entry said, sir. That
5 wouldn't have been my --
6
7 Q. But it is the answer; right?
8 A. If that's not what it said, I wouldn't have said that.
9
10 Q. You take issue with the proposition, do you, that the
11 church in 2005 gave information to Detective Watters which
12 gave him a new victim which he could use in the extradition
13 application?
14 A. No. No, what I'm saying is you alluded back to a COPS
15 event, if it is the one in relation to --
16
17 Q. I'm not alluding back to anything. I'm asking you
18 whether you told Mr Jones in 2005 that the church had given
19 the name of an additional victim to the investigating
20 officer?
21 A. Additional to [AE]?
22
23 Q. Yes.
24 A. Right.
25
26 Q. To provide supporting information for the purpose of
27 the extradition application?
28 A. No, I didn't tell him that, no.
29
30 Q. Did you tell Mr Jones that the church had actively
31 encouraged [AE] in 1999 to go to the police and make her
32 complaint?
33 A. No.
34
35 Q. They were matters that were a little bit inconvenient,
36 weren't they, to what you were trying to do?
37 A. Sir, I don't argue. I've met - some things the
38 church has done have been terrific and had I been asked
39 things along the lines of how has Zimmerman House helped
40 and the people that worked there, I would have heaped
41 praise on them, but I wasn't asked those questions. The
42 questions I was asked were in relation to other issues.
43
44 Q. Those matters are all true, aren't they, as to those
45 disclosures by the church?
46 A. Those ones, yes. Yes.
47

1 Q. Is there some reason we don't see any recognition by
2 you, while quick to make allegations of cover-ups, of what
3 might be seen to be the other side of the story?

4 A. No, sir. What my perception of it is - and I have met
5 some wonderful clergy, and I received another wonderful
6 letter from an active priest yesterday, and I'm only too
7 happy and very keen to put that message out there just as
8 much, but it is - the purpose of the interview on Lateline
9 was the failures that were being highlighted. I accept
10 that there have been many good things, and I think most
11 people would say the church has done many good things, but
12 that does not come to taking - to negating these gross
13 failures that it has consistently been shown to do in
14 relation to so many other victims.

15
16 Q. You agree with me when you went on to Lateline, your
17 purpose was, in as sensational a way as possible, to make
18 whatever criticisms you could of the church in order to
19 attract public attention to your desire for there to be a
20 proper investigation into this question of possible
21 cover-up of this sort of activity; that's right, isn't it?

22 A. No.

23
24 Q. The reason that you were not fulsome in your
25 descriptions of matters, for example, in relation to the
26 [AE] prosecution where the church had been extremely
27 helpful in terms of its disclosure of information, was that
28 that was part of the story which you didn't take issue
29 with, but it was inconvenient, wasn't it, and it was
30 inconvenient to your overall objective?

31 A. That wasn't the reason why it wasn't raised, no, sir.

32
33 Q. Equally, can I put it to you, that the conclusions and
34 the inferences you've drawn and the allegations you've made
35 about individuals in the report you prepared in November
36 2010, fall within the same category: you are seeking to
37 paint the church in terms of its disclosure of matters and
38 the like in worst possible light, aren't you?

39 A. Mr Gyles, if I'm to interpret what you're asking me
40 correctly, you're saying I should have just said, "The
41 church has done a very good thing with this one victim and,
42 therefore, there is no issue with all these other documents
43 that we tendered here on Tuesday and they're a wonderful
44 organisation that has always treated victims well."
45 I can't agree with you, sir.

46
47 Q. What I'm putting to you is that you've made some very

1 serious allegations about individuals --
2 A. Yes, I have.
3
4 Q. -- for the purpose of seeking your overall objective
5 in circumstances where those allegations - where the
6 interests of those individuals have been - you've run
7 roughshod over the interests of those individuals in
8 pursuit of your belief that this is something that needs to
9 be looked into? That is the fact, isn't it?
10 A. Mr Gyles, I'll stand by what I said on that.
11 I realise that this inquiry cannot cover everything that
12 I alluded to, but ultimately it will be covered and I make
13 no apologies or any regrets about what I said on that
14 program on that day in relation to any of the individuals.
15
16 Q. And sitting there now, you would welcome this inquiry,
17 wouldn't you, with the resources that it has, the powers
18 that it has and the people that it has here looking into
19 these questions, to look thoroughly and properly into these
20 matters and to deal fully with the suspicions that you had,
21 that's the case, isn't it?
22 A. I understand this Commission has a very specific
23 purpose in investigating the terms of reference, from what
24 I've seen, and it is doing it very thoroughly and quite
25 appropriately. There has already been comment passed that
26 many of the other issues I raise are for a different forum,
27 on a different day, and I accept that as well and I will
28 assist both of them to my utmost.
29
30 MR GYLES: Thank you, Detective Chief Inspector Fox,
31 I have no further questions.
32
33 THE COMMISSIONER: Thank you, Mr Gyles. Ms Gerace?
34
35 MS GERACE: No questions, thank you.
36
37 MR SAIDI: I think that leaves me.
38
39 THE COMMISSIONER: I haven't checked with Ms Needham.
40
41 MS NEEDHAM: No questions.
42
43 THE COMMISSIONER: Mr Skinner?
44
45 MR SKINNER: I have no cross-examination, thank you,
46 Commissioner.
47

1 <EXAMINATION BY MR SAIDI:

2

3 MR SAIDI: Q. Detective Chief Inspector Fox, you would
4 concede that the NSW Police Service is a disciplined
5 regime?

6 A. Yes.

7

8 Q. As part of that disciplined regime, it is extremely
9 important, is it not, that subordinates follow the
10 directions of their superior officers?

11 A. Where it is lawful and reasonable to do so, yes.

12

13 Q. You would also concede the proposition that, in the
14 case of superior officers to subordinates, it is important
15 that they carry out their functions in supervising their
16 subordinates?

17 A. Yes.

18

19 Q. In your role as a detective sergeant over
20 Mark Watters, it was your role to supervise him in his
21 investigations, was it not?

22 A. Yes.

23

24 Q. You were referred to a COPS entry at volume 4,
25 tab 311. If you want to refer to that, please do. That's
26 the entry of 8 October 1999.

27 A. Sorry?

28

29 Q. Volume 4, tab 311?

30 A. Yes.

31

32 Q. That's a COPS event entry created by Mr Watters; is
33 that right?

34 A. Watters, yes.

35

36 Q. Thank you. You were his detective sergeant at that
37 time, were you not?

38 A. Yes.

39

40 Q. It was part of your function as his detective sergeant
41 to keep abreast of each and every investigation carried out
42 by him, was it not?

43 A. Yes.

44

45 Q. It was part of your function to check each and every
46 COPS event entry created by him, was it not?

47

1 Do you have difficulty with that question, sir?
2 A. Yes, I do.
3
4 Q. Let me see if I --
5 A. Not the difficulty, sir, if I can explain it --
6
7 Q. I don't want you to explain anything.
8 A. Okay.
9
10 Q. I want you to answer my questions. Do you appreciate
11 that?
12 A. I do sir, very much, sir.
13
14 Q. Now, let me see if I can change it and we will see if
15 we can get a simple answer. * as part of your function as
16 a detective sergeant, was it not your responsibility to
17 check COPS event entries created by detectives that you
18 were supervising?
19 * A. Solely my responsibility? That was - the
20 investigation --
21
22 Q. Do you want me to repeat the question, Mr Fox?
23 A. Mr Saidi, the investigations led me --
24
25 Q. Do you want me to repeat the question because I want
26 an answer to my question?
27
28 MR COHEN: I object. Could the question be properly
29 focused as to which part of the entirety of the duties of
30 the detective sergeant he's referred to and, accordingly,
31 which one he's referred to.
32
33 MR SAIDI: When Mr Cohen sits down, could --
34
35 MS LONERGAN: Commissioner, I'm going to cut across
36 Mr Saidi. The tone and the speed with which the questions
37 are being directed is somewhat belittling. Also Mr Saidi,
38 with respect, is cutting across Detective Chief Inspector
39 Fox's answering. Perhaps questions could be asked and
40 there be appropriate pauses and the tone could perhaps be a
41 little less full of invective.
42
43 MR SAIDI: I don't accept any of that, for the record.
44 I am endeavouring to have this witness answer my questions.
45 We have been here for over three days in which this witness
46 has repeatedly prevaricated, refused to answer questions,
47 not answered direct questions.

1
2 MS LONERGAN: Commissioner, that's a matter for
3 submissions.
4
5 MR SAIDI: No, it's not, if an objection has been taken --
6
7 THE COMMISSIONER: Yes, it is.
8
9 MS LONERGAN: It does not meant that courtesy should not
10 be extended to a witness who is endeavouring, perhaps not
11 as quickly as Mr Saidi would like, to answer questions.
12
13 MR SAIDI: I again take exception to that. The question
14 should be re-read because the question had nothing to do
15 with sole responsibility. The question was responsibility,
16 and it was that --
17
18 THE COMMISSIONER: Yes, it is a simple question, and it --
19
20 MR SAIDI: Thank you.
21
22 THE COMMISSIONER: It is an unobjectionable question,
23 Mr Saidi, and you are permitted to ask it. Do you wish to
24 have it read?
25
26 MR SAIDI: Yes, I do. Could I say this, with respect.
27 I may deliver my questions with speed. That is my right as
28 a cross-examiner. I want a witness to answer my questions.
29 If I'm offending this witness in any way I am happy to move
30 back to where Mr Gyles is sitting. I don't want to offend
31 him in any way. I think one needs to make it clear to
32 Mr Fox that he should answer questions.
33
34 MR COHEN: Commissioner, might I be heard on that?
35
36 MS LONERGAN: I support Mr Saidi's position that the
37 witness should answer questions. I support Mr Saidi's
38 position that he is entitled to ask questions swiftly and
39 I want suggesting he wasn't so entitled, but cutting across
40 a witness in a way that the transcript staff can't take
41 down the question or the answer and in a tone that is, in
42 my respectful submission, is insulting is not helpful.
43
44 MR SAIDI: I object. I'm not going to accept for one
45 minute my tone was insulting.
46
47 THE COMMISSIONER: It didn't seem to me to be, Mr Saidi,

1 and --
2
3 MR SAIDI: Those objections should not be taken and those
4 statements should not be made.
5
6 THE COMMISSIONER: Let's just leave it at this. Would you
7 kindly deliver the questions at a speed that may be able --
8
9 MR COHEN: Might I be heard?
10
11 MR SAIDI: You have already been heard.
12
13 THE COMMISSIONER: Excuse me, Mr Cohen -- to be
14 comprehended by the witness.
15
16 Yes, Mr Cohen.
17
18 MR COHEN: My learned friend says that he can, as
19 I understand it, deliver his questions in any way he sees
20 fit.
21
22 THE COMMISSIONER: No, he didn't say that.
23
24 MR COHEN: If that's intended, then I direct him, most
25 respectfully, to the provision of section 41 of the
26 Evidence Act --
27
28 MR SAIDI: Please, can we continue?
29
30 MR COHEN: -- which indicates amongst other things --
31
32 MR SAIDI: Can we continue, Mr Cohen? Can the question be
33 read as you requested, Commissioner.
34
35 THE COMMISSIONER: We can all, please, maintain a civil
36 tone, speed and manner of delivery.
37
38 MR COHEN: Certainly, Commissioner. Might I respectfully
39 address the attention of my learned friend Mr Saidi to the
40 provision of section 41 of the Evidence Act.
41
42 THE COMMISSIONER: I'm sure that Mr Saidi is well aware of
43 those provisions and will observe them at all times,
44 Mr Cohen.
45
46 Could we have the question, please?
47

1 (Section of question and answer on page 514
2 marked * read)
3

4 THE COMMISSIONER: Q. Could I direct you to answer
5 Mr Saidi's question?

6 A. Yes, Commissioner. Not always.
7

8 MR SAIDI: Q. That is a prime function, I want to suggest
9 to you, of a detective sergeant responsible for the police
10 officers under his command to check all facets of their
11 work, including the creation of COPS event entries. Do you
12 agree or disagree?

13 A. Not always.
14

15 Q. If a detective sergeant of police was carrying out his
16 duties properly and in accordance with what is requested of
17 him, would you agree he would be expected to check the COPS
18 event entries of his subordinates?

19 A. Yes.
20

21 Q. If you were carrying out your function properly,
22 adequately, and in accordance with what was expected
23 of you, you would have checked that COPS event entry of 8
24 October 1999, would you not?

25 A. Not necessarily.
26

27 Q. Why wouldn't you have necessarily carried out the
28 checking of that document?

29 A. (Witness reads document). Because there's no printout
30 that I can see here that indicates that I did so. It may
31 have been another of the detectives office staff that did
32 so in regard to this matter.
33

34 Q. I'll come to my question. If it is part of your job
35 as a detective sergeant to properly and adequately check
36 the COPS event entries created by your subordinates, why
37 would you - that is you, Detective Chief Inspector Fox - in
38 your capacity as a detective sergeant, not have checked
39 that as part of your duties?
40

41 MR COHEN: I object for this reason: Detective Inspector
42 Watters, when he gave his evidence, indicated there were
43 three sergeants in his office to whom he had relative
44 responsibility. He has not yet established the sole
45 responsibility that that falls against. That seems to be
46 implicit in this question
47

1 THE COMMISSIONER: That may be the answer, Mr Cohen.

2

3 MR SAIDI: But the witness hasn't given it; Mr Cohen has,
4 with respect, and he should not --

5

6 MR COHEN: I object to that. That's an offensive
7 observation.

8

9 MR SAIDI: It may be offensive, but it is true, Mr Cohen.

10

11 MR COHEN: I ask that my friend withdraw that forthwith. .

12

13 MS LONERGAN: Commissioner, would that be a convenient
14 time, and before we adjourn may I make the following
15 observation --

16

17 THE COMMISSIONER: Yes, Ms Lonergan.

18

19 MS LONERGAN: My role as counsel assisting is to ensure
20 that the proceedings before this court are conducted in an
21 appropriate and dignified fashion, that witnesses are
22 allowed to give their evidence and that counsel conduct
23 themselves in a manner that is courteous and appropriate.

24

25 In my respectful submission, and it is to be noted on
26 the record, the assertion by Mr Saidi that it was improper
27 for me to rise and note those things, for the record, is
28 not a fair comment. I am completing and trying to fulfil
29 my role as counsel assisting.

30

31 THE COMMISSIONER: Yes, Ms Lonergan.

32

33 MS LONERGAN: Further, it appears that the standard of
34 exchange at the Bar table has not improved, although I do
35 note, for the record, that after my objecting to the tone
36 of Mr Saidi's questions, his tone did certainly improve,
37 and, in my respectful submission it would be appropriate to
38 adjourn now.

39

40 THE COMMISSIONER: Yes, Ms Lonergan, and may I say that no
41 impropriety whatsoever on your part has been noted by me.

42

43 MR SAIDI: Before you rise, Commissioner, this suggestion
44 that was made by Mr Cohen - a counsel, went taking an
45 objection, should not suggest an answer to a witness. The
46 witness did not suggest that himself; it was Mr Cohen who
47 did.

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MR COHEN: I resent that.

MR SAIDI: Let's replay it. Let's replay what Mr Cohen had to say.

MS LONERGAN: Commissioner, can I suggest we deal with this at 1.45 when we resume.

THE COMMISSIONER: Yes, thank you.

LUNCHEON ADJOURNMENT

1 UPON RESUMPTION:

2

3 THE COMMISSIONER: Yes, Mr Saidi.

4

5 MR SAIDI: I don't know what the last question was.
6 Whatever it is, I will withdraw it, and we'll move on.

7

8 Q. You have been asserting, have you not, for at least
9 the past two years, if not longer, that you were
10 investigating matters the subject of this inquiry going
11 back to at least 1999?

12 A. I've been involved in them to varying degrees, yes.

13

14 Q. From the very first; correct?

15 A. Yes.

16

17 Q. That includes a period when Detective Watters had
18 carriage of the investigations, does it not?

19 A. Yes.

20

21 Q. You were his supervising sergeant during that period;
22 correct?

23 A. Yes.

24

25 Q. You include in that period of your investigating the
26 matters of 10 years or more, that period when Mr Watters or
27 Officer Watters was investigating the matter, don't you?

28 A. Yes.

29

30 Q. Is it not the case that you were his supervising
31 detective sergeant during the course of the investigation
32 which you were maintaining was carried out by you over the
33 past 10 years or more?

34 A. I don't wish to - my answer to that is I don't want to
35 create the presumption that I was the leading officer at
36 all stages of that investigation, but I had involvement, to
37 varying degrees, with it over that period.

38

39 Q. Let's not beat around the bush. You have been
40 publicly stating, have you not, that you had carriage of
41 the investigations relating to this matter for a period of
42 10 years or more?

43 A. I think what I said was - is that I had been
44 investigating those matters for 10 years or more, something
45 along those lines.

46

47 Q. And that includes a period when Mr Watters was working

1 under you, doesn't it?
2 A. Yes, it does.
3
4 Q. That includes the very matter that Mr Watters was
5 investigating under you, doesn't it?
6 A. Yes, it does.
7
8 Q. That COPS event entry that I raised with you before
9 the luncheon adjournment, that's a COPS event entry which
10 you, as the person in your capacity as investigating the
11 matter and as the detective sergeant in charge of
12 Mr Watters, should, as a matter of police course, have come
13 to read and pay heed to; do you agree?
14 A. Yes.
15
16 Q. Did you read it at the time?
17 A. At some stage I would have read it, yes.
18
19 Q. Indeed, in terms of your supervision of Mr Watters, it
20 was your responsibility, was it not, to ensure that all
21 avenues of investigation to be carried out were in fact
22 carried out by him?
23 A. Yes.
24
25 Q. No-one hindered you in terms of carrying out your
26 responsibility in that respect, did they?
27 A. No.
28
29 Q. Indeed, from that period - that is, when you were
30 supervising Officer Watters, right through to 2005 - you
31 were free, were you not, to investigate whatever matters
32 related to church paedophilia activities that arose in the
33 your work as a police officer, were you not?
34 A. Yes.
35
36 Q. Let me move on to something else if I may. The COPS
37 event entry that I've referred you to, a COPS event is a
38 document which forms part of the NSW Police Force records,
39 is it not?
40 A. Yes.
41
42 Q. Documentation within the holdings of the NSW Police
43 Force are important in terms of the information which are
44 contained within it, are they not?
45 A. Yes.
46
47 Q. And it is important to maintain documents and keep

1 them up to date so as to ensure that other police officers
2 sharing a common interest in the investigation are able to
3 access them; correct?

4 A. As far as possible, yes.

5

6 Q. It is also part of the police record-keeping system
7 that any police officer involved in any investigation when
8 he or she comes across some important information,
9 documents that information within the police holdings;
10 correct?

11 A. It is always desirable; it doesn't always happen, yes.

12

13 Q. When you say "it is always desirable", it is a matter
14 of practice and policy of the Police Service that important
15 information is recorded within the police holdings, is it
16 not?

17 A. Today, yes.

18

19 Q. Going back to 2002, were police officers not taught,
20 as a matter of practice and procedure, that they were to
21 keep adequate and proper records relating to information
22 gathered during the course of an investigation?

23 A. Yes.

24

25 Q. Indeed, it goes back beyond 2002, does it not, to, at
26 the very least, the mid-1990s; correct?

27 A. It goes back probably to the start of policing, yes.

28

29 Q. And, more importantly, once computerisation took hold
30 within the NSW Police Force, was it not the practice and
31 procedure of police officers in terms of their being
32 required to record all important information obtained
33 within the electronic holdings?

34 A. My experience was that it wasn't done so much in the
35 beginning. It has certainly improved enormously over the
36 passage of time and I think that most people would
37 understand that, progressively, it has improved.

38

39 Q. I'm not asking about what most people understand.

40 A. Well, that's what I understand. That's my experience,
41 yes.

42

43 Q. Was it not the case, going back to 1999, at the very
44 least, that when computerisation was being taken advantage
45 of by the Police Service, that police officers were taught
46 that they were to record all important information within
47 the electronic holdings?

1 A. I don't know whether that was taught. It was
2 certainly desirable, but my experience was it didn't happen
3 to that degree right across the board or very well back
4 then.

5

6 Q. I'm not asking what happened. Let me now ask the
7 question in a different way. Was it not the practice and
8 procedure, as taught to police officers back in 1999, that
9 all important information was to be recorded within the
10 electronic holdings?

11 A. Yes.

12

13 Q. Important information would be matters such as the
14 investigation of a crime or a possible crime and any
15 information obtained which may assist the investigation of
16 a crime?

17 A. Yes.

18

19 Q. Any important information would or could include any
20 alleged admissions made by a person of interest as a result
21 of either a formal or informal interview?

22 A. Would that have been recorded in the COPS event?

23

24 Q. Not would be it recorded, but as a matter of police
25 practice and procedure, was it not the case that police
26 officers were required to record any such important
27 information such as any alleged admission made by a person
28 within the electronic holdings?

29 A. No.

30

31 Q. Is there not a case report maintained in relation to
32 matters?

33 A. Yes.

34

35 Q. And is the case report not geared towards recording
36 all relevant information relating to the case?

37 A. Not all, but a lot of the information, yes.

38

39 Q. I'll come back to police practice and procedure.
40 Please bear in mind I'm not referring to your practice and
41 procedures - would you bear that in mind? - but what is or
42 what was taught as being the police practice and procedure.
43 Would you bear in mind the distinction as I ask these
44 questions?

45 A. Yes.

46

47 Q. Was it not the case that police practice and procedure

1 required that all important information, including any
2 alleged admissions made by a person of interest be
3 electronically recorded?
4 A. Electronically recorded --
5
6 Q. Within the police computerised system?
7 A. Sorry, I thought you meant as in a recording in an
8 ERISP interview.
9
10 Q. No. I am talking about the police computerised
11 information system, whether it be in terms of a case
12 report, whether it be in terms a COPS entry, whether it be
13 terms in a strike force maintaining records, or in any
14 other form?
15 A. No, no, I don't believe so.
16
17 Q. You don't believe so?
18 A. No.
19
20 Q. Is it not the case that the importance of information
21 being recorded electronically within the police holdings is
22 to allow other police officers who may have a similar
23 interest in that information to be able to access it
24 readily?
25 A. I don't recall it being a requirement to record
26 admissions in an interview within the COPS system to allow
27 other police to see it, no.
28
29 Q. Wasn't it at the very least - I come to your
30 experience now - desirable that if any person of interest
31 whether it be a clergyman, whether it be a lawyer, whether
32 it be a citizen, that if any information was provided by
33 that person which touched upon the investigation, whether
34 in the form of an admission or otherwise, that that
35 information be recorded in the electronic holdings so it
36 could be made available to other police officers?
37 A. The more that could be recorded was always desirable.
38
39 Q. My question is: was it not the practice and procedure
40 that that take place, and I'm talking specifically back to
41 the period of 1999 onwards?
42 A. I don't believe so.
43
44 Q. You were never taught that?
45 A. At what period - 1999?
46
47 Q. 1999.

1 A. I think reading most of the events that I read in
2 1999, they were consistent with this one here, and that
3 degree of detail, I think if you check any case from that
4 era, I think you'd find that things of that nature were
5 very rarely if ever recorded. It has improved obviously,
6 and any additional information required to be placed in
7 COPS events consumes time and it's always a balance between
8 those. But in 1999, I don't think it went to that degree,
9 no.

10
11 Q. Let me ask the question again. Was it not the case in
12 1999 that the practice and procedure of the police force as
13 taught to its officers was that important information
14 needed to be electronically recorded within the holdings?

15 A. Yes.

16
17 Q. Did you follow that practice and procedure?

18 A. As far as possible, yes.

19
20 Q. Were you also taught, as a police officer, that
21 whenever any important information was forthcoming from a
22 citizen, whether in terms of a person of interest,
23 otherwise a suspect, otherwise a complainant or a witness,
24 that important information was to be recorded?

25 A. Yes.

26
27 Q. Were you also not taught in your work as a police
28 officer that that information was not only to be recorded,
29 but it was to be recorded in a fashion where it would be
30 available to other police officers who may be interested in
31 the subject matter?

32 A. I don't know if it ever - if I ever saw something of
33 that nature, no. I don't know. I don't remember that.

34
35 Q. Let's leave aside practice and procedure and deal with
36 commonsense. Is it not a commonsense proposition that if
37 you, as a police officer, experienced as you were back in
38 1999 through to 2005, obtained important information in
39 relation to an investigation, you would consider it
40 important to be placed on the electronic holdings?

41 A. Important information whenever possible, yes.

42
43 Q. Let me come to a specific subject matter but as I do,
44 I want to ask you this: you're aware, in your work as a
45 detective sergeant and as a detective chief inspector, that
46 police officers need to comply with provisions of the
47 Evidence Act?

1 A. Yes.

2

3 Q. You're aware, are you not, that there are also
4 guidelines given to police officers by the NSW Police Force
5 in terms of how they are to comply with the requirements
6 under matters such as the Evidence Act?

7 A. Yes.

8

9 MS LONERGAN: I object. We seem to be straying into areas
10 that I'm not clear as to the forensic purpose in terms of
11 informing the second term of reference of the inquiry,
12 which is church cooperation with police investigation. It
13 may be Mr Saidi has something in mind that I'm just --

14

15 MR SAIDI: I will be very clear within a very short time.

16

17 MS LONERGAN: Thank you, Mr Saidi. Thank you
18 Commissioner.

19

20 THE COMMISSIONER: Thank you, Mr Saidi.

21

22 MR SAIDI: Q. You're also aware, from your training as a
23 detective sergeant and higher commission, that when a
24 person of interest, or any person, provides important
25 information, that information is to be, as far as possible,
26 recorded and adopted; do you agree with that?

27 A. No.

28

29 Q. Let me see if I can break that up for you. When a
30 person makes a statement considered to be of significance,
31 you record that or you are required to record it, are you
32 not, at the very least in your official police notebook?

33 A. Yes.

34

35 Q. If a person makes a statement to you which could be
36 incriminatory, for example, or which you consider of
37 importance, were you not taught as a detective sergeant
38 that that statement was to be shown to the person and
39 adopted by him, by him initialling the statement?

40 A. Yes.

41

42 Q. That was standard police practice going back to the
43 years 1999 to 2004 at the very least, was it not?

44 A. I'm not sure of that.

45

46 Q. And if a person - that is whether a suspect or a
47 material witness - provided you with information of

1 significance, you were, on police practice, to record it as
2 contemporaneously as possible with the making of the
3 statement, have it adopted and, if you could, have it
4 witnessed; would you agree?
5 A. That opens up to my mind a whole heap of scenarios.
6 Could you be more specific?
7
8 Q. Yes, I will. I'm going to move to a very specific
9 matter that these questions are directed towards.
10 A. Thank you.
11
12 Q. You had a conversation with Bishop Malone?
13 A. Yes.
14
15 Q. And you believed that that conversation was of
16 significant importance; am I correct?
17 A. Yes.
18
19 Q. Significant importance so as to allow you to form a
20 belief that Bishop Malone, what, may have been covering up,
21 concealing an offence; have I understood you correctly?
22 A. No.
23
24 Q. Well, did you form a view, by what he said to you, he
25 had committed an offence of some kind or potentially had
26 committed an offence?
27 A. No, I hadn't formed that thought in my mind, no.
28
29 Q. At the very least, the conversation was of significant
30 importance to you for you to later record; correct?
31 A. Yes.
32
33 Q. You had Ann Joy with you at the time the conversation
34 took place; correct?
35 A. Yes.
36
37 Q. There was yourself there at the time when the
38 conversation took place, quite obviously?
39 A. Yes.
40
41 Q. Is it not standard police practice, when a significant
42 conversation takes place, that at least one of the police
43 officers makes contemporaneous notes in the notebook as to
44 that conversation?
45 A. No, not always.
46
47 Q. What, are you saying that when you've got two police

1 officers and one of them - perhaps I should lay the
2 groundwork for this. Ann Joy was a corroborative officer
3 to you in the investigation, was she not?

4 A. She attended the meeting in company with me, yes.

5

6 Q. She was there in the capacity, amongst other purposes,
7 as being a corroborative officer, was she not?

8 A. I suppose - you know, I won't disagree it can be
9 viewed that way, yes. Sorry, to make that clear and answer
10 that more fully, I wasn't intending that meeting to be in
11 any way a formal interview or a process of statement
12 obtaining, you know, where police normally would take a
13 corroborative officer in with them. It was my view of -
14 that meeting between Bishop Malone and myself was more of
15 an opportunity to discuss matters probably ranging more
16 around things probably outside of a police investigation,
17 but that I felt should be of concern.

18

19 Q. Given that was your intention, what you had was words
20 emerging from this gentleman's lips which were of
21 significant importance and which, I want to suggest to you,
22 were recorded contemporaneously at that time. What do you
23 say to that?

24 A. At which time?

25

26 Q. At the time when he made the statement or very shortly
27 after?

28 A. Oh, shortly after, yes.

29

30 Q. And when I'm saying "shortly after", I'm talking about
31 Ann Joy perhaps being directed by you to go and make a note
32 of the conversation that she had witnessed. Did you do
33 that?

34 A. I don't recall.

35

36 Q. You've got no recollection one way or the other that,
37 upon hearing the significant conversation, you didn't ask
38 the corroborative officer to go away and make a note of it;
39 is that what you're saying?

40 A. I don't know if she did. I don't recall asking her,
41 and you may enlighten me that she in fact did make some
42 notes. I don't know.

43

44 Q. Detective Chief Inspector Fox, you can rest assured
45 I'll be enlightening you on your evidence on that in a few
46 moments. Let's deal with what occurred there. Do you also
47 agree with this proposition: if it was a significant

1 conversation, if one didn't get Ann Joy to make record of
2 it, you yourself should have made an immediate record of it
3 in a notebook, a document or whatever writing you could
4 have used at the time?

5 A. I have no issue with the way I recorded it and I don't
6 think it was a breach of any regulation.

7

8 Q. My question is not directed towards you breaching the
9 regulation; do you appreciate that?

10 A. Yes, I do.

11

12 Q. I am directing your attention to what is proper and
13 appropriate police practice; do you appreciate that?

14 A. Yes.

15

16 MR COHEN: I object. There is a series of assertions that
17 have been made.

18

19 MR SAIDI: I withdraw the question.

20

21 Q. Let me ask you this: did you, immediately after
22 talking to Bishop Malone, go away and write in any document
23 in your handwriting the conversation that occurred with
24 him?

25 A. Not in handwriting, no, sir, no.

26

27 Q. In fact, your evidence is in this inquiry, as
28 I understood it, you didn't at any time ask Ann Joy to go
29 away and write up her own statement as to her recollection
30 of this conversation, did you?

31 A. No. No.

32

33 Q. You didn't write up your record of the conversation
34 and present it to Ann Joy and ask her to initial your
35 record as being the true and accurate record at the time,
36 did you?

37 A. No.

38

39 Q. Isn't that a proper and appropriate police practice,
40 when one is relying on a conversation at the very least,
41 when the police officer draws up his or her recollections
42 of a conversation, at the very least to get another person
43 to initial it as being true and correct?

44 A. Some police may do that, but I don't think the
45 majority do, no.

46

47 Q. Let's talk about a good detective, a good experienced

1 detective. Would you agree that a good experienced
2 detective would do that?

3 A. No. I know many very good experienced detectives, the
4 majority of whom I've never seen do that, no.

5
6 Q. What, never had a colleague adopt a record of a
7 conversation as being true and correct?

8 A. In a case, signing their notebook as true and correct;
9 it may occur, but it hasn't been a practice that I've seen
10 observed by a lot.

11
12 Q. It may occur? Let me suggest to you that having a
13 conversation which is alleged to have taken place adopted
14 in some fashion, whether it be by a fellow police officer
15 or whether it be by the person who you had the conversation
16 with, is absolutely mandatory in terms of good detective
17 work.

18
19 MS LONERGAN: I object. Commissioner, I still fail to see
20 how this is relevant to the examination of term of
21 reference 2. This appears to be a type of attack on
22 Detective Chief Inspector Fox's note-taking skills and
23 intention at the time of the discussion with Bishop Malone,
24 and perhaps Mr Saidi --

25
26 MR SAIDI: I am happy to, and also Mr Harben - I'm not
27 representing his client. I'm representing the police. In
28 terms of what evidence has emerged from this witness's lips
29 as to that conversation, what steps were taken to
30 corroborate it, what steps were taken to ensure that it
31 could properly be admissible in evidence at the later
32 point of time, is highly relevant, particularly when, as
33 I understand it, aspects of that conversation are indeed
34 challenged.

35
36 This is in the context in which Bishop Malone is
37 alleged by this witness to have concealed evidence. I'm
38 not going to stand here on behalf of the police and allow
39 what could be suggested to be - I'm not going to suggest it
40 to him that they permitted what is quite frail evidence in
41 terms of that conversation which you need to consider at
42 the end of the day.

43
44 THE COMMISSIONER: Mr Saidi, Mr Harben has put a version
45 to this witness, so we have had that. We also know now
46 that there were not any notes made at the time, or even
47 immediately after, by this officer or his corroborating

1 officer. I don't know that we can take it very much
2 further.

3
4 MR SAIDI: Let me move on.

5
6 Q. Let me move on to the Clarke conversation. That was
7 an important conversation, was it not?

8 A. Yes.

9
10 Q. That was a conversation where you had Ann Joy present
11 with you, was it?

12 A. Yes.

13
14 Q. That important conversation was not recorded
15 contemporaneously at the time, was it?

16 A. No.

17
18 Q. Ann Joy was there again in the capacity of a
19 corroborating officer; correct?

20 A. Yes.

21
22 Q. You didn't, at the time direct, Ann Joy to make any
23 contemporaneous notes as to the conversation; is that
24 correct?

25 A. Yes.

26
27 Q. You yourself made no contemporaneous notes as to the
28 conversation; correct?

29 A. Yes.

30
31 Q. Indeed, it wasn't until a period of years that you
32 ever made a reference in writing to the terms of that
33 conversation; am I correct?

34 A. Yes.

35
36 Q. How could it be that an experienced detective sergeant
37 such as yourself does not make a note of what is considered
38 to be an important conversation that you'd participated in?

39
40 MS LONERGAN: I object. How does this relate to the
41 church cooperation with the police investigation? This
42 witness has given evidence about his recollection of a
43 conversation. He has been examined in detail by Mr Harben,
44 and to a certain extent by myself, regarding the veracity
45 of his memory, subsequently - that's the end of the matter.
46 Cross-examining this witness about internal police
47 protocols doesn't inform the question of church cooperation

1 with the police.

2

3 THE COMMISSIONER: No. The point that there may be
4 problems with the reliability of the conversations has been
5 made, Mr Saidi.

6

7 MR SAIDI: Absolutely. Absolutely, and, indeed, you may
8 have to make a fact-finding determination at the end as to
9 whether or not Bishop Clarke actually concealed, and that
10 may require you to assess his evidence - whether Mr Harben
11 or Mr Gyles or anyone else.

12

13 THE COMMISSIONER: Whether he concealed on that date and
14 on other dates is not relative to this witness.

15

16 MR SAIDI: Exactly. The question I put to him, and
17 I understood it was affirmed by the witness or answered in
18 the affirmative by the witness, is that he didn't make a
19 note of that conversation for a period of years or didn't
20 refer to it in writing for a period of years after the
21 conversation itself, that is if I haven't misheard him.
22 I understood he agreed with that proposition.

23

24 MS LONERGAN: I don't cavil with that proposition,
25 Commissioner, but whether there's any further benefit to be
26 obtained by making submissions in effect through this
27 witness regarding matters that are to be weighed by you
28 Commissioner --

29

30 THE COMMISSIONER: Is it legitimate, Ms Lonergan, for the
31 witness to be asked whether he considered that that was in
32 accordance with police procedure?

33

34 MS LONERGAN: He has been asked, and it has been answered
35 already, and haranguing the witness about it, in my
36 respectful submission, doesn't take the matter any further.

37

38 MR SAIDI: I object to that comment of "haranguing". We
39 had the discussion before the adjournment that I asked a
40 proper question in a proper form, in a proper tone. I'm
41 not haranguing the witness and I take objection to these
42 terms being used by counsel assisting.

43

44 THE COMMISSIONER: Your tone after lunch has been much
45 calmer until now than before, and congratulations and --

46

47 MR SAIDI: Thank you, and let me make it clear for the

1 record that it is not because of anything said before
2 lunch; it is because of a forensic determination made by
3 myself. I don't accept what was said before lunch.
4

5 Special Commissioner, have you allowed the question?
6 I think the answer has been provided.
7

8 THE COMMISSIONER: I think it has, yes, thank you.
9

10 MR SAIDI: Q. Indeed, is it the case that, in relation
11 to that important conversation that you've referred to, in
12 recording that conversation to paper some years after the
13 event, you have never, at any stage, set out in detail the
14 context in which the question was asked by yourself and the
15 answer provided?
16

17 MR COHEN: I object. That question said at the end "never
18 at any stage." There is evidence before you, Commissioner,
19 that does just that. It is not a fair question.
20

21 THE COMMISSIONER: Yes, until --
22

23 MR SAIDI: If that is a qualification "until the
24 commencement of the Special Commission", I'll qualify it.
25

26 Q. Do you want the question repeated?

27 A. No. I agree with that.
28

29 Q. Do you agree that, in terms of making a note of an
30 important conversation where a statement is made by a
31 person considered to be of importance, the context, that
32 is, as much as possible of the conversation should be
33 recorded so as to allow one to see the context of the
34 answer provided?

35 A. Are you saying that specifically in relation to the
36 comments by Bishop Clarke?
37

38 Q. We'll stick with him, yes.

39 A. In 2003, when the comments were made by Bishop Clarke,
40 I did not attribute any importance to those comments
41 virtually at all. It was not until many, many years later
42 that the significance of what he said I applied my mind to
43 and the importance of that denial was then significant; but
44 we're talking about 2003. In 2003, it amounted to no more,
45 from the - [AE] herself, that it was nothing more than a
46 rumour and, as a consequence of that, when I raised the
47 subject in a very cordial conversation with Bishop Clarke,

1 I didn't place any more concern about his response at that
2 time. Hence, the reason - had I been aware in 2003 of all
3 the documents that I've been privy to on Tuesday and have
4 been before this Commission, I probably would have taken
5 Bishop Clarke back to a police station and typed it down
6 very formally and have him sign it, adopt it and done many
7 other things. But we're talking about 2003. It amounted
8 to no more than two sentences because the nature of the
9 information that was initially relayed to me was that it
10 was a rumour.

11
12 Q. Are you saying in that last answer, that conversation
13 with Bishop Clarke in which he told you what he did, as
14 you've recorded and you've given evidence about --

15 A. Yes.

16
17 Q. -- that the importance of it didn't occur to you until
18 many years or some years later; is that right?

19 A. Yes.

20
21 Q. Did it occur to you, what, for the first time in 2010
22 or earlier?

23 A. It occurred to me after I saw the documents that had
24 been obtained and provided to me by Joanne McCarthy.
25 I can't recall the exact date of that, but, yes, it was a
26 significant amount of years later.

27
28 Q. When it occurred to you a significant amount of years
29 later, did you, in any way, ask Ann Joy to record her
30 recollection of the conversation?

31 A. No.

32
33 Q. I take it from the report prepared by yourself in
34 relation to the matter - and I'm referring to your report
35 of 25 November 2010 where you refer to that conversation
36 with Bishop Clarke - you only set out one question asked of
37 him and one answer provided by him. Do you agree with
38 that?

39 A. Yes.

40
41 Q. Do you have any recollection of the context of that
42 one question and one answer?

43 A. The fact that I had asked him if - that he, as in
44 the church, had any knowledge of other victims of
45 Denis McAlinden and him saying "No", I do recall that, yes,
46 and, as I said --

47

1 Q. Perhaps you misunderstood my question. I want to
2 know, or rather you have recorded the context - that is,
3 that one question and that answer - anywhere in the context
4 of the other questions and the other discussions had
5 between you and him?
6 A. I don't know. I don't recall.
7
8 Q. Your letter to the Ombudsman which you wrote - and
9 that's an exhibit. I'll give you the exhibit number in a
10 moment. That's exhibit 55, tab 396. Would you refer to
11 that, if you would?
12 A. Sorry, Mr Saidi, volume number?
13
14 Q. I am sorry, I can't give you a volume number.
15 I haven't recorded it. It is tab 396. Mr Cohen has said
16 it is volume 5. Do you have that there in front of you?
17 A. I will have shortly, sir.
18
19 Q. Leave it for the moment and I'll come back to it in a
20 minute and I'll ask you a couple more questions. Do you
21 have tab 385 there in front of you? I don't want you to
22 look at it. I want to know whether you've got it?
23 A. No, I'm just trying to sort some papers out before
24 I tear them. 385?
25
26 Q. Do you have it there in front of you?
27 A. Would you like me to look at that now?
28
29 Q. No, I don't want you to; I just want to make sure
30 you've got it in front of you because I'm going to come to
31 it in a moment.
32 A. Somewhere there, yes.
33
34 Q. You gave some evidence earlier this week about the
35 interview or, rather, the taking of a statement by Brown -
36 that is Officer Brown - from Father Searle. Do you
37 remember giving that evidence?
38 A. Yes.
39
40 Q. In the course of your evidence, you indicated that you
41 met Officer Brown and Father Searle at the police station
42 and indicated relative areas to both of them as to what was
43 to be in the statement. Do you remember saying that?
44 A. I don't recall exactly what I said, sir, but along
45 those lines, yes.
46
47 Q. You indicated that Officer Brown had minimal knowledge

1 of the matter?

2 A. That would be a fair comment, yes. I think at the
3 time he was a trainee detective and fairly new to the
4 office.

5

6 Q. I'm going to refer to part of the evidence given by
7 yourself at page 227-228 on 3 July. Listen to these
8 questions and answers carefully:

9

10 Q. Did you then instruct Detective Brown
11 to go and take a statement?

12 A. Yes.

13 Q. From Father Searle?

14 A. Yes.

15 Q. Did you go with Detective Brown?

16 A. I was there. I spoke to - from
17 recollection, I spoke to Father Searle,
18 when he arrived at the police station to
19 provide his statement, and we discussed
20 what he was - you know, what I would like -
21 well, not what I would like to, I should
22 rephrase that. I indicated the relevant
23 areas --

24 Q. To Detective Brown?

25 A. To both Detective Brown and to Father
26 Searle.

27 Q. Your recollection is that you were
28 present with Father Searle and told
29 Detective Brown and Father Searle what you
30 expected would be addressed in the
31 statement?

32 A. Yes. My recollection is I had
33 originally to take the statement myself.
34 I don't recall now, but something
35 significant came up that was going to
36 prevent me from doing that, so I needed to
37 speak to both Detective Brown and Father
38 Searle together for the reason that
39 Detective Brown had very minimal knowledge
40 of the matter and I wanted to ensure that
41 he included in it what I felt was important
42 and relevant to the investigation.

43

44 If there is an objection, please, I invite anyone to take
45 it, but you can take it that I've read out word for word
46 the questions asked of you and the answers provided.

47 A. I don't dispute that, sir.

1
2 Q. Do you adhere to that evidence?
3 A. To the best of my recollection, it happened something
4 along those lines.
5
6 Q. Can you tell me where it was at the police station -
7 firstly, which police station was it?
8 A. I don't recall. I remember --
9
10 Q. Do you have a recollection where it was in the police
11 station?
12 A. No.
13
14 Q. Do you have a recollection as to how long this
15 conversation took place?
16 A. I wasn't standing there when the statement --
17
18 Q. My question is: do you have a recollection as to how
19 long this conversation took place for?
20 A. Oh, briefly. I can't recall what else I had on. I do
21 know that I saw Detective Brown and Father Searle at one
22 point. I don't recall specifically the words I would have
23 used, but it stands to reason that I - Detective Brown, to
24 that point, to my recollection, had no involvement in the
25 matter at all and I would have had to have imparted to him
26 some idea of what I needed him to get in a statement. It
27 was along those lines, but I don't recall the exact -
28 I certainly wasn't standing there when he took the
29 statement or anything like that.
30
31 Q. No, but you certainly recall that part of the evidence
32 that I read out to you?
33 A. Yes, I recall giving that sort of evidence.
34
35 Q. Do you recall the event itself, do you?
36 A. The event as in --
37
38 Q. As in what occurred - you meeting Searle, you meeting
39 Brown?
40 A. I remember speaking to Searle at one stage at the
41 police station. I remember Detective Brown and having to
42 explain to him what I needed to be taken in the statement.
43 You know, as to was it at Maitland police station, was it
44 at Cessnock or did we go up to Nelson Bay or somewhere,
45 I don't recall. I do remember, and it stands to reason,
46 I would have had to have spoken to Detective Brown to give
47 him some idea in contemplation of what had to be obtained

1 in the statement; otherwise, he would have sat there like a
2 bowl of fruit thinking, "What do I need to talk to him
3 about?"
4

5 Q. Are you making that up as you're answering that
6 question?

7 A. Only "the bowl of fruit" part.
8

9 Q. What about the rest? Were you making it up?

10 A. No. Well, to my recollection, I don't know whether
11 Detective Brown even met [AE]. I don't know whether he
12 ever met any of [AE]'s family or whether he obtained too
13 many other statements, but my recollection is that, as
14 I said, he was a trainee detective at the time and had had
15 very minimal --
16

17 Q. All right. Can we accept for the moment that the
18 questions that I read out to you and the answers provided
19 by you in your sworn evidence earlier this week can be
20 relied upon by the Special Commissioner? Can we accept
21 that?

22 A. To the best of my recollection.
23

24 Q. Would you turn now to tab 385. As you pull that up,
25 could I ask you this question before you read it: you were
26 stationed at Maitland at the time, were you not?

27 A. Yes.
28

29 Q. Have a look at the statement provided by Father Searle
30 on 19 May 2003.

31 A. Yes.
32

33 Q. Do you see where the place is shown as it having been
34 taken at?

35 A. Yes.
36

37 Q. Not Maitland, was it?
38

39 MR COHEN: I object. The earlier evidence indicated --
40

41 THE COMMISSIONER: It may have been Nelson Bay.
42

43 MR SAIDI: No, sorry, I said to him "Not Maitland?"
44

45 THE WITNESS: Yes.
46

47 MR SAIDI: That's my question. Sorry, was there a

1 confusion about my question?
2
3 MR COHEN: The question was not fair.
4
5 THE COMMISSIONER: I recall the earlier evidence, Mr Cohen
6 and the question was to the effect, "It is not Maitland?"
7 Yes, carry on - it is not Maitland.
8
9 MR SAIDI: Q. Do you see closer to the top right-hand
10 corner the place where the statement was taken?
11 A. Yes.
12
13 Q. Nelson Bay?
14 A. Yes.
15
16 Q. Correct?
17 A. Yes.
18
19 Q. Were you at Nelson Bay on that day, on your
20 recollection?
21 A. I must have travelled up there at some stage, yes.
22
23 Q. You must have? Now, can we take that last answer as
24 reliable evidence from you?
25 A. Because I recall that - speaking to the Father Searle
26 at some stage and he --
27
28 Q. Look, I'm not asking you to speculate and I'm not
29 asking you to conjecture. You appreciate the Special
30 Commissioner has to form a view about the reliability of
31 your evidence. Do you appreciate that?
32 A. Yes, yes.
33
34 Q. Let's come back to the questions I am asking you: the
35 place where the statement was taken was Nelson Bay. That's
36 what the statement shows?
37 A. Clearly, yes.
38
39 Q. It is witnessed by Detective Brown. Do you agree with
40 that?
41 A. It is indeed, yes.
42
43 Q. What I'm suggesting to you is this: that statement
44 was taken at Nelson Bay with you not being near - anywhere
45 near - Nelson Bay police station on the day when the
46 statement was taken so as to talk with Father Searle or
47 Detective Brown. Do you understand what I'm putting to

1 you?
2 A. I understand what you're putting to me.
3
4 Q. What do you say? What's your answer to that?
5 A. No, I disagree with that, sir.
6
7 Q. Is it your memory or, rather, then are you suggesting
8 based on your memory, that Father Searle and Detective
9 Brown may have met at Maitland police station, had a
10 conversation with you, and travelled to Nelson Bay?
11 A. No, I --
12
13 Q. Well, you tell me your best recollection now.
14 A. My recollection is, as I said, I can't remember why -
15 obviously, I think my evidence was that normally it is a
16 statement that I would have taken in view of the background
17 of the matter and I --
18
19 Q. I'm not asking you that. I'm sorry I don't want to
20 cut you off, but please answer my question.
21 A. Yes, sorry. I'm trying to, sir. You've asked me my
22 best recollection of it.
23
24 Q. Yes.
25 A. I don't recall what else I had on, but for me not to
26 take that statement - I am relying on the fact that I -
27 this was important to me. For me not to take it, obviously
28 I must have had other things on. I do recall being present
29 and speaking to Detective Brown and emphasising to him -
30 not "emphasising", that's probably a poor term - giving him
31 some background as to what I required to be taken in that
32 statement. I remember meeting Father Searle at one stage
33 and speaking to him a little bit about what was required in
34 that statement. It is not something that I - I can't
35 recall what it was, but I had other things to attend to.
36 It may be the case I had another inquiry to follow up down
37 the street at Nelson Bay or perhaps I interviewed somebody
38 else at Nelson Bay police station. For whatever reason it
39 was, I didn't obtain that statement myself and I asked him
40 to do so, which was a little bit out of the ordinary in
41 that he had, to my knowledge, not any, if any, involvement
42 in the matter prior to that at all.
43
44 Q. In that last answer to my question have you attempted,
45 somehow or other, to reconstruct how that statement came to
46 be taken?
47 A. In respect to - I suppose there is a lot there.

1 I certainly - you know, some of it I've got to concede that
2 I don't know, and I think that was my evidence in the first
3 place. I don't know what else it was that day that I had
4 to attend to, but certainly suggesting I reconstructed the
5 fact that I was desirous of taking that myself and that
6 I wasn't able to, and that Detective Brown had not had much
7 experience or any involvement in this matter prior to that,
8 I'm not - I'm fairly confident with that. But I don't
9 remember all the circumstances around it. I suppose, at
10 the end of the day, it is a statement and I don't - you
11 know --

12
13 Q. Detective Chief Inspector Fox let me ask you: what
14 does the Special Commissioner do with your evidence given
15 earlier that I've read out word for word --

16
17 MS LONERGAN: I object.

18
19 MR SAIDI: I haven't finished the question.

20
21 MS LONERGAN: I object to the question as far as it has
22 been expressed. It is not an appropriate question to put
23 to the witness.

24
25 MR SAIDI: All right.

26
27 Q. In view of the evidence, which was given by you
28 earlier in the week, where, let me suggest to you, it
29 appeared to me that you gave that evidence in quite
30 affirmative terms as to what occurred, do you now want to
31 change your evidence?

32 A. No.

33
34 MR COHEN: I object.

35
36 MR SAIDI: Q. Thank you. Given that you don't want to
37 change your evidence, let me suggest this to you: you met
38 with Detective Brown on the morning; you asked him to take
39 a statement; he travelled on his own to Nelson Bay and he
40 took the statement on his own at Nelson Bay and never,
41 during the course of that day, was with Father Searle in
42 your presence. What do you say to that?

43 A. Sir, I don't recall whether I travelled up with
44 Detective Brown or whether I met him up there that day.
45 I do recall speaking to him about the statement and
46 briefing him on it. As I said earlier, I wasn't sure what
47 station we were at, whether it was Beresfield or

1 Nelson Bay, but I would have guessed Nelson Bay in
2 consideration that Father Searle was attached to Nelson Bay
3 parish at the time, but I don't want to say that I was at
4 any stage confident of where that statement was obtained,
5 you know, because I think it is relied upon on the fact
6 that the location is recorded in the statement itself. But
7 I had been at Nelson Bay station - well, on this --
8

9 Q. Is any of this in response to my question, sir?

10
11 MR COHEN: I object. I ask this question: is any of this
12 relevant to the term of reference, especially as it clearly
13 goes only to the credit of the witness in respect of a
14 party who is not, as it were, under the gun in this term of
15 reference. If there was real concern about this material,
16 then it would have been or it ought to have been raised in
17 the first term of reference. How it gets in to relevant
18 material in this term of reference or has a --
19

20 THE COMMISSIONER: Do you say the witness's credit is not
21 relevant to this term of reference?
22

23 MR COHEN: Well, not having regard to the way this is put,
24 I don't.
25

26 MS LONERGAN: I agree with Mr Cohen's submission on that.
27

28 THE COMMISSIONER: All right, Ms Lonergan. In any event,
29 the question was, was it not, "Father Searle was never in
30 your presence?"
31

32 MR SAIDI: During the course of that day. Let me withdraw
33 that. If it is a issue of relevance you need to deal with
34 it, but let me withdraw it. I'll just ask a general
35 question. I anticipate we're going to hear some evidence
36 later on. Let me ask this general question.
37

38 Q. I want to give you the opportunity of reflecting on
39 what happened that day, reflecting on the evidence given to
40 you earlier in the week, reflecting on the questions I've
41 asked of you, and I want to ask you this: do you wish to
42 change your evidence?

43 A. All of it or part of it or --
44

45 Q. Any; part or - you pick and choose. Do you want to
46 change your evidence?

47 A. Obviously, you're alluding to something, but as

1 I said, I've never purported, and I don't think even when
2 I first evidence, that I had a clear recollection of where.
3 Even today I wasn't clear as to where the statement was
4 taken. The fact is that I did have to give a fairly
5 detailed description to Detective Brown and, yes, I did
6 meet - speak to Father Searle, albeit briefly, but that is
7 my recollection. No, I was not there when the statement
8 was taken. I wasn't present, which is the reason why I had
9 to brief Detective Brown.

10
11 Q. Do you have a definite recollection of having given
12 detailed directions or instructions to Detective Brown?

13 A. My recollection - well --

14
15 Q. Look, please answer "Yes" or "No"?

16 A. The answer is --

17
18 Q. You just said that, I want to remind you.

19 A. He would have had very little information in his head,
20 so I would have --

21
22 Q. Let me remind of what you said two answers ago.

23 A. Yes, I would have had to give him detailed
24 instructions.

25
26 Q. Are you reconstructing that or is that something you
27 specifically remember?

28 A. I do recall talking to him a fair bit about it, but it
29 stands to reason I would have because he hadn't been
30 involved. I --

31
32 Q. It wouldn't have been your simply saying to him
33 something along the lines of, "Look, can you go off to
34 Nelson Bay, obtain a statement from this witness as to what
35 happened on that particular night" - something as general
36 as that?

37 A. No.

38
39 * Q. And, indeed, if you wanted a police officer, who is
40 unfamiliar with the investigation, to go and obtain a
41 statement from a witness, would it not, as a matter of
42 police practice, be the case that you provide him with as
43 much information you have about what he is to take a
44 statement about?

45
46 MR COHEN: I object to this. The evidence already
47 provided in response to other examiners is of some detail

1 about what was imparted to Detective Brown.

2

3 THE COMMISSIONER: Yes, some background and some --

4

5 MR COHEN: That's the basis of my objection. On the
6 challenge, it can only go to credit. I maintain my
7 objection that, in these circumstances, it offends the
8 credibility, a fortiori, with regard to the fact this is
9 term of reference 2.

10

11 MR SAIDI: This doesn't go to credit. This goes to a
12 substantial matter, whether Father Searle concealed, and
13 this witness has asserted Father Searle has deliberately
14 left out information from his statement. This is not
15 merely credit. This is a primary issue.

16

17 MR COHEN: Might I be heard on that, Commissioner?

18

19 THE COMMISSIONER: Yes.

20

21 MR SAIDI: Commissioner, how many - sorry.

22

23 MR COHEN: The proposition is this: the issue as to
24 whether or not there is a concealment offence as against
25 Father Searle is a matter, apart from fairness, that hasn't
26 been put to him, assuming he's still alive, and I'm not
27 sure about that. The issue that can only be raised and
28 examined properly, if that's what's intended, is if it has
29 come out of the lips of Detective Constable Brown. This
30 gentleman, in these circumstances, can't give probative
31 evidence unless, of course, the only reason for the
32 evidence being taken is to go to credit.

33

34 MR SAIDI: I should also add it goes to bias of this
35 witness who, when he gives a version of events, as
36 suggested by Mr Gyles, appears to give a biased - how can
37 I put it? - bent towards the evidence that he projects. It
38 goes not merely to credit; it goes to whether or not Father
39 Searle acted in the manner in which the witness maintain he
40 did, that is by deliberately leaving material out of a
41 statement, and it also goes to what is the substantial
42 primary issue of bias on the part of this witness.

43

44 THE COMMISSIONER: If it goes to whether Father Searle did
45 leave material out of a statement deliberately to hinder an
46 investigation or to cover up, then I'll permit you to get
47 to that point, Mr Saidi.

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MR SAIDI: Could I ask, at the risk of troubling shorthand reporters, if that question could be repeated.

(Question on page 542 marked * read)

THE WITNESS: Yes.

MR SAIDI: Q. Did you give Detective Brown your notebook or a copy of your notebook entry relating to the alleged conversation with Father Searle?

A. I don't recall.

Q. Did you give him any document of any kind as to what the substance was to be of the information which was to be obtained?

A. I don't want to say, no, but I don't recall giving him any document, but I may. I don't know.

Q. When Detective Brown came back and provided you with a signed copy of the statement, did you at any stage say to Detective Brown something like: "Gee, I told you that he said a lot more than this. How come only this is in the statement?" - anything like that?

A. I imagine we would have. I don't recall.

Q. I don't want you to imagine. I want some concrete hard evidence from you. Do you understand that?

MR COHEN: I object.

THE COMMISSIONER: Yes, Mr Saidi.

Q. Don't imagine, please, Mr Fox.

A. Yes, Commissioner.

Q. If you can't remember, just say so.

A. I don't recall. I don't recall.

MR SAIDI: Q. I want to take you to your letter to the Ombudsman dated 29 May 2003. Exhibit 55, but for your purposes tab 396. Do you have that there?

A. I do.

Q. You said earlier in your evidence, if I haven't misunderstood, that Detective Brown had no involvement in this investigation when he went up to see Father Searle; is

1 that correct?
2 A. Sorry, what page, sorry? Sorry, that's not in this
3 report --
4
5 Q. Just focus on my question, if you would be kind
6 enough.
7 A. Sorry, I thought you were referring to a comment I had
8 in the report. Could you repeat that?
9
10 Q. Don't worry about your report for the moment. I can
11 assure you, I can guarantee you I'll be bringing you to a
12 comment in a moment.
13 A. Your question again, please.
14
15 Q. In terms of Detective Brown, did you not say in your
16 evidence, perhaps some minutes ago now, that he had no
17 involvement in that investigation?
18 A. No, sir, that's not what I said.
19
20 Q. Let me suggest to you quite clearly you used those
21 words that he had "no involvement in the investigation"?
22 A. I may have --
23
24 MR COHEN: I object. That was not the evidence.
25
26 THE COMMISSIONER: Yes. Was it just in this last
27 exchange?
28
29 MR SAIDI: It was perhaps a matter of 10 minutes ago,
30 perhaps a matter of 10 minutes ago. Let me assure my
31 learned friend I focused on the answer because his previous
32 evidence was he had minimal involvement and we moved to "no
33 involvement". If my friend wants it read out, if it is a
34 matter of importance, I'll ask for it to be dug out.
35
36 THE WITNESS: The involvement of Detective Brown, to my --
37
38 MR SAIDI: Sorry, just hold on. If it is going to hold it
39 up, let me approach it in a different way.
40
41 THE COMMISSIONER: Yes, if you can, Mr Saidi. It may hold
42 things up.
43
44 MR SAIDI: Q. I am going to put it to you - agree or
45 disagree, do what you like with the suggestion - that you
46 said only a matter of some minutes ago that Detective Brown
47 had no involvement in the investigation, didn't you?

1 A. If I had, that's an error.

2

3 Q. You said in your evidence, which I read out to you
4 earlier today - that is the evidence given earlier in the
5 week - that he had only minimal involvement in the
6 investigation, didn't you?

7 A. He'd had involvement, so far as I utilised him, and
8 I don't think he had any knowledge in the matter before, to
9 sit on the interview with Father Fletcher and to escort him
10 across the courthouse that day and back, and you may - he
11 may have had more involvement, but certainly, of course, he
12 got the statement from Father Searle. You know, he
13 certainly - you know, when I'm saying he had minimal
14 involvement, I don't think he really had any involvement in
15 the matter whatsoever in 2002. I may be corrected there,
16 but I don't recall any involvement by him in the 2002
17 period. It was only in the latter stages that I utilised
18 his assistance as a corroborating officer in the interview
19 obtaining at least this statement, and he may have done
20 some other things, but it certainly wasn't a major
21 involvement in the matter.

22

23 Q. Do you want me to repeat for you the exact words used
24 by you earlier in the week? Let me put it to you. It is
25 page 228, line 14 and thereabouts. I won't read the entire
26 answer, it is a long answer, but I'll just read the
27 relevant passage, for your benefit, I've read out the
28 entire answer previously.

29

30 *... so I needed to speak to both Detective*
31 *Brown and Father Searle together for the*
32 *reason that Detective Brown had very*
33 *minimal knowledge of the matter ...*

34

35 MR COHEN: I object. The question that was put was
36 "minimal involvement".

37

38 MR SAIDI: "No involvement" was what he said today and --

39

40 THE COMMISSIONER: Minimal knowledge.

41

42 MR SAIDI: Q. Let's change it to minimal. To satisfy
43 your counsel, I'll change it to minimal knowledge?

44 A. It depends on what - at what period of time,
45 I suppose, that you apply that to. I can't recall when
46 I said that. Certainly, at a period in 2003, certainly at
47 some stage, I would agree applying that he had no

1 involvement. I do recall he had some involvement, but -
2 and I don't want to demean his role. It was important, he
3 was the corroborating officer and he obtained the statement
4 for me and those things, but had he been an officer who had
5 worked on this for --
6

7 Q. Is that in response to my question?

8 A. I believe it answers it, sir.
9

10 Q. Let me then perhaps withdraw the question so we can
11 move on.

12 A. Please.
13

14 Q. This officer, that is, Detective Brown, I want to
15 suggest to you, in terms of the entirety of the
16 investigation, only took one statement for police purposes,
17 and that is the statement of Father Searle. Do you agree
18 or disagree?

19 A. I don't know whether he got any other statements, is
20 what I'm saying. He certainly didn't get a lot. I'm aware
21 of the Searle statement. It wouldn't shock me if you said
22 he got one or two other statements or he spoke to a couple
23 of people, but it wasn't beyond the interview. It wasn't a
24 major involvement.
25

26 Q. Would you be kind enough to turn to the document
27 I asked you to refer to.

28 A. Yes, sir.
29

30 Q. Page 1051 - for those in court who may wish to follow
31 this, it is tab 396 - is your letter to the Ombudsman of
32 29 May 2003, which is an exhibit before the Special
33 Commission.

34 A. Yes.
35

36 Q. That's exhibit 56. Thank you. Do you see that there?

37 A. Yes.
38

39 Q. Would you be kind enough to go to page 1051, the very
40 last paragraph at the bottom. Do you see the paragraph
41 commencing - I'll read it out:
42

43 *In the week following the charging of*
44 *Father Fletcher statements were taken from*
45 *five members of the Catholic Church. Both*
46 *Detective Brown and myself were left with a*
47 *very strong impression that there had been*

1 *collusion between these persons and*
2 *although each could assert they 'cooperated*
3 *with police' little beyond this was*
4 *volunteered.*

5
6 A. Yes.

7
8 Q. Do you adhere to that statement?

9 A. Yes, I do.

10
11 Q. That is a correct and accurate statement, as far as
12 you're concerned?

13 A. Yes.

14
15 Q. When did Detective Brown indicate to you that he was
16 left with a very strong impression that there had been
17 collusion?

18 A. When I sat down and I was discussing with him before
19 the interview with Father Fletcher a number of aspects and
20 when we were going through the statements and what I would
21 ask, I pointed out those discrepancies and I told him,
22 I think the words were, "You'd nearly think that these
23 blokes sat down and had a discussion before they came in,"
24 something along those lines, and my recollection is we both
25 agreed with that consensus, yes.

26
27 Q. You appreciate that I'm challenging you on this?

28 A. Yes, I do, yes.

29
30 Q. When you say "to my recollection", you tell me what he
31 said to you to indicate that he, that is, Detective Brown,
32 was left with a very strong impression that there had been
33 collusion between these persons. Tell me what he said.

34 A. I'd only be guessing now the exact words --

35
36 Q. I don't want you to guess. Tell me what he said.

37
38 MR COHEN: I object.

39
40 MR SAIDI: Oh, dear me.

41
42 MR COHEN: The witness said, "I'd only be guessing."
43 He doesn't want to be told by the cross-examiner to guess.
44 What is left?

45
46 MR SAIDI: T is a very simple question which I won't give
47 the witness the benefit of knowing. It requires a very

1 simple answer.

2

3 THE COMMISSIONER: Q. Is it the case, Mr Fox, that you
4 don't recall what he said, if he said anything?

5 A. I'm sure - I recall discussing the matter, but I don't
6 recall the conversation in exact words.

7

8 MR SAIDI: . To the effect of?

9 A. To the effect of as I just stated a moment ago.

10

11 Q. What, he said to you in these words --

12 A. He was --

13

14 Q. Listen to me - words to the effect of, "Oh, gee, I've
15 got a very strong impression that there's been collusion
16 between these clergymen." Is that what he said?

17 A. No, I don't --

18

19 Q. You tell me what he said, the effect of; not what you
20 said to him, what he said to you.

21 A. As I said a moment ago, I think my recollection is
22 I sat down there before we had the interview with Fletcher
23 and I looked at the statements as to what I would be asking
24 and I made the comment, as in - I had taken those
25 statements and I said to him that, "You'd swear that there
26 was some degree of - these blokes having spoken to each
27 other," because they were all remarkable for not having any
28 recollection of this very important conversation, and
29 I said, "You'd think that they'd got their heads together
30 before they came in." And he said something along the
31 lines, "Well," you know, "that's hard to disagree with," or
32 something like that.

33

34 Q. Something like that?

35 A. But, you know, I think, looking at them, as a police
36 officer, neither of us had any qualms about that --

37

38 Q. I'm not asking you that and I'm not asking you to
39 provide gratuitous evidence.

40 A. Sorry.

41

42 Q. Do you appreciate that? I'm asking you questions;
43 I'd like you to answer them.

44 A. Sorry, sir.

45

46 Q. You wrote to the Ombudsman in what I'd suggest were
47 strong terms:

1 *Both Detective Brown and myself were left*
2 *with a very strong impression that there*
3 *had been collusion ...*
4

5 In that you were attempting to indicate to the Ombudsman
6 that not only you held that opinion but Detective Brown
7 also held a similarly strong view of the matter; correct?

8 A. That's the discussion we had and that's the comments
9 that I made at the time, yes.

10
11 Q. You were using those comments and you were introducing
12 Detective Brown into those comments so as to support a
13 position that you were putting before the Ombudsman;
14 correct?

15 A. Yes. If the Ombudsman was desirous of speaking to
16 Detective Brown or myself further, I was prepared to
17 provide more information on that aspect and that's what
18 I was telling them.

19
20 Q. What do you say to the suggestion that Detective Brown
21 never at any stage said to you words to the effect of, "Oh,
22 I'm left with a very strong impression that there's been
23 collusion between these persons." What do you say to that
24 suggestion?

25 A. Sorry, that he never said?

26
27 Q. Yes.

28 A. My evidence, sir, is that I don't recall the exact
29 words that were said. The strongest I can do at this time
30 - and going back to that report and what recollection I do
31 have of the events - we discussed the statements in general
32 terms. I can't recall exactly what was said, but I do
33 recall that he was in agreement with me as to the general
34 tone and nature of what was contained in those statements
35 and I think that is reinforced in that the report was sent
36 to the Ombudsman at the time and had they been desirous,
37 I'm very confident then that they would have found exactly
38 what I was saying.

39
40 Q. Let me put the question to you again and I'm going to
41 put it to you, you appreciate, as a positive assertion.

42 A. Okay.

43
44 Q. Never at any stage did Detective Brown, in the way
45 you've suggested or any other manner, indicate to you words
46 to the effect of - whether in these precise words, similar
47 words or something to that effect - "I'm left with a very

1 strong impression that there had been collusion between
2 these persons."
3 A. I disagree, sir.
4
5 Q. Thank you. What I'm going to also suggest to you is
6 when it comes to you wanting to assert a position, you are
7 prepared to place a version of events which does not accord
8 with the truth. Do you understand what I'm putting to you?
9 A. Yes, I do.
10
11 Q. That's correct, isn't it?
12 A. No, sir.
13
14 Q. Now I want to take you to something else altogether
15 different, if I may. You've been asked a number of
16 questions relating to the Lateline interview?
17 A. Yes.
18
19 Q. You heard Mr Gyles put a number of propositions to you
20 about the answers provided by you during the course of that
21 interview?
22 A. Yes.
23
24 Q. And your motivations for providing the information
25 which you did?
26 A. Yes.
27
28 Q. Do you remember those types of questions?
29 A. Yes, I do.
30
31 Q. Before you went on the Lateline program was the
32 information which you were to provide on the program vetted
33 in any way by anyone?
34 A. It was not whatsoever. That has been suggested many
35 times and I cannot make it any more clearly --
36
37 Q. I haven't suggested it. I asked you.
38 A. Yes, and I cannot state it more strongly. At no stage
39 whatsoever did that ever occur.
40
41 Q. No-one ever asked you whether or not you had any
42 documentation, any corroborative evidence or anything of
43 any kind to support the assertions you were going to make
44 on the program?
45
46 MR COHEN: I object. This is a difficulty but I object on
47 this ground. Mr Roser of senior counsel went through this

1 material at extraordinary length in term of reference 1.

2

3 MS LONERGAN: Commissioner, I can't hear Mr Cohen.

4

5 THE COMMISSIONER: So far Mr Cohen has said that Mr Roser
6 went through this material at extraordinary length in term
7 of reference 1.

8

9 MS LONERGAN: Thank you, Commissioner.

10

11 MR COHEN: In my submission, there are two difficulties
12 with putting it. First, the oppressive nature of doing
13 this yet again in TOR 2, but particularly having regard to
14 the fact that term of reference 2 in this respect is not
15 about the Police Service, it is about the Catholic Church,
16 and, in my respectful submission, having regard to the line
17 of questioning that has already been put, oppressive or
18 otherwise, in the second go at it, it just cannot be
19 relevant to the term of reference, unless we are again
20 going to a simple proposition of attacking credit which
21 offends section 102 of the Evidence Act. That is my
22 submission.

23

24 MR SAIDI: I am not going to the areas where Mr Roser went
25 to. In fact, exhibit 12 was not an exhibit before terms of
26 reference 1.

27

28 MS LONERGAN: It was.

29

30 MR COHEN: It was.

31

32 MR SAIDI: I am sorry?

33

34 MS LONERGAN: Exhibit 12 was an exhibit in terms of
35 reference 1.

36

37 MR SAIDI: Well then, my memory has failed me because
38 I don't recall it being a specific exhibit in terms of
39 reference 1.

40

41 MS LONERGAN: It was.

42

43 MR SAIDI: If it was I will accept that. I'm outnumbered
44 at the Bar table. I accept that. This is for a different
45 purpose, with respect. What was done in relation to terms
46 of reference 1 - and I take issue with the suggestion that
47 Mr Roser took this witness through it in great detail - is

1 a different issue. What is being put forward for the
2 purposes of terms of reference 2 and what you need to
3 consider is what reliance can be placed on this witness in
4 terms of not only his general credibility, but as
5 I referred earlier to his bias, his motives, matters of
6 that kind.

7

8 I should be permitted - not only in terms of fairness
9 to myself where this document is in and refers to my
10 clients, but the material should go in so that you could
11 assess, Special Commissioner, all of the aspects of the
12 evidence of this witness taken as a whole.

13

14 The church authorities were not part of, I point out
15 quite clearly, terms of reference 1 in terms of challenging
16 this material. Indeed, I recall - and I hope my memory
17 doesn't fail me - when an attempt was made to traverse some
18 of these matters, I think it was Mr Skinner who was told it
19 should be left to the terms of reference 2. I don't want
20 to spend a lot of time on it, but there were --

21

22 THE COMMISSIONER: Yes, all right, Mr Saidi --

23

24 MS LONERGAN: Can I note for the record that I agree with
25 Mr Saidi's submission regarding the issues to which he can
26 put credit findings in terms of reference 2 and also his
27 approach at this time.

28

29 THE COMMISSIONER: Thank you. Perhaps if you ask a
30 question in relation to it.

31

32 MR SAIDI: Q. It will certainly be more than one question,
33 but I'll try to get there as quickly as possible.

34

35 Q. In terms of your going on the Lateline program, you
36 made a number of statements in response to either questions
37 of Tony Jones or statements which fell from your lips. Do
38 you recall that?

39

A. Yes.

40

41 MR SAIDI: Perhaps exhibit 12 can be placed in front of
42 the witness, Special Commissioner.

43

44 THE COMMISSIONER: Yes.

45

46 THE WITNESS: I believe I already have a copy of that,
47 Commissioner.

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THE COMMISSIONER: Thank you very much, Detective Chief Inspector Fox.

MR SAIDI: Q. I don't know and I'm hoping my copy is similar to yours in terms of page numbers, sir --

THE COMMISSIONER: On the exhibit it is 1 to 9.

MR SAIDI: I'm hoping the numbering is the same.

THE WITNESS: Commissioner, I am still suffering the after effects of the flu and I have been --

THE COMMISSIONER: Do you need a break?

THE WITNESS: If I might request that, I would very much appreciate it.

THE COMMISSIONER: Yes. Just let me know when you're ready.

THE WITNESS: Five minutes.

SHORT ADJOURNMENT

MS LONERGAN: Commissioner, Mr Saidi isn't actually in court. I'm sure he's on his way.

THE COMMISSIONER: Are you well enough to proceed?

THE WITNESS: I am. I am just getting a bit fatigued at the end of a long week.

THE COMMISSIONER: Yes, of course. It has been a very long week.

(Mr Saidi returned to the hearing room)

MR SAIDI: Q. I'm just having trouble getting my page number, Mr Fox. Page 4, if you would be kind enough to go there, the middle of the page, where it commences:

TONY JONES: One of the most disturbing things that you said earlier was that you were directed to give the material up. As I understand it, you were also ordered to

1 *stand down from the case, to no longer*
2 *investigate this case. Is that a correct*
3 *way of putting it?*

4
5 And you said:

6
7 *That's absolutely correct. That's spot on.*

8
9 Do you see that?

10 A. Yes.

11
12 Q. You are aware that Lateline is a program that goes
13 Australia wide, nationwide?

14 A. Yes.

15
16 Q. And you're aware that when you were appearing on that
17 program, you were providing information to the people of
18 Australia who were watching Lateline?

19 A. Yes.

20
21 Q. The fact of the matter is that you were never on
22 Strike Force Lantle at any time, were you?

23 A. I didn't say that, sir, no, and I was not.

24
25 Q. When you say, "I didn't say that", Mr Jones asked you:

26
27 *... you were also ordered to stand down*
28 *from the case ...*

29
30 A. That's correct.

31
32 Q. Did you correct him?

33 A. No, that's correct. I had no need to correct him.

34
35 Q. You were ordered to stand down from the case?

36 A. Yes.

37
38 MS LONERGAN: I object, Commissioner. The full question
39 needs to be put which was, "... being taken off this case
40 which you'd obviously worked on ..." I see. I withdraw my
41 objection. I am terribly sorry. I see where Mr Saidi is
42 at.

43
44 MR SAIDI: Thank you.

45
46 Q. Is that the correct statement that you gave to the
47 people of Australia via Lateline?

1 A. Yes.
2
3 Q. You were ordered to stand down from the case?
4 A. Yes.
5
6 Q. Which case was that?
7 A. The investigation of a cover-up within the
8 Catholic Church by - concerning matters relating to
9 Denis McAlinden.
10
11 Q. You were referring to Strike Force Lantle, weren't
12 you, in that context?
13 A. What ultimately became Strike Force Lantle. I had
14 already obtained some statements prior to the strike force
15 being set up. Sir, I understand what you're asking. I was
16 never a part of Strike Force Lantle but that doesn't mean
17 that I did not perform some roles in obtaining statements
18 which formed part of the case.
19
20 Q. You've just told us you were never part of
21 Strike Force Lantle.
22 A. That's right.
23
24 Q. You were never appointed to the strike force by way of
25 the terms of reference or any other means; correct?
26 A. Yes.
27
28 Q. You were never officially placed on the investigation
29 of Strike Force Lantle in any official capacity; correct?
30 A. Yes.
31
32 Q. And you were never part of the investigation team of
33 Strike Force Lantle; correct?
34 A. Yes.
35
36 Q. Would you have a look at that passage I just referred
37 you to? Do you see there that Strike Force Lantle, about
38 six or eight lines up - forgive me if I'm one or two out -
39 is specifically mentioned by yourself?
40 A. Yes, it is, yes.
41
42 Q. Do you see that the question asked by Tony Jones and
43 the answer provided by you comes immediately after the
44 mention of Strike Force Lantle?
45 A. Not immediately but --
46
47 Q. Very shortly after?

1 A. Shortly after, yes.

2

3 Q. Do you see that anyone listening to you on nationwide
4 TV, that is, anyone in Australia, could be forgiven for
5 understanding that you were directed to give the material
6 up and you were ordered to stand down from Strike Force
7 Lantle, to no longer investigate the case?

8

9 MR COHEN: I object. Those are questions for you,
10 Commissioner, in term of reference 1, in my respectful
11 submission.

12

13 THE COMMISSIONER: Yes. It is difficult, Mr Saidi, for
14 the witness to say what the people of Australia understood
15 from it.

16

17 MR SAIDI: Let me see what he wanted to impart, by way of
18 his knowledge, to the people of Australia.

19

20 MR COHEN: Might I maintain my objection for this reason -
21 it is what I have stated on a number of occasions - that it
22 is a matter for you clearly, Commissioner, but this seems
23 not to touch or concern or even remotely affect term of
24 reference 2. In my submission, it is just irrelevant.

25

26 MR SAIDI: I had understood Mr Gyles and indeed others
27 cross-examined this witness about what he said on the
28 Lateline program and indeed put it to him that he was
29 prepared to say - these are my words, not his precise
30 words, I don't have a transcript - anything and everything
31 in order to further his cause of calling for a
32 Royal Commission. This is just another part of the
33 information which has been put forward, not merely in terms
34 of the church concealing matters but also in other aspects
35 of the interview.

36

37 THE COMMISSIONER: Yes, all right, I will permit you to
38 put the question, Mr Saidi.

39

40 MR SAIDI: Q. Were you intending to impart the
41 information to the people who were watching Lateline that
42 you were directed to stand down from Strike Force Lantle
43 and to no longer investigate the case?

44

A. No.

45

46 Q. Do you say that's absolutely correct, that's spot on?

47

A. Yes.

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Q. The case that you were investigating, that you were asserting on national TV that you were no longer to investigate, was a case being carried out by you without the knowledge of any of your superiors; is that correct?

A. At an earlier time they did not know; at a later time they did know, sir, yes.

Q. When you say "at a later time they did know", are you referring to the meeting of 2 December 2010.

A. No, I'm referring to their knowledge after the email of 16 September 2010.

Q. In terms of the investigation of the case, that is, no longer investigate the case, what do you say to the proposition that you deliberately withheld for a period of time throughout the latter part of 2010 the fact that you were actively investigating abuse allegations yourself?

MR COHEN: I object for this reason: Mr Roser of senior counsel has traversed this ground I think for three days in the term of reference 1. In my respectful submission, to do it again now in this way, which seems to be a carbon copy of that approach, is oppressive, having regard to the fact that there has already been three days of cross-examination, but it does not seem to touch or concern term of reference 2. Notwithstanding my learned friend's protestations to the contrary, it seems to be uncontaminated by connection to term of reference 2. On that footing, these questions should not be permitted.

THE COMMISSIONER: Yes, I am persuaded that that's correct, Mr Cohen. Mr Saidi, it does seem to be a term of reference 1 matter now that we're on to. Were you going to put something perhaps more generally or more about the contents of term of reference 2?

MR SAIDI: No. Let me be clear - in terms of what this witness said on nationwide TV in the form of the Lateline program, submissions are going to be made, whether it be terms of reference 1 or terms of reference 2, I don't say categorically but potentially submissions are going to be made that this witness deliberately went on nationwide TV and deliberately told lies, significant lies, in terms of Strike Force Lantle, his involvement in it and matters of that kind.

1 THE COMMISSIONER: You wish to put that to him so that you
2 may ultimately make that submission?
3
4 MR SAIDI: Absolutely. It is a matter of procedural
5 fairness.
6
7 MR COHEN: I maintain my objection. That material was put
8 at length and those propositions were put at length by
9 Mr Roser of senior counsel. Hence, in these peculiar
10 circumstances, it becomes evidently quintessentially
11 oppressive and should not be permitted.
12
13 THE COMMISSIONER: Ms Lonergan, do you agree with Mr Cohen
14 that these matters have all been put in terms of reference
15 1?
16
17 MS LONERGAN: No. Mr Saidi is able to examine this
18 witness on credibility in the broader terms of his public
19 presentation of matters relating to the Catholic Church
20 investigation that he says he was conducting at the time. .
21
22 THE COMMISSIONER: Yes.
23
24 MR GYLES: Might I say something, Commissioner?
25
26 THE COMMISSIONER: Yes, Mr Gyles?
27
28 MR GYLES: There is a point to this in terms of terms of
29 reference 2. You would appreciate that there are four
30 investigations the subject of terms of reference 2. With
31 all due respect, what Mr Saidi is dealing with here is what
32 might be described as a rogue investigation which was
33 carried out at the initiative of Detective Chief Inspector
34 Fox himself which --
35
36 THE COMMISSIONER: Not one of the four?
37
38 MR GYLES: That's right. It is important to differentiate
39 that as being something you don't need to deal with. That
40 is the other potential relevance in the capacity in which
41 he's describing that. I simply raise that before you,
42 Commissioner.
43
44 THE COMMISSIONER: Mr Saidi, I think I really must, in
45 those circumstances, permit you to proceed.
46
47 MR SAIDI: Thank you, Special Commissioner.

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Q. Would you turn to page 5 of 9. Do you see there about halfway down the page Tony Jones makes a statement about why you were taken off the case?

A. Yes.

Q. What case did you understand Tony Jones to be referring to?

A. I feel that I should only answer that partly in respect to instructions I've been given outside of this Commission.

Q. Let me withdraw the question. Were you referring to a Strike Force Lantle investigation?

A. I was referring to the case specifically - you know, in addition to other things, also in relation to material that I had already obtained that later on I believe has formed part of Strike Force Lantle. At no stage have I ever at any time suggested that I was ever on Strike Force Lantle or part thereof, sir.

Q. Let me ask another question because I would like a direct answer. When Tony Jones says about why you were taken off the case, were you taking that to be a reference to Strike Force Lantle?

A. I was never a part of it, so I never took it that way, sir, and I've never suggested it.

Q. So you were taken off some other case then, were you? A simple "yes" or "no" will do.

A. (No response).

Q. Were you taken off some other case, were you?

A. In many respects, yes.

Q. Who directed you to be taken off the case?

MS LONERGAN: I object. We are now straying into terms of reference 1 territory as opposed to credibility, as I apprehend the direction we're now shifting to.

MR SAIDI: I've only got a couple of questions before I get to the major point.

THE COMMISSIONER: All right. Go on then.

MR SAIDI: Q. Who was it who took you off the case?

1 A. The case I'm referring to encompasses part of what
2 became Lantle but also encompasses other matters.
3
4 Q. Who took you off the case?
5 A. Superintendent Mitchell.
6
7 Q. And was that at the meeting of 2 December 2010?
8 A. Yes.
9
10 Q. Superintendent Mitchell at no time indicated to you
11 that you were to cease investigating any matters that were
12 not part of or the function of Strike Force Lantle; isn't
13 that so?
14 A. Sorry, I'm just - I'm pausing because I'm trying to
15 answer the matter delicately.
16
17 Q. Let me rephrase it and we'll see how delicate we can
18 be.
19 A. I understand what you're saying --
20
21 MR COHEN: I object.
22
23 MR SAIDI: I withdraw the question. There's nothing to
24 object to.
25
26 Q. Let me ask you in this fashion. Did
27 Superintendent Mitchell give you a direction, an
28 instruction, however one wishes to term it, that you were
29 to cease investigating church related paedophilia activity,
30 apart from what was to be carried out by Strike Force
31 Lantle in its investigations?
32 A. I can't answer that question, sir, in concern for
33 endangering some areas I've been instructed not to address.
34
35 Q. He never told you at any time, did he, to cease
36 investigating any other matter? And we don't have to
37 identify the matter. He never told you to cease
38 investigating any other matter, did he?
39 A. Sir, I can't answer that question in view of
40 instructions that I've been given.
41
42 Q. Let me remind you of the evidence which you gave in
43 terms of reference 1 where you were able to answer it.
44
45 MR COHEN: I object. That strays right back into term of
46 reference 1.
47

1 MR SAIDI: No, it doesn't. It strays into an assessment
2 of this witness's evidence now being given.
3
4 MS LONERGAN: Commissioner, I rise to make this objection.
5 It has already been said in term of reference 1 evidence.
6 Why do we need to revisit it?
7
8 MR SAIDI: Because this witness appears to be giving
9 evidence which is different to what he gave in terms of
10 reference 1.
11
12 MR COHEN: I object: that's not so.
13
14 MR SAIDI: Can I finish my question and then we'll see?
15
16 MR COHEN: With respect, there is an understanding, having
17 regard to the great delicacy that surrounds Lantle, that
18 certain areas are not off limits but are dealt with
19 delicately. This witness very fairly is trying to observe
20 that understanding and is being criticised for it: that's
21 why I object.
22
23 MR SAIDI: I'm not a party to it, as I understand it.
24
25 MR COHEN: Yes, you are.
26
27 MR SAIDI: Am I? We'll find out later.
28
29 THE COMMISSIONER: Mr Saidi, I think Ms Lonergan wishes to
30 address a remark to you.
31
32 (Counsel conferred)
33
34 MR SAIDI: Perhaps one way of dealing with this - people
35 who are here for terms of reference 2 were not here for
36 terms of reference 1. It may be that I remind the witness,
37 in very simple terms, of the evidence he gave in terms of
38 reference 1 to the effect that he was not told to cease
39 having an active role in any other investigation other than
40 Strike Force Lantle, which he appeared to have answered
41 candidly in terms of reference 1 and definitively in terms
42 of reference 1. Surely it is a matter of fairness.
43
44 THE COMMISSIONER: Yes.
45
46 Q. Do you agree with that, Mr Fox?
47 A. Yes, Commissioner. I could expand on it but I won't.

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MR SAIDI: Q. So you've just agreed with the statement I made to the Special Commissioner about the effect of your evidence in terms of reference 1?

A. I agree that that was my answer in term of reference 1. There may be more to that answer but I won't head down that path.

Q. For those in court who weren't part of terms of reference 1, for the record, it is at transcript pages 144-145 that I was referring to. Of course, the evidence you gave in terms of reference 1 relating to the circumstances in which you came to cease investigating were true and correct, were they?

A. Yes.

Q. In terms of the other statements made by yourself on the Lateline program, you referred also to a victim. I'll use the pseudonym, of course. The person or the victim you were referring to was a person [AJ].

MS LONERGAN: Commissioner, may I have a word with Mr Saidi?

(Counsel conferred)

MR SAIDI: I will see if I can approach it this way and I'll see if Ms Lonergan takes any objection.

Q. You referred to a victim in the Lateline program, did you not? Don't worry about who the victim is.

A. No, no, I know who [AJ] is.

Q. Don't worry about [AJ]. I've withdrawn that question. Let's now deal with your referring to a victim. All right?

A. I referred to victims through that --

Q. Would you go to page 3. In the second-last paragraph from the bottom there is a statement by Tony Jones:

In 2010, two years ago, new witnesses started to come forward to give evidence about the activities of one paedophile priest called Father McAlinden. Now one of those witnesses I would describe as a key Church insider, a whistleblower.

1 Do you see that?

2 A. Yes.

3

4 Q. Were you referring to a victim or complainant there?

5

6 MR COHEN: I object. He's getting perilously close to
7 material that should not be commented upon.

8

9 MS LONERGAN: Perhaps we could adjourn a few minutes while
10 I discuss it with Mr Saidi.

11

12 MR SAIDI: I'll withdraw it, but I want to make it
13 absolutely plain that, if any issue of procedural fairness
14 arises at a later point in time in terms of the
15 submissions, submissions are going to be put forward in
16 terms of Detective Chief Inspector Fox's credibility on
17 these issues, based on other evidence which has been
18 forthcoming and which will, of course, be made known.
19 Because of the objections to my cross-examining this
20 witness in relation to that, I would expect that there
21 would be no procedural fairness points about it when we put
22 submissions then --

23

24 MS LONERGAN: Mr Saidi apprehends the situation correctly.
25 The reason why these questions can't be led at this time is
26 that evidence relating to this particular point has been
27 taken in camera and will be taken in camera and it is a
28 matter of fairness, and Mr Saidi has kindly accepted that.

29

30 MR SAIDI: Yes, I accept that.

31

32 THE COMMISSIONER: I take on board what you're saying in
33 relation to your submissions, Mr Saidi.

34

35 MR SAIDI: Q. Detective Chief Inspector Fox, happily
36 I can tell you I'm coming to a end. I want to raise a
37 couple of other issues with you, if I may. Your report of
38 25 November 2010 was forwarded on to your superiors within
39 the region command; correct?

40 A. Yes.

41

42 Q. That report, for your benefit, is at tab 498 if you
43 need to refer to it. It is also an exhibit in these
44 proceedings. The case report relating to [AE], you were
45 referred to during the course of your evidence. That's
46 tab 499, if you wish, and it is also an exhibit. But if
47 you want to --

1 A. Sorry, what volume?
2
3 MS LONERGAN: It is volume 7.
4
5 MR SAIDI: Q. Volume 7, I'm told, from behind me. I'm
6 told by my learned colleague Mr Cohen that the tabs are 498
7 and 499. Do you have it there in front of you?
8 A. Yes, I do.
9
10 Q. I don't have it in front of me, but, for the purpose
11 of these questions, I don't think I need to. If you go to
12 your report at tab 498, the report of 25 November 2010, do
13 you see the date there, quite clearly?
14 A. Yes.
15
16 Q. If you go to the case report, tab 499, which should be
17 there as well?
18 A. Yes.
19
20 Q. It will be shown as your having opened the case on
21 23 November 2010?
22 A. Yes.
23
24 Q. It also shows the case as having been finalised on
25 that day, on the same date; correct?
26 A. Yes.
27
28 Q. All of the activities in relation to that case carried
29 out by you were carried out within the one calendar - or
30 within the one day; correct?
31 A. Yes.
32
33 Q. Did you use the information contained within the
34 case report for the purpose of drafting your report of
35 25 November 2010?
36 A. In all likelihood, yes.
37
38 Q. Not for the purpose of any investigation, but to
39 assist in drafting a report; is that correct?
40 A. Oh, in relation to both functions, certainly; but, you
41 know, certainly I would imagine in part to assist in the
42 preparation of that report as well.
43
44 Q. When you say "in relation to both functions", by that
45 stage all statement-taking had been completed; correct?
46 A. No.
47

1 Q. All statement taking by you had been completed by July
2 of 2010, had it not?
3 A. Sorry, that was when I last finished taking
4 statements.
5
6 Q. Yes.
7 A. Then, yes. Sorry, I understand what you mean.
8
9 Q. Perhaps it was the clumsiness of my question, but the
10 last statement taken by you was a date - I think it was
11 late July 2010?
12 A. Yes.
13
14 Q. You had no need, did you, to go to that case report on
15 23 November for the purposes of any investigation, did you?
16 A. I certainly did, yes.
17
18 Q. Did you?
19 A. Yes.
20
21 Q. What, you were continuing to investigate at a point of
22 time after Strike Force Lantle had been set up; is that
23 right?
24 A. Yes.
25
26 Q. Could you look at what you did on 23 November and tell
27 me for what investigative purpose you opened up a case on
28 that day?
29 A. Why I opened it up is what Lantle was looking at were
30 a number of matters in respect to Father Denis McAlinden.
31 I had become aware through correspondence provided by
32 Joanne McCarthy that related back to matters concerning
33 [AE] which, to my understanding at that time, did not form
34 part of Strike Force Lantle, but I was desirous of looking
35 into that so that Lantle, I was hoping, could have become
36 more broader and more wide ranging, and I felt that
37 information contained within that would assist towards that
38 end.
39
40 Q. I'm sorry, I thought my question related to for what
41 investigative purpose; that is, was it for an investigative
42 purpose associated with an investigation being carried out
43 by you?
44 A. Yes, yes.
45
46 Q. What was the purpose, the investigative purpose, of
47 the investigation carried out by you?

1 A. To reacquaint myself with information contained within
2 that case.
3
4 Q. To reacquaint yourself for the purpose of preparing a
5 report of 25 November; is that so?
6 A. That was part of it, yes.
7
8 Q. Also was it a case of reacquainting yourself with
9 the terms of the case so that you can also familiarise
10 Joanne McCarthy with what information was contained within
11 the police holdings?
12 A. No.
13
14 Q. But that's exactly what you did, isn't it?
15 A. No.
16
17 Q. Didn't you send a copy of the --
18
19 MS LONERGAN: Commissioner, I object to this line of
20 inquiry --
21
22 MR SAIDI: Could I finish one more question? I promise
23 you --
24
25 MS LONERGAN: All right, if it is only one more.
26
27 MR SAIDI: I can see there will be a stopwatch behind me.
28
29 Q. Isn't it the case that that report prepared by you on
30 25 November 2010 was in fact forwarded to Joanne McCarthy
31 in its completeness?
32 A. Yes, it was.
33
34 MR SAIDI: Thank you.
35
36 MS LONERGAN: Commissioner, Mr Cohen has asked for some
37 time to speak to his client before he can re-examine. That
38 should occur now. I also need to take some instructions
39 from Ms Sullivan regarding the conduct of another short
40 matter we have to attend to this afternoon. Perhaps we
41 could adjourn for 20 minutes to determine the position.
42
43 THE COMMISSIONER: Certainly.
44
45 MR COHEN: Can I say, Commissioner, and I need to be quite
46 candid, in the circumstances. It is now 25 to 4 on a
47 Friday afternoon. This gentleman has been in the witness

1 box now for three days, I think.

2

3 THE COMMISSIONER: Yes, and he has been unwell this week.

4

5 MR COHEN: I can't give you any assurance that I can be
6 ready by 4 o'clock to do anything meaningful and I have to
7 be quite candid about that.

8

9 MS LONERGAN: Commissioner, perhaps Mr Cohen could assess
10 the situation over the next 15 minutes and then contact
11 counsel assisting, who will, of course, be present and, in
12 the meantime, we might be able to attend to another matter.

13

14 MR COHEN: May I suggest that that other matter be
15 attended to in the absence of Detective Chief Inspector Fox
16 and I can undertake my - I don't want to prejudice hearing
17 time, but I do want to have a proper opportunity to deal
18 with the matters that I have to deal with.

19

20 THE COMMISSIONER: Of course you must, Mr Cohen, and every
21 effort will be made to give you the opportunity.

22

23 MR COHEN: My suggestion is: can the matter my learned
24 friend wants to deal with before the Commission be done now
25 while I and my instructing solicitor have a conference with
26 Detective Chief Inspector Fox?

27

28 MS LONERGAN: What I have suggested is something even more
29 step by step than Mr Cohen proposes; that is, that Mr Cohen
30 considers his position and speaks to his client for
31 10 minutes, while I take instructions from Ms Sullivan, who
32 is not present in court at the moment, as to how she would
33 like the rest of the afternoon to proceed, and also to
34 discuss with my other learned friends at the Bar table what
35 their time constraints are and how best to progress the
36 evidence today in cooperation with everybody present.

37

38 THE COMMISSIONER: Yes. I will take an adjournment.

39

40 **SHORT ADJOURNMENT**

41

42 MS LONERGAN: Thank you for that time, Commissioner.
43 There has been a discussion between the parties as to how
44 best to manage the rest of the afternoon. It has been
45 determined that the proper course is to allow Mr Cohen the
46 opportunity to have access to the transcript so that he can
47 re-examine Detective Chief Inspector Fox.

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The proposal is that you adjourn until 10am on Tuesday, where the witnesses who will be called will be Detective Chief Inspector Fox, in re-examination, followed by former Detective Brown, Detective Filippo and then Bishop Malone.

THE COMMISSIONER: Thank you very much, Ms Lonergan. Thank you to counsel to and to all the practitioners for this productive week and I will adjourn proceedings until 10am on Tuesday.

AT 3.58PM THE COMMISSION WAS ADJOURNED TO TUESDAY, 9 JULY 2013 AT 10AM

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