COMMISSION TO INQUIRE INTO CHILD ABUSE
PUBLIC HEARING

HELD AT THE HERBERT PARK HOTEL
BALLSBRIIDGE, DUBLIN 4

ON WEDNESDAY, 29TH NOVEMBER, 2006 - DAY 234

EVIDENCE OF BR. SEAMUS NOLAN
THE CHRISTIAN BROTHERS

BEFORE:

MR. JUSTICE SEÁN RYAN
CHAIRPERSON OF THE INQUIRY

and

MS. MARIAN SHANLEY
MR. FRED LOWE

234

I hereby certify the following to be a true and accurate transcript of my shorthand notes of the evidence in the above-named action.

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MEMBERS OF THE COMMISSION PRESENT:

REGISTRAR TO INVESTIGATION COMMITTEE:  MR. B. REEDY

COUNSEL FOR THE COMMISSION:  MR. N. MACMAHON SC  
                              MS. K. FERGUS SC

Instructed by:  MS. F. ROBINSON

FOR CHRISTIAN BROTHERS:  NO COUNSEL PRESENT

Instructed by:  MR. P. LANKFORD  
                MAXWELLS

FOR THE DOE:  MR. C. DIGNAM BL

Instructed by:  CSSO

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<table>
<thead>
<tr>
<th>WITNESS</th>
<th>EXAMINATION</th>
<th>QUESTION NO</th>
<th>PAGE NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>BR. SEAMUS NOLAN</td>
<td>QUESTIONED - THE COMMISSION</td>
<td>1 - 17</td>
<td>22 - 54</td>
</tr>
</tbody>
</table>
THE HEARING COMMENCED AS FOLLOWS ON WEDNESDAY, 29TH
NOVEMBER 2006 AT 10:07 A.M.

THE CHAIRPERSON: Thank you. Yes Mr. MacMahon.

MR. MACMAHON: Good morning, Chairman, Members of the Committee.

At the start of this public session of the Investigation Committee I would like to briefly fill in the Committee on a little bit of the background which led to today's public hearing. The position you will recall, Chairman, is that on 24th May, 2006, in the course of the Commission's Phase 3 hearings -- this was a hearing into Carriglea Park Industrial School -- Br. Nolan, who is here today, told the Investigation Committee that some years previously questionnaires had been sent out to members of the Congregation who had been in industrial schools, asking for information about life in those institutions. He said that those questionnaires were not specific to Carriglea Park alone but were sent out generally to people who were in industrial schools. Member of the Committee can refer to the actual wording used, it is on page 7 and 8 of the transcript for the 24th May, 2006.

THE CHAIRPERSON: Yes.

MR. MACMAHON: When asked by the Chairman whether these

Gwen Malone Stenography Services Ltd.
questionnaires would be of relevance to the Commission, Br. Nolan said that he thought they should be sent on to us.

I should say, Chairman, that the existence of these questionnaires was up to then not known to the Commission. There followed a long sequence of correspondence between the solicitor for the Commission and the solicitor for the Christian Brothers. I propose going into that correspondence in a moment. The reason why this public hearing today was arranged was that despite this protracted correspondence between the solicitors for the Commission and solicitors for the Christian Brothers these questionnaires were not furnished until a late stage, in fact until after the fact that this public hearing was being held had been publicised.

I think it would be relevant, Chairman, for me to go into the correspondence so that the Committee can have a flavour of what it contained. I think it would be appropriate to begin with the first letter, which is the 8th June, 2006. This is a letter signed by Elisa McHugh, solicitor to the Investigation Committee. It is addressed to Maxwell Solicitors at their address and it is headed "Phase 3: Witness examination. Evidence of Br. Seanus Nolan, your client Congregation of Christian Brothers". The letter goes:

"Dear Sirs,

5

Gwen Malone Stenography Services Ltd."
I refer to the evidence of Seamus Nolan an 24th May, 2006 at the public Phase 3 hearings into Carriglea Park Industrial School. During the course of his evidence Br. Nolan referred to the fact that members of the Congregation were requested to fill out questionnaires in or around the year 2000. He stated that these questionnaires referred to general life in the institutions, workload, timetable etc. He confirmed that the questionnaires were not specific to Carriglea Park Industrial School but related to all industrial schools run by the Christian Brothers.

He indicated that these questionnaires were available and I would be obliged if you would furnish copies to the Commission as soon as possible. I would also be obliged if you would explain why these documents were not previously discovered to the Commission.

Yours faithfully, Elisa McHugh, solicitor to the Investigation Committee.

On 24th July, 2006 the Commission again wrote to the solicitors for the Christian Brothers. This letter is headed "Phase 3 witness examination. Evidence of Br. Seamus Nolan, your client Congregation of Christian Brothers" and it says:

"Dear Sirs,

We refer to Ms. McHugh's letter dated 8th June, 2006 regarding the questionnaires issued in approximately 2000. We look forward to receiving copies of the questionnaires and an explanation as to why these documents were not being previously furnished to us as soon as possible.

Yours faithfully, Feena Robinson, solicitor for the Investigation Committee."
That letter elicited a response. The response letter is from Maxwells solicitors, it is addressed to the Commission and it is dated 28th July, 2006. It is headed "Re: Commission to Inquire into Child Abuse, a specific matter, Phase 3 witness examination. Evidence of Br. Seamus Nolan. Our clients, the Congregation of Christian Brothers (St. Helen's province)". The letter goes:

"Dear Ms. Robinson,

We have your letter of 24th July, 2006. We confirm that we have looked at Br. Nolan's evidence and his reference to questionnaires. We understand that the witness was referring to questionnaires sent to Brothers who served in industrial schools and other institutions in or about 2000. We have examined the reasons, purpose and intent of these questionnaires and confirm that they were undertaken by the Congregation on direct legal instruction and advice in preparation of High Court litigation and any inquiries, either statutory or non-statutory, that might be established in dealing with these matters going forward and childcare research generally with regard to these institutions. These are, therefore, current working documents and are covered by legal privilege."

The letter goes on:

"The documents were not furnished to the Committee, either by way of discovery or otherwise, as they are clearly privileged and we reiterate that they form part of legal research and as backdrop to gathering information with a view to defending High Court litigation."
These documents do not pertain to or contain responses to individual complaints, but rather deal with matters such as use of time, duties, workload, staff roles, professional and teaching standards, general attitudes of the public and ancillary topics. Your request has been sent to our current senior counsels and on receipt of their advices we will revert to you further.

Yours faithfully Maxwells."

The Commission responded to that letter on 1st August, 2006. This letter was addressed to Maxwells, it is headed "Phase 3, Carriglea Park Industrial School, Dun Laoghaire. Questionnaires referred to by Br. Nolan".

The letter goes:

"Dear Mr. Lankford,

Your letter of 28th July, 2006 comes as a surprise. In the course of his evidence in public on 24th May, 2006 Br. Seamus Nolan mentioned that questionnaires had been sent to Brothers about their experiences in industrial schools. The Chairperson asked him whether they would be of relevance to the investigation committee and Br. Nolan replied "I think we should send them on to you".

When we had not received them I sent my letter of 24th July reminding you about the matter. There was no suggestion in the course of Br. Nolan's evidence, or at the end of it, or at any time thereafter until your letter was received that there was any objection so furnishing the questionnaires. Privilege was not mentioned, nor was any objection or point taken in relation to the material.

It seems clear that this material is of relevance to the Committee's work. Br. Nolan confirmed that in evidence.

There was no decent from the Christian Brother's legal team present during
that evidence and neither was any question raised during subsequent hearings. The suggestion that the material is subject to privilege is in itself an acknowledgment that it is relevant, although sought to be protected from the obligation to produce it.

If the documents in question were indeed intended to be the subject of a claim of privilege that should of course have been asserted in the affidavit of discovery submitted by the Christian Brothers. A claim of privilege does not exempt the material from being described and identified.

It seemed at the time of Br. Nolan’s evidence that these questionnaires had been inadvertently overlooked by your clients when they made discovery of documents. If the questionnaire documents came into existence for an exclusive or dominant purpose which clothed them with privilege it is not easy to understand how they came to be omitted from the discovery affidavit. And if on the other hand the material was inadvertently overlooked it would seem to be an unlikely and happy coincidence that when they were unearthed they turned out to have been privileged.

It is even more puzzling that in your last paragraph you say that the matter has been referred to senior counsel for advice. The implication, if I understand correctly, is that your client’s position may change in light of advice from senior counsel. It is open to a person to waive a claim of privilege and produce the material. The Brothers could agree to supply the questionnaires to the Committee notwithstanding their contention that they might be privileged. And it may be of interest to your clients that another congregation has had no difficulty in furnishing a survey that it conducted amongst its members in relation to their experiences in industrial schools.

You will appreciate that I do not want to enter into protracted correspondence over this matter and would appreciate
confirmation as a matter of urgency whether the Christian Brothers are refusing to hand over the questionnaires relying on a claim of legal professional privilege.

Yours sincerely Feena Robinson."

The reply to that letter comes from Maxwells and it is dated 3rd August, 2006. It is headed "re Phase 3 witness examination. Witness Br. Seamus Nolan. Our clients Christian Brothers (St. Helen's)."

"Dear Ms. Robinson,

We are in receipt of your letter of 1st August, 2006. We advise that the position outlined as to how the questionnaires referred to in the evidence of Br. Nolan is reiterated. The witness clearly was not conscious and may not have been aware that they were covered by legal privilege.

We assert that the dominant purpose of creating the documents has been to prepare for litigation, existing or anticipated."

There is a footnote reference there, Chairman, to a case of Costello J in the High Court *Sparebank -v- Bereen* (?) 1989, ILRM 257. The letter goes on:

"We confirm that in the principle affidavits of discovery dealing with industrial schools it is clearly outlined in schedule 1, part 2 that the Congregation, at the direction of its solicitors, had undertaken detailed research into all aspects of the running of industrial schools. This research could not have been done without inquiring of those who worked in them.

It is to be noted that you have
refrained from calling on all possible research done, which is revealing of your position. Your speculation with regard to the material being inadvertently overlooked and other inferences being drawn is completely unacceptable and devoid of logic as documents that are created under privilege and known to be privileged would not be disclosed or referred to directly.

We draw your attention to the agreement reached with regards discovery referred to in the principal affidavits and the categories referred to. We would submit that the position you are taking has no logical or legal merit, nor could it lead to right of action.

Yours sincerely."

Ms. Robinson, solicitor for the Investigation Committee replied to that letter on 11th August, 2006. Her letter is headed "Re: Phase 3 witness examination of Br. Seamus Nolan. Your client: The Christian Brothers Congregation (St. Helen's.)"

"Dear Mr. Lankford,

I refer to your letter dated 3rd August. While I accept that specific responses by individuals against whom complaints were made in proceedings may be privileged I do not accept that the questionnaires can be covered in their entirety by legal privilege. In the circumstances the Investigation Committee must insist on disclosure of the questionnaires.

Please furnish me with a list of individuals to whom the questionnaires were sent, who completed them when they were completed and what was in them. In this regard a blank copy of the questionnaire would be useful. I await hearing from you.

Yours sincerely, Feena Robinson."
The next letter in the sequence is dated 5th September, 2006. It is the same heading of the previous letter. It is from Ms. Robinson to Mr. Lankford and it says:

"I refer to my letter dated 11th August and look forward to receiving your response by return."

By letter of 8th September, 2006 Mr. Lankford replies.

"Dear Ms. Robinson,

We have your letter of the 5th inst. This matter has been referred to the counsel and we are awaiting response."

On 28th September, 2006 the Commission replies to the solicitors for the Christian Brothers. Ms. Robinson in this letter says:

"Dear Mr. Lankford,

I refer to your letter dated 8th September regarding the questionnaires. I note that I have not heard anything further from you. I presume that by now you have received advices from senior counsel and accordingly look forward to receiving this documentation requested as soon as possible."

A reply to that is received by letter dated 3rd October, 2006. It says:

"Dear Ms. Robinson,

I have your letter of 28th September, 2006. I confirm that I am awaiting counsel's advice and as soon as same is to hand I will revert to you with my client's instructions."
Ms. Robinson replied to that on 10th October, 2006. She said:

"Dear Mr. Lankford,

Thank you for your letter dated 3rd October. Please ask counsel to confirm when he or she expects to be in a position to furnish you with the advise requested and let me know when that will be. I look forward to hearing from you.

Yours sincerely."

The next letter is also from Ms. Robinson, it is dated a month later, 8th November, 2006. The heading of this letter is "Carriglea Park Industrial School, Dun Laoghaire, Re: Phase 3 hearings. Your clients: The Congregation of Christian Brothers". The letter goes:

"Dear Mr. Lankford,

I refer to previous correspondence in relation to the questionnaires completed by various Christian Brothers and note I have not received the questionnaires, a blank copy of the questionnaire or indeed any indication as to when I may receive a further response from you.

In the circumstances the Investigation Committee intends to hold a public hearing in relation to this matter on Wednesday, 29th November at 10 a.m. The venue is yet to be decided and a direction to attend addressed to Br. Seamus Nolan will be issued as soon as the venue has been confirmed. In the meantime please confirm that Br. Nolan will attend on 29th November.

Yours sincerely."

The solicitors for the Christian Brothers replied to that letter by letter dated 10th November, 2006. That
letter goes:

"Dear Ms. Robinson,

We have your letter of 8th inst and note the contents. We confirm we have not yet heard from Mr. Hanratty with regard to advises in this matter. We have sent a reminder to him by letter of even date and hope to revert to you as early as possible."

On 14th November Ms. Robinson sends a direction a notice directing the attendance of Br. Seamus Nolan. The letter goes:

"Further to recent correspondence, please find attached a direction to attend addressed to Br. Seamus Nolan. Please confirm that Br. Nolan will attend.

Yours sincerely."

Attached to that letter is the notice directing Br. Nolan's attendance. It gives the date, today's date, at 10 a.m. in the Herbert Park Hotel, Embassy House, Ballsbridge, Dublin 4. That notice is dated 14th November, 2006.

There followed a letter from Maxwells dated 15th November, 2006. Initially the letter which received had what is probably a typographical error and which was rapidly corrected and I propose going into the corrected version which was sent by fax on 16th November, 2006. This letter, the amended version is dated 15th November, 2006, it is headed "Re:
Commission to Inquire Into Child Abuse. Proposed
meeting with the counsel to the Investigation
Committee. Specific matter: List proposed agenda.
Our client: Christian Brothers Congregation, St. Mary
and St. Helen's."

"Dear Ms. Robinson,

We refer to the above matter and
letters received attaching the above
matters. We would request a meeting
with counsel to the Investigation
Committee to deal with the matters
enclosed in the agenda attached. We
would hope that a meeting would be more
expeditious of resolution rather than
protracted correspondence.

We propose a meeting on Monday next,
21st November at 4 p.m. We look
forward to hearing from you in early
course."

Enclosed with that letter was an agenda containing nine
items. I don't know if it is necessary to go into all
of those.

THE CHAIRPERSON: No.

MR. MACMHAON: But one of those, item 6,
related to the evidence of
Br. Nolan and the request for the questionnaires
referred to in the evidence of Phase 3 Carriglea
module.

That letter was received by the Commission on 16th
November and by the same date the Commission replied.
The Commission's letter is dated 16th November, 2006
and it refers to a number of matters. The heading -- I
don't propose going into all of those matters,
Chairman, at this point in time but I do propose
indicating -- the heading of that letter was "Re: 11
letters dated as follows:

"3rd November, 2006 - three letters.
6th November, 2006 - two letters.
8th November, 2006 - one letter.
10th November, 2006 - two letters.
14th November, 2006 - one letter.
15th November, 2006 - two letters."

It starts:

"Dear Mr. Lankford,

I refer to correspondence received
recently from you as follows."

The Commission's letter, Ms. Robinson's letter is
divided into -- it is a three page letter, of which the
matter of the questionnaires is dealt with on the --
sorry, it is a four page letter. The matter of the
questionnaires is dealt with on the fourth page. The
other three pages are dealing with other matters which
have been raised in the course of correspondence, the
correspondence the dates of which I have referred to.
A response is given in relation to each of the points
raised in all of those letters. The paragraph on page
4 which is relevant to today's hearing is
headed "questionnaires. Your letter dated 10th
November".

"Turning to an entirely different
matter, I confirm that the hearing into
the production of the survey material
referred to by Br. Nolan in his evidence of 24th May will take place at the Herbert Park Hotel on Wednesday, 29th November at 10 a.m.

I presume that you have by now received the directions to attend addressed to Br. Nolan.

Yours sincerely, Feena Robinson."

That letter also deals with the proposed meeting which had been suggested by the solicitors for the Christian Brothers. That begins at the end of page 3. This section of the letter is headed "proposed meeting. Your letter dated 15th November."

"The Investigation Committee has for some time been under considerable pressure to arrange meetings between its lawyers and a numbers of victims groups and has firmly rejected such proposals, as a result of which it has come in for a good deal of criticism.

A meeting of the kind you suggest may well be a practical and useful suggestion, but I am afraid exceeding to it would expose the Investigation Committee not only to further criticism but to a charge of inconsistency. In the circumstances I feel that I am compelled to insist on communication in writing."

The next heading is "Re: Public meetings. Your letter dated 15th November". It goes:

"As your letter dated 10th August acknowledged, acknowledging receipt of my letter of 8th August...."

I think I need not go into that at this point in time. I have dealt with the last bit in relation to the questionnaires when I opened that letter to you.
initially. A reply to that letter comes dated 17th November, 2006. This letter is from Maxwells, addressed to the solicitors for the Commission and it is headed "Re: Phase 3 hearings. Evidence of Br. Seamus Nolan. Our client: Christian Brothers Congregation, St. Mary and St. Helen's".

"Dear Ms. Robinson,

We refer to the above matter and your letter of 9th November last and previous correspondence. We confirm that senior counsel has now reverted to us in this matter and we would advise that it is his view that the questionnaires referred to by the witness are privileged, in that they were created at the instigation of the congregation's legal advisors and for the principle purpose of defending High Court litigation.

In stating to the Commission that the Carriglea questionnaires would be provided, Br. Nolan was unaware that those documents were privileged and that the Congregation regarded them as such. However, in view of the fact that he did indicate that these questionnaires would be provided the Congregation does not wish to go back on that and has instructed us to waive the privilege in respect of the Carriglea questionnaires. Consequently, we enclose herewith copies of the questionnaires in relation to Carriglea.

Please note that this is not to be taken as a waiver of the Congregation's privilege in respect of the questionnaires relating to any other institution. We would ask that you revert to us in this matter, confirming that it will not be necessary to proceed to a public hearing of this matter on 29th November next as indicated. We await hearing from you in early course."

Gwen Malone Stenography Services Ltd.
Attached to this letter there was a document, which is referred to, which is a document in blank effectively. On 20th November, 2006 the solicitor for the Investigation Committee replied to Mr. Lankford's letter. This letter is headed "Re: Phase 3 hearings. Evidence of Br. Seamus Nolan. Your clients: The Congregation of Christian Brothers, St. Mary's and St. Helen's".

"Dear Mr. Lankford,

Thank you for your letter dated 17th November. The public hearing will be proceeding on 29th November. We are requesting all surveys, which obviously include the answers. No completed surveys were enclosed with your letter.

Yours sincerely."

The Committee received a response to that letter. This letter is from Maxwells and addressed to the solicitors for the Commission, dated 21st November, 2006. It goes:


Dear Ms. Robinson,

We refer to the above matter in previous correspondence. We enclose herewith questionnaires sent to deal with this school. You may recall that Carriglea closed in 1954 and we confirm that the questionnaire was only sent to the Brothers setout in the schedule hereto. We also attach copy of an additional questionnaire which was sent in November 2000 dealing with Carriglea..."
to a named Brother. The second questionnaire was only sent to that Brother.

We note from the evidence of Br. Seamus Nolan that he was asked and responded with regard to Carriglea Park Industrial School only. However, the Congregation in reviewing these matters have consented to furnish the questionnaires sent with regards to St. St. Joseph's, Tralee and St. Joseph's, Glynn also.

We would be obliged if you could bring this matter to the attention of the Chairperson of the Investigation Committee and we would request that the public hearing would not proceed. We await hearing from you."

Enclosed at the same time I think, the same date, 21st November, 2006 were letters which enclosed questionnaires sent by the Congregation to the Brothers in St. Joseph's, Glynn and in St. Joseph's Industrial School in Tralee. Those two letters went:

"Dear Ms. Robinson,

We refer to the above matter and our letter of even date concerning the evidence of Br. Nolan in Phase 3 hearings. We enclose herewith questionnaires sent by the Congregation to the Brothers referred to on the front page of each response. Please note that a number of the Brothers are now deceased."

By letter of 23rd November, 2006 Ms. Robinson wrote to solicitors for the Christian Brothers. The heading of this letter was "Re: Phase 3 hearings. Forthcoming hearing on Wednesday, 29th November".

"Dear Mr. Lankford,
I refer to your three letters dated 21st November received yesterday. All questionnaires completed by Christian Brothers were requested. Not all questionnaires were received. The public hearing will be proceeding next Wednesday."

There followed a letter received yesterday in relation to this matter, Chairman. This letter is dated 28th November, 2006. It says "Re: Phase 3. Evidence of Br. Seamus Nolan. Public hearing on 29th November, 2006. Christian Brothers Congregation, St. Helen's".

"Dear Ms. Robinson,

We refer to previous correspondence and discussions with respect of counsel concerning the above matter. We confirm that unfortunately none of our counsel are available to attend the hearing on 29/11/06 due to previous commitments. As you are aware, there has been no previous occasion when no member of our team of counsel was not available for a hearing before the Investigation Committee and we have not previously sought an adjournment because of the non-availability of counsel. In view of the sensitive nature of the work of the Commission, our clients are anxious to ensure that they were represented by counsel at public sittings. For this reason we request the Commission to grant a short adjournment of the proposed public sitting.

We advise that our counsel will be available at any time on Thursday, 30th November or Friday, 1st December."

That letter was received yesterday and it was responded to yesterday, by courier, as follows:

"Dear Mr. Lankford,

I am replying to your letter of 28th inst in the absence of Ms. Robinson. I am afraid that it is impossible to
exceed to the request for an adjournment contained in your letter received less than an hour ago.

You will recall that you were notified of the hearing date by letter of the 8th inst. A notice directing the attendance of Br. Nolan issued on 14th inst and a general notice of the hearing was given to the public on the 16th inst.

Yours sincerely."

The reference to the 16th inst, of course, Chairman, is reference to the fact that this public hearing was going to be heard today and was notified to the public on the Commission internet site. That publication took place on the 16th of this month.

THE CHAIRPERSON: Very good.

MR. MacMAHON: The current position, Chairman, is that the Committee has now received questionnaires relating to three industrial schools. These were received after the copious correspondence and after an announcement that today's public hearing was going to take place.

BR. SEAMUS NOLAN, HAVING BEEN PREVIOUSLY SWORN, WAS QUESTIONED BY THE COMMISSION, AS FOLLOWS:

1 Q. THE CHAIRPERSON: Maybe we can get the factual basis. Good morning Br. Nolan. How are you?

A. BR. NOLAN: Good morning.

2 Q. THE CHAIRPERSON: Obviously, in respect of
your evidence you are still sworn. I just remind you of that. Can you tell us what's going on, Br. Nolan?

A. I can't really, because I was quite oblivious to the length of the correspondence. I knew there was correspondence.

Q. THE CHAIRPERSON: It has taken us six months to get what you told us there is no problem in giving us.

A. I was completely unaware though at the time. These were papers that I found, I wasn't actually a member of the Leadership Team at the time, at the beginning of the Commission's work. I came on in late 2002 in the Redress Board. As part of my searching and doing background work I came across these in the office in which I worked. I found them fairly useful. I don't think I learned anything of great note. But it was encouraging to kind of get the feel of these places. After that I didn't look at them again. But I thought it worthwhile in the Carriglea case because information was rather short and I gathered it was being suggested that we really hadn't much valuable information gathered from live people and I mentioned that I had read these questionnaires.

Now, I must say following, I think the day after that particular hearing, I put them aside -- found them again, put them aside and waited for a formal letter asking for them. It never came.
Q. THE CHAIRPERSON: Did you know that this sparring match had gone on when we tried to ask for them and were fobbed off constantly, pushed around, pushed from pillar to post. Are you claiming privilege? We don't know. It has been referred to counsel. Then we are fobbed off with the -- well, sorry, can you understand our frustration and, indeed, anger, when after all this six months later we are given the questions and not the answers for one institution? Can you understand our frustration?

A. Yes. I was totally oblivious of it I must say.

Q. THE CHAIRPERSON: There are questions that I want to ask, or we would like to ask about where we stand at the moment, but let me just explain. People can have documents that are subject of legal privilege. They are entitled, if they choose, to waive that privilege. But what we don't see it as any part of our function to bully people or pressure them into waiving them. That's a decision they are free to make as they choose if the material is properly privileged. It is our function, however, to satisfy ourselves that it is properly privileged and that depends upon a factual basis.

Now, even as we look at the correspondence the claim waxes and wanes, comes and goes, is waived for some materials. So one of the things we would like to do is
to find out what other documents exist definitively and have specific information about the claims that are made. If it is claimed, for instance, for defending litigation we would like to know what cases were in existence that were being defended? If it is anticipated litigation, a legitimate heading, what claims, what litigation was anticipated? All those are factual questions. We have no interest in depriving people of legal rights, but what has happened has been a waste of our time, it has been frustrating us and we would like an explanation as to why it has taken six months of protracted correspondence, which essentially was a waste of time. Mr. Lankford, Br. Nolan doesn't understand it, we don't understand it, maybe you understand it.

MR. LANKFORD: I would.

Obviously, Br. Nolan, obviously, when giving evidence -- if I could just talk about it.

THE CHAIRPERSON: Yes, take your time, I would like the explanation.

MR. LANKFORD: When he gave evidence on the 24th of May, as he said in direct evidence, he wasn't aware of or didn't understand what privilege was. Whether or not the document was or was not privileged he didn't know about it. So when the questions were put to him at the very, very long meeting, I think it was the second or third
last question put to him he obviously wished to be, as
the Congregation has always been, helpful to the
Commission, he said that he knew about some of these
documents and that they could be sent on. Now, after
that hearing... (INTERJECTION)

THE CHAIRPERSON: He said:

"A. I think we should send them on to
you."

Q. Would they be of relevance to us?
A. "I think we should send them on to
you."

So far so good, he agrees that they are relevant and
he's going to send them to us.

MR. LANKFORD: But he was not
aware that
these documents were
created on 30th March, 1999 when they were sent out to
a particular number of Brothers who survived in
Carriglea -- who were teaching in Carriglea before or
on some date in 1954, when the institution closed. And
he wasn't aware on what basis those documents were
created.

THE CHAIRPERSON: But they weren't specific
to Carriglea, Mr. Lankford.

He made that clear.

MR. LANKFORD: Oh yes, but in
his
evidence, Mr. Chairman, he

Gwen Malone Stenography Services Ltd.
referred only to Carriglea and he was being asked questions.

THE CHAIRPERSON: No. No.

"Q. Do you have copies of those questionnaires?
A. I don't have them here, no."

Now I am looking at the transcript.

"I am sure they can be found, yes. They are not specific to Carriglea Park alone. They were just generally sent out..."

And he says:

"...to people who were in industrial schools."

I asked:

"Would they be of relevance to us?"

And he says:

"I think we should send them on to you."

I say:

"Thank you very much."

MR. LANKFORD: I accept that that's the position. But he was unaware when these documents were created and he didn't
know that they were created for a specific purpose, which was in defence of a civil litigation at the time.

THE CHAIRPERSON: All right, the specific witness, Br. Nolan, did not appreciate the question of privilege, but why didn't you or counsel appreciate that, then or later?

MR. LANKFORD: As I say, I was aware that he mentioned these at the time, but counsel wasn't aware of them because I think both counsel who were present on that particular day weren't advisors to the Congregation at this time. I think all the three counsel weren't advisor to the Congregation at this time. You must remember, Mr. Chairman, this is 30th March, 1999 and the Commission itself, that is the non-statutory Commission, wasn't established until in or around September 1999.

THE CHAIRPERSON: It was announced in May; isn't that right?

MR. LANKFORD: It was, yeah, March.

THE CHAIRPERSON: I understand that.

MR. LANKFORD: Also in September '99. And, obviously, there were two reports from that statutory Commission, I think one in September and one on 7th November, I think, of that
THE CHAIRPERSON: Yes. You say the first point is that Br. Nolan wasn't aware that these documents were the subject of a claim to privilege.

MR. LANKFORD: Absolutely. And he didn't know how they came into existence.

THE CHAIRPERSON: That's all right.

MR. LANKFORD: If we could just move on then to that.

THE CHAIRPERSON: Wait now I have a question to ask you about that. The only person sitting here who knew that was you.

MR. LANKFORD: Yes, that's right.

THE CHAIRPERSON: Because counsel did not know of these documents, or alternatively did not know that they were -- okay.

MR. LANKFORD: I suppose as an explanation for that, Mr. Chairman, and I don't want to be sassy or anything else, but I was down here (indicating), because of the arrangements I was down here (indicating). My two senior counsel were here and I was down here (indicating).

THE CHAIRPERSON: I just want to get
MR. LANKFORD: I was in very much ...(INTERJECTION)

THE CHAIRPERSON: Stop for a second, Mr. Lankford. There is no criticism implied in anything I am saying, I just want to get the facts.

MR. LANKFORD: Sorry.

THE CHAIRPERSON: But what you have said, as I understand it, is that these documents were created for the purpose of defending litigation.

MR. LANKFORD: And I can also say because, obviously, of these matters being in the public domain for quite some time it was anticipated that some form of inquiry, whether it was non-statutory or statutory, was going to be established and we were anticipating or were trying to -- you must remember Carriglea closed in 1954, Chairman.

THE CHAIRPERSON: Yes. So it wasn't restricted to litigation?

MR. LANKFORD: No.

THE CHAIRPERSON: Obviously privilege attaches to documents whose dominant purpose is litigation. What you first said and what it seems to be saying in the correspondence is that this is for litigation. So it wasn't just for litigation, it was also anticipating an inquiry.
MR. LANKFORD: If you look at the sample
the letter that was sent out to
the Brothers and that were sent to you, you will see in
the second paragraph it states very
clearly...(INTERJECTION)

THE CHAIRPERSON: That's a cover all for
anything.

MR. LANKFORD: No, no, it was stated that
these were for the purposes
of gathering information to defend legal matters.

THE CHAIRPERSON: I know, but you would put
that on a laundry list if
you were sending it anyway.

MR. LANKFORD: No, I don't think you
would.

THE CHAIRPERSON: Sorry, a lawyer would
perfectly properly seek to
cover all angles while making sure he is not producing
something. But whether in fact it is privileged is
another days work.

MR. LANKFORD: We can come to that.

THE CHAIRPERSON: The question is why it took
us six months to get it?

Or to get a refusal of it. What we wanted you to say
was "here are the documents" or "no, you can't have
them we are claiming privilege". We wanted that one
way or the other. Why couldn't we have had that in
less than six months?
MR. LANKFORD: I refer to the matters. First of all, Mr. McGrath.

...(INTERJECTION).

THE CHAIRPERSON: The first point is that the Brother didn't know it.

MR. LANKFORD: The Brother didn't know.

THE CHAIRPERSON: Very good, that's the first point. Now who decided to claim the privilege? If he didn't know it, who decided?

MR. LANKFORD: Maxwells as solicitor on behalf of the Congregation.

THE CHAIRPERSON: No, you can't claim it, it is the Christian Brother's choice.

MR. LANKFORD: The Christian Brothers.

THE CHAIRPERSON: It is their privilege, it is their choice to waive it or to claim it. Who decided to claim it?

MR. LANKFORD: Maxwells on behalf of the Congregation.

THE CHAIRPERSON: It was wasn't Br. Nolan, because he didn't know about it. So who did know about it?

MR. LANKFORD: Maxwells on behalf of the Congregation claimed privilege for the documentation, because they were instructed to create those documents on the basis that they were for the defence of High Court litigation.

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THE CHAIRPERSON: So Br. Nolan didn't know. Who did know?

MR. LANKFORD: Well, the PLT of the Congregation at the time. I would have to check who they were, but obviously they were there at the time in 1999.

THE CHAIRPERSON: Provincial -- Province Leadership Team I am guessing by that.

MR. LANKFORD: Well, they are the six members.

THE CHAIRPERSON: Yes, I understand. So each of them the Province Leadership Team knew about them?

MR. LANKFORD: Yes, they did. Now, just to go on then to say that Mr. MacMahan is incorrect in saying that the affidavit for the setting out of documentation with regard to Carriglea and all of the other institutions, he's incorrect in saying that the Congregation did not reserve privilege in those documentation. In my letter, in the correspondence which was read out you will see that we specifically referred to the schedule, part 2 of that particular schedule. When you look at part 2 of the schedule, Mr. Chairman, you will see that there are 20 or 30 categories.

THE CHAIRPERSON: It is described in general terms.

MR. LANKFORD: Yes, categories
THE CHAIRPERSON: Strictly speaking it should be listed specifically. But you can say we didn't insist on that and we took a practical view. That's fair enough.

MR. LANKFORD: If I could go on a little bit further than that, Mr. Chairman, and say -- and I don't think I am misstating the situation -- our counsel at that time, because, obviously, with regard to the other institutions and the type of work that was being done and the interaction between the Congregation and the Commission was on a daily basis it was agreed -- and I refer in the affidavit to correspondence and the understandings reached. My understanding of those was that it was only categorisation which was agreed. We tried to be as broad in those categories as possible by actually going through them...(INTERJECTION)

THE CHAIRPERSON: Mr. Lankford, could I stop you. Are you going to come to a point where you explain why it took us six months to get this letter?

MR. LANKFORD: Yes, I will of course.

THE CHAIRPERSON: After all the rigamarole I know what's in the correspondence...(INTERJECTION)

MR. LANKFORD: I think it is important though, Mr. MacMahon said that we didn't claim privilege...(INTERJECTION)
THE CHAIRPERSON: He read the correspondence and he read the answer.

MR. LANKFORD: Yes, I know.

THE CHAIRPERSON: And that's not the issue here. The issue is simple. The first issue is -- and let me tell you why this is so. This is so because it makes us uneasy, Mr. Lankford, it makes us uneasy to the point of being suspicious, that if such efforts are made to withhold something as simple as this we want to be assured that what else is there. Because this is not an attitude of oh, let's help you and let's bring it around to you. Six months later we could still be corresponding, if we didn't have this meeting we could be correspond in six months time and you would still be giving us the run around.

MR. LANKFORD: I don't think so because...(INTERJECTION)

THE CHAIRPERSON: Because you gave us the run around for six months.

MR. LANKFORD: I wouldn't accept that.

THE CHAIRPERSON: Why did you give us the questionnaire and not the answers? Was that not deliberately offensive?

MR. LANKFORD: No, it wasn't. What happened there...(INTERJECTION)

THE CHAIRPERSON: I mean, you must have thought through that
MR. LANKFORD: No, it wasn't. That was sent out on a Friday, on the 17th, and when they were going out, together with the responses, we realised that, in respect of Carriglea, that one of the persons to which this questionnaire was sent -- that's the second supplementary questionnaire -- that we realised that he was a client of the office, of Maxwells, and we had to clear the matter.

THE CHAIRPERSON: Why didn't you tell us that?

MR. LANKFORD: Well it was on a Thursday, and I am just trying to explain it to you now.

THE CHAIRPERSON: If you are telling me there was a mistake, that I can take.

MR. LANKFORD: No, there wasn't a mistake. What happened was that there was the...(INTERJECTION)

THE CHAIRPERSON: After all this rigamarole, six months later you send us the question and not the answers.

MR. LANKFORD: There was one individual who gave evidence in the Carriglea module.

THE CHAIRPERSON: You had to check with one individual and you realised you hadn't checked with them.
MR. LANKFORD: Exactly.
THE CHAIRPERSON: Why didn't you tell us that?
MR. LANKFORD: Just to say to you that's what we did. We did say it in our letter of 21st November. But we just say we tried to do that on the Friday -- just to explain why only the sample letter and the guidelines and the questions, the draft questions were sent out on the Friday, to explain that. We had to check with that particular Brother. Now, he's an elderly Brother, he's 84 years of age and when it comes to the direct evidence of Br. Nolan I will ask him -- and maybe we could just ask him now.

(TO THE WITNESS) Is it a fact, Brother, that you were asked to contact that particular Brother so that his consent with regard to privilege or perceived privilege was to be waived and he was consenting to that?

A. BR. NOLAN: Yes, I did that, I rang him and he gave the permission.

THE CHAIRPERSON: All right, Mr. Lankford, let's start at the very beginning.

MR. LANKFORD: Yes.

THE CHAIRPERSON: Br. Nolan gives this evidence and mentions these documents. Okay, so far so good. Some time shortly after that we write looking for the material. You
believe that this material, rightly or wrongly -- it
doesn't matter whether it is correct or not -- you
believe that this material is privileged. All right?
A decision now has to be made, this is June 2006. The
decision is simple: Do the Christian Brothers want to
rely on privilege and tell us they are not giving us
it, or do they wish to waive the privilege and give us
the documents? Now, that is simple.

MR. LANKFORD: Could I respond to that?

THE CHAIRPERSON: Why wasn't that decision,
that simple decision made
and we are told, no, you can't have them because they
are privileged, or yes here they are?

MR. LANKFORD: I will explain that to you.

THE CHAIRPERSON: Please do.

MR. LANKFORD: When we received your
letter of 8th June asking
these documents formally we wrote to our counsel, and I
am not blaming counsel in this matter, but we wrote to
counsel and I have no difficulty, subject to that
particular counsel -- I confirm it anyway,
Mr. Chairman. We wrote, I think, the following day or
two days later indicating to counsel that this matter
had arisen and that in my view these were privileged
but that I would like his advice in respect of it. I
wrote to him in that particular vein.

THE CHAIRPERSON: So you were in doubt at
that stage?

MR. LANKFORD: No, I wasn't in doubt at

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all. I wasn't in doubt at all, Mr. Chairman. There
wasn't any doubt that we had claimed privilege.
THE CHAIRPERSON: But you wanted to get
confirmation.
MR. LANKFORD: I wanted to get
confirmation from senior counsel.
THE CHAIRPERSON: That is perfectly
legitimate.
MR. LANKFORD: Which is very legitimate
dealing with these types of
very, very technical matters.
THE CHAIRPERSON: But there was still a
question: Were your
clients going to waive the privilege? Why didn't you
proceed on the basis of, look, there is two
possibilities: (A) it is privileged and my view will
be confirmed by counsel, or (B) I am wrong and it is
not privileged. But whether or which let's decide.
MR. LANKFORD: I didn't particularly wish
to move, Mr. Chairman, and
I am sure 30 years as a barrister you would realise
that in a very technical matter one needs to, no matter
how confident oneself may be in respect of a very
technical matter like these that you need a senior
counsel to have a look at it or a junior counsel to
have a look at it. That's what Maxwells did, they
wrote to their counsel. This was in the end of June
and these matters were not received, the advices were
not received at the close of the law term on 28th July.
However, on 28th July, Mr. Chairman, we did send a fairly emphatic letter to the Commission's solicitor citing a legal authority and also citing the claim for privilege set out in the affidavits. I would have thought that it was quite clear that, that was a signal that at least the writer of the letter was saying that these were privileged and we were standing over that privilege.

Now, subsequent to that there was an intervention of the long vacation and, as I said, most of the correspondence dealing with can we have it? No, we are -- they are very short letters of one line or two lines saying that we are awaiting counsel's advice. That was actually what happened, but it was during the long vacation. At the first opportunity that we had we then wrote to you saying that we now have counsel's opinion, we do believe that it is privileged. But we were very conscious, Mr. Chairman, as you probably know, we were very conscious that these letters were there and we were very conscious that we did not want to rise the ire of the Congregation, not only (inaudible) but, secondly, I would have thought that we had an exceptionally good relationship with the Commission and our cooperation was noted in these matters up to this particular and only...(INTERJECTION)

THE CHAIRPERSON: When counsel advised counsel confirmed that the
matter was privileged.

MR. LANKFORD: He looked at the documentation and he felt that given that documentation he...(INTERJECTION)

THE CHAIRPERSON: I am not inquiring as to -- 10:58 but he confirmed that they were privileged.

MR. LANKFORD: Confirmed that they were privileged documents.

THE CHAIRPERSON: Which brought us back to square one. Which was the 10:58 decision was: Do we stick to our privilege or do waive it? Which was exactly where we were six months, five months before.

MR. LANKFORD: Obviously our advice was to look at the documents carefully...(INTERJECTION)

THE CHAIRPERSON: How many letters do you think it took for us to get to that point, Mr. Lankford? How much time do you think had to be spent by the Commission dealing with your correspondence?

MR. LANKFORD: Well from the 8th of June to the...(INTERJECTION)

THE CHAIRPERSON: Do you think we have nothing else to do but deal 10:59 with this correspondence?

MR. LANKFORD: No, not at all. Of course not. But as you know, Mr.

Chairman...(INTERJECTION)

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THE CHAIRPERSON: Do you think it is satisfactory that...(INTERJECTION)

MR. LANKFORD: No, it is not.

THE CHAIRPERSON: Wait now, hear the question. Do you think that the way that your firm dealt with us in the past six months over this issue was satisfactory?

MR. LANKFORD: In respect of this issue, as I say, I was constrained...(INTERJECTION)

THE CHAIRPERSON: In respect of this issue.

MR. LANKFORD: In respect of this issue I was constrained, Mr. Chairman. I wrote to you on two occasions indicating not only that but I indicated to you in our letter of 28th July that...(INTERJECTION)

THE CHAIRPERSON: Is that a yes or a no or a maybe?

MR. LANKFORD: It is a complicated matter and, as I say, I was awaiting senior counsel's advices. But what I did do, Mr. Chairman -- and I would have thought that it might be regarded as rather courageous -- but I did write to you on 28th July, which really stated that the nature of these questionnaires did not deal with complaints. In other words, what I was trying to do there was to tell you the nature of the questionnaire.

THE CHAIRPERSON: We wrote back on 1st

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August and we pleaded -- no, hold on. The one thing we wanted to know was: Are you refusing these relying on privilege or not? Now, that was a reasonable request. Are you giving them to us or not? You may be perfectly entitled to withhold them you may not be perfectly entitled to, but we will at least move on once we know what you are doing. We still didn't get a direct answer.

MR. LANKFORD: Could I just explain it again. We did say in our letters that these were privileged documentation. Right? We did say it, Mr. Chairman, it is in the letter of 28th July very, very clearly. We also gave you an authority by the former President of the High Court in respect of those matters.

THE CHAIRPERSON: Mr. Lankford, the law is not in dispute here, it is perfectly clear, it is perfectly simple.

MR. LANKFORD: I accept that.

THE CHAIRPERSON: There is nothing desperately complicated about this.

MR. LANKFORD: But, Mr. Chairman, I was waiting for legal advice.

THE CHAIRPERSON: All right. All right.

MR. LANKFORD: If I could just go on from the legal advice because, like anything else, the life is not confined and dealing with individuals and dealing with Commissions
is not just dealing with legal advice whether you are absolutely 1000% and you have got 15 Supreme Court decisions. A number of reasons: 1. The Supreme Court could change their mind if the facts are slightly different, or what is the Commission's response to our claiming of privilege? Now, this was also dealt with and it was decided by the Congregation and decided by me that it was not politic. We were getting quite a severe bashing, if I may put it that way, from the Commission with regard to this matter. I am not saying that the Commission hadn't got grounds for doing so, what I am saying is that this was then decided, that in those circumstances, and on looking at the documentation that the Congregation were prepared to waive the privilege in respect of that documentation. And that is what we did on 21st November.

THE CHAIRPERSON: So do we...(INTERJECTION)

MR. LANKFORD: Could I just say to you, just to clarify that, there was I can assure you, there was a delay between 8th June and the final response. But we had indicated the broad areas of our position and we also had indicated to the Commission that these questionnaires were not as -- they were merely information gathering and that they were not...(INTERJECTION).

THE CHAIRPERSON: That's what we were are at. we are information gathering, at least I hope so.

MR. LANKFORD: But in contra distinction...
to responding to specific allegations. In other words, what we stated in our letter of 28th. And we made it perfectly clear that these documents were of a specific type.

THE CHAIRPERSON: Now, Mr. Lankford, let's get onto the next thing.

Have we got everything in the documents?

MR. LANKFORD: With regard to -- maybe when we go into the evidence of Mr. Nolan, or maybe I could ask him questions because it is important.

Q. THE CHAIRPERSON: Br. Nolan, have we got everything of these documents?

A. BR. NOLAN: As far as I know, yes.

Q. THE CHAIRPERSON: But you have not been able to check them?

A. Which documents is this? Is this the questionnaires?

Q. THE CHAIRPERSON: Br. Nolan, let me ask you this: Questionnaires were sent out, I take it you don't have a complete list of everybody to whom they were sent?

A. No, actually I wasn't on the PLT at the time.

Q. THE CHAIRPERSON: All right. Questionnaires were sent, were they sent to every surviving Brother in every institution?

A. I would expect so, yes.

MR. LANKFORD: Not in respect of every institution, in respect
A. Well, our three institutions, like St. Helen's province institutions.

Q. THE CHAIRPERSON: The St. Helen's province? What happened in regard to St. Mary's province? St. Mary's is the northern, St. Helen's is the Southern; isn't that right?

A. As far as I know they didn't go that road.

Q. THE CHAIRPERSON: What road did they go, do we know?

A. I think they went directly to the solicitors, as far as I know, and made statements. Again, I wasn't working with them at the time.

THE CHAIRPERSON: What's the position there, Mr. Lankford, what happened in St. Mary's province?

MR. LANKFORD: With regard to St. Mary's province you must understand, Mr. Chairman, that all of the Brothers were -- other than those that were charged or interviewed by the guards in respect of these complaints -- they were all clients of Maxwells.

THE CHAIRPERSON: Yes.

MR. LANKFORD: And St. Mary's institution, the St. Mary's province decided that they would not send out these questionnaires and would not use these questionnaires, but that they would either come into me or that I would go up to the Provincial House to interview them.
You must remember this is 1999.

The Chairperson: Very good.

Mr. Lankford: And these Brothers either had been mentioned in pleadings or were expected to be mentioned in pleadings at this time.

The Chairperson: That's a bit hard for me to understand. But let's not get sidetracked into that one, Mr. Lankford, I think that sounds complicated.

Mr. Lankford: It is very complicated.

The Chairperson: Just let's stick to the facts for the moment.

Questionnaires were sent out to St. Helen's province.

Mr. Lankford: Yes.

The Chairperson: They were not sent out to St. Mary's.

Mr. Lankford: Yes.

The Chairperson: Instead a number of Brothers, however selected, a number of Brothers were interviewed and made statements. Is that correct?

Mr. Lankford: Yes, that's correct. Well, they didn't make statements as such, Mr. Chairman. What happened was that questions and answers dealing with certain areas that the Congregation's solicitors were interested in, with the complete intent to defend the allegations against other Brothers and possibly themselves.
THE CHAIRPERSON: Let me see if I can put this right. Information was obtained.

MR. LANKFORD: Yes.

THE CHAIRPERSON: You, Mr. Lankford -- let's keep this simple. Mr. Lankford got information from individual Brothers.

MR. LANKFORD: Yes.

THE CHAIRPERSON: So the Brother came along and he spoke to you and you wrote down his answers.

MR. LANKFORD: Well, I asked him questions and I wrote down.

THE CHAIRPERSON: You asked him questions.

MR. LANKFORD: It was then put into a statement.

THE CHAIRPERSON: So he made a statement?

MR. LANKFORD: Yes.

THE CHAIRPERSON: Very good. That's where I came in. All right, he made a statement. There is a body of statements, over which privilege is...(INTERJECTION)

MR. LANKFORD: There is a body of information, Mr. Chairman, which are set out, as these things are, in a narrative form depending on the questions being asked. Yes, they are there.

THE CHAIRPERSON: And they relate to the people in St. Helen's
province?

MR. LANKFORD: St. Mary's.

THE CHAIRPERSON: Forgive me, I am sorry. In St. Mary's province we have these statements in this form. In St. Helen's we have the questionnaires.

MR. LANKFORD: That's correct.

THE CHAIRPERSON: All right. And without in any way depriving your clients of any right that they may have, could we ask you for a list of those statements and the basis on which they are claimed to be privileged? I mean, if you are entitled to privilege, you are entitled to privilege. There is no question of anybody here trying to -- and we are not in the business of criticising people for exercising their rights, they are perfectly entitled to do that.

MR. LANKFORD: Mr. Chairman, the answer is yes.

THE CHAIRPERSON: Thank you very much. When could we have that, Mr. Lankford?

MR. LANKFORD: I think we could have it within ten days, because I have to check the matters.

THE CHAIRPERSON: Very good. Thank you very much.

MR. LANKFORD: Could I just say to you as well, Mr. Chairman, it
comes back to the question of claiming privilege and
the specification of certain documents in the
affidavits. Now just to say to you, and obviously you
probably know, it is not normal to specify every single
document that has been claimed privilege over in normal
litigation, even in complicated litigation.

**The Chairperson:** That's what the law did say.

**Mr. Lankford:** I think the Supreme Court does say it all right.

**The Chairperson:** You usually have to pay attention to Supreme Court.

Even I, Mr. Lankford.

**Mr. Lankford:** I know, and I do as well. But normally, Mr. Chairman, it is not done as a practice and, as I said to you, we go back to the agreement. It does explain one thing: That, obviously, if the Commission wishes to call for us to give a list of that documentation, those statements, of course we are obligated to give you a list of them. That is as clear as that. But just to say to you that up to this present moment, apart from the letter we received about three weeks ago asking specifically for that information, we didn't receive them up to now, because we understood the categories were agreed.

**The Chairperson:** We have dealt with that.

**Mr. Lankford:** But I can say to you now we have no difficulty in
creating those lists and confirming how many Brothers and who were they.

THE CHAIRPERSON: And which institutions.

MR. LANKFORD: Oh, of course, of which institutions were given in respect of those documents. We have no difficulty about that.

THE CHAIRPERSON: In those ones, Mr. Lankford, did you use a template for questions?

MR. LANKFORD: No, it was my own...(INTERJECTION)

THE CHAIRPERSON: Presumably you asked the same people the same questions.

MR. LANKFORD: Yeah, I asked the same questions of all of the other persons dealing with these matters.

THE CHAIRPERSON: Is there any reason why you wouldn't give us the questions you asked?

MR. LANKFORD: I don't have them. But the thing is that they covered a similar area to the questionnaire but the questionnaire themselves weren't used. In other words, they deal, for example, with things like...(INTERJECTION)

THE CHAIRPERSON: We can take it that they are the same, it followed
MR. LANKFORD: No, it didn't you see, it didn't follow the same format because I suppose -- they didn't unfortunately. But they covered similar areas dealing with -- similar areas, let's put it that way. But certainly the template wasn't asked for.

THE CHAIRPERSON: So you didn't have a list of topics to be covered?

MR. LANKFORD: Well, general topics.

THE CHAIRPERSON: And there is such a list, that you would have an aide-mémoire.

MR. LANKFORD: No, there isn't, but I can go through them and pick them out and set them out for you.

THE CHAIRPERSON: If there isn't one...(INTERJECTION)

MR. LANKFORD: There isn't one, Mr. Chairman. Because they came in individually.

Q. THE CHAIRPERSON: (TO WITNESS) So where we stand at the moment is, Br. Nolan, what we would like is we would like to be assured, without making an accusation against anybody, no criticism, no accusation against anybody, where we have a criticism we have leveled it, which is -- I don't want to repeat myself?

A. BR. NOLAN: Yes.
Q. THE CHAIRPERSON: All right. What we now want to be sure of is that we have everything, that we have not got some word wrong in the question which has led to some misunderstanding or some interpretation. We want to make sure whatever information was given, by whomsoever, we would like to get that information. Now, you are on the Province Leadership Team at the moment; is that correct?

A. I am yes.

Q. THE CHAIRPERSON: Are you in a position, subject to any legal advice -- well, legal advice will not arise in this respect for the questionnaires because you are giving us all the questionnaires for the St. Helen's province?

A. Yes.

Q. THE CHAIRPERSON: Can you undertake to make sure that we have been sent all the questionnaires? How would you go about checking that?

A. I will have to go back and get lists of whom they might have been sent to, people who were alive at the time. I have already made out a list of people who were sent questionnaires and who are deceased at the moment. But in all this excitement I was rather excited too, and as soon as I got the word, it was the 17th or the 18th of November, this bundle had been available all along, I sent it off straight away. I didn't take photocopies so it could be that it is not a complete list.
Q. THE CHAIRPERSON: But it is possible for you to satisfy yourself --
A. I would be able to find it, yes.
THE CHAIRPERSON: -- that all the relevant material has been furnished? It is possible for you to do that?
A. I would say so, certainly.
THE CHAIRPERSON: Thank you very much.

MR. LANKFORD: We have no difficulty in sending them out.

THE CHAIRPERSON: I am not making accusations. We just want to be satisfied that we are not now making a slip or not asking the right question, or something like this. There is no question, we are getting all of those questionnaires. Full stop. No further debate necessary. Very good.

Now, as to the statements. The St. Mary's statements, the Brothers are entitled to insist on privilege, if they choose to claim privilege, or they are equally free to waive privilege. That's their issue. From our point of view we have to be sure if privilege is claimed that it is properly claimed. So, the precise basis on which it is claimed, the factual basis on which it is claimed, and we also need to know the exact documents that are in issue. Is there anything unclear about that, Mr. Lankford?

MR. LANKFORD: No. As I said
Mr. Chairman, you are perfectly entitled to have a list of the persons who made the statements and you are perfectly entitled that these be set out and confirmed to you. I don't think the Congregation would ever have had another position because it is quite clear that there are quite a number of Supreme Court decisions which set this out. The only matter that we were concerned about, Mr. Chairman, and it is something -- I mean, in hindsight now we were of the view that these matters did not need to be set out because it was categories that were agreed rather than individuals.

THE CHAIRPERSON: I think you are off the hook on that one, Mr. Lankford, because in fairness to you we didn't insist on every piece of paper being listed, and given the thousands of pieces of paper. Maybe we were right. Maybe we were wrong. That was the position that we took. However, now that we are focussing on the specific things we have to adopt a somewhat different -- which is not to say that anybody was wrong earlier, but that's a more sensible way given that we are now focussing very specifically.

MR. LANKFORD: I accept that. As I said to you, once you call on us to specify those matters now I don't think we could have any difficulty in not setting them out. Now just to say to you that the request that you have made that not just the lists be given but the actual documents themselves are being asked for then, obviously, I will

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have to discuss that matter with the PLT of St. Mary's and we would hope to revert to you very, very quickly once we have the list.

THE CHAIRPERSON: Well within ten days you are giving us the information.

MR. LANKFORD: Yes.

THE CHAIRPERSON: And within ten days, presumably, you are able to tell us whether you are giving us the documents or you are not giving us the documents.

MR. LANKFORD: Or very shortly.

THE CHAIRPERSON: Well let's say 14 days.

MR. LANKFORD: 14 days.

THE CHAIRPERSON: I just want to have a date that we can put in our diaries saying we are sure to hear from Mr. Lankford by now and it will be a clear answer, with a list and we won't have a fencing match.

MR. LANKFORD: Certainly.


MR. LANKFORD: And thank you, Mr. Chairman, for being -- thank you for your courtesy.

UNKNOWN SPEAKER: Thank you, Mr. Chairman, for making these people get

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to the point.

THE CHAIRPERSON: Thank you very much as well.

THE HEARING THEN CONCLUDED
you” [1] - 8:20
yourself [1] - 54:2