

COMMISSION TO INQUIRE INTO CHILD ABUSE
PUBLIC HEARING

HELD AT THE HERBERT PARK HOTEL
BALLSBRIDGE, 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.

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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I N D E X

<u>W I T N E S S</u>	<u>EXAMI NATI ON</u>	<u>QUESTI ON NO.</u>	<u>PAGE NO.</u>
BR. SEAMUS NOLAN			
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1 THE HEARING COMMENCED AS FOLLOWS ON WEDNESDAY, 29TH
2 NOVEMBER 2006 AT 10:07 A.M.

3
4
5 THE CHAIRPERSON: Thank you. Yes 10:07
6 Mr. MacMahon.

7
8 MR. MacMAHON: Good morning, Chairman,
9 Members of the Committee.

10 At the start of this public session of the 10:07
11 Investigation Committee I would like to briefly fill in
12 the Committee on a little bit of the background which
13 led to today's public hearing. The position you will
14 recall, Chairman, is that on 24th May, 2006, in the
15 course of the Commission's Phase 3 hearings -- this was 10:07
16 a hearing into Carriglea Park Industrial School -- Br.
17 Nolan, who is here today, told the Investigation
18 Committee that some years previously questionnaires had
19 been sent out to members of the Congregation who had
20 been in industrial schools, asking for information 10:08
21 about life in those institutions. He said that those
22 questionnaires were not specific to Carriglea Park
23 alone but were sent out generally to people who were in
24 industrial schools. Member of the Committee can refer
25 to the actual wording used, it is on page 7 and 8 of 10:08
26 the transcript for the 24th May, 2006.

27 THE CHAIRPERSON: Yes.

28 MR. MacMAHON: When asked by the Chairman
29 whether these

1 questionnaires would be of relevance to the Commission,
2 Br. Nolan said that he thought they should be sent on
3 to us.

4
5 I should say, Chairman, that the existence of these 10:08
6 questionnaires was up to then not known to the
7 Commission. There followed a long sequence of
8 correspondence between the solicitor for the Commission
9 and the solicitor for the Christian Brothers. I
10 propose going into that correspondence in a moment. 10:08

11 The reason why this public hearing today was arranged
12 was that despite this protracted correspondence between
13 the solicitors for the Commission and solicitors for
14 the Christian Brothers these questionnaires were not
15 furnished until a late stage, in fact until after the 10:09
16 fact that this public hearing was being held had been
17 publicised.

18
19 I think it would be relevant, Chairman, for me to go
20 into the correspondence so that the Committee can have 10:09
21 a flavour of what it contained. I think it would be
22 appropriate to begin with the first letter, which is
23 the 8th June, 2006. This is a letter signed by Elisa
24 McHugh, solicitor to the Investigation Committee. It
25 is addressed to Maxwell Solicitors at their address and 10:09
26 it is headed "Phase 3: Witness examination. Evidence
27 of Br. Seamus Nolan, your client Congregation of
28 Christian Brothers". The letter goes:

29 "Dear Sirs,

1 I refer to the evidence of Seamus Nolan
2 an 24th May, 2006 at the public Phase 3
3 hearings into Carriglea Park Industrial
4 School. During the course of his
5 evidence Br. Nolan referred to the fact
6 that members of the Congregation were
7 requested to fill out questionnaires in
8 or around the year 2000. He stated
9 that these questionnaires referred to
10 general life in the institutions,
11 workload, timetable etc. He confirmed
12 that the questionnaires were not
13 specific to Carriglea Park Industrial
14 School but related to all industrial
15 schools run by the Christian Brothers.

10: 10

10 He indicated that these questionnaires
11 were available and I would be obliged
12 if you would furnish copies to the
13 Commission as soon as possible. I
14 would also be obliged if you would
15 explain why these documents were not
16 previously discovered to the
17 Commission.

10: 10

14 Yours faithfully, Elisa McHugh,
15 solicitor to the Investigation
16 Committee."

10: 10

17 On 24th July, 2006 the Commission again wrote to the
18 solicitors for the Christian Brothers. This letter is
19 headed "Phase 3 witness examination. Evidence of
20 Br. Seamus Nolan, your client Congregation of Christian
21 Brothers" and it says: 10: 11

22 "Dear Sirs,

23 We refer to Ms. McHugh's letter dated
24 8th June, 2006 regarding the
25 questionnaires issued in approximately
26 2000. We look forward to receiving
27 copies of the questionnaires and an
28 explanation as to why these documents
29 were not being previously furnished to
30 us as soon as possible.

10: 11

28 Yours faithfully, Feena Robinson,
29 solicitor for the Investigation
30 Committee."

1
2 That letter elicited a response. The response letter
3 is from Maxwell's solicitors, it is addressed to the
4 Commission and it is dated 28th July, 2006. It is
5 headed "Re: Commission to Inquire into Child Abuse, a 10:11
6 specific matter, Phase 3 witness examination. Evidence
7 of Br. Seamus Nolan. Our clients, the Congregation of
8 Christian Brothers (St. Helen's province)". The letter
9 goes:

10 "Dear Ms. Robinson, 10:11
11

12 We have your letter of 24th July, 2006.
13 We confirm that we have looked at
14 Br. Nolan's evidence and his reference
15 to questionnaires. We understand that
16 the witness was referring to
17 questionnaires sent to Brothers who
18 served in industrial schools and other
19 institutions in or about 2000. We have 10:12
20 examined the reasons, purpose and
21 intent of these questionnaires and
22 confirm that they were undertaken by
23 the Congregation on direct legal
24 instruction and advice in preparation
25 of High Court litigation and any
26 inquiries, either statutory or
27 non-statutory, that might be
28 established in dealing with these
29 matters going forward and childcare 10:12
research generally with regard to these
institutions. These are, therefore,
current working documents and are
covered by legal privilege."

24 The letter goes on:

25 "The documents were not furnished to 10:12
26 the Committee, either by way of
27 discovery or otherwise, as they are
28 clearly privileged and we reiterate
29 that they form part of legal research
and as backdrop to gathering
information with a view to defending
High Court litigation.

1 These documents do not pertain to or
2 contain responses to individual
3 complaints, but rather deal with
4 matters such as use of time, duties,
5 workload, staff roles, professional and
6 teaching standards, general attitudes
7 of the public and ancillary topics.
8 Your request has been sent to our
9 current senior counsels and on receipt
10 of their advices we will revert to you
11 further.

10: 13

12 Yours faithfully Maxwells."

13 The Commission responded to that letter on 1st August,
14 2006. This letter was addressed to Maxwells, it is
15 headed "Phase 3, Carriglea Park Industrial School, Dun
16 Laoghaire. Questionnaires referred to by Br. Nolan".
17 The letter goes:

10: 13

18 "Dear Mr. Lankford,

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

10: 13

10: 14

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

10: 14

41 It seems clear that this material is of
42 relevance to the Committee's work.
43 Br. Nolan confirmed that in evidence.
44 There was no decent from the Christian
45 Brother's legal team present during

1 that evidence and neither was any
2 question raised during subsequent
3 hearings. The suggestion that the
4 material is subject to privilege is in
5 itself an acknowledgment that it is
6 relevant, although sought to be
7 protected from the obligation to
8 produce it.

10: 14

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

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

10: 15

18 It is even more puzzling that in your
19 last paragraph you say that the matter
has been referred to senior counsel for
20 advice. The implication, if I
understand correctly, is that your
21 client's position may change in light
of advice from senior counsel. It is
22 open to a person to waive a claim of
privilege and produce the material.
23 The Brothers could agree to supply the
questionnaires to the Committee not
24 withstanding their contention that they
might be privileged. And it may be of
25 interest to your clients that another
congregation has had no difficulty in
26 furnishing a survey that it conducted
amongst its members in relation to
27 their experiences in industrial
schools.

10: 15

10: 15

10: 16

28 You will appreciate that I do not want
29 to enter into protracted correspondence
over this matter and would appreciate

1 confirmation as a matter of urgency
2 whether the Christian Brothers are
3 refusing to hand over the
4 questionnaires relying on a claim of
5 legal professional privilege.

6 Yours sincerely Feena Robinson."

10:16

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

10:16

11 "Dear Ms. Robinson,

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

10:16

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

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

10:17

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

10:17

38 It is to be noted that you have

1 refrained from calling on all possible
2 research done, which is revealing of
3 your position. Your speculation with
4 regard to the material being
5 inadvertently overlooked and other
6 inferences being drawn is completely
7 unacceptable and devoid of logic as
8 documents that are created under
9 privilege and known to be privileged
10 would not be disclosed or referred to
11 directly.

10: 18

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

10: 18

11 Yours sincerely. "

12
13 Ms. Robinson, solicitor for the Investigation Committee
14 replied to that letter on 11th August, 2006. Her
15 letter is headed "Re: Phase 3 witness examination of
16 Br. Seamus Nolan. Your client: The Christian Brothers
17 Congregation (St. Helen's.)"

10: 18

18 "Dear Mr. Lankford,

19
20 I refer to your letter dated 3rd
21 August. While I accept that specific
22 responses by individuals against whom
23 complaints were made in proceedings may
24 be privileged I do not accept that the
25 questionnaires can be covered in their
26 entirety by legal privilege. In the
27 circumstances the Investigation
28 Committee must insist on disclosure of
29 the questionnaires.

10: 18

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

10: 18

Yours sincerely, Feena Robinson. "

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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."

10: 19

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."

10: 19

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

10: 19

"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."

10: 20

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."

10: 20

1 Ms. Robinson replied to that on 10th October, 2006.

2 She said:

3 "Dear Mr. Lankford,

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

10: 20

11 Yours sincerely."

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

10: 20

17 "Dear Mr. Lankford,

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

10: 21

10: 21

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

10: 21

36 Yours sincerely."

37 The solicitors for the Christian Brothers replied to
38 that letter by letter dated 10th November, 2006. That
39

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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."

10: 22

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

10: 22

"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."

10: 22

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.

10: 22

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:

10: 22

1 Commission to Inquire Into Child Abuse. Proposed
2 meeting with the counsel to the Investigation
3 Committee. Specific matter: List proposed agenda.
4 Our client: Christian Brothers Congregation, St. Mary
5 and St. Helen's."

10: 23

6
7 "Dear Ms. Robinson,

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

10: 23

17 We propose a meeting on Monday next,
18 21st November at 4 p.m. we look
19 forward to hearing from you in early
20 course."

10: 23

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

24 **THE CHAIRPERSON:** No.

25 **MR. MacMAHON:** But one of those, item 6,
26 related to the evidence of
27 Br. Nolan and the request for the questionnaires
28 referred to in the evidence of Phase 3 Carriglea
29 module.

10: 24

10: 24

30 That letter was received by the Commission on 16th
31 November and by the same date the Commission replied.
32 The Commission's letter is dated 16th November, 2006
33 and it refers to a number of matters. The heading -- I

1 don't propose going into all of those matters,
2 Chairman, at this point in time but I do propose
3 indicating -- the heading of that letter was "Re: 11
4 letters dated as follows:

5 "3rd November, 2006 - three letters. 10: 24
6 6th November, 2006 - two letters.
7 8th November, 2006 - one letter.
8 10th November, 2006 - two letters.
9 14th November, 2006 - one letter.
10 15th November, 2006 - two letters."

11 It starts: 10: 25

12 "Dear Mr. Lankford,
13 I refer to correspondence received
14 recently from you as follows."

15 The Commission's letter, Ms. Robinson's letter is 10: 25
16 divided into -- it is a three page letter, of which the
17 matter of the questionnaires is dealt with on the --
18 sorry, it is a four page letter. The matter of the
19 questionnaires is dealt with on the fourth page. The
20 other three pages are dealing with other matters which 10: 25
21 have been raised in the course of correspondence, the
22 correspondence the dates of which I have referred to.
23 A response is given in relation to each of the points
24 raised in all of those letters. The paragraph on page
25 4 which is relevant to today's hearing is 10: 26
26 headed "questionnaires. Your letter dated 10th
27 November".

28 "Turning to an entirely different
29 matter, I confirm that the hearing into
the production of the survey material

1 referred to by Br. Nolan in his
2 evidence of 24th May will take place at
3 the Herbert Park Hotel on Wednesday,
4 29th November at 10 a.m.

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

8 Yours sincerely, Feena Robinson. "

10:26

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

10:26

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

10:27

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

10:27

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

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

10:27

35 I think I need not go into that at this point in time.
36 I have dealt with the last bit in relation to the
37 questionnaires when I opened that letter to you

1 initially. A reply to that letter comes dated 17th
2 November, 2006. This letter is from Maxwells,
3 addressed to the solicitors for the Commission and it
4 is headed "Re: Phase 3 hearings. Evidence of
5 Br. Seamus Nolan. Our client: Christian Brothers
6 Congregation, St. Mary and St. Helen's".

10: 28

7 "Dear Ms. Robinson,

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

10: 28

15 In stating to the Commission that the
16 Carriglea questionnaires would be
17 provided, Br. Nolan was unaware that
18 that documents were privileged and that
19 the Congregation regarded them as such.
20 However, in view of the fact that he
21 did indicate that these questionnaires
22 would be provided the Congregation does
23 not wish to go back on that and has
24 instructed us to waive the privilege in
25 respect of the Carriglea
26 questionnaires. Consequently, we
27 enclose herewith copies of the
28 questionnaires in relation to
29 Carriglea.

10: 28

10: 29

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

10: 29

1 Attached to this letter there was a document, which is
2 referred to, which is a document in blank effectively.
3 On 20th November, 2006 the solicitor for the
4 Investigation Committee replied to Mr. Lankford's
5 letter. This letter is headed "Re: Phase 3 hearings. 10: 29
6 Evidence of Br. Seamus Nolan. Your clients: The
7 Congregation of Christian Brothers, St. Mary's and St.
8 Helen's".

9 "Dear Mr. Lankford,

10 Thank you for your letter dated 17th 10: 29
11 November. The public hearing will be
12 proceeding on 29th November. We are
13 requesting all surveys, which obviously
include the answers. No completed
surveys were enclosed with your letter.

14 Yours sincerely."

15 10: 30
16 The Committee received a response to that letter. This
17 letter is from Maxwell's and addressed to the solicitors
18 for the Commission, dated 21st November, 2006. It
19 goes:

20 "Re: Phase 3 hearings. Evidence of 10: 30
21 Br. Seamus Nolan a. Specific matter:
Request for questionnaires.
22 Institution: Carriglea Park Industrial
23 School. Our client: Christian
Brothers Congregation, St. Helen's.

24 Dear Ms. Robinson,

25 We refer to the above matter in 10: 30
26 previous correspondence. We enclose
herewith questionnaires sent to deal
27 with this school. You may recall that
Carriglea closed in 1954 and we confirm
28 that the questionnaire was only sent to
the Brothers set out in the schedule
29 hereto. We also attach copy of an
additional questionnaire which was sent
in November 2000 dealing with Carriglea

1 to a named Brother. The second
2 questionnaire was only sent to that
3 Brother.

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

10: 31

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

10: 31

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

10: 31

24 "Dear Ms. Robinson,

25 We refer to the above matter and our
26 letter of even date concerning the
27 evidence of Br. Nolan in Phase 3
28 hearings. We enclose herewith
29 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."

10: 32

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

10: 32

34 "Dear Mr. Lankford,

1 I refer to your three letters dated
2 21st November received yesterday. All
3 questionnaires completed by Christian
4 Brothers were requested. Not all
5 questionnaires were received. The
public hearing will be proceeding next
Wednesday."

10: 33

6 There followed a letter received yesterday in relation
7 to this matter, Chairman. This letter is dated 28th
8 November, 2006. It says "Re: Phase 3. Evidence of
9 Br. Seamus Nolan. Public hearing on 29th November,
10 2006. Christian Brothers Congregation, St. Helen's".

10: 33

11 "Dear Ms. Robinson,

12 We refer to previous correspondence and
13 discussions with respect of counsel
concerning the above matter. We confirm
14 that unfortunately none of our counsel
are available to attend the hearing on
15 29/11/06 due to previous commitments.
As you are aware, there has been no
16 previous occasion when no member of our
team of counsel was not available for a
17 hearing before the Investigation
Committee and we have not previously
18 sought an adjournment because of the
non-availability of counsel. In view
19 of the sensitive nature of the work of
the Commission, our clients are anxious
20 to ensure that they were represented by
counsel at public sittings. For this
21 reason we request the Commission to
grant a short adjournment of the
22 proposed public sitting.

10: 33

10: 33

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

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

10: 33

27 "Dear Mr. Lankford,

28 I am replying to your letter of 28th
29 inst in the absence of Ms. Robinson. I
am afraid that it is impossible to

1 exceed to the request for an
2 adjournment contained in your letter
received less than an hour ago.

3 You will recall that you were notified
4 of the hearing date by letter of the
8th inst. A notice directing the
5 attendance of Br. Nolan issued on 14th
inst and a general notice of the
6 hearing was given to the public on the
16th inst. 10: 34

7 Yours sincerely. "

8

9 The reference to the 16th inst, of course, Chairman, is
10 reference to the fact that this public hearing was 10: 34
11 going to be heard today and was notified to the public
12 on the Commission internet site. That publication took
13 place on the 16th of this month.

14 THE CHAIRPERSON: Very good.

15 MR. MacMAHON: The current position, 10: 35
16 Chairman, is that the
17 Committee has now received questionnaires relating to
18 three industrial schools. These were received after
19 the copious correspondence and after an announcement
20 that today's public hearing was going to take place. 10: 35

21

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

24

25 1 Q. THE CHAIRPERSON: Maybe we can get the 10: 35
26 factual basis. Good
27 morning Br. Nolan. How are you?

28 A. BR. NOLAN: Good morning.

29 2 Q. THE CHAIRPERSON: Obviously, in respect of

1 4 Q. **THE CHAIRPERSON:** Did you know that this
2 sparring match had gone on
3 when we tried to ask for them and were fobbed off
4 constantly, pushed around, pushed from pillar to post.
5 Are you claiming privilege? We don't know. It has 10: 37
6 been referred to counsel. Then we are fobbed off with
7 the -- well, sorry, can you understand our frustration
8 and, indeed, anger, when after all this six months
9 later we are given the questions and not the answers
10 for one institution? Can you understand our 10: 37
11 frustration?

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

13 5 Q. **THE CHAIRPERSON:** There are questions
14 that I want to ask, or we
15 would like to ask about where we stand at the moment, 10: 38
16 but let me just explain. People can have documents
17 that are subject of legal privilege. They are
18 entitled, if they choose, to waive that privilege. But
19 what we don't see it as any part of our function to
20 bully people or pressure them into waiving them. 10: 38
21 That's a decision they are free to make as they choose
22 if the material is properly privileged. It is our
23 function, however, to satisfy ourselves that it is
24 properly privileged and that depends upon a factual
25 basis. 10: 38

26
27 Now, even as we look at the correspondence the claim
28 waxes and wanes, comes and goes, is waived for some
29 materials. So one of the things we would like to do is

1 to find out what other documents exist definitively and
2 have specific information about the claims that are
3 made. If it is claimed, for instance, for defending
4 litigation we would like to know what cases were in
5 existence that were being defended? If it is 10: 39
6 anticipated litigation, a legitimate heading, what
7 claims, what litigation was anticipated? All those are
8 factual questions. We have no interest in depriving
9 people of legal rights, but what has happened has been
10 a waste of our time, it has been frustrating us and we 10: 39
11 would like an explanation as to why it has taken six
12 months of protracted correspondence, which essentially
13 was a waste of time. Mr. Lankford, Br. Nolan doesn't
14 understand it, we don't understand it, maybe you
15 understand it. 10: 40

16 **MR. LANKFORD:** I would.
17 Obviously,
18 Br. Nolan, obviously, when
19 giving evidence -- if I could just talk about it.

20 **THE CHAIRPERSON:** Yes, take your time, I 10: 40
21 would like the explanation.

22 **MR. LANKFORD:** When he gave
23 evidence on
24 the 24th of May, as he said
25 in direct evidence, he wasn't aware of or didn't 10: 40
26 understand what privilege was. Whether or not the
27 document was or was not privileged he didn't know about
28 it. So when the questions were put to him at the very,
29 very long meeting, I think it was the second or third

1 last question put to him, he obviously wished to be, as
2 the Congregation has always been, helpful to the
3 Commission, he said that he knew about some of these
4 documents and that they could be sent on. Now, after
5 that hearing... (INTERJECTION)

10:40

6 **THE CHAIRPERSON:** He said:

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

9 Q. Would they be of relevance to us?

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

10:41

12
13 So far so good, he agrees that they are relevant and
14 he's going to send them to us.

15 **MR. LANKFORD:** But he was not
16 aware that

10:41

17 these documents were
18 created on 30th March, 1999 when they were sent out to
19 a particular number of Brothers who survived in
20 Carriglea -- who were teaching in Carriglea before or
21 on some date in 1954, when the institution closed. And
22 he wasn't aware on what basis those documents were
23 created.

10:41

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

10:41

26 He made that clear.

27 **MR. LANKFORD:** Oh yes, but in
28 his

29 evidence, Mr. Chairman, he

1 referred only to Carriglea and he was being asked
2 questi ons.

3 **THE CHAIRPERSON:** No. No.

4 "Q. Do you have copies of those
5 questi onnai res? 10: 41

6 A. I don't have them here, no."
7

8 Now I am looking at the transcript.

9 "I am sure they can be found, yes.
10 They are not specific to Carriglea Park 10: 41
11 alone. They were just generally sent
12 out..."

13 And he says:

14 "... to people who were in industrial
15 school s. 10: 42

16 I asked:

17 "Would they be of relevance to us?"
18

19 And he says:

20 "I think we should send them on to 10: 42
21 you."

22
23 I say:

24 "Thank you very much."
25

26 **MR. LANKFORD:** I accept that 10: 42
27 that's the
28 position. But he was
29 unaware when these documents were created and he didn't

1 know that they were created for a specific purpose,
2 which was in defence of a civil litigation at the time.

3 **THE CHAIRPERSON:** All right, the specific
4 witness, Br. Nolan, did not
5 appreciate the question of privilege, but why didn't
6 you or counsel appreciate that, then or later? 10: 42

7 **MR. LANKFORD:** As I say, I was
8 aware that

9 he mentioned these at the
10 time, but counsel wasn't aware of them because I think 10: 42
11 both counsel who were present on that particular day
12 weren't advisors to the Congregation at this time. I
13 think all the three counsel weren't advisor to the
14 Congregation at this time. You must remember,
15 Mr. Chairman, this is 30th March, 1999 and the 10: 42
16 Commission itself, that is the non-statutory
17 Commission, wasn't established until in or around
18 September 1999.

19 **THE CHAIRPERSON:** It was announced in May;
20 isn't that right? 10: 43

21 **MR. LANKFORD:** It was, yeah,
22 but these are
23 March.

24 **THE CHAIRPERSON:** I understand that.

25 **MR. LANKFORD:** Also in 10: 43
26 September '99.

27 And, obviously, there were
28 two reports from that statutory Commission, I think one
29 in September and one on 7th November, I think, of that

1 same year.

2 **THE CHAIRPERSON:** Yes. You say the
3 first point is that
4 Br. Nolan wasn't aware that these documents were the
5 subject of a claim to privilege. 10: 43

6 **MR. LANKFORD:** Absolutely. And
7 he didn't
8 know how they came into
9 existence.

10 **THE CHAIRPERSON:** That's all right. 10: 43

11 **MR. LANKFORD:** If we could just
12 move on
13 then to that.

14 **THE CHAIRPERSON:** Wait now, I have a question
15 to ask you about that. The 10: 43
16 only person sitting here who knew that was you.

17 **MR. LANKFORD:** Yes, that's
18 right.

19 **THE CHAIRPERSON:** Because counsel did not
20 know of these documents, or 10: 43
21 alternatively did not know that they were -- okay.

22 **MR. LANKFORD:** I suppose as an
23 explanation
24 for that, Mr. Chairman, and
25 I don't want to be sassy or anything else, but I was 10: 44
26 down here (indicating), because of the arrangements I
27 was down here (indicating). My two senior counsel were
28 here and I was down here (indicating).

29 **THE CHAIRPERSON:** I just want to get

1 information.

2 MR. LANKFORD: I was in very

3 much

4 ... (INTERJECTION)

5 THE CHAIRPERSON: Stop for a second, Mr. 10: 44

6 Lankford. There is no

7 criticism implied in anything I am saying, I just want

8 to get the facts.

9 MR. LANKFORD: Sorry.

10 THE CHAIRPERSON: But what you have said, as 10: 44

11 I understand it, is that

12 these documents were created for the purpose of

13 defending litigation.

14 MR. LANKFORD: And I can also say because,

15 obviously, of these matters 10: 44

16 being in the public domain for quite some time it was

17 anticipated that some form of inquiry, whether it was

18 non-statutory or statutory, was going to be established

19 and we were anticipating or were trying to -- you must

20 remember Carriglea closed in 1954, Chairman. 10: 45

21 THE CHAIRPERSON: Yes. So it wasn't

22 restricted to litigation?

23 MR. LANKFORD: No.

24 THE CHAIRPERSON: Obviously privilege

25 attaches to documents whose 10: 45

26 dominant purpose is litigation. What you first said

27 and what it seems to be saying in the correspondence is

28 that this is for litigation. So it wasn't just for

29 litigation, it was also anticipating an inquiry.

1 THE CHAIRPERSON: So Br. Nolan didn't know.
2 Who did know?
3 MR. LANKFORD: Well, the PLT of the
4 Congregation at the time.
5 I would have to check who they were, but obviously they 10: 47
6 were there at the time in 1999.
7 THE CHAIRPERSON: Provincial -- Province
8 Leadership Team I am
9 guessing by that.
10 MR. LANKFORD: Well, they are the six 10: 47
11 members.
12 THE CHAIRPERSON: Yes, I understand. So each
13 of them, the Province
14 Leadership Team knew about them?
15 MR. LANKFORD: Yes, they did. Now, just 10: 47
16 to go on then to say that
17 Mr. MacMahon is incorrect in saying that the affidavit
18 for the setting out of documentation with regard to
19 Carriglea and all of the other institutions, he's
20 incorrect in saying that the Congregation did not 10: 48
21 reserve privilege in those documentation. In my
22 letter, in the correspondence which was read out you
23 will see that we specifically referred to the schedule,
24 part 2 of that particular schedule. When you look at
25 part 2 of the schedule, Mr. Chairman, you will see that 10: 48
26 there are 20 or 30 categories.
27 THE CHAIRPERSON: It is described in general
28 terms.
29 MR. LANKFORD: Yes, categories

1 of... (INTERJECTION)
2 **THE CHAIRPERSON:** Strictly speaking it should
3 be listed specifically.
4 But you can say we didn't insist on that and we took a
5 practical view. That's fair enough. 10: 48
6 **MR. LANKFORD:** If I could go on a little
7 bit further than that, Mr. Chairman, and say -- and I
8 don't think I am misstating the situation -- our
9 counsel at that time, because, obviously, with regard
10 to the other institutions and the type of work that was 10: 49
11 being done and the interaction between the Congregation
12 and the Commission was on a daily basis it was
13 agreed -- and I refer in the affidavit to
14 correspondence and the understandings reached. My
15 understanding of those was that it was only 10: 49
16 categorisation which was agreed. We tried to be as
17 broad in those categories as possible by actually going
18 through them... (INTERJECTION)
19 **THE CHAIRPERSON:** Mr. Lankford, could I stop
20 you. Are you going to come 10: 49
21 to a point where you explain why it took us six months
22 to get this letter?
23 **MR. LANKFORD:** Yes, I will of course.
24 **THE CHAIRPERSON:** After all the rigamarole I
25 know what's in the 10: 50
26 correspondence... (INTERJECTION)
27 **MR. LANKFORD:** I think it is important
28 though, Mr. MacMahon said
29 that we didn't claim privilege... (INTERJECTION)

1 THE CHAIRPERSON: He read the correspondence
2 and he read the answer.

3 MR. LANKFORD: Yes, i know.

4 THE CHAIRPERSON: And that's not the issue
5 here. The issue is simple. 10: 50
6 The first issue is -- and let me tell you why this is
7 so. This is so because it makes us uneasy,
8 Mr. Lankford, it makes us uneasy to the point of being
9 suspicious, that if such efforts are made to withhold
10 something as simple as this we want to be assured that 10: 50
11 what else is there. Because this is not an attitude of
12 oh, let's help you and let's bring it around to you.
13 Six months later we could still be corresponding, if we
14 didn't have this meeting we could be correspond in six
15 months time and you would still be giving us the run 10: 51
16 around.

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

19 THE CHAIRPERSON: Because you gave us the run
20 around for six months. 10: 51

21 MR. LANKFORD: I wouldn't accept that.

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

25 MR. LANKFORD: No, it wasn't. What 10: 51
26 happened
27 there... (INTERJECTION)

28 THE CHAIRPERSON: I mean, you must have
29 thought through that

1 **MR. LANKFORD:** Exactly.

2 **THE CHAIRPERSON:** Why didn't you tell us

3 that?

4 **MR. LANKFORD:** Just to say to you that's

5 what we did. We did say it 10: 52

6 in our letter of 21st November. But we just say we

7 tried to do that on the Friday -- just to explain why

8 only the sample letter and the guidelines and the

9 questions, the draft questions were sent out on the

10 Friday, to explain that. We had to check with that 10: 52

11 particular Brother. Now, he's an elderly Brother, he's

12 84 years of age and when it comes to the direct

13 evidence of Br. Nolan I will ask him -- and maybe we

14 could just ask him now.

15 (TO THE WITNESS) Is it a fact, Brother, that you were 10: 53

16 asked to contact that particular Brother so that his

17 consent with regard to privilege or perceived privilege

18 was to be waived and he was consenting to that?

19 A. **BR. NOLAN:** Yes, I did that, I rang

20 him and he gave the 10: 53

21 permi ssi on.

22 **THE CHAIRPERSON:** All right, Mr. Lankford,

23 let's start at the very

24 begi nni ng.

25 **MR. LANKFORD:** Yes. 10: 53

26 **THE CHAIRPERSON:** Br. Nolan gives thi s

27 evi dence and menti ons these

28 documents. Okay, so far so good. Some time shortly

29 after that we write looking for the material. You

1 believe that this material, rightly or wrongly -- it
2 doesn't matter whether it is correct or not -- you
3 believe that this material is privileged. All right?
4 A decision now has to be made, this is June 2006. The
5 decision is simple: Do the Christian Brothers want to
6 rely on privilege and tell us they are not giving us
7 it, or do they wish to waive the privilege and give us
8 the documents? Now, that is simple.

10: 54

9 **MR. LANKFORD:** Could I respond to that?

10 **THE CHAIRPERSON:** Why wasn't that decision,
11 that simple decision made

10: 54

12 and we are told, no, you can't have them because they
13 are privileged, or yes here they are?

14 **MR. LANKFORD:** I will explain that to you.

15 **THE CHAIRPERSON:** Please do.

10: 54

16 **MR. LANKFORD:** When we received your
17 letter of 8th June asking
18 these documents formally we wrote to our counsel, and I
19 am not blaming counsel in this matter, but we wrote to
20 counsel and I have no difficulty, subject to that
21 particular counsel -- I confirm it anyway,

10: 54

22 Mr. Chairman. We wrote, I think, the following day or
23 two days later indicating to counsel that this matter
24 had arisen and that in my view these were privileged
25 but that I would like his advice in respect of it. I
26 wrote to him in that particular vein.

10: 55

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

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

1 all. I wasn't in doubt at all, Mr. Chairman. There
2 wasn't any doubt that we had claimed privilege.

3 **THE CHAIRPERSON:** But you wanted to get
4 confirmation.

5 **MR. LANKFORD:** I wanted to get 10: 55
6 confirmation from senior counsel.

7 **THE CHAIRPERSON:** That is perfectly
8 legitimate.

9 **MR. LANKFORD:** Which is very legitimate
10 dealing with these types of 10: 55
11 very, very technical matters.

12 **THE CHAIRPERSON:** But there was still a
13 question: Were your
14 clients going to waive the privilege? Why didn't you
15 proceed on the basis of, look, there is two 10: 55
16 possibilities: (A) it is privileged and my view will
17 be confirmed by counsel, or (B) I am wrong and it is
18 not privileged. But whether or which let's decide.

19 **MR. LANKFORD:** I didn't particularly wish
20 to move, Mr. Chairman, and 10: 55
21 I am sure 30 years as a barrister you would realise
22 that in a very technical matter one needs to, no matter
23 how confident ones self may be in respect of a very
24 technical matter like these that you need a senior
25 counsel to have a look at it or a junior counsel to 10: 56
26 have a look at it. That's what Maxwell's did, they
27 wrote to their counsel. This was in the end of June
28 and these matters were not received, the advices were
29 not received at the close of the law term on 28th July.

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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.

10:56

10:57

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 advices. 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)

10:57

10:58

10:58

THE CHAIRPERSON: When counsel advised
counsel confirmed that the

1 matter was privileged.

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

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

7 **MR. LANKFORD:** Confirmed that they were
8 privileged documents.

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

14 **MR. LANKFORD:** Obviously our advice
15 was to look at the 10:59
16 documents carefully... (INTERJECTION)

17 **THE CHAIRPERSON:** How many letters do you
18 think it took for us to get
19 to that point, Mr. Lankford? How much time do you
20 think had to be spent by the Commission dealing with 10:59
21 your correspondence?

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

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

27 **MR. LANKFORD:** No, not at all. Of course
28 not. But as you know, Mr.
29 Chairman... (INTERJECTION)

1 THE CHAIRPERSON: Do you think it is
2 satisfactory
3 that... (INTERJECTION)
4 MR. LANKFORD: No, it is not.
5 THE CHAIRPERSON: Wait now, hear the 10:59
6 question. Do you think that the way that your firm
7 dealt with us in the past six months over this issue
8 was satisfactory?
9 MR. LANKFORD: In respect of this issue,
10 as I say, I was 10:59
11 constrained... (INTERJECTION)
12 THE CHAIRPERSON: In respect of this issue.
13 MR. LANKFORD: In respect of this issue I
14 was constrained,
15 Mr. Chairman. I wrote to you on two occasions 10:59
16 indicating not only that but I indicated to you in our
17 letter of 28th July that... (INTERJECTION)
18 THE CHAIRPERSON: Is that a yes or a no or a
19 maybe?
20 MR. LANKFORD: It is a complicated matter 10:59
21 and, as I say, I was
22 awaiting senior counsel's advices. But what I did do,
23 Mr. Chairman -- and I would have thought that it might
24 be regarded as rather courageous -- but I did write to
25 you on 28th July, which really stated that the nature 11:00
26 of these questionnaires did not deal with complaints.
27 In other words, what I was trying to do there was to
28 tell you the nature of the questionnaire.
29 THE CHAIRPERSON: We wrote back on 1st

1 August and we pleaded -- no, hold on. The one thing we
2 wanted to know was: Are you refusing these relying on
3 privilege or not? Now, that was a reasonable request.
4 Are you giving them to us or not? You may be perfectly
5 entitled to withhold them, you may not be perfectly 11:00
6 entitled to, but we will at least move on once we know
7 what you are doing. We still didn't get a direct
8 answer.

9 **MR. LANKFORD:** Could I just explain it
10 again. We did say in our 11:01
11 letters that these were privileged documentation.
12 Right? We did say it, Mr. Chairman, it is in the
13 letter of 28th July very, very clearly. We also gave
14 you an authority by the former President of the High
15 Court in respect of those matters. 11:01

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

19 **MR. LANKFORD:** I accept that.

20 **THE CHAIRPERSON:** There is nothing 11:01
21 desperately complicated
22 about this.

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

25 **THE CHAIRPERSON:** All right. All right. 11:01

26 **MR. LANKFORD:** If I could just go on from
27 the legal advice because,
28 like anything else, the life is not confined and
29 dealing with individuals and dealing with Commissions

1 is not just dealing with legal advice whether you are
2 absolutely 1000% and you have got 15 Supreme Court
3 decisions. A number of reasons: 1. The Supreme Court
4 could change their mind if the facts are slightly
5 different, or what is the Commission's response to our 11:01
6 claiming of privilege? Now, this was also dealt with
7 and it was decided by the Congregation and decided by
8 me that it was not politic. We were getting quite a
9 severe bashing, if I may put it that way, from the
10 Commission with regard to this matter. I am not saying 11:02
11 that the Commission hadn't got grounds for doing so,
12 what I am saying is that this was then decided, that in
13 those circumstances, and on looking at the
14 documentation that the Congregation were prepared to
15 waive the privilege in respect of that documentation. 11:02
16 And that is what we did on 21st November.

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

18 **MR. LANKFORD:** Could I just say to you,
19 just to clarify that, there
20 was I can assure you, there was a delay between 8th 11:03
21 June and the final response. But we had indicated the
22 broad areas of our position and we also had indicated
23 to the Commission that these questionnaires were not
24 as -- they were merely information gathering and that
25 they were not... (INTERJECTION). 11:03

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

29 **MR. LANKFORD:** But in contra distinction

1 to responding to specific
2 allegations. In other words, what we stated in our
3 letter of 28th. And we made it perfectly clear that
4 these documents were of a specific type.

5 **THE CHAIRPERSON:** Now, Mr. Lankford, let's 11:03
6 get onto the next thing.
7 Have we got everything in the documents?

8 **MR. LANKFORD:** With regard to -- maybe
9 when we go into the
10 evidence of Mr. Nolan, or maybe I could ask him 11:04
11 questions because it is important.

12 6 Q. **THE CHAIRPERSON:** Br. Nolan, have we got
13 everything of these
14 documents?

15 A. **BR. NOLAN:** As far as I know, yes. 11:04

16 7 Q. **THE CHAIRPERSON:** But you have not been able
17 to check them?

18 A. Which documents is this? Is this the questionnaire?

19 8 Q. **THE CHAIRPERSON:** Br. Nolan, let me ask you
20 this: Questionnaires were 11:04
21 sent out, I take it you don't have a complete list of
22 everybody to whom they were sent?

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

24 9 Q. **THE CHAIRPERSON:** All right. Questionnaires
25 were sent, were they sent 11:04
26 to every surviving Brother in every institution?

27 A. I would expect so, yes.

28 10 Q. **MR. LANKFORD:** Not in respect of every
29 institution, in respect

1 of --

2 A. Well, our three institutions, like St. Helen's province

3 institutions.

4 11 Q. **THE CHAIRPERSON:** The St. Helen's province?

5 What happened in regard to 11:05

6 St. Mary's province? St. Mary's is the northern, St.

7 Helen's is the Southern; isn't that right?

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

9 12 Q. **THE CHAIRPERSON:** What road did they go, do

10 we know? 11:05

11 A. I think they went directly to the solicitors, as far as

12 I know, and made statements. Again, I wasn't working

13 with them at the time.

14 **THE CHAIRPERSON:** What's the position there,

15 Mr. Lankford, what happened 11:05

16 in St. Mary's province?

17 **MR. LANKFORD:** With regard to St. Mary's

18 province you must

19 understand, Mr. Chairman, that all of the Brothers

20 were -- other than those that were charged or 11:05

21 interviewed by the guards in respect of these

22 complaints -- they were all clients of Maxwells.

23 **THE CHAIRPERSON:** Yes.

24 **MR. LANKFORD:** And St. Mary's institution,

25 the St. Mary's province 11:05

26 decided that they would not send out these

27 questionnaires and would not use these questionnaires,

28 but that that they would either come into me or that I

29 would go up to the Provincial House to interview them.

1 You must remember this is 1999.

2 **THE CHAIRPERSON:** Very good.

3 **MR. LANKFORD:** And these Brothers

4 either had been mentioned

5 in pleadings or were expected to be mentioned in 11:06

6 pleadings at this time.

7 **THE CHAIRPERSON:** That's a bit hard for me to

8 understand. But let's not

9 get sidetracked into that one, Mr. Lankford, I think

10 that sounds complicated. 11:06

11 **MR. LANKFORD:** It is very complicated.

12 **THE CHAIRPERSON:** Just let's stick to the

13 facts for the moment.

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

15 **MR. LANKFORD:** Yes. 11:06

16 **THE CHAIRPERSON:** They were not sent out to

17 St. Mary's.

18 **MR. LANKFORD:** Yes.

19 **THE CHAIRPERSON:** Instead a number of

20 Brothers, however selected, 11:06

21 a number of Brothers were interviewed and made

22 statements. Is that correct?

23 **MR. LANKFORD:** Yes, that's correct. Well,

24 they didn't make statements

25 as such, Mr. Chairman. What happened was that 11:07

26 questions and answers dealing with certain areas that

27 the Congregation's solicitors were interested in, with

28 the complete intent to defend the allegations against

29 other Brothers and possibly themselves.

1 THE CHAIRPERSON: Let me see if I can put
2 this right. Information
3 was obtained.
4 MR. LANKFORD: Yes.
5 THE CHAIRPERSON: You, Mr. Lankford -- let's 11:07
6 keep this simple. Mr. Lankford got information from
7 individual Brothers.
8 MR. LANKFORD: Yes.
9 THE CHAIRPERSON: So the Brother came along
10 and he spoke to you and you 11:07
11 wrote down his answers.
12 MR. LANKFORD: Well, I asked him questions
13 and I wrote down.
14 THE CHAIRPERSON: You asked him questions.
15 MR. LANKFORD: It was then put into a 11:07
16 statement.
17 THE CHAIRPERSON: So he made a statement?
18 MR. LANKFORD: Yes.
19 THE CHAIRPERSON: Very good. That's where I
20 came in. All right, he 11:07
21 made a statement. There is a body of statements, over
22 which privilege is... (INTERJECTION)
23 MR. LANKFORD: There is a body of
24 information, Mr. Chairman,
25 which are set out, as these things are, in a narrative 11:07
26 form, depending on the questions being asked. Yes,
27 they are there.
28 THE CHAIRPERSON: And they relate to the
29 people in St. Helen's

1 province?

2 **MR. LANKFORD:** St. Mary's.

3 **THE CHAIRPERSON:** Forgive me, I am sorry.

4 In St. Mary's province we

5 have these statements in this form. In St. Helen's we 11:08

6 have the questionnaires.

7 **MR. LANKFORD:** That's correct.

8 **THE CHAIRPERSON:** All right. And without in

9 anyway depriving your

10 clients of any right that they may have, could we ask 11:08

11 you for a list of those statements and the basis on

12 which they are claimed to be privileged? I mean, if

13 you are entitled to privilege, you are entitled to

14 privilege. There is no question of anybody here trying

15 to -- and we are not in the business of criticising 11:08

16 people for exercising their rights, they are perfectly

17 entitled to do that.

18 **MR. LANKFORD:** Mr. Chairman, the answer is

19 yes.

20 **THE CHAIRPERSON:** Thank you very much. When 11:09

21 could we have that, Mr.

22 Lankford?

23 **MR. LANKFORD:** I think we could have it

24 within ten days, because I

25 have to check the matters. 11:09

26 **THE CHAIRPERSON:** Very good. Thank you very

27 much.

28 **MR. LANKFORD:** Could I just say to you as

29 well, Mr. Chairman, it

1 comes back to the question of claiming privilege and
2 the specification of certain documents in the
3 affidavits. Now just to say to you, and obviously you
4 probably know, it is not normal to specify every single
5 document that has been claimed privilege over in normal 11:09
6 litigation, even in complicated litigation.

7 **THE CHAIRPERSON:** That's what the law did
8 say.

9 **MR. LANKFORD:** I think the Supreme Court
10 does say it all right. 11:09

11 **THE CHAIRPERSON:** You usually have to pay
12 attention to Supreme Court.
13 Even I, Mr. Lankford.

14 **MR. LANKFORD:** I know, and I do as well.
15 But normally, Mr. Chairman, 11:09
16 it is not done as a practice and, as I said to you, we
17 go back to the agreement. It does explain one thing:
18 That, obviously, if the Commission wishes to call for
19 us to give a list of that documentation, those
20 statements, of course we are obligated to give you a 11:10
21 list of them. That is as clear as that. But just to
22 say to you that up to this present moment, apart from
23 the letter we received about three weeks ago asking
24 specifically for that information, we didn't receive
25 them up to now, because we understood the categories 11:10
26 were agreed.

27 **THE CHAIRPERSON:** We have dealt with that.

28 **MR. LANKFORD:** But I can say to you now we
29 have no difficulty in

1 creating those lists and confirming how many Brothers
2 and who were they.

3 **THE CHAIRPERSON:** And which institutions.
4 **MR. LANKFORD:** Oh, of course, of which
5 institutions were given in 11:10
6 respect of those documents. We have no difficulty
7 about that.

8 **THE CHAIRPERSON:** In those ones,
9 Mr. Lankford, did you use a
10 template for questions? 11:10

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

13 **THE CHAIRPERSON:** Presumably you asked the
14 same people the same
15 questions. 11:11

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

19 **THE CHAIRPERSON:** Is there any reason why you
20 wouldn't give us the 11:11
21 questions you asked?

22 **MR. LANKFORD:** I don't have them. But the
23 thing is that they covered
24 a similar area to the questionnaire but the
25 questionnaire themselves weren't used. In other words, 11:11
26 they deal, for example, with things
27 like. . . (INTERJECTION)

28 **THE CHAIRPERSON:** We can take it that they
29 are the same, it followed

1 the same format.

2 **MR. LANKFORD:** No, it didn't you see, it
3 didn't follow the same
4 format because I suppose -- they didn't unfortunately.
5 But they covered similar areas dealing with -- similar 11:11
6 areas, let's put it that way. But certainly the
7 template wasn't asked for.

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

10 **MR. LANKFORD:** Well, general topics. 11:11

11 **THE CHAIRPERSON:** And there is such a list,
12 that you would have an
13 ai de-mémoire.

14 **MR. LANKFORD:** No, there isn't, but I can
15 go through them and pick 11:12
16 them out and set them out for you.

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

19 **MR. LANKFORD:** There isn't one,
20 Mr. Chairman. Because they 11:12
21 came in individually.

22 13 Q. **THE CHAIRPERSON:** (TO WITNESS) So where we
23 stand at the moment is,
24 Br. Nolan, what we would like is we would like to be
25 assured, without making an accusation against anybody, 11:12
26 no criticism, no accusation against anybody, where we
27 have a criticism we have leveled it, which is -- I
28 don't want to repeat myself?

29 A. **BR. NOLAN:** Yes.

1 14 Q. **THE CHAIRPERSON:** All right. What we now
2 want to be sure of is that
3 we have everything, that we have not got some word
4 wrong in the question which has led to some
5 misunderstanding or some interpretation. We want to 11:12
6 make sure whatever information was given, by
7 whomsoever, we would like to get that information.
8 Now, you are on the Province Leadership Team at the
9 moment; is that correct?

10 A. I am, yes. 11:13

11 15 Q. **THE CHAIRPERSON:** Are you in a position,
12 subject to any legal
13 advice -- well, legal advice will not arise in this
14 respect for the questionnaires because you are giving
15 us all the questionnaires for the St. Helen's province? 11:13

16 A. Yes.

17 16 Q. **THE CHAIRPERSON:** Can you undertake to make
18 sure that we have been sent
19 all the questionnaires? How would you go about
20 checking that? 11:13

21 A. I will have to go back and get lists of whom they might
22 have been sent to, people who were alive at the time.
23 I have already made out a list of people who were sent
24 questionnaires and who are deceased at the moment. But
25 in all this excitement I was rather excited too, and as 11:13
26 soon as I got the word, it was the 17th or the 18th of
27 November, this bundle had been available all along, I
28 sent it off straight away. I didn't take photocopies
29 so it could be that it is not a complete list.

1 17 Q. THE CHAIRPERSON: But it is possible for you
2 to satisfy yourself --
3 A. I would be able to find it, yes.
4 THE CHAIRPERSON: -- that all the relevant
5 material has been 11:14
6 furnished? It is possible for you to do that?
7 A. I would say so, certainly.
8 THE CHAIRPERSON: Thank you very much.
9 MR. LANKFORD: We have no difficulty in
10 sending them out. 11:14
11 THE CHAIRPERSON: I am not making
12 accusations. We just want
13 to be satisfied that we are not now making a slip or
14 not asking the right question, or something like this.
15 There is no question, we are getting all of those 11:14
16 questionnaires. Full stop. No further debate
17 necessary. Very good.
18
19 Now, as to the statements. The St. Mary's statements,
20 the Brothers are entitled to insist on privilege, if 11:14
21 they choose to claim privilege, or they are equally
22 free to waive privilege. That's their issue. From our
23 point of view we have to be sure if privilege is
24 claimed that it is properly claimed. So, the precise
25 basis on which it is claimed, the factual basis on 11:15
26 which it is claimed, and we also need to know the exact
27 documents that are in issue. Is there anything unclear
28 about that, Mr. Lankford?
29 MR. LANKFORD: No. As I said

1 Mr. Chairman, you are perfectly entitled to have a list
2 of the persons who made the statements and you are
3 perfectly entitled that these be set out and confirmed
4 to you. I don't think the Congregation would ever have
5 had another position because it is quite clear that 11: 15
6 there are quite a number of Supreme Court decisions
7 which set this out. The only matter that we were
8 concerned about, Mr. Chairman, and it is something -- I
9 mean, in hindsight now we were of the view that these
10 matters did not need to be set out because it was 11: 16
11 categories that were agreed rather than individuals.
12 **THE CHAIRPERSON:** I think you are off the
13 hook on that one,
14 Mr. Lankford, because in fairness to you we didn't
15 insist on every piece of paper being listed, and given 11: 16
16 the thousands of pieces of paper. Maybe we were right.
17 Maybe we were wrong. That was the position that we
18 took. However, now that we are focussing on the
19 specific things we have to adopt a somewhat
20 different -- which is not to say that anybody was wrong 11: 16
21 earlier, but that's a more sensible way given that we
22 are now focussing very specifically.
23 **MR. LANKFORD:** I accept that. As I said
24 to you, once you call on us
25 to specify those matters now I don't think we could 11: 16
26 have any difficulty in not setting them out. Now, just
27 to say to you that the request that you have made that
28 not just the lists be given but the actual documents
29 themselves are being asked for then, obviously, I will

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

4 **THE CHAIRPERSON:** Well within ten days you
5 are giving us the information. 11:17

6 **MR. LANKFORD:** Yes.

7 **THE CHAIRPERSON:** And within ten days,
8 presumably, you are able to
9 tell us whether you are giving us the documents or you
10 are not giving us the documents. 11:17

11 **MR. LANKFORD:** Or very shortly.

12 **THE CHAIRPERSON:** Well let's say 14 days.

13 **MR. LANKFORD:** 14 days.

14 **THE CHAIRPERSON:** I just want to have a date
15 that we can put in our 11:17
16 diaries saying we are sure to hear from Mr. Lankford by
17 now and it will be a clear answer, with a list and we
18 won't have a fencing match.

19 **MR. LANKFORD:** Certainly.

20 **THE CHAIRPERSON:** All right. Thank you very 11:17
21 much. Is there anything
22 else? Ms. Shanley? Mr. Lowe? Very good. Thank you
23 very much. Thank you for your assistance,
24 Mr. Lankford. Thank you Br. Nolan.

25 **MR. LANKFORD:** And thank you, 11:18
26 Mr. Chairman, for being --
27 thank you for your courtesy.

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

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to the point.

THE CHAIRPERSON:

Thank you very much as
well .

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