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**MICHAEL McAULEY**  
 Barrister

(ANNEXURE 1)

**COPY**

October 13 1997

Elmer C Marffy  
 Solicitor  
 5 Durham Avenue  
 ST IVES NSW 2075

Dear Sir,

R. v. NESTOR

On 7 October 1997 I telephoned Fr Brian Lucas. Fr Lucas was most helpful and confirmed the meeting with Fr Nestor on 30 April 1996.

I was satisfied that Fr Lucas was doing his best to recollect what had occurred. You will appreciate that Fr Lucas deals with a very large number of complaints of a sexual nature involving clergy and, as he said, he puts those matters as best he can out of his mind once he has dealt with them.

Fr Lucas was unable to recollect who had organised for Fr Nestor to see him on 30 April 1996. Initially he thought that this was Bishop Murray of Wollongong. This was on the basis of diary notes as follows:

17 April 1996	Bill Murray phoned
18 April 1996	Bill Murray phoned
23 April 1996	Bill Murray phoned
29 April 1996	Lisa Canly of the Illawarra Mercury phoned

However I pointed out to Fr Lucas that this was about the time that Bishop Murray was giving evidence before the Royal Commission. In the light of Fr Ryan had told me it seemed more likely that as Fr Ryan recollected the appointment had been arranged through him.

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Fr Lucas was unable to recollect precisely what information he had been provided with prior to the discussion with Fr Nestor.

However I gather that it is Fr Lucas' practice when interviews of this nature take place to "grab the relevant person by the throat and give him a good shake up".

Fr Nestor confirmed what I already knew, namely that there was a specific denial of any misconduct. However, in Fr Lucas' view the manner of this was unconvincing.

Fr Lucas suggested strongly that I contact Cath McCormack of Centacare in Wollongong. I indicated that I didn't consider it appropriate that I personally speak to Mrs McCormack though I may have an investigator contact her. Fr Lucas also suggested that I speak to Bishop Wilson a second time in relation to the matter. Again I indicated to him that I was reluctant to do so given the involvement of the Diocese's lawyers in this matter.

Fr Lucas suggested that perhaps I should speak to the Diocese's lawyers first and outline what was proposed. I accordingly telephoned Mr Michael McGrath and spoke to him on 9 October 1997.

Mr McGrath's reception was not encouraging and I propose to take no further action in this regard.

I spoke to Fr Lucas a second time on 8 October 1997. He advised me that there was a view that although the conviction was baseless there were other matters which were of concern. He expressed the view that in the event that there was an acquittal, it was likely that there would be further allegations made sooner or later. He indicated to me that in the context of 1996 he didn't find it strange that Fr Schmitzer would take the initiative in reporting this matter to the Police as it was the Church's general approach at that time, given the perceived need to distance the Church from any suggestion that it had covered up misconduct.

Fr Lucas expressed the view that there may be an innocent explanation for Fr Schmitzer's unwillingness to speak and he suggested that a further attempt be made to speak to Fr Schmitzer. However I consider that in the absence of any

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assistance from Bishop Wilson in this regard all reasonable avenues have been exhausted.

Fr Lucas provided me with the name of a Dr Gerardine Taylor who I spoke to 10 October 1997. Dr Taylor is a clinical psychologist specialising in certain disorders. I spoke to Dr Taylor and was told that it was likely that in the event that there was an acquittal the Church would require Dr Nestor to undergo assessment. In the event that no other Diocese was willing to accept him the Diocese would probably require that he undergo treatment provided at her clinic.

I had a short discussion with Dr Taylor with a view to determining whether she might in some circumstances be able to provide useful expert evidence, but formed the conclusion that such was unlikely.

It seems to me that although Fr Lucas was most helpful it could be that the approach adopted is intended to protect the Church's interest with, in some cases, insufficient regard for the individual concerned.

The information I gleaned from Fr Lucas and also from Dr Taylor gives some clue as to how this matter is likely to be approached after legal proceedings are concluded.

Yours faithfully,



Michael McAuley

cc. Fr J Nestor