

**ROYAL COMMISSION INTO INSTITUTIONAL  
RESPONSES TO CHILD SEXUAL ABUSE**

**Public Hearing - Case Study 17  
(Day C48)**

Supreme Court Building, State Square, Darwin

On Thursday, 25 September 2014 at 10am

Before  
The Chair: Justice Peter McClellan AM  
Commissioners: Mr Robert Fitzgerald AM  
Professor Helen Milroy

Counsel Assisting: Ms Sophie David SC

1 THE CHAIR: Yes, Ms David.

2

3 MS DAVID: Your Honour, before we recommence with the  
4 witness' evidence, there is an application for a direction  
5 not to publish information in respect of some evidence that  
6 was given by Mrs Wall [REDACTED]

7

8 [REDACTED] Can I hand up that proposed direction to your Honour and  
9 the relevant parts of the transcript.

10

11 THE CHAIR: Yes, I've made that direction.

12

13 MS DAVID: Thank you, your Honour.

14

15 <ROGER JOHN NEWMAN, on former oath: [10.10am]

16

17 <EXAMINATION BY MR GEORGIU CONTINUED:

18

19 MR GEORGIU: Q. Could we go back to tab 109, please.  
20 That was the note to prosecutor which you made, as you told  
21 us yesterday, before the committal hearing of February  
22 2002?

23

24 A. That's correct.

25

26 Q. In fact, you believe you prepared that around

27

28 about May of 2001?  
29 A. That's right. It would have gone in with the file,  
30 the prosecution file.

31

32 Q. If you would turn to the final page of that document,  
33 please, or if we could scroll down to it, I should say, set  
34 out on that final page is a conversation that you had with  
35 Mr Pattemore; correct?

36

37 A. I just probably need to scroll down a bit. Okay.

38

39 Q. I'm looking at the paragraph that begins, "I have also  
40 spoken to the Superintendent of Retta Dixon at the time of  
41 the offences, Mr Merv Pattemore"?

42

43 A. Yes.

44

45 Q. That was in relation to him being told about the  
46 conduct of Mr Henderson; correct?

47

48 A. That's right.

49

50 Q. Is what you have set out there a reference to the  
51 conversation you had with Mr Pattemore on 2 March 1999?

1 A. Yes.  
2  
3 Q. This is a note of that that you have made in about May  
4 2001.  
5 A. Yes.  
6  
7 Q. Mr Pattemore told you, did he not, that he did not  
8 suspect anything happening with Henderson at the time of  
9 the abovementioned complaints?  
10 A. That's correct.  
11  
12 Q. The reference to the "abovementioned complaints" are  
13 the complaints that led to the committal hearing in 2002?  
14 A. That is correct.  
15  
16 Q. It was not a case of him saying, "I have no  
17 recollection of those matters," but, rather, "I did not  
18 suspect anything having happened."  
19 A. That's what I've written there, so yes.  
20  
21 Q. And what you've written there, I suggest, reflects a  
22 memory of what occurred that is better than your memory of  
23 the events in September 2014 when you prepared your  
24 statement for this Commission.  
25 A. The statement I prepared from documentation I was  
26 provided with, so I imagine that the statement was accurate  
27 to the best of my knowledge.  
28  
29 Q. Was this one document with which you were provided,  
30 that is, that at tab --  
31 A. I don't recall receiving this one, no.  
32  
33 Q. You go on to say in this statement that Mr Pattemore  
34 became emotional during the conversation you were having  
35 with him.  
36 A. That's correct.  
37  
38 Q. I appreciate it is some time ago now, but did he  
39 become emotional after he had told you he did not suspect  
40 anything happening with Henderson?  
41 A. I imagine - my impression was that he was very uptight  
42 right from the beginning, when I got there, and that he  
43 was - appeared to be nervous and he was certainly under  
44 some emotional stress.  
45  
46 Q. When you say "he became emotional", are you referring  
47 to distress?

1 A. Yes, that was my observation.  
2  
3 Q. Upset at the matters that he was being asked about?  
4 A. I don't know if it was that, or whether the pressure -  
5 because I was there asking him about it caused that stress.  
6  
7 Q. You make no reference in this document to him being  
8 vague and confused, do you?  
9 A. No.  
10  
11 Q. Is there any document which described him during that  
12 meeting on 2 March 1999 as vague and confused?  
13 A. I believe there is, yes.  
14  
15 Q. Are you able to take us to that, please?  
16 A. I'd have to have a look for it.  
17  
18 Q. Because that appears, does it not, in your statement  
19 of this year where you say he was confused and vague in  
20 relation to the matters he spoke to you about?  
21 A. That's correct. No, I can't take you to that.  
22  
23 Q. So is the description "confused and vague" that  
24 appears at paragraph 56 of your statement to this Royal  
25 Commission something that was first noted at the time of  
26 making this statement?  
27 A. No, I don't believe it was. I believe I got that  
28 reference from a document that I had.  
29  
30 Q. But you can't find that document?  
31 A. I can't find it at the moment, no.  
32  
33 Q. Was it your impression, following your discussions  
34 with him, that he simply did not want to talk about  
35 Mr Henderson?  
36 A. Yes.  
37  
38 Q. You asked him specifically about what he knew of the  
39 offences; correct?  
40 A. Yes.  
41  
42 Q. And you asked him specific questions as to his duties  
43 in relation to Mr Henderson?  
44 A. I don't know if it went that far.  
45  
46 Q. I take you back to tab 109. You've stated there:  
47

1           *Pattemore became emotional during my*  
2           *conversation with him and he would not*  
3           *provide a statement in relation to his*  
4           *knowledge of any offences or to his duties*  
5           *in relation to Henderson at the time.*

6  
7           A.    Yes.

8  
9           Q.    My having read that to you, does that now jog your  
10          memory that you sought to ascertain from him what his  
11          duties were --

12         A.    No.

13  
14         Q.    -- in relation to Mr Henderson?

15         A.    No.

16  
17         Q.    He went on to tell you, did he not, that he had been  
18          to court in relation to the Stolen Generation matter and he  
19          couldn't handle any more?

20         A.    That's correct.

21  
22         Q.    I want to move now to a separate topic, and that  
23          relates to your meeting with Mr Carey on 27 November 2002.  
24          If we could have tab 118 on the screen, please. This was a  
25          document to which you referred yesterday; correct?

26         A.    Yes, that's correct.

27  
28         Q.    If you read in the middle of the narrative there the  
29          sentence beginning:

30  
31                *Part of his decision was based on a*  
32                *separate trial application by Henderson*  
33                *which Carey believed would be successful,*  
34                *thus diminishing the chances of a*  
35                *successful prosecution.*

36  
37         A.    That's correct.

38  
39         Q.    Yesterday, when you gave evidence, you weren't sure  
40          whether a separate trial application had been heard;  
41          correct?

42         A.    That's correct.

43  
44         Q.    Having regard to what's stated there on the case note,  
45          is your memory now that at the time of that meeting of  
46          27 November 2002, there had yet to be a separate trial  
47          application?

1 A. That's how it's written, yes. That's what  
2 I understood, or - I suppose the way to explain it would be  
3 that if there was a separate trial application, then that  
4 would diminish the chance of a successful prosecution. So  
5 at that time I wasn't aware of any separate trial  
6 application. That's sort of how it reads to me.  
7  
8 Q. It goes a bit further, doesn't it? It suggests that  
9 Mr Carey is telling you, effectively, that there has yet to  
10 be a separate trial application?  
11 A. Yes.  
12  
13 Q. Did he tell you why he believed a separate trial  
14 application would be successful?  
15 A. No, I don't believe he did. He may have, but I can't  
16 recollect that.  
17  
18 Q. If he did, is it something that is likely to have  
19 featured in your case note of that day?  
20 A. Possibly, possibly not. It's just an explanation of  
21 what happened on that particular day, a precis of events.  
22  
23 THE CHAIR: Q. Based on your experience in these  
24 matters, if the application had succeeded and separate  
25 trials had been ordered, do you have a view as to whether  
26 or not that would have weakened the prospects of getting a  
27 conviction in relation to one or all of the complainants?  
28 A. Yes, your Honour, it would have.  
29  
30 Q. It would have weakened it, would it?  
31 A. Would have weakened it yes.  
32  
33 Q. Why?  
34 A. Because I believe the witnesses got strength from  
35 being together.  
36  
37 Q. That's as to them personally?  
38 A. Personally.  
39  
40 Q. But as to the prospects of conviction once the  
41 evidence had been given, in your experience, would it have  
42 made much difference or not?  
43 A. Not in the way that you put it, no.  
44  
45 Q. Once the witnesses had got to court, as it were, and  
46 given their evidence --  
47 A. Yes, it would not have weakened the individual cases

1 but as a group, together, it maybe would have weakened  
2 their resolve to appear.

3

4 MR GEORGIU: Q. Was there any discussion at that time  
5 about the leading, in any event, of evidence of uncharged  
6 acts?

7 A. I don't recollect that at all.

8

9 Q. Any discussion at that time of leading of evidence to  
10 establish a sexual interest in young children?

11 A. I don't recollect that at all.

12

13 Q. Going back to that case note, and, indeed, this is  
14 reflected in your statement but we'll just focus on the  
15 case note, you say this:

16

17 *Part of his decision was based on a*  
18 *separate trial application by Henderson ...*

19

20 Correct?

21 A. That's correct.

22

23 Q. So, "part of his decision for the entry of a nolle was  
24 based on a separate trial application", is how that reads;  
25 correct?

26 A. That's correct.

27

28 Q. Did he explain to you or give you other reasons for a  
29 nolle prosequi being entered?

30 A. He possibly could have, but I can't recollect that.

31 I mean, the main thing that I've written there is that.

32 Whether he didn't explain it in front of the witnesses or -  
33 I can't really recall.

34

35 Q. Mr Newman, had he given you other significant reasons,  
36 no doubt they would have appeared in your case note;  
37 correct?

38 A. Possibly, yes.

39

40 Q. This case note, I take it, was made on the very day  
41 you had your discussion with Mr Carey?

42 A. That's correct, yes.

43

44 Q. Had he mentioned to you that one of the problems and  
45 one of the reasons for filing of the nolle was the lack of  
46 specificity in relation to the individual offences, would  
47 you have recorded that in your case note?

1 A. Possibly, but I was aware of that at the time anyway.  
2  
3 Q. I am sorry?  
4 A. I was aware of that at the time anyway. I think that  
5 had been raised on an earlier occasion.  
6  
7 Q. That had certainly been raised earlier, and there are  
8 other references to it, but I'm concerned to know what had  
9 been raised on the 27th in your discussions with Mr Carey?  
10 A. Yes. Look, I couldn't go any further than to say that  
11 he may have, it's quite possible that he did have, but the  
12 only thing I have noted there, of course, is the separate  
13 trial application.  
14  
15 Q. If a complaint had been made to you on that day about  
16 a lack of particularisation of the charges, you would have  
17 had an opportunity to argue the contrary point; correct?  
18 A. Yes, but probably not at that point - not with the  
19 witnesses present.  
20  
21 Q. It would have been a simple matter of having them wait  
22 outside whilst you discussed that point with Mr Carey?  
23 A. Possibly, but it probably wouldn't have been the  
24 opportune time to do it.  
25  
26 Q. I understand we're talking about something you don't  
27 recall, but given your knowledge of the complainants and  
28 given your investigations, had an opportunity been given to  
29 you to better particularise the complaints, you would no  
30 doubt have availed yourself of that opportunity; correct?  
31 A. Yes. I think that did happen.  
32  
33 Q. Before 27 November, is that what you mean?  
34 A. Yes. Yes, it happened prior to the committal hearing  
35 in 2002 - early 2002.  
36  
37 Q. That was the further statement from [AJD]?  
38 A. That's correct, yes.  
39  
40 Q. But what about the other complainants [AJE], [AKU]?  
41 A. [AJE] and [AKU] were given an opportunity to present  
42 statements, to make further statements, but they never  
43 turned up to keep that appointment.  
44  
45 Q. But they did turn up on 27 November, didn't they?  
46 A. They did.  
47



1 Q. Further statements could have been obtained from them  
2 on that day, or shortly thereafter; correct?  
3 A. That's correct.  
4  
5 Q. You were told, in no uncertain terms, that the case  
6 was not going to proceed and a nolle would be entered;  
7 correct?  
8 A. I was just told it wasn't going to proceed, yes.  
9  
10 Q. Were you told at any stage that if further evidence  
11 came to light the proceedings could be re-instigated?  
12 A. I can't recall that, no. I mean --  
13  
14 THE CHAIR: Q. Mr Newman, we know from other documents  
15 that the motivation, it would seem, for the prosecutor's  
16 decision was the decision of the High Court in *S v The*  
17 *Queen*?  
18 A. Yes.  
19  
20 Q. I assume that you at least had some knowledge of that  
21 decision at the time?  
22 A. Yes, I did.  
23  
24 Q. One response to *S v The Queen* is to limit the counts  
25 in an indictment to one specific or two specific events,  
26 rather than a multiplicity of counts?  
27 A. Yes.  
28  
29 Q. Do you understand --  
30 A. Yes, I do.  
31  
32 Q. And the High Court made plain that that wasn't done in  
33 *S v The Queen* which is why *S v The Queen* ultimately failed,  
34 in the view of the majority; you understand that, too?  
35 A. Yes, I do.  
36  
37 Q. Did anyone talk to you about the possibility of  
38 bringing these charges but confining them, so that any  
39 problems with particulars, not as a general proposition,  
40 but confining yourself to one offence, maybe two offences,  
41 in relation to an individual complainant would overcome the  
42 *S v The Queen* problem, was that discussed with you?  
43 A. No, your Honour.  
44  
45 Q. Did it occur to you at the time that that might have  
46 been the way to deal with the problem?  
47 A. No, I don't think it did. I think that the legal

1 matters I left up to the DPP.

2

3 Q. You may not have sufficient recollection now, but  
4 looking back, do you think it would have been possible to  
5 isolate in relation to each complainant one or two counts  
6 that could have been particularised and proceeded with?

7 A. I imagine that if we had had an opportunity to discuss  
8 that, yes, that would have been one point that could have  
9 been raised.

10

11 MR GEORGIU: Q. There had been some correspondence  
12 between you and Mr Elliott recommending obtaining further  
13 particulars in order to overcome the problems of *S v The*  
14 *Queen*; correct?

15 A. That's correct.

16

17 THE CHAIR: I'm not sure the issue is actually extra  
18 particulars, Mr Georgiou, in a generalised sense. I think  
19 the issue is identifying particular offences which can be  
20 sufficiently particularised themselves, particular counts.

21

22 MR GEORGIU: Yes.

23

24 THE CHAIR: Now, whether that required one to have a  
25 search for more particulars or whether, rather, it required  
26 a close examination of what was already available and a  
27 confining of the charges might be the issue instead.

28

29 MR GEORGIU: Yes.

30

31 Q. Following 27 November 2002, did you take any further  
32 steps to obtain other evidence?

33 A. Other evidence, no, no.

34

35 Q. To obtain statements or further statements from the  
36 same complainants?

37 A. No.

38

39 Q. To investigate the matter further?

40 A. No.

41

42 Q. Was it suggested to you by the DPP that that might be  
43 a thing that could be done and, depending on the outcome of  
44 that, charges could be reinstated?

45 A. No.

46

47 MR GEORGIU: Thank you, Mr Newman. If your Honour

1 pleases.

2

3

<EXAMINATION BY MR LAWRENCE:

4

5

MR LAWRENCE: Q. My name is Lawrence and I represent [AKV], [AKU], [AJW], [AJA], Lorna Cubillo and Sandra Kitching. I'll just start where Mr Georgiou finished off if I may, and that's 27 November. Do you remember that day?

6

A. I remember it only because of the case note that I've got here.

7

8

Q. I understand from your evidence that you set off that day to pick up the witnesses in the pending trial [AKU], and [AJE]; correct?

9

A. Yes.

10

11

Q. Brother and sister?

12

A. That's correct.

13

14

Q. And you picked them up at their home?

15

A. Yes, I believe so.

16

17

Q. And you drove them in your vehicle to the office of the DPP?

18

A. Yes, I did.

19

20

Q. And your understanding then was that you were taking them into the office of the DPP to proof them in relation to the forthcoming trial which was listed in December?

21

A. That's correct.

22

23

Q. When I say "proof them", I mean your understanding was that they would have been going through their intended evidence with the Crown Prosecutor, who had carriage of the matter?

24

A. That's correct.

25

26

Q. And your understanding then, as the officer in charge of this investigation which had begun three years previously, was that that Crown Prosecutor was Mr Glen Dooley?

27

A. That's correct.

28

29

Q. And you took both brother and sister into the building and into the office to have that meeting?

30

A. That's correct.

31

1  
2 Q. And the meeting did not involve Mr Dooley.  
3 A. Mr Dooley may have been present. I just can't recall,  
4 but definitely Mr Carey.  
5  
6 Q. Definitely Mr Carey?  
7 A. Yes.  
8  
9 Q. Do you actually have a memory of Mr Dooley being in  
10 that room when things were discussed?  
11 A. I really can't recall.  
12  
13 Q. But you do remember Mr Carey?  
14 A. Yes.  
15  
16 Q. Had you spoken to him at any stage whatsoever in your  
17 endeavours in the investigation prior to this meeting?  
18 A. Prior to that time, I do not recall speaking to  
19 Mr Carey.  
20  
21 Q. So his entering the room or conducting the meeting  
22 would have been a surprise to you?  
23 A. Yes, it was.  
24  
25 Q. When that meeting began, you were still of the view  
26 that you were there to discuss the evidence of each of  
27 those individuals that was to be given at the trial that  
28 you understand was listed in December?  
29 A. That's correct.  
30  
31 Q. During that meeting, you were told that there wasn't  
32 going to be a trial in December?  
33 A. That's correct.  
34  
35 Q. Can you tell me this: during that meeting and those  
36 discussions, was it your view that the charges were going  
37 to be dropped, or had they already been dropped?  
38 A. At that time, I believe my impression was that they  
39 were going to be dropped.  
40  
41 Q. Right. So you weren't aware, during that meeting, and  
42 indeed at the end of that meeting, that two weeks before  
43 it, the DPP had, in fact, filed a nolle prosequi in the  
44 Supreme Court?  
45 A. I only became aware of that during this trial or  
46 during this Commission.  
47

1 THE CHAIR: Mr Lawrence, we went over this yesterday.  
2  
3 MR LAWRENCE: Yes, and I'm asking these questions on  
4 behalf of my client who was at that meeting, who wasn't  
5 here yesterday, and is here today and that is why, on  
6 instructions, I'm asking the officer about this.  
7  
8 THE CHAIR: Very well, but we do understand; we've covered  
9 the ground.  
10  
11 MR LAWRENCE: I understand, your Honour.  
12  
13 THE CHAIR: We know clearly that Mr Newman did not know  
14 that the nolle prosequi had been filed. It's equally plain  
15 that he should have known, should have been told.  
16  
17 MR LAWRENCE: Indeed. The reason I'm asking these  
18 questions is that is [AKU] is here today and wasn't  
19 yesterday and didn't hear this evidence, and that's why  
20 I want her to hear the answers to these questions that  
21 she's asked me to ask Mr Newman.  
22  
23 THE CHAIR: Very well.  
24  
25 MR LAWRENCE: Q. I think you told us yesterday that  
26 [AKU] initially, as far as your statement was concerned,  
27 was happy, but then you changed that to "relieved"?  
28 A. Yes --  
29  
30 Q. This was the female sibling in the two that were  
31 there?  
32 A. Yes.  
33  
34 Q. And her brother wasn't happy at all?  
35 A. That's correct.  
36  
37 Q. So, following that meeting, would it be correct to say  
38 that the three of you left not knowing that, in fact, the  
39 charges had been dropped?  
40 A. We were aware that it wasn't going to proceed.  
41  
42 Q. Yes, but you didn't know, in fact, that the charges  
43 had been dropped --  
44 A. No.  
45  
46 Q. -- two weeks previously?  
47 A. No.

1  
2 Q. You weren't told that the Crown had entered a  
3 nolle prosequi --  
4 A. I can't recall being told, no.  
5  
6 Q. You would have recorded it if you were, wouldn't you?  
7 A. More than likely, yes.  
8  
9 Q. So what happens after that meeting and that  
10 information - they go back in the car and you drive them  
11 home?  
12 A. Yes, I imagine that happened.  
13  
14 Q. Can you remember it?  
15 A. No, but I would have taken them home.  
16  
17 Q. I want to now go back to the beginning of your  
18 endeavours in relation to this matter. You first became  
19 involved in the investigation of this matter, I gather,  
20 in June 1998?  
21 A. That's correct.  
22  
23 Q. And that was by virtue of a memorandum you received  
24 from a Sergeant Carolan concerning complaints that had been  
25 made by one of the alleged victims, [AJB]?  
26 A. No, that came from Detective Lockhart.  
27  
28 Q. Lockhart, sorry. Carolan was in --  
29 A. The previous investigation that went back to 1975,  
30 I believe.  
31  
32 Q. Part of the memo from Lockhart advised you that there  
33 was over 100 allegations of carnal knowledge without  
34 consent?  
35 A. Yes.  
36  
37 Q. So it was clearly a serious matter?  
38 A. Of course.  
39  
40 Q. It involved complaints from an [AJB] against a  
41 Mr Donald Henderson and also another resident, Mr [AJD]?  
42 A. Yes.  
43  
44 Q. The fact that this is what is called an historical  
45 allegation doesn't make it in any way whatsoever less  
46 serious?  
47 A. No.

1  
2 Q. The allegations that were being made related to  
3 alleged offences committed at Retta Dixon Home here in  
4 Darwin?  
5 A. That's correct.  
6  
7 Q. You had been in Darwin since 1963?  
8 A. That's correct.  
9  
10 Q. You went to school here?  
11 A. Yes.  
12  
13 Q. You know about Retta Dixon?  
14 A. I do.  
15  
16 Q. You know a lot of people that were at Retta Dixon?  
17 A. I do.  
18  
19 Q. You know them socially?  
20 A. Not socially, no, but I've known them over the years.  
21  
22 Q. And you would have seen them and been involved with  
23 them, perhaps, in sporting fields?  
24 A. Definitely.  
25  
26 Q. And you know basically the general history of the  
27 Retta Dixon Home?  
28 A. Yes, I do.  
29  
30 Q. If I can take you to your statement, paragraph 32,  
31 which tells us of your first involvement in the case. It  
32 says there, and I just want to ask you about this  
33 paragraph:  
34  
35 *At the time of the Retta Dixon*  
36 *investigation there were no policies,*  
37 *guidelines or general orders which*  
38 *specifically addressed the investigation of*  
39 *historical sexual crimes.*  
40  
41 A. That's correct.  
42  
43 Q. Are there any such orders now?  
44 A. I'm not aware - there possibly could be.  
45  
46 Q. Well, when did you leave the police?  
47 A. 2003.

1  
2 Q. Were there any then?  
3 A. No.  
4  
5 Q. Have you done any investigation or asked for advice  
6 from anybody in preparation of this statement, as to  
7 whether they now have such orders?  
8 A. I believe I made one request, but I don't believe  
9 there was - I'm not sure if I even got a reply as to the  
10 nature - or whether there are any current general orders in  
11 effect for historical sexual crimes.  
12  
13 Q. You would have heard of previous historical sexual  
14 allegations in your time as an officer in charge of the  
15 sexual crimes unit?  
16 A. That's correct.  
17  
18 Q. You would have investigated some?  
19 A. That's correct.  
20  
21 Q. Have you been involved in any cases that involved the  
22 concept of retrieved memory?  
23 A. Yes.  
24  
25 Q. You would have been aware of a fairly famous case that  
26 occurred here in the Northern Territory of the historical  
27 allegations concerning a priest on Melville Island?  
28 A. That's correct.  
29  
30 Q. And that was a fairly large trial that occurred here  
31 in Darwin involving similar allegations, historical, as  
32 well as the nature of them?  
33 A. That's correct.  
34  
35 Q. And that was investigated by the Northern Territory  
36 Police?  
37 A. It was.  
38  
39 Q. And that was prosecuted by the Northern Territory  
40 Office of the DPP?  
41 A. I believe it would have been, yes.  
42  
43 Q. And it was unsuccessful?  
44 A. That's correct. I believe there may have been a  
45 conviction and it was quashed at a later date, but don't  
46 quote me on that.  
47



1 Q. But you were aware of all of that before you picked up  
2 this matter in 1989 *[sic]*?  
3 A. Yes, I would have - well, I certainly knew about it,  
4 yes.  
5  
6 Q. I just want to take you through your endeavours. The  
7 allegations involved a man called Donald Henderson; right?  
8 A. That's correct.  
9  
10 Q. You would have availed yourself of the police  
11 intelligence and information in relation to that  
12 individual?  
13 A. Yes.  
14  
15 Q. You would have got his date of birth, you would have  
16 gone into the computer and discovered everything that the  
17 police, at that stage in 1989 *[sic]*, knew about  
18 Donald Henderson?  
19  
20 MR GRANT: Your Honour, it is 1998; my friend keeps on  
21 referring to 1989.  
22  
23 MR LAWRENCE: Sorry.  
24  
25 THE WITNESS: Can you repeat the question, Mr Lawrence?  
26  
27 MR LAWRENCE: Q. When you were given the task to  
28 investigate these allegations against Donald Henderson  
29 in June 1998 --  
30 A. Yes.  
31  
32 Q. -- you would have availed yourself of all the  
33 information and material available at the hands of the  
34 police force - the NT police force - concerning him?  
35 A. Yes. Yeah.  
36  
37 Q. You would have looked for his prior criminal record?  
38 A. Yes.  
39  
40 Q. Which revealed that he had been convicted, four years  
41 previously, here in Darwin in the Casuarina Magistrates  
42 Court.  
43  
44 MR GRANT: We're still stuck in the 1980s your Honour.  
45  
46 MR LAWRENCE: Sorry, '94.  
47

1 MS DAVID: '84.  
2  
3 THE WITNESS: Yes.  
4  
5 MR LAWRENCE: Q. Do you want me to show you it?  
6 A. No, I don't need to see it, Mr Lawrence. I wouldn't  
7 have availed myself of those.  
8  
9 Q. I'm going to show it to you anyway.  
10  
11 THE CHAIR: We can agree it's 1984, can't we?  
12  
13 MR LAWRENCE: Yes, but I'm going to show it to him anyway.  
14 I'm going to show him the entry in the prior record for  
15 Donald Bruce Henderson in the Casuarina CSJ. Tab 123.  
16  
17 MS DAVID: Perhaps we can bring it up.  
18  
19 MR LAWRENCE: Q. Do you recognise that?  
20 A. Yes - well, I would have seen it, I'm sure.  
21  
22 Q. That tells you that he was convicted?  
23 A. Yes.  
24  
25 Q. Wait a minute, it's not up here yet. Here we go.  
26 Page 12, Casuarina, Court of Summary Jurisdiction,  
27 4 January 1984:  
28  
29 *Aggravated assault on male child of sexual*  
30 *nature, 2 counts summons.*  
31 *Convicted without penalty.*  
32  
33 Released on \$500 own recognizance. Two years bond on each.  
34  
35 THE CHAIR: Does that tell us whether he pleaded or  
36 whether it was a trial?  
37  
38 MR LAWRENCE: I'll ask questions in a minute.  
39  
40 THE CHAIR: I'd like to know. Does it tell us whether he  
41 pleaded guilty or whether it was a trial.  
42  
43 MR LAWRENCE: It doesn't tell us that, no.  
44  
45 THE CHAIR: Does anyone know. Mr Solicitor?  
46  
47 MR LAWRENCE: Yes, we understand that he pleaded guilty.

1  
2 MS DAVID: He pleaded guilty, your Honour.  
3  
4 MR LAWRENCE: I'll come to that in a minute.  
5  
6 THE CHAIR: Thank you.  
7  
8 MR LAWRENCE: Q. You would have explored the substance  
9 of that, presumably, in this investigation into  
10 Donald Henderson?  
11 A. Yes.  
12  
13 Q. Did, indeed, that lead you to discover that  
14 Mr Henderson pleaded guilty in the court that day to those  
15 counts?  
16 A. I wasn't sure whether he pleaded guilty - yes, he did  
17 plead guilty, but whether it was contested or not, I don't  
18 know.  
19  
20 Q. You don't know?  
21 A. No.  
22  
23 Q. You don't know today?  
24 A. No.  
25  
26 Q. Why don't you know?  
27 A. I probably never explored it.  
28  
29 Q. Why wouldn't you explore it?  
30 A. Well, I mean, it's a prior history and he's been  
31 convicted.  
32  
33 Q. Convicted of sexual nature aggravated assault on a  
34 child, a male?  
35 A. That's correct.  
36  
37 Q. Commonly known in our vernacular, I'm sure you  
38 remember, as an indecent assault?  
39 A. That's right.  
40  
41 Q. Did you find out the details, the particulars, of  
42 those indecent assaults on male children?  
43 A. I would have viewed them, yes.  
44  
45 Q. What were they?  
46 A. I cannot recall.  
47

1 Q. Can the witness be shown folio 109, which is your note  
2 to prosecutor, which I think you dated yesterday as  
3 approximately May 2001. I'm getting advice from everywhere  
4 here. I'm assuming I'm wrong and everybody else is right.  
5 But my memory of yesterday was that he said it was May  
6 2001.

7  
8 Remember the note to prosecutor?

9 A. Yes.

10  
11 Q. Do you have that document?

12 A. No.

13  
14 MR LAWRENCE: Can someone give him it?

15  
16 MS DAVID: It will come up on the screen.

17  
18 MR LAWRENCE: Here we go.

19  
20 Q. Can you see that all right?

21 A. Yes.

22  
23 Q. So that's a document - it's your document. My memory  
24 is that yesterday you thought it was about May 2001?

25 A. It would have gone in with the prosecution file  
26 whenever that went in. I think it was May 2001.

27  
28 Q. Because it was before the committal?

29 A. Yes, it was before the committal --

30  
31 Q. That document might assist us in exploring what you  
32 knew as to what happened at the Casuarina Magistrates  
33 Court. If we go down, do you see that paragraph:

34  
35 *Donald Henderson was interviewed in*  
36 *relation to further offences against*  
37 *children in 1983/84 and was convicted*  
38 *without penalty after pleading guilty.*

39  
40 So you knew that?

41 A. That's correct.

42  
43 Q.  
44 *The offences were 2 counts of aggravated*  
45 *assault on a male child of a sexual nature.*

46  
47 So you knew that?

1 A. Yes.  
2  
3 Q. They happened in Darwin?  
4 A. Yes.  
5  
6 Q. And they were heard at Casuarina Magistrates Court,  
7 which is no longer with us, that court. The number of the  
8 apprehension is blah, blah, blah. A copy of the running  
9 sheet is attached to the file. Now, do we have that?  
10 A. No.  
11  
12 Q. Where is it?  
13 A. I don't know.  
14  
15 Q. You know at the end of your statement - can I take you  
16 to your statement near the end, paragraph 161, it  
17 endeavours to summarise all the material that you used to  
18 do this statement. Take your time.  
19 A. Yes.  
20  
21 Q. Before I go to that, when you did this statement, you  
22 had legal assistance? Did you do it with lawyers in the  
23 room, or at least were you advised by lawyers before you  
24 compiled this statement to give to this Royal Commission?  
25 A. No. I completed the statement myself at home, then  
26 submitted it, and there were changes made just to things  
27 like that instead of the Act it was an Ordinance, and  
28 things like that, but apart from that --  
29  
30 Q. Was there ever a time when you were in the room with  
31 legal advisers concerning the Commission's request of  
32 you --  
33 A. Yes.  
34  
35 Q. -- to give a statement?  
36 A. Yes.  
37  
38 Q. And was that statement discussed by the legal people  
39 that were in the room?  
40 A. We had two meetings. The first meeting was in  
41 relation to when I received this file with the  
42 documentation, and the second meeting was to attend and  
43 sign the statement.  
44  
45 Q. What's happening is this is the stuff that you have  
46 relied on. It says:  
47

1           *I kept my own hard file of evidence in*  
2           *relation to the Retta Dixon Home*  
3           *investigation (along with other significant*  
4           *investigation files). Those files were*  
5           *left at CIB upon my retirement and cannot*  
6           *be located.*

7  
8           A.   That's correct.

9  
10          Q.   Is that unusual?

11          A.   No.

12  
13          Q.   Did you make inquiries as to where they might be?

14          A.   Yes, an exhaustive search was done by police.

15  
16          Q.   Were there any indications as to what had become of  
17          them?

18          A.   No.

19  
20          Q.   So they just weren't located; they were lost?

21          A.   I imagine they were kept for some time. The reason  
22          that you leave them is in case something crops up in the  
23          future so you can consult those files. After a period of  
24          time I imagine they would have - might have been either  
25          archived or destroyed, and it appears that they may have  
26          been destroyed.

27  
28          Q.   Did you discover whether they were archived,  
29          destroyed?

30          A.   I left it up to the police to make their searches and  
31          they certainly didn't find anything. I don't have any  
32          control over that anymore.

33  
34          Q.   Well, would your hard file of evidence contain the  
35          running sheet that you referred to in relation to the  
36          particulars of these matters back in 1984?

37          A.   Say that again, please.

38  
39          Q.   Would it have contained the running sheet which gives  
40          us details as to the particulars of Henderson's conviction  
41          in 1984 concerning indecently dealing with two male  
42          children?

43          A.   It may have, it may not have, but the running sheet  
44          was probably - possibly still available. I'm not sure.

45  
46          Q.   Have you any memory of what the details were in the  
47          running sheet as to the particulars on these convictions?

1 A. No. It would have just given the story, I imagine.  
2  
3 Q. Don't imagine anything. I'm asking you --  
4 A. No.  
5  
6 Q. -- can you remember this? I'm instructed to ask you  
7 this. Have you met Barbara Cummings?  
8 A. Not that I can recall, no.  
9  
10 Q. Were the male victims in that matter, if you can  
11 remember, Aboriginal or non-Aboriginal?  
12 A. I can't comment. I don't know.  
13  
14 Q. Were the offences committed, if you can remember, at  
15 Retta Dixon Home?  
16 A. No, I can't recall that, either.  
17  
18 Q. Would you be of the view that that running sheet that  
19 would perhaps reveal those details would be available now?  
20 A. I'd have to make inquiries through the police.  
21  
22 Q. Would you be willing to do that?  
23  
24 THE CHAIR: I think the Solicitor might be able to help if  
25 anyone can. Mr Solicitor, can you help us?  
26  
27 MR GRANT: Your Honour, in the material that was produced  
28 to the Commission in response to a notice to produce to  
29 Northern Territory Police, there is some information. I  
30 don't think it's included in the tender bundle, obviously,  
31 because this line of inquiry I don't think was anticipated.  
32 But the offence is described in a crime report compiled by  
33 the Northern Territory Police. There is an investigation  
34 diary which has minimal information in it, but the offence  
35 appears to have taken place at the Nightcliff pool where  
36 the offender became aroused whilst playing with a victim  
37 and his brother in the pool. It was reported by somebody  
38 at the Nightcliff pool, police were called, and he was  
39 apprehended the following day. So there is material in  
40 the --  
41  
42 THE CHAIR: Does it disclose whether the victims were  
43 Aboriginal?  
44  
45 MR GRANT: It doesn't, your Honour, that I can discern,  
46 but certainly it occurred in a public place, at the  
47 Nightcliff public swimming pool.

1  
2 THE CHAIR: Mr Lawrence, have you seen these documents?  
3  
4 MR LAWRENCE: No, your Honour.  
5  
6 THE CHAIR: Perhaps, Mr Solicitor, you could give them to  
7 Mr Lawrence. Does that mean there is not a running sheet  
8 that you know of?  
9  
10 MR GRANT: Your Honour, there is an investigation diary,  
11 but it's scant in detail. There are some statements as  
12 well, which describe the nature of the offending, which  
13 I'll isolate as well.  
14  
15 THE CHAIR: Could you do that?  
16  
17 MR GRANT: I can.  
18  
19 THE CHAIR: It sounds to me like, Ms David, we should have  
20 these documents copied, I think.  
21  
22 MR LAWRENCE: I'm a bit embarrassed trying to read this  
23 and question, if you know what I mean, your Honour.  
24  
25 THE CHAIR: Take your time, read the documents.  
26  
27 MR LAWRENCE: Q. Let me ask you this: he pleaded guilty  
28 at the Casuarina Magistrates Court in 1984. From your  
29 experience, there would have been, obviously, the charges  
30 to which he pleaded guilty?  
31 A. Correct.  
32  
33 Q. From your experience, there would have been what is  
34 before this Commission in relation to the charges laid  
35 against Donald Henderson, namely, a police precis which  
36 outlines the narrative of the charges against him, the  
37 particulars, if you like?  
38 A. Yes, they were probably on the prosecution file.  
39  
40 Q. What would normally happen would be that the police  
41 would read the charge out, he would plead guilty, and then  
42 the prosecutor would read the precis outlining what he did  
43 and to whom, when and how?  
44 A. That's correct.  
45  
46 Q. And that is known in the vernacular as the "police  
47 precis"?



1 A. That's correct.  
2  
3 Q. Where is it?  
4 A. I have no idea, Mr Lawrence.  
5  
6 Q. Have you seen it?  
7 A. No. I may have seen it at some time in the past, but  
8 I haven't had access to it recently.  
9  
10 Q. Can I suggest to you that when you started your  
11 investigation in 1989 [sic] and you discovered that this  
12 man had a prior conviction for this type of caper, you  
13 would have got the charge and the precis to find out?  
14 A. I may have viewed them, yes, but it didn't have any  
15 relevance to the current investigation at the time, apart  
16 from telling me that Mr Henderson had prior offences of a  
17 similar nature.  
18  
19 Q. Absolutely, and you would have been interested to know  
20 what the particulars of those offences were?  
21 A. Yes and no. I mean, if - in this particular case, I'm  
22 not sure, you know, what the basis or the knowledge was  
23 that I had, at the time, of the offences, but I certainly  
24 would have made myself aware of it. But it didn't really  
25 have any influence on the matter that I was investigating,  
26 apart from to tell me that Mr Henderson had prior offences  
27 of a similar nature.  
28  
29 Q. But, Mr Newman, you also discovered at the same time,  
30 presumably, that Mr Henderson had also been charged and  
31 brought to trial, or at least committal, back in 1976 in  
32 relation to similar offences, did you not?  
33 A. That's correct, yes.  
34  
35 Q. And you would have discovered from those, in the  
36 material available to you, that they were charges of a very  
37 similar nature as alleged now from children in Retta Dixon  
38 committed by him?  
39 A. Yes.  
40  
41 Q. So, therefore, surely you would have wanted to know  
42 what he pleaded guilty to in 1984, as to whether they were,  
43 again, sexual offences against children within Retta Dixon  
44 Home?  
45 A. I think I've said that - I realise it was acts of a  
46 similar nature.  
47

1 Q. So you would have looked at that police precis?  
2 A. Yes, I would have, if it was available at the time.

3  
4 Q. Well, have you a memory of looking at it?  
5 A. No, I don't, but I would have been aware that he had  
6 been charged with those particular offences.

7  
8 Q. All right. Now, that's a document that you would  
9 expect would be in the ken and indeed the custody of the  
10 police now?

11 A. Possibly, yes.

12  
13 MR LAWRENCE: I call for that document.

14  
15 THE CHAIR: I have asked the Solicitor whether he can  
16 help. I think he's doing what he can.

17  
18 Mr Solicitor, no doubt an inquiry can be made through  
19 your resources to see whether there is any further document  
20 that can be provided.

21  
22 MR GRANT: Yes, your Honour.

23  
24 MR LAWRENCE: Q. Would you agree that if you discovered  
25 that these offences to which he pleaded guilty - actually  
26 I'll read out from this document, which I understand is a  
27 document not in the tender bundle, but it will be, I'll  
28 tender it in a minute. It would appear these are the  
29 particulars of his endeavours at Nightcliff pool:

30  
31 *The offender attended Casuarina Pool on*  
32 *Tuesday 18/10/83 at about 7am. He met two*  
33 *boys ages 9 & 11. He became friendly with*  
34 *them and played with them. He became*  
35 *sexually aroused and rubbed his erect penis*  
36 *against them. He also touched the older*  
37 *boy on the penis. At no time was his penis*  
38 *exposed.*

39  
40 Right?

41 A. Yes, I have read that.

42  
43 Q. That certainly suggests that whatever he was doing  
44 wasn't at Retta Dixon?

45 A. That's correct.

46  
47 Q. Nor does it suggest he was at any of these Retta Dixon

1 camps at Lee Point or Coomalie?  
2 A. Yes.  
3  
4 Q. It's at a public place?  
5 A. Yes.  
6  
7 Q. If anything, it suggests he was committing sexual  
8 assaults arguably against people who are not at  
9 Retta Dixon?  
10 A. That's correct.  
11  
12 Q. If you were to discover that these victims were  
13 nothing to do with Retta Dixon, that would be relevant to  
14 your endeavours in relation to your investigation into his  
15 alleged sexual assaults against Retta Dixon boys and girls?  
16 A. The relevance being?  
17  
18 Q. That he's pleaded guilty to being sprung at Nightcliff  
19 swimming pool, but he didn't plead guilty to being sprung  
20 at Coomalie Creek, which was the subject of the charges  
21 against Retta Dixon kids in 1976.  
22 A. That's correct.  
23  
24 Q. And so it would have alerted you as a detective that  
25 he might have felt a lot safer against the authorities if  
26 the charges were in relation to young boys and girls from  
27 Retta Dixon as opposed to a couple of young white kids at  
28 the Nightcliff pool.  
29  
30 MR GRANT: We don't know that, your Honour.  
31  
32 MR LAWRENCE: You may not know it, but I'm putting this to  
33 the detective who was the officer in charge of the sexual  
34 crimes unit.  
35  
36 THE CHAIR: You're asking him to go into the mind of  
37 Mr Henderson. That's what the Solicitor is saying --  
38  
39 MR LAWRENCE: I don't mean to do that.  
40  
41 THE CHAIR: That's the way the question has been asked.  
42  
43 MR LAWRENCE: I don't mean to do that.  
44  
45 Q. What I mean to do is go into your mind. If you  
46 consider that he has pleaded guilty, having been caught at  
47 Nightcliff swimming pool committing sexual offences against

1 kids that are not at the Retta Dixon, yet he didn't plead  
2 guilty to anything in relation to similar charges against  
3 Retta Dixon kids at Coomalie?  
4 A. I don't know what the reasons were why he didn't plead  
5 guilty.

6  
7 THE CHAIR: Mr Solicitor, you said there were some  
8 statements. Have you found those?

9  
10 MR GRANT: Yes. I haven't found the statements as yet.

11  
12 THE CHAIR: Are there eye witness statements?

13  
14 MR GRANT: My recollection is that I've read them in  
15 preparation for the matter, but I'm trying to isolate them  
16 now, your Honour.

17  
18 THE CHAIR: Mr Lawrence, they may be of assistance to you  
19 in the way you frame your questions, because the evidence  
20 that was available may be relevant to that question.

21  
22 MR LAWRENCE: They most certainly would. I'd be grateful  
23 if I could have a look. I must say, I'm curious why this  
24 isn't before this inquiry already. It's extremely  
25 relevant.

26  
27 THE CHAIR: We'll worry about that. Have you got them,  
28 Mr Solicitor?

29  
30 MR GRANT: We're just identifying the statements now,  
31 your Honour. I've identified a number of sheets that are  
32 relevant. I'll just show my friend.

33  
34 THE CHAIR: Have you found the statements yet? I think  
35 we'll take the morning adjournment so that you can disgorge  
36 all the documents that you have. Ms David, if we can get  
37 them copied straightaway, and if everyone has access to  
38 them, they may well, Mr Lawrence, explain the circumstances  
39 of these pleas better than asking Mr Newman to speculate in  
40 the mind of Mr Henderson.

41  
42 MR LAWRENCE: They probably will.

43  
44 THE CHAIR: I would have thought so. We'll take the  
45 morning adjournment.

46  
47 **SHORT ADJOURNMENT**

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THE CHAIR: Where have we got to?

MR GRANT: Commissioners, Grant for the Northern Territory witnesses. Just in response to my friend's call for documents, what I can indicate to the Commissioners and to my friend is that when the notices to produce were foreshadowed and subsequently served, the police information officer, a number of auxiliaries, went to archives and under the supervision of the archivist went through all the material there to identify anything falling within the parameters of the notice to produce. It was an exhaustive search. They identified a number of documents that were relevant to the 1984 conviction.

I indicated to your Honour that I thought there were statements. Now having found the documents, I realise it was in fact the CIB running sheet. Your Honour and the Commissioners should have before you on the bench a small sheaf of papers.

THE CHAIR: We don't.

MS DAVID: We have redacted what has been provided to us. I'm now in a position to produce them for the Commission and the witness.

THE CHAIR: Should they be tendered as a bundle?

MS DAVID: They should, your Honour.

THE CHAIR: And will we call them the documents in relation to the 1984 prosecution?

MS DAVID: And conviction.

THE CHAIR: We will make that bundle of documents together exhibit 17-20.

MS DAVID: It is a bundle of five pages.

**EXHIBIT #17-20 BUNDLE OF FIVE PAGES IN RELATION TO THE 1984 PROSECUTION AND CONVICTION OF DONALD HENDERSON**

THE CHAIR: You've had a chance to look at them, have you, Mr Lawrence?

1 MR LAWRENCE: I have, your Honour, yes.

2

3 MR GRANT: The Commission can see that the first document  
4 is an apprehension report, which we would suggest is the  
5 apprehension report referred to in the memorandum to  
6 prosecutor, which is at tab 109, Mr Newman's memorandum.  
7 I said earlier it was the Nightcliff pool, your Honours  
8 will see that it was, in fact, the Casuarina pool, and  
9 I correct that.

10

11 Then there is a crime report. There are in fact two  
12 crime reports, but only one has been produced here.

13

14 THE CHAIR: Do these documents tell us who the witnesses,  
15 if any, were?

16

17 MR GRANT: If the Commission goes to the current running  
18 sheet, which is the document, we would suggest, is referred  
19 to in Sergeant Newman's memo to prosecutor as the "CIB  
20 running sheet". What has been redacted there are two  
21 reports in relation to entirely unrelated matters, because,  
22 of course, these running sheets were kept in journals which  
23 weren't specific to particular crimes; they were  
24 chronological reports of police attendances.

25

26 You will see that on the third page of the running  
27 sheet there is a reference to interview and admissions.

28

29 THE CHAIR: Is there an unredacted copy of this that we  
30 can see?

31

32 MS DAVID: I'll make sure it's in the same order,  
33 your Honour. I have only one copy.

34

35 THE CHAIR: That's all right.

36

37 MR GRANT: We have two further unredacted copies for the  
38 Commission.

39

40 THE CHAIR: We won't make them an exhibit. Where is the  
41 Casuarina pool located?

42

43 MR GRANT: In Casuarina, your Honour, approximately  
44 12 kilometres out of the CBD in Darwin, but it's part of a  
45 major population centre near the main shopping centre here  
46 in Darwin. It's a large public pool, a 50-metre Olympic  
47 pool complex.

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The Commission will see that there is a crime report that refers to another crime report. There are in fact two different crime reports in respect of each child. The details are largely the same in both, but there is some difference in the detail, but only one of those has been produced in the redacted version.

THE CHAIR: The comment in the crime report, "reasons for suspicion", is that response "made admissions" - is that what that says?

MR GRANT: I can't see that.

THE CHAIR: 17, "see over - to be summonsed".

MR GRANT: I can't assist your Honour, there.

THE CHAIR: It looks like he's recorded as having made admissions, but --

MR GRANT: We would suggest, your Honour, that the reference to the making of the admissions is a reference to that part of the occurrence running sheet where the offender was interviewed and made admissions to the offences.

THE CHAIR: Yes.

MR GRANT: But the obvious initial suspicions arose from the report, the information that was provided by the manager of the Casuarina pool, and the attendance by officers the following morning to have the offender identified by the complainants.

In response to the call, I can inform the Commission that we also made an inquiry of the courts to see whether the 1984 court file could be located, but it could not. If it please the court. That's the response to the call.

THE CHAIR: Yes. Yes, Mr Lawrence?

MR LAWRENCE: And it would appear that the prosecution file has likewise not been located?

MR GRANT: Yes, that's correct.

1 MR LAWRENCE: Q. And that would have been the file that  
2 contained the police precis that I questioned you about  
3 earlier, Mr Newman?  
4 A. That's correct.  
5  
6 Q. Have you had the opportunity to read this material?  
7 A. Yes, I have.  
8  
9 Q. Does it confirm, indeed, that the running sheet is the  
10 one that you read --  
11 A. Yes.  
12  
13 Q. -- when you first took up the investigation?  
14 A. Yes, I have seen it since. I must apologise. I had  
15 been provided with a copy earlier, but because it didn't  
16 relate to the matters I was addressing I didn't take too  
17 much notice of it.  
18  
19 Q. I just want to go back to your endeavours in  
20 1989 [sic]. You would have discovered this material fairly  
21 earlier in the piece; would that be correct?  
22 A. Most likely. I can't say for sure, but most likely.  
23  
24 Q. Can we take it that you would agree that you would  
25 have searched if there were any priors on Donald Henderson  
26 very early in your investigation?  
27 A. Oh, yes, yes, definitely.  
28  
29 Q. And that would have discovered a conviction in Darwin  
30 in 1984?  
31 A. I would say so, yes.  
32  
33 Q. You would naturally, thereafter, find out what the  
34 particulars of that were?  
35 A. That's correct.  
36  
37 Q. That would have discovered, at the very least, these  
38 running sheets and the apprehension report and the crime  
39 report that we've now got before us in evidence?  
40 A. Yes.  
41  
42 Q. Which tells you that in 1983 he was interfering with  
43 two young boys at Casuarina pool in a sexual manner, which  
44 was not dissimilar to the matters that you were  
45 investigating?  
46 A. That's correct.  
47



1 Q. Would you be of the view that you would have also  
2 discovered then the police prosecution file with the precis  
3 and the statements taken from the young boys and any other  
4 relevant witnesses?  
5 A. Probably not.  
6  
7 Q. Why not?  
8 A. Whilst I would have been aware that there were  
9 instances of similar offences I certainly - most likely  
10 would not have gone to check up on the prosecution file,  
11 because I had the details of the offences.  
12  
13 Q. Right. Again, I want to ask you, going through your  
14 early endeavours - and correct me if they are not - what  
15 you would have also discovered early on would have been the  
16 1975/76 matters, if I can call them that?  
17 A. Yes. I can't exactly recollect, but I did go to the  
18 archives and seek documents from there and viewed them at  
19 the archives.  
20  
21 Q. Forgive me, but is that alluded to or mentioned in the  
22 original Lockhart memo? Have a look at that if you want?  
23 A. Not that I'm aware of - could be, I'd have to check.  
24  
25 Q. All right. Obviously it's relevant?  
26 A. Well, it gives me a background into Mr Henderson.  
27  
28 Q. Indeed. When you look up Mr Henderson, you not only  
29 discover his prior convictions by virtue of the police  
30 material, but you also discover prior charges?  
31 A. That's correct.  
32  
33 Q. That would have included these charges in relation to  
34 the events alleged in 1975?  
35 A. Yes.  
36  
37 Q. So you would have looked at that?  
38 A. Yes.  
39  
40 Q. You would have discovered it and read it?  
41 A. Yes.  
42  
43 Q. And that would have included the charges against him?  
44 A. That's correct.  
45  
46 Q. Which would have included the particulars of those  
47 charges?

1 A. That's correct.  
2  
3 Q. And it would have included the history of the  
4 proceeding against him?  
5 A. Yes.  
6  
7 Q. Which revealed to you that not only was he charged but  
8 he was brought to court here in Darwin.  
9 A. Yes.  
10  
11 Q. And it would have revealed to you the names of the  
12 alleged victims?  
13 A. Yes.  
14  
15 Q. And their ages?  
16 A. Yes.  
17  
18 Q. And it would have revealed to you that they were,  
19 again, children in the care of Retta Dixon?  
20 A. Yes.  
21  
22 Q. When he was a house parent?  
23 A. That's correct.  
24  
25 Q. Which was exactly similar - if there is such a term -  
26 to the allegations that you were tasked to investigate now,  
27 in 1989 [sic], which was again children in Retta Dixon  
28 allegedly abused by this man.  
29 A. That's correct.  
30  
31 Q. Did you speak to any colleagues who were involved in  
32 that investigation back in the 1970s?  
33 A. I believe I may have made inquiries in relation to  
34 Sergeant Carolan, but I don't think I spoke to him. I  
35 don't recollect speaking to him.  
36  
37 Q. Did you speak to anybody in the early stages, when you  
38 discovered this prosecution by the authorities - anyone in  
39 prosecutions as to its conduct?  
40 A. No.  
41  
42 Q. You obtained a transcript of the proceeding?  
43 A. Yes.  
44  
45 Q. You read it?  
46 A. That's correct.  
47

1 Q. It's over 100 pages?  
2 A. I can't recall how long it was.  
3  
4 Q. Can you remember the last time you read it?  
5 A. It was probably at the archives when I went there to  
6 view it.  
7  
8 Q. When was that?  
9 A. Some time after 1998 - probably early - some time in  
10 1998. I can't recall when.  
11  
12 Q. That would have revealed all the witnesses who were  
13 called during the proceeding?  
14 A. Yes, it would have.  
15  
16 Q. Sorry?  
17 A. Yes, it would have.  
18  
19 Q. Which were, of course, the alleged victims?  
20 A. Yes.  
21  
22 Q. And the result?  
23 A. Yes.  
24  
25 Q. Which was not guilty to everything?  
26 A. That's right.  
27  
28 Q. I think you've mentioned in your note to prosecutor --  
29  
30 MR GRANT: Just while my friend is looking for that, I'm  
31 not sure that that's right, that the result was not guilty  
32 to everything. My understanding is that the accused was  
33 committed to trial and a nolle prosequi was entered  
34 in February 1976.  
35  
36 THE CHAIR: That was my understanding too. I didn't want  
37 to intervene but that seems to be what happened.  
38  
39 MS DAVID: Four counts were dismissed at committal, one  
40 count was committed for trial and a nolle prosequi was then  
41 entered on that count.  
42  
43 MS McLEOD: The nolle prosequi appears behind tab 75 in  
44 the bundle, if the Commissioners please - sorry, 76.  
45  
46 MR LAWRENCE: I'm grateful for the padding out from my  
47 learned friends while I'm flustering around here.

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Q. This note to the prosecutor, which I think we agreed was in May 2001, has you making the comment:

*I have viewed the transcript of the committal/hearing and it would appear that the prosecution of the matter left a lot to be desired.*

A. That's correct.

Q. Do you have a memory of what led you to that conclusion?

A. No, it was just an opinion that I formed at the time.

Q. Let's remind ourselves: when you discovered that, of course, you were investigating matters in relation to [AKU], [AJE], and [AJD], or allegations made by them.

A. Yes.

Q. The discovery you made in relation to the 1975/76 matters was of different complainants, different alleged victims?

A. They weren't the same as these ones, no.

Q. Still kids in the care of Retta Dixon?

A. Yes, I believe so.

Q. And matters that had occurred, allegedly, down at one of the campsites that was used by Retta Dixon, and reported to the police shortly thereafter?

A. You mean the previous ones?

Q. Yes.

A. Yes, I'll take your word for that. I'm not sure.

Q. There is another matter I would like to ask you about. I'm wondering if you discovered this. We've heard evidence of this at some stage. It is a document called an "occurrence running sheet" dated 30 September 1992. This may be a bit out of sequence in date, because it's further on, but there was a report made by - it's document 79. Actually, I withdraw all of that, because it's something that happened in September 1992. I'll go on back to - no, I will ask you about that. There was a report made in September 1992 by one of the alleged victims that you were investigating [AKU], where she saw Don Henderson

1 carrying on at the Anula shops in a suspicious way. Do you  
2 remember that?  
3 A. No, I don't recall this running sheet entry.  
4  
5 Q. Have a look at it. Take your time, read it.  
6 A. Can we scroll down a bit more, thanks? Yes,  
7 Mr Lawrence.  
8  
9 Q. You don't remember reading that?  
10 A. No, but I may have been aware of it, because I was at  
11 Nightcliff CIB at that particular time.  
12  
13 Q. It's obviously relevant to your investigations into  
14 Donald Henderson?  
15 A. Yes, it would have been.  
16  
17 Q. Let me take you to your statement, if I may, at  
18 paragraph 41, which takes you through your endeavours.  
19 This is June 1998. You've discovered early in the piece  
20 that Henderson has a prior. You've discovered early in the  
21 piece that he's been charged with similar offences, in a  
22 similar period, as well, to these matters you're  
23 investigating, with the same or similar victims, children  
24 in his care - an unsuccessful prosecution. You met with  
25 some of the victims that you were investigating here?  
26 A. Yes.  
27  
28 Q. [AKU]?  
29 A. Yes.  
30  
31 Q. [AJD]?  
32 A. [AJD] I met in Perth, yes.  
33  
34 Q. [AJE]?  
35 A. [AJE], yes.  
36  
37 Q. You heard their stories?  
38 A. Yes, I did.  
39  
40 Q. You thought they were telling the truth?  
41 A. I did.  
42  
43 Q. Did they appear, if I can put it this way, damaged  
44 individuals?  
45 A. Yes, I would say that.  
46  
47 Q. Did you ascribe that in part, at least, to the stories

1 they told you as to what happened to them as children at  
2 Retta Dixon?  
3 A. I'm sure I would have, yes.  
4  
5 Q. You also discovered in this investigation that for  
6 some of the children from Retta Dixon, or at least one,  
7 there was an allegation against him that he himself had  
8 been sexually assaulting other children?  
9 A. Correct, [AJD].  
10  
11 Q. That wouldn't have struck you as unusual, as an  
12 experienced detective and, indeed, the officer in charge of  
13 the sexual crimes unit?  
14 A. I suppose once I found out the circumstances, it  
15 wasn't unusual, no.  
16  
17 Q. Because that's what happens, isn't it?  
18 A. That's correct.  
19  
20 Q. Kids who are abused quite often turn into abusers  
21 themselves?  
22 A. Yes.  
23  
24 Q. And that's what you were investigating here?  
25 A. That's correct.  
26  
27 Q. So can I suggest to you that what's on your plate is  
28 that you need to get information, evidence, about the Retta  
29 Dixon Home?  
30 A. That's correct.  
31  
32 Q. You need to get information and evidence concerning  
33 who was at the Retta Dixon Home during this period?  
34 A. That's correct.  
35  
36 Q. And you need to discover who was running the Retta  
37 Dixon Home during this period?  
38 A. That's correct.  
39  
40 Q. And you would have discovered that?  
41 A. Yes.  
42  
43 Q. It was the Aborigines Inland Mission?  
44 A. Yes.  
45  
46 Q. And you would have wanted to know who was working at  
47 Retta Dixon Home during the period of these allegations

1 which were being made now and those which had been made  
2 previously?  
3 A. That's correct.  
4  
5 Q. You would have wanted to know each and every name of  
6 each and every member of the staff who worked there?  
7 A. Yes.  
8  
9 Q. Because they would have been clearly potential  
10 witnesses to what you were investigating?  
11 A. That's correct.  
12  
13 Q. And would you agree that what you were investigating  
14 was a particularly serious matter?  
15 A. All matters of this nature are particularly serious.  
16  
17 Q. Well, the reason I use "particularly" is because it  
18 would have appeared to you early in the piece that this  
19 man, Donald Henderson, a convicted sexual offender, was  
20 posing to you, as a detective, as a predator upon young  
21 boys and girls within the Retta Dixon Home.  
22 A. That's correct.  
23  
24 Q. You had information before you of a large number of  
25 alleged victims at the hands of this man.  
26 A. That's correct.  
27  
28 Q. Your first memo told you there were over 100 charges  
29 involved in this investigation.  
30 A. That's correct.  
31  
32 Q. Charges of rape.  
33 A. Yes - call it rape.  
34  
35 Q. Not fondling, not indecent dealing - sexual  
36 intercourse without consent?  
37 A. I think it was a different term in those days.  
38  
39 Q. Well, sexual intercourse without consent?  
40 A. Yes.  
41  
42 Q. Rape?  
43 A. Yes - I'll say yes to it, but it was a different term.  
44  
45 Q. But not indecent dealings?  
46 A. No.  
47

1 Q. Not fondling?  
2 A. No - some might have been indecent dealings.  
3  
4 Q. Yes, but there were rapes?  
5 A. Yes, definitely.  
6  
7 Q. Of children?  
8 A. Correct.  
9  
10 Q. Young Aboriginal boys, young Aboriginal girls?  
11 A. Correct.  
12  
13 Q. Within the walls of Retta Dixon?  
14 A. Within the walls of Retta Dixon, yes.  
15  
16 Q. Run by AIM; correct?  
17 A. Sorry?  
18  
19 Q. Run by AIM, the institution?  
20 A. Yes.  
21  
22 Q. And you would have been as familiar as anyone, if not  
23 more, about institutional abuse of children.  
24 A. That's correct.  
25  
26 Q. We've heard it all. This Commission is sitting now  
27 nationally to investigate this.  
28 A. That's correct.  
29  
30 Q. That would have been in your mind when you were  
31 carrying on your investigations back in 1998?  
32  
33 MR GRANT: I object to that, your Honour. That is a very  
34 broad question, particularly when it follows up the --  
35  
36 THE CHAIR: The question actually doesn't work in that  
37 form, Mr Lawrence.  
38  
39 MR LAWRENCE: All right.  
40  
41 THE CHAIR: He would not have contemplated a Royal  
42 Commission back in 1998.  
43  
44 MR LAWRENCE: I didn't mean to suggest that.  
45  
46 THE CHAIR: That's the way the question reads.  
47



1 MR LAWRENCE: Okay.  
2  
3 Q. But it would have been known to you - we all know -  
4 that a problem in modern-day society is that kids have been  
5 abused within the confines of institutions such as AIM?  
6 A. Yes, that's correct.  
7  
8 Q. The Roman Catholic Church?  
9 A. Yes.  
10  
11 Q. The Boys' Brigade?  
12 A. Yes.  
13  
14 Q. And this is what was presenting to you as the officer  
15 in charge of the sexual crimes unit and an experienced  
16 detective of many years.  
17 A. Yes.  
18  
19 Q. You need to speak to relevant witnesses.  
20 A. That's correct.  
21  
22 Q. Were you here the other day when Mrs Wall gave  
23 evidence?  
24 A. Part of it, I believe, yes.  
25  
26 Q. Did you hear her evidence?  
27 A. I believe I heard half of it, yes.  
28  
29 Q. She was a house parent back then?  
30 A. Yes.  
31  
32 Q. Did you interview her?  
33 A. No.  
34  
35 Q. Why not?  
36 A. I'm not sure, Mr Lawrence, why I didn't. I made  
37 inquiries and I think the name I came up with, or the only  
38 name I came up with, was [AKR].  
39  
40 Q. Did [AKR]'s name come up when you discovered that she  
41 was involved in the unsuccessful prosecution back in 1976?  
42 A. Not that I'm aware of. It may have, but I'm not aware  
43 of it.  
44  
45 Q. Let me put this to you, and it might refresh your  
46 memory. Wasn't she the house parent that reported the  
47 matter of Donald Henderson sexually abusing kids down at

1 the camp in 1975, which led to the police investigation,  
2 the charges and the unsuccessful prosecution?  
3 A. She may have been, but I don't recall that.  
4  
5 Q. I'm going to take you to a document that's before the  
6 Commission at tab 60. Have a look at this document. It's  
7 up on the screen and it's an NTCIB running sheet,  
8 8 September 1975; correct?  
9 A. Yes.  
10  
11 Q. Sergeant McIntyre?  
12 A. Yes.  
13  
14 Q. Talking to a house parent, it's her maiden name, but  
15 it's the same one, [AKR]. Do you follow that?  
16 A. Yes.  
17  
18 Q. She's telling the police that the kids have reported  
19 that Henderson has buggered them; correct?  
20 A. Yes.  
21  
22 Q. At Batchelor; correct?  
23 A. Yes.  
24  
25 Q. Mr Pattemore, who was the superintendent, has baled  
26 them up, and Mr Henderson has gone to Legal Aid; correct?  
27 A. Yes.  
28  
29 Q. Mr Henderson is investigated, a telex is sent down to  
30 New South Wales requesting anything known of him,  
31 "Fingerprint section not checked due to no member being on  
32 duty"; correct?  
33 A. Yes.  
34  
35 Q. That was a document that was available to you in 1998  
36 when you were tasked to investigate Donald Henderson?  
37 A. That's correct.  
38  
39 Q. You would have read it?  
40 A. Yes.  
41  
42 Q. And it would have enlightened you in relation to these  
43 matters back in 1975/76.  
44 A. Yes.  
45  
46 Q. It would have also revealed a witness there, who is  
47 the house parent as revealed?

1 A. Yes.  
2  
3 Q. And she was a witness?  
4 A. Yes.  
5  
6 Q. She was a potential witness to your matters now?  
7 A. Yes.  
8  
9 Q. Because this is the same period that you're  
10 investigating?  
11 A. Yes.  
12  
13 Q. And she happens to have reported having received what  
14 we call, in the game, "recent complaint evidence" from kids  
15 as to Henderson bugging them down in the camp?  
16 A. Yes.  
17  
18 Q. So you want to speak to her, do you not?  
19 A. Yes.  
20  
21 Q. And did you?  
22 A. Yes.  
23  
24 Q. When?  
25 A. 26 February 1999.  
26  
27 Q. Did you take a statement from her?  
28 A. No. She was interstate.  
29  
30 Q. Sorry?  
31 A. She was interstate.  
32  
33 Q. Have you got a note of when you spoke to her?  
34 A. 26 February 1999.  
35  
36 Q. What was discussed?  
37 A. Do you want me to read it out.  
38  
39 Q. Is it part of the materials, or is this stuff --  
40 A. It's part of my running sheet which I've been provided  
41 with, so it very well could be.  
42  
43 Q. Could I have a look at the document first before we go  
44 there, please?  
45 A. Yeah, sure.  
46  
47 MR LAWRENCE: Could I have a look at that, your Honour?

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THE WITNESS: It's entry 21, Mr Lawrence.

MR LAWRENCE: Q. Entry 21, thank you. What is this document?

A. That's - prior to the current system coming in, which is called PROMIS, our running sheets were done either by hand or we typed them out. That's just the way I presented the running sheets in relation to this investigation. After the last entry in the running sheets it went on to PROMIS, and that's where you get your case notes from.

Q. Well, this reveals - I'll read this document out. It's your document?

A. Yes.

Q. It says on 26 February 1999::

*1999 Newman called [AKR] - reluctant to talk about matter. Stated that there was a lot of activity involving Henderson & the children from Retta Dixon. There were quite a few kids involved. Henderson also ran camps from Batchelor and also took kids from the Uniting Church on camps. When [AKR] was working at Batchelor she found out about what was going on as the kids came and told her what was going on. The kids told her that if someone didn't stop what was going on then they would bash Henderson. People who may be able to assist with inquiries are:  
1. [AJS] ...*

Look at [AJS]?

A. Yes.

Q. Do you remember him?

A. No.

Q. Are you sure?

A. I don't recall him, no.

Q. I'll come back to him:

- 2. [AJT]?
- 3. [AJW].

1  
2 Look at that?  
3 A. Yes.  
4  
5 Q. Do you remember her?  
6 A. No. I don't recollect.  
7  
8 Q.  
9 *[REDACTED] who lives with [REDACTED].*  
10  
11 *4. Merv Pattemore [REDACTED].*  
12 *5. Barbara Henderson - 50-55 years still*  
13 *living somewhere in Darwin.*  
14  
15 That would be the wife of Donald Henderson, wouldn't it?  
16 A. I would say so.  
17  
18 Q.  
19 *... also stated that several children have*  
20 *been before the Court in about 1974-1976*  
21 *but the case was lost due to the kids not*  
22 *being able to give good enough evidence.*  
23 *Sergeant Alex Carolan was OIC of the case.*  
24 *The kids also told her that Henderson had*  
25 *threatened to kill them if they went to the*  
26 *authorities. [AKR] does not want to get*  
27 *involved & obviously knows more.*  
28  
29 So that's what was revealed to you in your conversation  
30 with her in February 1999?  
31 A. Yes.  
32  
33 Q. Does that mean that that was the first time you  
34 discovered about the case in 1974?  
35 A. About the?  
36  
37 Q. The case in 1974?  
38 A. I can't recollect the chronological order it came in,  
39 but it may have been, it may not have been.  
40  
41 Q. Well, this is eight months after you've started the  
42 investigation, this conversation, isn't it?  
43 A. Sorry?  
44  
45 Q. It's eight months after you started the investigation?  
46 A. From that note, yes.  
47

1 Q. It says here:  
2  
3 *... also stated that several children have*  
4 *been before the Court in about 1974-1976*  
5 *but the case was lost due to the kids not*  
6 *being able to give good enough evidence.*  
7 *Sergeant Alex Carolan was OIC of the case.*  
8 *The kids also told her that Henderson had*  
9 *threatened to kill them if they went to the*  
10 *authorities. [AKR] does not want to get*  
11 *involved --*  
12  
13 That suggests - correct me if I'm wrong; correct this  
14 Commission - that that is the first time that you've been  
15 informed about a previous case in 1974 to 1976?  
16 A. Look, I can't recollect if that's correct or not.  
17  
18 THE CHAIR: What was the case in 1974?  
19  
20 MR LAWRENCE: That's what the entry says.  
21  
22 THE CHAIR: I know, but it reads like an uncertainty as to  
23 date, doesn't it?  
24  
25 MR LAWRENCE: It says "in about 1974 to 1976".  
26  
27 THE CHAIR: "1974 comma 1976", isn't it?  
28  
29 MR LAWRENCE: Yes.  
30  
31 THE CHAIR: That just suggests an uncertainty as to the  
32 date, doesn't it?  
33  
34 MR LAWRENCE: Certainly, I concede that.  
35  
36 THE CHAIR: It doesn't suggest necessarily that there was  
37 a case in 1974.  
38  
39 MR LAWRENCE: No, but as your Honour would be aware, the  
40 allegations related to the year 1974.  
41  
42 THE CHAIR: I understand that, yes.  
43  
44 MR LAWRENCE: The case was brought in 1975.  
45  
46 THE CHAIR: Yes. I understand that. All it suggests is  
47 this person is not sure about the precise dates.

1  
2 MR LAWRENCE: She certainly isn't, but what I'm am trying  
3 to put to this witness is that he has recorded this.  
4  
5 Q. Is that because it was the first time you had  
6 discovered that?  
7 A. I can't recollect, Mr Lawrence, whether it was that  
8 time or something else led to me the archives on the files  
9 in relation to Mr Henderson.  
10  
11 MR GRANT: Perhaps if I can assist my friend and the  
12 witness, if my friend looks at item 13 of the running  
13 sheet, all will be revealed in that respect - the  
14 investigation diary.  
15  
16 MR LAWRENCE: Thank you. I haven't got that. I've only  
17 got 14.  
18  
19 THE WITNESS: I've got it here if you'd like to have a  
20 look.  
21  
22 MR GRANT: And the entry continues on the following page.  
23  
24 THE WITNESS: What page is that, Mr Lawrence?  
25  
26 MR LAWRENCE: Q. Page 1, investigation diary.  
27  
28 MR GRANT: The entry continues on the top of page 2 of the  
29 diary.  
30  
31 MR LAWRENCE: I don't know if this makes it any clearer.  
32  
33 Q. What I want to know is when did you first discover  
34 that Donald Henderson was prosecuted unsuccessfully in  
35 Darwin in 1976 for similar offences to which you were  
36 tasked to investigate?  
37 A. I really can't answer that. I don't know when  
38 I discovered that. It was some time during the  
39 investigation.  
40  
41 Q. Have a look at the entry that the learned Solicitor  
42 has asked us to look at, and that might help us.  
43 It's February 1999 again?  
44 A. Yes.  
45  
46 Q. Well, does it help? hat it must have been somewhere  
47 A. All it tells me is t

1 around 25 February 1999, which was prior to when I spoke to  
2 [AKR] on 26 February 1999. So the information must have  
3 come from someone other than [AKR].  
4

5 THE CHAIR: Can you make sure you talk into the  
6 microphone?  
7

8 MR LAWRENCE: Q. Do we agree, Mr Newman, that it would  
9 appear, including your memory today, that the first time  
10 that you discovered that Donald Henderson had been charged  
11 and prosecuted in relation to sexually assaulting other  
12 Retta Dixon kids back in 1974 was in February 1999?

13 A. Yes, some time around that, or prior to that.  
14

15 Q. Eight months after you began your investigation into  
16 this matter?

17 A. That's a possibility, yes.  
18

19 Q. That's simply not good enough, is it?

20 A. In what way?  
21

22 Q. In the way that it's extremely relevant, and you're  
23 the officer in charge of the sexual crimes unit, with all  
24 the intelligence available within the police material, and  
25 you haven't discovered what is extremely relevant material  
26 until eight months into your endeavours.

27 A. Mr Lawrence, I'm not sure what you're trying to say.  
28 You're making it clear enough to me, but I think the  
29 problem was as to when I actually discovered it. I made  
30 the request to view the archives in February, but it may  
31 have been some time prior to that that I actually received  
32 that information in relation to the file. Now, that formed  
33 part of my investigation. If it was relevant prior to that  
34 for me to view that file, I cannot recall, but the matter  
35 was ongoing and that's the time or that's the opportunity  
36 I took to view the files at the archives.  
37

38 Q. You can't remember looking into this matter in  
39 1974/75.

40 A. I can't.  
41

42 Q. Bear with me. And the only records available tell us  
43 that your first discovery of this matter was in February  
44 1999; correct?

45 A. I'm not saying I discovered it in February 1999. What  
46 I'm saying is that I made the application in February 1999.  
47



1 Q. Right.  
2 A. To view the file.  
3  
4 Q. You've got no memory prior to that. You're working on  
5 this job in June, July, August, September and you've got no  
6 record to produce to this Royal Commission that you have  
7 discovered the 1974/75 matters, have you?  
8 A. I don't have a recollection as to when it came to my  
9 attention, no.  
10  
11 Q. No. Let's just accept that what I'm putting to you is  
12 right. You're the officer in charge of the sexual crimes  
13 unit. You've been tasked to investigate extremely serious  
14 sexual assaults committed upon young children at the Retta  
15 Dixon Home at the hands of Donald Henderson and you  
16 discover that Donald Henderson has got a prior for a  
17 similar in 1984. Let's just accept that you don't find out  
18 about Donald Henderson being charged with similar offences  
19 against Retta Dixon boys and girls until eight months into  
20 your work. Is that good enough?  
21 A. It may have been, Mr Lawrence, that that part of the  
22 investigation wasn't important at that time, or it may have  
23 been important at that time. The inquiries that I was  
24 making may have led me to that file, but from my point of  
25 view, at the end - the end result is that I did get there  
26 and how that would have affected the earlier inquiries that  
27 were being made I cannot understand.  
28  
29 Q. The sooner you gather material as a detective, the  
30 sooner you get evidence, the stronger your case becomes,  
31 does it not?  
32 A. In some cases.  
33  
34 Q. Isn't there a saying, "The first 24 hours are the most  
35 important 24 hours".  
36 A. When you are talking about --  
37  
38 MR GRANT: Oh, really, I just have to object. We're  
39 talking about historical --  
40  
41 THE CHAIR: I think, Mr Lawrence, that needs a context and  
42 I think the Solicitor is right. You're not talking about  
43 crimes that happened the previous day.  
44  
45 MR LAWRENCE: Okay.  
46  
47 Q. Let's go back to that entry in your running sheet

1 where you spoke to the house parent. She has clearly  
2 revealed to you that she's a potential witness?  
3 A. That's correct.  
4  
5 Q. Did you take a statement from her at any stage?  
6 A. No.  
7  
8 Q. Why not?  
9 A. Firstly, the lady in question was interstate and,  
10 secondly, she made it clear that she did not want to get  
11 involved.  
12  
13 Q. That doesn't end the matter, though, does it, if she  
14 doesn't want to get involved?  
15 A. Why? Can I force her to take a statement?  
16  
17 Q. Well, you could certainly endeavour to persuade her  
18 that what you're investigating is an extremely serious  
19 series of allegations against Don Henderson, who has  
20 already been convicted of sexually assaulting young boys  
21 and girls who were in her care. Wouldn't you do that?  
22 A. When somebody makes it clear to me, I suppose, that  
23 they don't wish to provide a statement, then I just don't  
24 take the matter any further unless, you know, that person  
25 comes back to me and requests that, after thought - and  
26 I would have provided her, I'm sure, or said, "If you  
27 change your mind, call me", but I never received that.  
28  
29 Q. That file note, the CIB running sheet which we showed  
30 earlier talking about this lady, [AKR], actually tells you  
31 that she is a potential witness that carries what is really  
32 quite strong evidence of recent complaint, doesn't it?  
33 A. Yes.  
34  
35 Q. You would have been interested in getting that  
36 evidence in relation to getting Don Henderson, wouldn't  
37 you?  
38 A. Of course.  
39  
40 Q. And that's as much you did. She says she's reluctant?  
41 A. If a person doesn't wish to make a statement to me,  
42 I'm not going to force them to make a statement.  
43  
44 Q. Oh, yeah. What about if she saw a murder?  
45 A. Sorry?  
46  
47 Q. What if she had witnessed a murder?

1 A. She may be subpoenaed as a witness.  
2  
3 Q. Did you consider subpoenaing her?  
4 A. No.  
5  
6 Q. Look, the situation is, isn't it, that you needed to  
7 speak to all of the house parents at Retta Dixon?  
8 A. As many as I could, yes.  
9  
10 Q. What did you do in relation to that?  
11 A. I made inquiries in relation to documents that may  
12 have helped me identify people, and there were no archival  
13 documents and I believe that many of the documents had been  
14 lost during the cyclone. So there was nothing - no hard  
15 evidence for me to follow.  
16  
17 Q. All right. We know it's the organisation AIM;  
18 correct?  
19 A. Correct.  
20  
21 Q. You know the period you're investigating; correct?  
22 A. Correct.  
23  
24 Q. You know that it involves young Aboriginal boys and  
25 girls in the care of AIM and the staff therein; correct?  
26 A. Correct.  
27  
28 Q. You know where AIM's headquarters are?  
29 A. I could have found out, yes.  
30  
31 Q. Sorry?  
32 A. I could have found out.  
33  
34 Q. Well, you did, didn't you?  
35 A. No, I didn't.  
36  
37 Q. You didn't?  
38 A. No.  
39  
40 Q. Why not?  
41 A. I can't give an answer to that. I mean, the  
42 investigation that I did was based on the witnesses  
43 I located during my search for witnesses.  
44  
45 Q. How about this: it was inadequate?  
46 A. That's your opinion, Mr Lawrence.  
47

1 Q. I'm putting it to you. Do you agree or disagree?  
2 A. No, I disagree.  
3  
4 Q. That not finding out where AIM's headquarters was was  
5 inadequate on your part?  
6 A. Why was it inadequate?  
7  
8 Q. Because they would have been able to reveal to you the  
9 details in relation to all the house parents that were  
10 clearly potential relevant witnesses in this matter?  
11 A. They could have, yes.  
12  
13 Q. Right. And you didn't do that?  
14 A. No, I didn't.  
15  
16 Q. Well, I'm putting to you again, that's inadequate,  
17 that's not good enough?  
18 A. That wasn't something - that wasn't the line of  
19 inquiry that I was following and if I made a mistake now,  
20 so be it.  
21  
22 Q. Well, do you concede before this Royal Commission that  
23 that was a shortfall on your part?  
24 A. I wasn't asked to provide shortfalls.  
25  
26 Q. No, no. Do you concede before this Commission, now,  
27 that you should have contacted the headquarters of AIM and  
28 discovered from them who were the staff manning Retta Dixon  
29 during the relevant period?  
30 A. Yes, it may have helped in my inquiries.  
31  
32 Q. It would have given you the names of all the house  
33 parents; correct?  
34 A. Well, it may have, yes.  
35  
36 Q. Did you think about doing that?  
37 A. No, I didn't.  
38  
39 Q. Can I take you to your statement at paragraph 44.  
40 Have you got that?  
41 A. Yes, I have.  
42  
43 Q. This is the part of your statement where you are  
44 describing what you did as the officer in charge of this  
45 investigation.  
46 A. Yes.  
47

1 Q. It tells us that on 15 June 1998, which would have  
2 been how long into the investigation - a couple of days; is  
3 that right? What's the official date when you started  
4 investigating this matter? Take your time. The Lockhart  
5 memo is dated 12 June.  
6 A. It would have been some time around that time, yes.  
7  
8 Q. So within days you make inquiries with a  
9 Mr Matthew Storey of the Stolen Generation Litigation Unit  
10 in relation to the identity of other child residents of  
11 Retta Dixon Home at the time the alleged offences occurred;  
12 correct?  
13 A. That's correct.  
14  
15 Q. What made you ask him about information that might be  
16 relevant to your investigation?  
17 A. I can't recall where I got that information from.  
18  
19 Q. All right. Well, can you remember speaking to  
20 Matthew Storey?  
21 A. I did make notes at the time that I spoke to him, so,  
22 yes, I would have spoken to him. I don't recall speaking  
23 to him.  
24  
25 Q. Do you have those notes?  
26 A. Only the running sheet that I prepared.  
27  
28 Q. Are there entries in there that are relevant --  
29 A. Yes, I believe there are.  
30  
31 Q. Can you produce them, please?  
32  
33 MR LAWRENCE: Can I ask, is this running sheet of yours  
34 before the Commission, and if not why not?  
35  
36 MR GRANT: I can tell the Commission that the document was  
37 produced by police in response to notice to produce 396.  
38 We, of course, have had nothing to do with the compilation  
39 of the tender bundle, so I can't assist my friend beyond  
40 that.  
41  
42 THE CHAIR: Is it in the bundle?  
43  
44 MS DAVID: It is not in the tender bundle, but I can  
45 provide copies for the hearing, if it assists.  
46  
47 THE CHAIR: We'll mark it as an exhibit. It will become

1 exhibit 17-21.

2

3

**EXHIBIT #17-21 RUNNING SHEET PREPARED BY MR NEWMAN**

4

5

MR GRANT: In our understanding, the documents produced on subpoena were available to everyone, and people could have requested them to go into the tender bundle, had they wished.

8

9

10

MS DAVID: I provide four copies.

11

12

MR LAWRENCE: It is a bit embarrassing for me to cross-examine this witness, who is important in relation to the police investigation, when I haven't been given this material, nor indeed has the Commission.

15

16

17

MS DAVID: Can I say that the copies aren't redacted, so I'll need to at some point take them back, redact them, and replace the exhibit.

19

20

21

MR LAWRENCE: I don't want to be a pest, but I would like an opportunity to read this complete document made by the officer, and perhaps it should be redacted while I'm reading it.

24

25

26

THE CHAIR: We'll adjourn for five minutes while you do that.

27

28

29

MR LAWRENCE: Redacting might take a bit of --

30

31

MS DAVID: We can do that in the lunch.

32

33

THE CHAIR: You can keep going and we'll redact in due course. We'll take a short adjournment.

34

35

36

**SHORT ADJOURNMENT**

37

38

MR LAWRENCE: Q. Exhibit 17-21 is a typed document, of six pages, which is your investigation diary, or at least it's a typed document by you. This isn't your investigation diary, is it? It's you typing what was in your investigation diary?

39

40

41

42

A. No, that's the occurrences that would have happened at the time.

44

45

46

Q. I see. So this is a computer-created thing, is it?

47

A. It may have been something I created instead of

1 writing it in manually, to have a document that I had typed  
2 into, instead of manual.  
3  
4 Q. Using that, it tells us that on 12 May the first  
5 complaint, to which you were tasked a month later, by [AJB]  
6 was made to the Alice Springs Detective Lockhart; is that  
7 correct?  
8 A. Yes.  
9  
10 Q. Have you got this in front of you?  
11 A. Yes, I have.  
12  
13 Q. It goes through down June, when you were tasked.  
14 Indeed, it tells us that on 15 June you contacted Matthew  
15 Storey of the Stolen Generation Litigation Unit re further  
16 complainants, and he told you that he was still waiting for  
17 victims to contact him, and he would advise when he had  
18 contact; right?  
19 A. Yes.  
20  
21 Q. In August you have the next entry, which is you  
22 contacting Storey again?  
23 A. Yes.  
24  
25 Q. You leave a message on his answering machine.  
26  
27 THE CHAIR: We can read the document, Mr Lawrence. Is  
28 there a point?  
29  
30 MR LAWRENCE: Yes.  
31  
32 Q. One of the problems with this investigation was  
33 obtaining witnesses, victims, who were reluctant to give  
34 evidence about what had happened to them, for all the usual  
35 reasons.  
36 A. Correct.  
37  
38 Q. Is that why you were harnessing or seeking assistance  
39 from Mr Storey, who has dealings with people from  
40 Retta Dixon?  
41 A. Most likely, yes.  
42  
43 Q. That goes through to August/September. These are all  
44 the relevant entries you make in relation to the work  
45 you're doing on this investigation?  
46 A. That's correct.  
47

1 Q. Indeed, it confirms that the first time you look at  
2 the past, if you like, is 25 February when you contacted  
3 the police archive officer?

4 A. Yes.

5

6 Q. When you got the CIB running sheet 1256/83 and  
7 1314/89; right?

8 A. Yes.

9

10 Q. Then on 26 February - I've questioned you about how  
11 you spoke to the house parent, who was reluctant,  
12 et cetera, and told you about the old case?

13 A. That's correct.

14

15 Q. I'm now going back to your statement. At  
16 paragraphs 44 through to 47 it basically details trying to  
17 get information from the Stolen Generation unit, and that  
18 would have been in relation to potential victims?

19 A. Yes, that's correct.

20

21 Q. Then at paragraph 48 it says:

22

23 *I cannot recall whether I received further*  
24 *information from Ms Roussos and the*  
25 *investigation diary entries do not indicate*  
26 *that Ms Roussos made any contact with me.*  
27 *The investigation diary entries show that*  
28 *on 24 September 1999 I was in possession of*  
29 *a list of names of child residents of Retta*  
30 *Dixon Home. I do not now recall where*  
31 *I got that information from. While it is*  
32 *possible that Ms Roussos provided me with*  
33 *the list, I consider that unlikely given*  
34 *that it appears to have come into my*  
35 *possession more than 12 months after my*  
36 *last contact with the Stolen Generation*  
37 *Litigation Unit.*

38

39 Correct?

40 A. That's correct.

41

42 Q. Are we to take it, then, that it's 15 months after you  
43 were tasked into this investigation that you eventually get  
44 a list of the kids that were staying at Retta Dixon in the  
45 relevant period?

46 A. Some names, yes.

47



1 Q. Some names. During that period, you haven't managed  
2 to get any more names of potential witnesses, as in house  
3 parents and staff of AIM during that period?  
4 A. There doesn't appear to be, no.  
5  
6 Q. So over a year goes by, and you haven't discovered any  
7 of the relevant house parents that worked during this  
8 period?  
9 A. It doesn't appear that way, no.  
10  
11 Q. Did you give any consideration at all, having spoken  
12 to the one in February, eight months into your  
13 investigations, to speaking to other house parents, as they  
14 may very well be able to give you relevant evidence?  
15 A. Possibly, yes, I would have.  
16  
17 Q. And did you take any action to discover them? Take  
18 your time.  
19 A. There's nothing on the - on my running sheets that  
20 indicate that I did, but I have - I have an idea that I did  
21 try and contact the people in [REDACTED], but that's only a  
22 recollection, so I'm not sure.  
23  
24 Q. Who was that?  
25 A. There was somebody mentioned in [REDACTED] by [AKR].  
26  
27 Q. But you did speak to somebody and you spoke to that  
28 person in March 1999, the superintendent.  
29 A. Yes.  
30  
31 Q. So that would have been about nine months into your  
32 investigation?  
33 A. Yes, approximately nine months.  
34  
35 Q. And you went out and spoke to him about what he knew  
36 about what had been going on in his Retta Dixon Home.  
37 A. That's correct.  
38  
39 Q. And you recorded some of that?  
40 A. Yes, I did.  
41  
42 Q. And, prior to speaking to him, you had discovered  
43 material, archives, in relation to the old matters from  
44 1974/75.  
45 A. Yes, I believe I requested running sheets.  
46  
47 Q. This is in your statement at pages 6 and 7 where you

1 set up an interview with him and you go out to his house  
2 and you interview him; correct?  
3 A. That's correct.  
4  
5 Q. Were you in company? Did you have a colleague?  
6 A. No, I don't believe I did.  
7  
8 Q. So this is in March 1999, and you ask him questions  
9 about things, and the truth of the matter is that  
10 Mr Pattemore lies to you, doesn't he?  
11 A. Well, he answers to the best of his ability. I can't  
12 say whether he lied to me.  
13  
14 Q. Let's go through this step by step. You're an  
15 experienced detective; correct?  
16 A. Correct.  
17  
18 THE CHAIR: Mr Lawrence, if we get to the point where  
19 Mr Pattemore did lie, what's the relevance of it?  
20  
21 MR LAWRENCE: It heightens this witness's concerns in  
22 relation to gathering relevant evidence. It could suggest  
23 to this detective that there is a classic institutional  
24 cover-up going on.  
25  
26 THE CHAIR: Well, I'm not sure about that. But --  
27  
28 MR LAWRENCE: That's why I want to ask him.  
29  
30 THE CHAIR: Yes. The issues that are important to the  
31 Commission are, firstly, the nature and effectiveness of  
32 the investigation, and you've isolated some matters. But  
33 it's taken quite a lot of time for that.  
34  
35 Secondly, it is the process of prosecution and then  
36 the ultimate decision not to proceed. We would be assisted  
37 if you were able to relate what you're asking Mr Newman to  
38 the decision in relation to the prosecution, to see whether  
39 or not there are matters that could have been done in the  
40 investigation which may have led to a different conclusion  
41 in relation to the prosecution. Do you understand?  
42  
43 MR LAWRENCE: Of course I understand. And by not  
44 gathering enough evidence --  
45  
46 THE CHAIR: We'd be grateful if you'd go to those matters  
47 if a fairly direct way, if you can.

1  
2 MR LAWRENCE: Well, I'm trying to do that, with respect.  
3  
4 THE CHAIR: Let me say again. We'd be grateful if you'd  
5 go to it in a fairly direct way. But it is important, we  
6 fully agree it is important, but we would be grateful if  
7 you'd do it in a direct way.  
8  
9 MR LAWRENCE: Q. He gives you answers to your questions  
10 concerning your investigation; correct?  
11 A. Correct.  
12  
13 Q. And he told you that he didn't have any knowledge of  
14 Mr Henderson committing offences against children whilst he  
15 was superintendent at Retta Dixon Home, nor was he aware of  
16 any complaints against Mr Henderson.  
17 A. Correct.  
18  
19 Q. Did you believe him?  
20 A. I can't say at what stage of the investigation  
21 I formed an opinion that Mr Pattemore had knowledge of it,  
22 but I was certainly aware that he would have had knowledge,  
23 and that was probably one of the reasons that I wanted to  
24 speak to him.  
25  
26 Q. Well, he gave evidence at Henderson's committal in  
27 1975 about exactly this kind of stuff, namely, kids being  
28 sexually assaulted by Henderson. He gave evidence at that  
29 proceeding.  
30 A. Correct.  
31  
32 Q. And you knew that.  
33 A. I can't recollect whether I did or not, but I would  
34 have had an opinion that he knew more about than he was  
35 willing to talk about.  
36  
37 Q. Well you knew it, because it's in the transcript that  
38 you discovered from archives in February, a month before  
39 you spoke to him.  
40 A. Okay.  
41  
42 Q. Right. So, when he tells you this, it's clearly not  
43 true, is it?  
44 A. It definitely wasn't true, no.  
45  
46 Q. No, that's right. So you're thinking, are you not -  
47 maybe you're not - institutional cover-up?

1 A. No, I wasn't thinking that at the time.  
2  
3 Q. Are you thinking, having received that explanation  
4 which wasn't true, that you had better speak to other house  
5 parents at Retta Dixon?  
6 A. At some stage that would have been, yeah, formed in my  
7 mind, I'm sure.  
8  
9 Q. Did you do anything about that?  
10 A. I didn't speak to any other house parents, no.  
11  
12 Q. You did gather statements from the victims in the  
13 subsequent prosecution eventually, notwithstanding there  
14 was reluctance in relation to some of them?  
15 A. That's correct.  
16  
17 Q. And you tell us in your statement that [AJE], who was,  
18 I think, would it be fair to say, particularly, or at least  
19 he was extremely reluctant but eventually he did do a  
20 statement and I think, even when he did the statement, he  
21 did not sign it immediately but he signed it a couple of  
22 months later?  
23 A. That's correct.  
24  
25 Q. You've described his approach and his attitude towards  
26 you as extremely courageous?  
27 A. Exactly.  
28  
29 Q. Part of that description would have been by virtue of  
30 the fact that he was terrified of what Mr Henderson might  
31 do to him if he did become a witness against him.  
32 A. Yes, he expressed those views.  
33  
34 Q. In fact, he was so scared he thought Mr Henderson  
35 would take a hit out on him to kill him.  
36 A. That's correct.  
37  
38 Q. And you had no concerns or no doubts as to the  
39 sincerity of this man's fear.  
40 A. Exactly.  
41  
42 Q. So this would have to be an extremely serious  
43 investigation that you're dealing with when you're coming  
44 across this kind of material.  
45 A. Yes. All people express their fears in different ways  
46 and that particular witness certainly expressed that fear  
47 to me.

1  
2 Q. You tell us at paragraph 75 that you gathered evidence  
3 from the hospital, which was of a potentially corroborative  
4 nature in relation to [AKU], namely, x-rays of a broken  
5 nose.  
6 A. Yes, cracked nose, I think it was.  
7  
8 Q. Sorry, whatever it was, but that was strong evidence  
9 in your opinion, wasn't it?  
10 A. Yes, it was.  
11  
12 Q. Because it married, it dovetailed with her account of  
13 being backhanded?  
14 A. Yes, it was corroborating what she told me.  
15  
16 Q. And she had to go to the hospital to get it treated.  
17 A. Yes.  
18  
19 Q. That's the kind of evidence that you were aware of  
20 when you were told on 27 November by Mr Carey that the  
21 indictment was no longer proceeding?  
22 A. That's correct.  
23  
24 Q. Because one of the charges was an assault against her?  
25 A. Yes.  
26  
27 Q. And you saw absolutely no problems at all in  
28 prosecuting that charge?  
29 A. No.  
30  
31 THE CHAIR: If that's a convenient time, we'll take the  
32 luncheon adjournment. How much longer do you propose to  
33 be?  
34  
35 MR LAWRENCE: Subject to the court, half an hour.  
36  
37 THE CHAIR: Half an hour. Does anyone else have any  
38 questions of Mr Newman?  
39  
40 MS McLEOD: I have no questions, thank you, Commissioner.  
41  
42 MR GRANT: None as yet, your Honour.  
43  
44 THE CHAIR: We'll prepare the next witness for half an  
45 hour's time. We'll adjourn.  
46  
47 **LUNCHEON ADJOURNMENT**

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MR LAWRENCE: Q. Mr Newman, my memory tells me, for what it is worth, that we were questioning you about the legitimate fears, or at least you felt that there were legitimate fears felt by that witness in relation to - or at least that they had death threats?

A. Yes, witness [AJE].

Q. That wasn't dissimilar to what the house parent had said, which was revealed in that running sheet concerning the children back then, if you recall?

A. That's correct, yes.

Q. I'm just trying to suggest to you that you are dealing with a particularly serious offender here, aren't you?

A. Correct.

Q. If I can take you to your statement now, at paragraph 79 --

A. Yes.

Q. -- which takes us into December 1999. We also mentioned before lunch that you had obtained what was potentially corroborative material from the hospital concerning the other victim. It says here:

*On 14 December 1999, I sought advice from Mr Karczewski, who was then a Senior Crown Prosecutor ...*

In relation to matters involving [AJD]?

A. That's correct.

Q. Of course, this is a thing we talked about earlier, where he, in fact, had been nominated by a victim as having sexually assaulted the victim - he was a potential offender also?

A. Yes.

Q. So that's one of the things you wanted to discuss with Mr Karczewski; would that be right?

A. That's correct.

Q. But you also understood that he was similarly a victim from Mr Henderson, as well - or he was a victim --

A. [AJD] was, yes.

1 Q. So you had the situation where Mr Henderson's  
2 allegedly sexually assaulting all these kids, and within  
3 this group of kids, one of the kids has actually committed  
4 a sexual offence against one of the kids as well?  
5 A. That's correct.  
6  
7 Q. So that's pretty unusual, as far as a uniform  
8 investigation is going?  
9 A. I hadn't run across that type of thing before, but  
10 I had heard of it.  
11  
12 Q. You got advice from Mr Karczewski as to that  
13 difficulty by saying you should interview [AJD] first as to  
14 him being assaulted by Mr Henderson?  
15 A. That's correct.  
16  
17 Q. That would have been, would it not, because  
18 Mr Henderson was really seen as the villain of the piece,  
19 and [AJD] was, if anything, a consequence of that villainy?  
20 A. Yes.  
21  
22 THE CHAIR: Q. There may have also been considerations  
23 about the proper course of investigation in relation to  
24 warnings to be given and so on; is that right?  
25 A. Yes, I'm sure Mr Karczewski would have advised me of  
26 all of that when I spoke to him, and that would have been  
27 a consideration.  
28  
29 Q. That would be a factor in the sequence in which you  
30 interviewed, I would have thought.  
31  
32 MR LAWRENCE: There would have been fairly unusual and  
33 several difficulties associated with that aspect.  
34  
35 THE CHAIR: That might be the biggest one, I rather  
36 suspect.  
37  
38 MR LAWRENCE: Q. You have managed to gather witness  
39 statements from victims. I'm at paragraph 94 now and it is  
40 a year later, but this is in the year 2000, on  
41 13 September. You spoke to Mr Karczewski again?  
42 A. Yes.  
43  
44 Q. [AJD] you hadn't managed to locate at this stage - oh,  
45 sorry, you had located him, but there was this other  
46 complainant, [AJF]?  
47 A. [AJF].

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Q. Now, look him up. I've asked you about him earlier. Do you remember him?

A. Just bear with me a moment. Yes. I don't think we have spoken about him before.

Q. Yes. Now, can you remember him at all?

A. I can't physically place him, no, but I do know I had dealings with him, as did another detective.

Q. Let me remind you about [AJF]. It might refresh your memory. Wasn't he one of the young kids from Retta Dixon that in fact Mr Henderson REDACTED?

A. He was a REDACTED of Mr Henderson, yes.

Q. He was REDACTED by Mr Henderson?

A. REDACTED by him. Yes, I believe there may have been two, but that was the only one that I was aware of at that time.

Q. So [AJF] was, like the other kids at Retta Dixon, in the care of Retta Dixon?

A. Yes - oh, I'm not sure about that, whether he was in the care of Retta Dixon or whether he was actually RED

REDACTED Mr Henderson's and, as such, may

not have

come under that - I suppose the same terminology as the other children who were actually house children there. So

REDACTED Mr Henderson's.

I'm not sure about that.

Q. Let me put to you that he was a Retta Dixon kid.

A. Well, if you are putting that to me, I accept it for what you say, yes.

Q. You would have discovered that in your investigations?

A. No, I didn't.

THE CHAIR: Mr Lawrence, this is the difficulty, I don't know, do you mean in the legal sense as to who was his guardian?

MR LAWRENCE: Yes.

THE CHAIR: I'm not sure that Mr Newman can really be expected to know the legal relationship, can he?

MR LAWRENCE: Q. I'm putting to you that, like the other



1 victims that you gathered statements from, he lived at  
2 Retta Dixon in one of the cottages?

3 A. Yes, he did.

4  
5 Q. And you discovered that, [REDACTED]  
6 [REDACTED]

7 A. Yes.

8 [REDACTED]  
9 [REDACTED]

10

11

12

13

14

15 Q. Can I remind you that [AJF] was a particularly  
16 difficult witness to try and get a witness statement from  
17 by virtue of the reason of his mental instability?

18 A. That would have been part of it, yes.

19

20 Q. Do you remember him now?

21 A. Yes, I do, but I didn't take a statement from him.

22

23 Q. Look at paragraph 103 of your statement, please?

24 A. Yes.

25

26 Q. It takes us to February 2001, which is shortly before,  
27 or perhaps just after, the committal proceedings - just  
28 after, actually. Sorry, it is a year before it. Have you  
29 read that?

30 A. Yes, I have.

31

32 Q. That tells you that you spoke to [AJF]?

33 A. Yes.

34

35 Q. In relation to allegations of sexual assault against  
36 [REDACTED]

37 A. Yes.

38

39 Q. Because Mr [AJD] had expressed a desire to speak to  
40 him about that - [AJD] had told you, "You had better speak  
41 to [AJF]"?

42 A. Yeah, I don't recollect that, but he may have.

43

44 Q. The next paragraph again says that later that day you  
45 gave [AJD] a number for [AJF]'s natural mother and advised  
46 her that you could arrange counselling for [AJF], if he  
47 thought that would be of assistance?

1 A. Yes.  
2  
3 Q. Does that refresh your memory as to the state of  
4 [AJF]'s mental health?  
5 A. No, it doesn't. The only recollection I have of  
6 [AJF]'s mental health was that he was taken into care in  
7 Katherine by the police and, because of his demeanour, he  
8 was transferred to the Cowdy Ward in RDH. We were supposed  
9 to attend the Cowdy Ward to take a statement from him, but  
10 he escaped.  
11  
12 Q. Do you know where he is now?  
13 A. No, I don't.  
14  
15 Q. Paragraphs 106 to 108 tell us that you did have  
16 a record of interview with Mr Henderson, but he made no  
17 admissions?  
18 A. I didn't have a record of interview, I just spoke to  
19 him.  
20  
21 Q. It was just an informal conversation, was it?  
22 A. Well, we went there with the intention of conducting  
23 a record of interview, but Mr Henderson wished to consult  
24 with his solicitor first and, after a short conversation,  
25 he then said that he wouldn't be talking or providing any  
26 more information.  
27  
28 Q. And that's quite often the sequence of events, isn't  
29 it, when you're preparing a prosecution file? You gather  
30 the evidence from the victims and complainants and any  
31 other relevant evidence relating to that and then you  
32 approach the suspect with a view to interviewing, getting  
33 his version, her version, and then, if there is or there  
34 isn't, that's the end of the investigation, and you  
35 complete the file, hand it to the prosecution section?  
36 A. Yes, that's often the way.  
37  
38 Q. Generally the case, and that was the case here?  
39 A. I believe so.  
40  
41 Q. Paragraph 110, mid May 2001, you submit it to the DPP?  
42 A. That's correct.  
43  
44 Q. You tell us, and we have heard evidence about this,  
45 that Mr Elliott, a Crown Prosecutor of the time here in  
46 Darwin, wrote to you in October, about five months later,  
47 alerting you to the difficulties flowing from the

1 High Court decision of *R v S*?  
2 A. Yes.  
3  
4 Q. And he suggested that one way to get across that might  
5 be to take some other statements which would, if you like,  
6 shave off a lot of what they said and refine it so that  
7 they were at least talking about one incident, with  
8 particulars attached to it, with an approximate date?  
9 A. Yes, or more particular particulars.  
10  
11 Q. And that didn't happen?  
12 A. No.  
13  
14 Q. Were you intent on doing that?  
15 A. Yes. Well, I did approach both - all three witnesses  
16 who were going to give evidence.  
17  
18 Q. When?  
19 A. I do have a notation, if you just hang on a moment,  
20 I will go to it.  
21  
22 Q. Of course, of course. Is this your investigation  
23 diary that we are looking at now?  
24 A. No, no, that's - these entries would be part of the  
25 PROMIS system.  
26  
27 Q. Is this in evidence, do you know? Do we have this?  
28 A. I don't know. I know I made inquiries with [AJE] and  
29 [AKU] in relation to taking a further statement and an  
30 appointment was made to take that statement, but the  
31 appointment was not kept. I also made further inquiries  
32 through Western Australian police to take a statement from  
33 Mr [AJD], and Mr [AJD]'s reply was that he wouldn't talk to  
34 the police down there and that he needed to talk to me, and  
35 which he did when he came to Darwin for the committal  
36 hearing.  
37  
38 Q. That's [AJD], is it?  
39 A. That's [AJD], yes, D - delta.  
40  
41 Q. You did take a further statement from him on  
42 3 February, just before the committal?  
43 A. Just before the committal, yes.  
44  
45 Q. And then on 4 February 2002 it tells us at  
46 paragraph 119, page 13, that you collected the brother and  
47 sister again from their houses and took them to the DPP for

1 a briefing?  
2 A. Yes.  
3  
4 Q. That was in relation to them giving evidence before  
5 the committal, which was the next day?  
6 A. That's correct.  
7  
8 Q. Was there any consideration given there and then to  
9 taking statements from them that could address the  
10 difficulties pointed out to you by Mr Elliott as to *R v S*?  
11 A. There may have been, but I really can't recollect.  
12  
13 Q. It didn't happen?  
14 A. No, it didn't happen.  
15  
16 Q. It could have happened?  
17 A. Yes, it could have happened, yes.  
18  
19 Q. The committal happened, and it was after the  
20 committal - not long after it - that you were contacted by  
21 [AKT]?  
22 A. Yes.  
23  
24 Q. She being the sister of [AKV]?  
25 A. Yes.  
26  
27 Q. She told you what she knew and also that her brother  
28 could be a potential witness, and he was willing to do  
29 that.  
30 A. That's correct.  
31  
32 Q. And you did speak to him?  
33 A. Yes.  
34  
35 Q. That takes us to your case notes. I don't know if you  
36 have them there. We will get them. There are two, one in  
37 relation to your conversation with the sister and the next  
38 one relates to your conversation with the brother.  
39 A. Yes, I have it here.  
40  
41 Q. You do?  
42 A. Yes.  
43  
44 Q. For the purposes of the court, it is exhibits 17-16  
45 and 17-17. I am indebted to my friend. This actually all  
46 flowed from Mr Glen Dooley, didn't it? He had actually  
47 received information about the sister?

1 A. From another lady.  
2  
3 Q. From another lady?  
4 A. Yes.  
5  
6 Q. She put you on to her brother. The entry of  
7 14 February, which is quite a large entry, tells us about  
8 what [AKV] told you.  
9 A. Yes.  
10  
11 Q. You have read that recently?  
12 A. Yes, I have.  
13  
14 Q. We don't need to go through it now. You are familiar  
15 with what was said by him to you?  
16 A. Yes, unless you wish to bring up a particular point.  
17  
18 Q. Yes, by all means?  
19 A. Is there a particular point you wish to address in  
20 that?  
21  
22 Q. Oh, sorry, no, I thought you said you wanted to bring  
23 up a point. Well, I might bring this up. [AKV] gave  
24 evidence here that he had a conversation with you, and  
25 I think his evidence was that it was actually in a cafe.  
26 He said that during that he was a bit self-conscious that  
27 he was telling you all this stuff with people around, close  
28 by. I don't know if you saw or read that evidence.  
29 A. I heard it, yes.  
30  
31 Q. I think it was put to you by Ms David --  
32 A. Yes.  
33  
34 Q. -- and my memory is you weren't saying that didn't  
35 happen, but --  
36 A. I didn't recollect it, yes, and I'm not saying that  
37 it's not right.  
38  
39 Q. That could be right?  
40 A. Yes.  
41  
42 Q. Your view seems to have been that it was a telephone  
43 conversation.  
44 A. Yes, and that's what's indicated in that case note,  
45 so --  
46  
47 Q. He told you quite a lot of stuff about being assaulted

1 by Mr Henderson, sexually?  
2 A. That's correct; that's correct.  
3  
4 Q. He also told you that he was an eyewitness to a sexual  
5 assault by Henderson on another young boy?  
6 A. Yes, I believe that's part of the case note.  
7  
8 Q. And he also told you that he heard rumours, stories,  
9 and he also named other potential victims at the hands of  
10 Mr Henderson?  
11 A. That's correct.  
12  
13 Q. He also told you that business about the letter that  
14 went into the NT News from Mr Pattemore?  
15 A. That's right.  
16  
17 Q. And he also nominated other potential sources for your  
18 information, and witnesses?  
19 A. Yes.  
20  
21 Q. Nowhere did he say to you in the conversation or the  
22 note of it that he wasn't willing to give evidence?  
23 A. No.  
24  
25 Q. He's clearly a victim of sexual abuse at the hands of  
26 Don Henderson?  
27 A. Yes, allegedly.  
28  
29 Q. According to him?  
30 A. Yes.  
31  
32 Q. He's also an eyewitness to Don Henderson sexually  
33 assaulting another young boy at Retta Dixon?  
34 A. Yes.  
35  
36 Q. His allegations posed no difficulties for the  
37 difficulties passed to you by Mr Elliott as to *R v S*, did  
38 they?  
39 A. Can you repeat that, thanks?  
40  
41 Q. I will put it this way: [AKV] told you that he was  
42 sexually assaulted by Mr Henderson at two places specific.  
43 One was Berry Springs --  
44  
45 THE CHAIR: Mr Lawrence, you will need to stay near the  
46 microphone.  
47

1 MR LAWRENCE: Q. I will start again. [AKV] told you  
2 that Don Henderson had sexually assaulted him in two  
3 separate places.  
4 A. Yes.  
5  
6 Q. One was at Berry Springs?  
7 A. Yes.  
8  
9 Q. The other one was at the above-ground swimming pool  
10 behind cottage 2, which was Henderson's cottage.  
11 A. Yes.  
12  
13 Q. He gave you the particulars of how Henderson sexually  
14 assaulted him?  
15 A. Yes.  
16  
17 Q. Which were consistent with a lot of particulars  
18 already gathered by the authorities in relation to other  
19 victims at the hands of Henderson?  
20 A. That's correct.  
21  
22 Q. He also gave you a general date as to when both of  
23 these happened?  
24 A. That's correct.  
25  
26 Q. Which was either side of Cyclone Tracy?  
27 A. I believe so, yes.  
28  
29 Q. So the difficulties conveyed to you by Mr Elliott as  
30 to the victims you had gathered statements from prior to  
31 the committal did not exist in relation to [AKV], did they?  
32 A. No, didn't appear to.  
33  
34 Q. Did you appreciate that when you gathered his story?  
35 A. Yes, it would have been more specific.  
36  
37 Q. Did you appreciate that?  
38 A. Yes.  
39  
40 Q. Why didn't you take a statement from him and make him  
41 a prosecution witness and charge Donald Henderson with  
42 sexually assaulting him in the manner he described on the  
43 two occasions he described?  
44 A. Yes, I've thought about that, and that's the reason  
45 I believe that, instead of meeting [AKV] at a cafe, where  
46 I would have encouraged him to come back and make  
47 a statement, is that I spoke to him by phone and the

1 opportunity didn't present itself at that time to take that  
2 statement. If [AKV] had been - if I had requested [AKV] at  
3 the time to make a statement, I'm sure that, you know,  
4 given the evidence that he has provided, he would have come  
5 back and made a statement.

6

7 Q. Are you blaming him?

8 A. I beg your pardon?

9

10 Q. Are you blaming him for not taking a statement from  
11 him?

12 A. You asked me a question, I provided an answer. I'm  
13 not blaming [AKV]. That's your words, not mine.

14

15 Q. Why didn't you go and get [AKV] and take a statement  
16 to the effect of the story he told you, either on the phone  
17 or in that cafe?

18 A. Maybe [AKV] didn't want to make a statement at that  
19 time, if it was in a cafe. If he would have wanted to make  
20 a statement, I certainly would have taken one.

21

22 Q. Is there anywhere in any of your records that says he  
23 didn't want to make a statement?

24 A. No, but neither is there something that says he wanted  
25 to make a statement.

26

27 Q. So that's it, is it? You just gather a story of  
28 sexual assault by a predator and, because he says, or you  
29 haven't recorded that he didn't want to make a statement,  
30 that's it, you just leave it up in the ether?

31 A. Well, I suppose if we look at the other witness, as in  
32 [AJE], it takes some considerable time, sometimes, to take  
33 a statement, for the person to get the courage to make that  
34 statement.

35

36 Q. Did he appear to you lacking in any fortitude, vim,  
37 courage, in relation to what he said happened to him at the  
38 hands of Mr Henderson?

39 A. No, he told me his story.

40

41 Q. Have you heard his evidence at this Commission?

42 A. No, I haven't.

43

44 Q. Have you read his evidence at this Commission?

45 A. No, I haven't.

46

47 Q. Well, his evidence at this Commission is that he was



1 willing and able, "absolutely" was the word [AKV] used as  
2 to giving a statement and giving evidence against  
3 Mr Henderson?

4 A. Well, I can't reply to that. All I can say is that if  
5 he would have wanted to make a statement, the statement  
6 would have been taken.

7  
8 Q. Did you want him to make a statement?

9 A. I would have wanted him to make a statement, yes.

10  
11 Q. Did you tell him you wanted him to make a statement?

12 A. I can't recall.

13  
14 Q. Why didn't he make a statement, Mr Newman?

15 A. I can't answer that.

16  
17 Q. Isn't it because you didn't follow it up?

18 A. I think if you look at the note --

19  
20 Q. All right, look at the note. Read the note out.  
21 I think the last paragraph says:

22  
23 *[AKV] is now shifting from Jabiru to Lake*  
24 *Evella and will be there for at least*  
25 *a year. [AKV] will call and advise me of*  
26 *his phone number and also contact me*  
27 *personally on his next visit to Darwin.*

28  
29 So why I can't recall it, maybe that was the opportunity  
30 that was given for him to make a statement. But I can't be  
31 sure of that.

32  
33 Q. You can't be sure of what?

34 A. That he was going to call into Darwin and make  
35 a statement at some particular time.

36  
37 Q. But, look, you are the officer in charge of the sexual  
38 unit.

39 A. I am, or was.

40  
41 Q. Sexual crimes unit. You are investigating a predator  
42 and you have experienced a lot of difficulties with some of  
43 the witnesses - for good reason, historical, shyness,  
44 trauma, *R v S*, and here you have, 20 minutes after the  
45 committal proceeding, this witness telling you precisely -  
46 virtually precisely what Henderson did to him at the Berry  
47 Springs water hole and in the swimming pool. You should

1 have taken a statement from him.  
2 A. Firstly, there are two points. Firstly, I don't know  
3 whether the meeting was by phone or the information was  
4 taken over the phone, or, secondly, that he wished to make  
5 a statement at that time. If Mr [AKV] would have wanted to  
6 make a statement at that time, I would have taken  
7 a statement, or if [AKV] was in a position to make  
8 a statement at that time, I would have taken a statement.  
9  
10 Q. Look, the prosecution of Henderson was fraught with  
11 difficulties, wasn't it?  
12 A. As all prosecutions are.  
13  
14 Q. Particularly with this one, because of the history,  
15 the reluctance of witnesses, the lack of particulars - all  
16 of those things that were pointed out to you by Mr Elliott  
17 before the committal.  
18 A. That's correct.  
19  
20 Q. And here you have it, on the phone or in a cafe,  
21 everything you would need as the officer in charge of the  
22 investigation to try to prosecute Mr Henderson -  
23 a predator - a victim of him sexually assaulting him?  
24 A. That's correct.  
25  
26 Q. And you failed to take a statement from him and you  
27 failed to lay charges against Henderson?  
28 A. When you say "failed", maybe circumstances prevented  
29 me from taking a statement, and I've mentioned those  
30 circumstances.  
31  
32 Q. What, because he was in Lake Evella? That's in the  
33 territory, isn't it?  
34 A. The way that my case note reads is that Mr [AKV] was  
35 going to contact me the next time he visited Darwin.  
36  
37 Q. All right. Well, he didn't contact you. Let's just  
38 say he didn't. Why didn't you contact him?  
39 A. I have no idea.  
40  
41 Q. You should have contacted him.  
42 A. There may have been reasons that I'm not aware of.  
43 Maybe I should have contacted him.  
44  
45 Q. Well, think, because you are sitting in the witness  
46 box of a Royal Commission here. Think if there are any  
47 reasons why you did not contact [AKV]?

1 A. I have thought, and I have provided you with those  
2 answers.

3  
4 Q. What are the reasons?

5 A. I have given you the two reasons.

6  
7 THE CHAIR: He has given you reasons now twice,  
8 Mr Lawrence. It will be for the Commission to assess his  
9 answers.

10

11 MR LAWRENCE: Q. Will you concede to this Commission now  
12 that you should have approached him by whatever means at  
13 your availability? Is there a police station at Lake  
14 Evella?

15 A. There used to be, but there is no longer one.

16

17 Q. Will you concede to this Commission that you should  
18 have approached [AKV] and you should have taken a statement  
19 from him consistent with what he told you and you should  
20 have recommended that charges were laid against  
21 Mr Henderson consistent with his account?

22 A. The only thing I can say is I rely on the two previous  
23 answers I have given.

24

25 Q. So you won't concede that?

26 A. No, I won't.

27

28 MR LAWRENCE: Thank you very much, Mr Newman.

29

30 MR GRANT: I have nothing by way of re-examination,  
31 your Honour.

32

33 MS DAVID: I have three very brief matters, your Honour. .

34

35 **<EXAMINATION BY MS DAVID:**

36

37 MS DAVID: Q. Firstly, Mr Newman, I asked you some  
38 questions about whether you had any training within the  
39 sexual assault unit in respect of taking statements from  
40 witnesses?

41 A. Yes.

42

43 Q. And you said that there was no such training at the  
44 time?

45 A. Not at the time, I believe, no.

46

47 Q. Nor was there any such training in 2003 when you

1 retired.  
2 A. Not that I can recollect. I have a vague memory of  
3 some courses, but I can't recollect what they were.  
4  
5 Q. What I want to ask you now is this: were there any  
6 courses in respect of how to deal in particular with  
7 indigenous witnesses?  
8 A. There are cross-cultural training courses, but I don't  
9 think - I think that was later. They came later, yes.  
10  
11 Q. So when you retired in 2003, were there any such  
12 cross-cultural training courses available to members of the  
13 sexual crimes unit, firstly?  
14 A. I don't recall there being any, but there possibly  
15 could have. But I certainly don't recall that.  
16  
17 Q. And, in particular, were there any training courses in  
18 respect of indigenous witnesses who were the complainants  
19 in sexual assault matters?  
20 A. No.  
21  
22 Q. So that training wasn't available to your unit up to  
23 2003 when you retired?  
24 A. No.  
25  
26 Q. Do you think now, in retrospect, that would have  
27 assisted you and other officers of the sexual crimes unit?  
28 A. Yes, it could have. I mean, you take every  
29 opportunity to learn and to expand your knowledge, but  
30 a lot of it does come down to the personal - the way that  
31 you actually get on with the person that you are  
32 interviewing. Some people, you know, they attach to  
33 people, and other people they don't attach to, I suppose.  
34  
35 Q. But you would agree, wouldn't you, that there are  
36 particular issues in relation to interviewing and dealing  
37 with indigenous witnesses that don't necessarily arise in  
38 respect of Caucasian witnesses?  
39 A. Oh, definitely.  
40  
41 Q. And you would agree that some training in that regard  
42 would no doubt be of assistance to people within the sexual  
43 crimes unit?  
44 A. Oh, definitely, yes.  
45  
46 Q. Can I now turn to a second topic. You said in some  
47 answers to questions by my friend Mr Lawrence that in

1 respect of the separate trials application you thought the  
2 prospect of separate trials and, indeed, if they had been  
3 granted, might have adversely affected some of the  
4 witnesses' willingness to come to court?  
5 A. That's right.  
6  
7 Q. Do you recall that line of questioning?  
8 A. Yes, I do.  
9  
10 Q. This issue had been raised with you before the  
11 nolle prosequi was entered, hadn't it - the issue of  
12 separate trials?  
13 A. Yes.  
14  
15 Q. Indeed, in an email that you sent to Mr Dooley of the  
16 DPP, which is found at RN10 - I will read the relevant part  
17 to you rather than bring it up.  
18 A. Yes, sure.  
19  
20 Q. You refer to conversations with [AJE] and say that you  
21 had told him about separate trials and that didn't seem to  
22 worry him at all.  
23 A. That's correct.  
24  
25 Q. So it's the case, isn't it, that when the topic of  
26 separate trials was raised with [AJE], at least --  
27 A. Yes.  
28  
29 Q. -- it wasn't an issue for him, in that it didn't  
30 discourage him from giving evidence?  
31 A. No.  
32  
33 Q. So when you answered in that way, was that your  
34 general feeling in respect of the matter, rather than  
35 anything any person had actually said?  
36 A. I believe [AJE] I might have discussed it with -  
37 probably discussed it with [AJE] and he would have given me  
38 his opinion that that wouldn't worry him.  
39  
40 Q. But when you said in answer to questions that the  
41 witnesses drew strength from each other --  
42 A. Yes.  
43  
44 Q. -- that was your perception of the matter, rather than  
45 what any of the witnesses had actually said to you?  
46 A. Oh, yes, definitely.  
47

1 Q. And, in particular, in the context of separate trials?  
2 A. Yes.  
3  
4 Q. Finally, one last matter. You were shown a document,  
5 exhibit 17-21, which is an investigations diary. I want to  
6 ask you one very brief question about entry 35.  
7 A. Yes.  
8  
9 Q. Do you have that before you?  
10 A. Yes, I do, thank you.  
11  
12 Q. There is a reference at the bottom of that entry to  
13 "George Henderson". Is that a reference to the accused,  
14 Mr Don Henderson?  
15 A. Yes, I've read that and I believe that is Don  
16 Henderson?  
17 A. .  
18  
19 Q. There is not a George Henderson as well?  
20 A. No, there isn't, no.  
21  
22 Q. Mr Henderson was with the YMCA World Vision, then AMP  
23 Life Insurance?  
24 A. Yes, that's correct.  
25  
26 Q. Did you understand that as of 2 March 1999  
27 Mr Henderson was working with YMCA World Vision?  
28 A. No, I didn't understand that, but it may have been -  
29 he may have been with them, but I'm not sure. I really  
30 can't say.  
31  
32 Q. Do you have any recollection as to when you wrote  
33 "George Henderson with YMCA World Vision then the AMP Life  
34 Insurance", whether you were referring to his employment?  
35 A. Yes. Mr Henderson did work for AMP Life Insurance,  
36 I believe.  
37  
38 Q. And you have referred to "YMCA World Vision"?  
39 A. Yes.  
40  
41 Q. Do you have any recollection as to in what capacity he  
42 was working with YMCA World Vision?  
43 A. No, that would have been information from  
44 Mr Pattemore.  
45  
46 Q. Did you have any information in particular as to  
47 whether he was working with children?

1 A. No.

2

3 MS DAVID: Thank you. I have nothing further,  
4 your Honour.

5

6 THE CHAIR: Thank you. You may step down. You are  
7 excused.

8

9 THE WITNESS: Thank you, your Honour.

10

11 <THE WITNESS WITHDREW

12

13 MS DAVID: Your Honour, there are just a couple of matters  
14 to tidy up before I call the next witness. The first is  
15 the document that I was last referring to, exhibit 17-21.  
16 Can I provide a redacted copy of that document to replace  
17 the current exhibit.

18

19 Secondly, in respect of the exhibit 17-20, which was  
20 tendered through the last witness, there was reference by  
21 the learned Solicitor General to a second crime report,  
22 which wasn't included in the exhibit. Can I provide  
23 a redacted copy of that to add to that exhibit?

24

25 THE CHAIR: That will be added to exhibit 17-20.

26

27 **EXHIBIT #17-20 ADDITION OF SECOND CRIME REPORT**

28

29 MS DAVID: It was the crime report in respect of the  
30 second male complainant.

31

32 The third matter is that yesterday there was  
33 a reference to some documents which had been latterly  
34 produced by the learned Solicitor General in respect to  
35 a victims of crime file, and your Honour will recall some  
36 discussion about that in the course of the examination of  
37 Mr Newman. Can I tender a redacted version of those  
38 documents for the court.

39

40 THE CHAIR: Yes. We should mark those as exhibit 17-22.

41

42 **EXHIBIT #17-22 COLLECTION OF DOCUMENTS FROM THE DPP**

43

44 MS DAVID: If your Honour please, I call  
45 Mr Karczewski QC.

46

47

1 <WOJCIECH JACEK KARCZEWSKI, sworn: [2.40pm]

2

3

<EXAMINATION BY MS DAVID:

4

5

MS DAVID: Q. Mr Karczewski, did you provide a statement to the Royal Commission dated 15 September 2014?

6

7

A. I did.

8

9

Q. Can I ask you, Mr Karczewski, to have a look at this statement.

10

11

A. That's the statement.

12

13

Q. Have you had an opportunity to review that statement before coming to the hearing room to give evidence?

14

15

A. I have.

16

17

Q. And is it an accurate account of your recollection of events?

18

19

A. Yes, it is.

20

21

MS DAVID: I tender that statement, your Honour, and the attached annexures.

22

23

THE CHAIR: We will make it exhibit 17-23.

24

25

**EXHIBIT #17-23 STATEMENT OF WOJCIECH JACEK KARCZEWSKI DATED 15/09/2014 TOGETHER WITH ANNEXURES**

26

27

28

29

MS DAVID: Q. Are you currently the Director of Public Prosecutions in the Northern Territory?

30

31

A. I am.

32

33

Q. During the course of your evidence, do you mind if I refer to you as "Mr Director"?

34

35

A. Not at all.

36

37

Q. In June 1998, were you appointed the Deputy Director of the DPP?

38

39

A. That is correct.

40

41

Q. And did you hold that position until 2013, when you were appointed the current Director of Public Prosecutions?

42

43

A. That is correct.

44

45

Q. Do you understand that you have been asked to provide a statement and give evidence, in part, in relation to an investigation and prosecution of a Mr Donald Henderson?

46

47



1 A. Yes, I do.  
2  
3 Q. Can I ask you, first of all, do you have any  
4 independent recollection of that prosecution or your  
5 involvement in it?  
6 A. None at all.  
7  
8 Q. Have you been able to provide a statement, and will  
9 you be able to give evidence by reference to memorandums  
10 and file notes that you have seen since in respect of your  
11 role in that prosecution?  
12 A. Yes.  
13  
14 Q. Is it on that basis that you give evidence to the  
15 hearing?  
16 A. That is so.  
17  
18 Q. Currently, in respect of the Northern Territory Office  
19 of the DPP, are there a set of DPP guidelines?  
20 A. Yes, there are.  
21  
22 Q. Have you annexed a set of those guidelines to your  
23 statement --  
24 A. Yes, I have.  
25  
26 Q. -- at annexure JK13. Perhaps we could bring that up  
27 on the screen. If we can just scroll down to the second  
28 page --  
29 A. The answer to the question is yes.  
30  
31 Q. Are these the guidelines that currently apply to the  
32 DPP?  
33 A. Yes, that is correct.  
34  
35 Q. And did they apply in 2002?  
36 A. Yes, they did.  
37  
38 Q. So there haven't been any substantive changes between  
39 2002 and today?  
40 A. No, there haven't.  
41  
42 Q. So if I ask you questions about those guidelines, they  
43 are as presented in JK13?  
44 A. That is correct.  
45  
46 Q. And they were in that form in 2002?  
47 A. Yes.

1  
2 Q. Can I now ask if you could cast your mind back to  
3 2002. I want to ask you some general questions about the  
4 workings of the Office of the DPP?  
5 A. Yes.  
6  
7 Q. In particular, in relation to the division of labour  
8 with the Northern Territory Police Force.  
9 A. Yes.  
10  
11 Q. Obviously, you had quite discrete roles?  
12 A. Yes.  
13  
14 Q. But above and beyond that, were there informal  
15 conversations and correspondence between both agencies?  
16 A. Yes, there was.  
17  
18 Q. And in terms of major indictable matters - so matters  
19 that had committal proceedings - can you say as of 2002  
20 generally how the two agencies would relate to each other?  
21 A. In what sense?  
22  
23 Q. What was the process? So obviously the police would  
24 lay the charges?  
25 A. Yes.  
26  
27 Q. But prior to the police laying charges in respect of  
28 a major indictable matter, was it common for there to be  
29 correspondence and discussion with the DPP?  
30 A. No, not necessarily, no. Very often, we would receive  
31 a brief of evidence without there having been any  
32 consultation with our office.  
33  
34 Q. Were there occasions where there was consultation with  
35 the DPP?  
36 A. Yes, there were occasions.  
37  
38 Q. Was there any formal memorandum or guidelines as to  
39 when there was to be such consultation in the laying of  
40 major indictable charges?  
41 A. No.  
42  
43 Q. Was that something that was a matter of practice  
44 between individual prosecutors and the office and members  
45 of the police force?  
46 A. More so with the members of the police force. If they  
47 thought that they needed the input from the office, they

1 would contact somebody within the office and seek advice on  
2 an informal basis.

3

4 Q. And within that context, were relationships formed  
5 between various police officers or senior detectives and  
6 prosecutors within the office?

7 A. I think that's right, yes, that's a fair comment.

8

9 Q. Was there any formal or written process by which  
10 a police officer could seek the advice of a prosecutor or  
11 member of the DPP office?

12 A. No.

13

14 Q. At the time that a matter was listed for committal  
15 proceedings, was there then a handover of the brief of  
16 evidence - would the DPP assume conduct of the file?

17 A. Yes, that's correct, yes.

18

19 Q. How did that division of labour work? Was there  
20 a system in place in that regard?

21 A. The police used to handle matters up until such time  
22 as the matter had been - I should point out that in the  
23 Top End, in the Darwin region, there was then a separate  
24 police prosecutions unit which operated independently of  
25 the DPP, although the offices were close together, and what  
26 would happen is that the police prosecutions unit would  
27 handle the brief of evidence until such time as the matter  
28 had been listed for hearing in the court of summary  
29 jurisdiction, and then the file would be sent to us by the  
30 police prior to the committal - at some time prior to the  
31 committal hearing.

32

33 Q. Was it customary for a prosecutor from the Office of  
34 the DPP to conduct any oral committal proceedings?

35 A. Yes.

36

37 Q. Was there ever an occasion where a police prosecutor  
38 would conduct those proceedings?

39 A. Very rarely.

40

41 Q. So that was generally the job of the DPP prosecutors?

42 A. That is correct.

43

44 Q. Was it generally at that point that the brief of  
45 evidence would be provided to the DPP for the committal  
46 proceedings?

47 A. Yes.

1  
2 Q. Then after the committal proceedings what was the  
3 process or the relationship in terms of the DPP prosecutor  
4 who had conduct of the file and the investigating officer?  
5 A. If there were any requisitions, any matters  
6 outstanding that needed to be attended to, they were  
7 requested by the prosecutor and so there was an ongoing  
8 relationship in that respect.  
9  
10 Q. Would the investigating officer also keep in touch  
11 with the relevant prosecutor as to any matters that arose  
12 in terms of the witnesses or other material that came to  
13 their attention?  
14 A. Generally speaking.  
15  
16 Q. Was this relationship formalised in any way?  
17 A. No.  
18  
19 Q. Was there a memorandum of understanding or --  
20 A. No.  
21  
22 Q. -- a guideline?  
23 A. No.  
24  
25 Q. It just grew out of the practice between the two  
26 agencies?  
27 A. That is correct.  
28  
29 Q. As of 2002, was there a victim support service which  
30 was attached to the DPP?  
31 A. Yes, there was.  
32  
33 Q. What was the name of that service?  
34 A. It had started off as the Victims Support Unit - the  
35 VSU - and at some point of time it changed its name to the  
36 Witness Assistance Service, or WAS.  
37  
38 Q. If I can just start with the period from 1998 to 2002,  
39 so during that period, what was that service known as?  
40 A. Victims Support Unit.  
41  
42 Q. And was the Victims Support Unit within the DPP, or  
43 was it separate to the DPP?  
44 A. It was within the office but separate, if I can put it  
45 like that. They maintained their own - it was an office  
46 within an office.  
47

1 Q. But was it funded within the DPP budget?  
2 A. Oh, yes, yes, that's correct.  
3  
4 Q. And the office itself was housed within the DPP  
5 offices?  
6 A. That is correct.  
7  
8 Q. But it had a sort of separate running, if you like?  
9 A. That's correct.  
10  
11 Q. What was the role of that service in terms of  
12 complainants or witnesses in sexual assault matters?  
13 A. There would be a referral to the Witness Assistance  
14 Service. They would then write a letter to the complainant  
15 or to the victim, and then, after having made contact with  
16 that person, would then attend to their various needs.  
17 That's not something that the prosecutors involved  
18 themselves with, so I can't really speak as to the  
19 day-to-day operations of the Witness Assistance Service in  
20 that regard.  
21  
22 Q. Was it their practice, though, generally speaking, to  
23 tend to the needs of the complainants and witnesses in  
24 terms of their court commitments?  
25 A. That is so.  
26  
27 Q. So, for example, organising how they might get to  
28 court?  
29 A. Yes.  
30  
31 Q. Any support they might need at court? Did it also  
32 involve advising them of important court dates?  
33 A. Yes.  
34  
35 Q. And any proofings or conferences that needed to be  
36 had --  
37 A. Yes.  
38  
39 Q. -- in preparation for those court dates?  
40 A. Yes.  
41  
42 Q. At what point were witnesses or complainants referred  
43 to this service?  
44 A. It would have to be after the matter had been listed  
45 for a committal - after such time as the DPP had received  
46 the brief, because, generally speaking, we would be unaware  
47 of the matter prior to that point of time.

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47

Q. To the best of your knowledge, was there any correspondence or communication between the officer in charge and the victim support service?

A. I can't say. In a particular case, there may well have been, and the circumstances under which that might have happened, for example, if the whereabouts, the address of a victim was unknown or the person had moved on, then the officer, the witness assistance officer assigned to the case might make an inquiry of the officer in charge as to the whereabouts of the person, the fresh contact details and the like.

Q. Within the DPP, were there any written guidelines or memorandums in terms of how the victim support service was to be involved in the ongoing prosecution?

A. No.

Q. So what I mean by that is, for example, did a prosecutor or solicitor have a list of what they had to do in terms of involving the victim support service?

A. No.

Q. Was, again, that a matter of practice within the organisation?

A. That is correct.

Q. I should ask you, in terms of how the system works now, as in 2014 --

A. Yes.

Q. -- are there any changes in terms of the relationship between the Office of the DPP and the police prosecution unit or the police force, the Northern Territory Police Force?

A. Well, in the Darwin region there is no longer a police prosecutions unit. All summary prosecutions in Darwin, as from 2 December of last year, are conducted by civilian prosecutors, civilian lawyers employed by the Director of Public Prosecutions. The relationship between the DPP and the police remains the same as what it was, and that is that there is communication between the allocated prosecutor and the officer in charge of the case in respect of outstanding matters in respect of the progress of the case and the like.

THE CHAIR: Q. Are those prosecutors solicitors, as we

1 would understand them?  
2 A. I am sorry, your Honour?  
3  
4 Q. Are those prosecutors solicitors as we would  
5 understand them?  
6 A. Yes.  
7  
8 Q. So it is similar to other States which have a  
9 solicitor advocate role in the DPP.  
10 A. That's so.  
11  
12 MS DAVID: Q. Is that in any way formalised in any sort  
13 of memorandum or guideline?  
14 A. There is a draft memorandum of understanding which is  
15 not yet - hasn't yet been finalised.  
16  
17 Q. But is that something that the DPP has turned its mind  
18 to?  
19 A. Yes.  
20  
21 Q. A document which sets out the division of labour, if  
22 you like, between the prosecution, DPP, and the Northern  
23 Territory Police Force in respect of prosecutions of major  
24 indictable matters?  
25 A. That's right.  
26  
27 Q. What sort of matters will that memorandum or draft  
28 memorandum look at?  
29 A. It really concerns itself with administrative matters,  
30 as to who has responsibility for what, such as the laying  
31 of charges and just generally administrative matters. But  
32 it doesn't deal with any matters of substance in relation  
33 to particular cases. If there is a - there is now an  
34 organisation within the police force known as JOS, the  
35 judicial operation section, and JOS is now the first point  
36 of contact in relation to, if I can call them - if there is  
37 a matter or matters of a general kind, for example, in  
38 which the DPP or our staff are not satisfied, then our  
39 first point of contact is JOS. But in respect of  
40 a particular matter, the first point of contact will always  
41 be the officer in charge of the case. So in terms of  
42 progressing a particular matter, the relationship between  
43 the DPP and the investigating officer hasn't changed.  
44  
45 Q. But there is some sort of memorandum which sets out,  
46 from an administrative point of view, what each party or  
47 agency is responsible for?

1 A. Yes, well - yes.  
2  
3 Q. I don't mean in terms of the legal or investigative  
4 work, but in terms of what role each will play from an  
5 administrative point of view?  
6 A. In the process, yes, that's correct.  
7  
8 Q. So who will contact the victim at any --  
9 A. Oh, no, sorry, the document is not that detailed, no.  
10  
11 Q. And this is in draft form at the moment?  
12 A. Yes, it is, yes.  
13  
14 Q. When do you anticipate that that document will exist?  
15 A. I would like to have it attended to in the next couple  
16 of months.  
17  
18 Q. Not to labour the point, but what sort of matters are  
19 in it? What topics does it cover?  
20 A. Look, I'd - it's been a while since I have looked at  
21 the document. Perhaps if I can bring along a copy at some  
22 point in time and show you.  
23  
24 Q. We will leave that and maybe come back to it.  
25 A. Yes.  
26  
27 Q. If I can turn to the investigation of Mr Henderson in  
28 particular, and if I can begin with the process that  
29 occurred in that regard prior to committal - so the  
30 involvement of the DPP in the investigation and prosecution  
31 of Mr Henderson prior to the actual date of committal.  
32 A. Yes.  
33  
34 Q. You have told us that the normal course of events is  
35 that the DPP has limited involvement before the brief of  
36 evidence is produced for committal?  
37 A. That's right.  
38  
39 Q. But there are occasions where a member of the DPP or  
40 a prosecutor might be asked for some assistance in respect  
41 of a particular investigation?  
42 A. That is so.  
43  
44 Q. That was the case in this matter, wasn't it?  
45 A. That is so.  
46  
47 Q. If I can just draw your attention to paragraph 8 of



1 your statement. We will start with that?  
2 A. Paragraph 8.  
3  
4 Q. If we just use that as a date which signifies when the  
5 Magistrates Court information was laid --  
6 A. Yes.  
7  
8 Q. So on 4 June 2001, the Northern Territory police laid  
9 the initial Magistrates Court information in respect of  
10 Mr Henderson.  
11 A. That's correct.  
12  
13 Q. But prior to June 2001, there had been involvement by  
14 the DPP in the investigation - that's correct, isn't it?  
15 A. Yes.  
16  
17 Q. In particular, on 14 December 1999, you had had  
18 a conversation with Mr Newman?  
19 A. I can't recall.  
20  
21 Q. I just want to find the relevant document. Bear with  
22 me. There is a case note which Detective Newman as he then  
23 was refers to in his statement at paragraph 79, that on  
24 14 December 1999 he sought advice from you, then a Senior  
25 Crown Prosecutor with the DPP, in relation to matters  
26 involving Mr [AJD]. You have a list of pseudonyms?  
27 A. I've got my own here, which might be easier.  
28  
29 Q. [AJD] was --  
30 A. Yes, yes.  
31  
32 Q. -- the witness from whom two statements were taken?  
33 A. That's correct, yes.  
34  
35 Q. His particular concern was that [AJD] had been  
36 identified as a person who had sexually assaulted another  
37 complainant, [AJB]?  
38 A. Yes, yes.  
39  
40 Q. And he was asking for some advice as to how to  
41 proceed?  
42 A. Yes.  
43  
44 Q. And he says that you gave him some advice, that [AJD]  
45 be interviewed first in relation to the alleged sexual  
46 abuse by Mr Henderson?  
47 A. Yes.

1  
2 Q. And then in relation to [AJB]?  
3 A. Yes.  
4  
5 Q. Do you have any independent recollection of that  
6 advice?  
7 A. None at all.  
8  
9 Q. Is that the sort of matter that a police detective or  
10 an investigating officer would ring the DPP about?  
11 A. Yes, it is.  
12  
13 Q. Is that because it might have implications on any  
14 subsequent prosecution?  
15 A. Yes.  
16  
17 Q. But you have no recollection of that?  
18 A. No, I don't.  
19  
20 Q. Would that be unusual for a member of the DPP to be  
21 involved at that early stage with that sort of advice?  
22 A. No, no, no, not at all. At that point of time, there  
23 was in existence a scheme within the office whereby  
24 a person was appointed as a chambers prosecutor and that  
25 person was available to give assistance to other  
26 prosecutors within the office, to the police prosecutions  
27 unit and also to members of the police force seeking  
28 advice. So --  
29  
30 Q. In circumstances - and we're looking back in 1999 - in  
31 1999 where such a request was made, how would a note of  
32 that be kept from the DPP's point of view?  
33 A. There was in existence a book and the prosecutor may  
34 have made a note in that book of an inquiry made of him and  
35 the advice given.  
36  
37 Q. By "a book", what sort of document do you mean?  
38 A. It was a thick book, which I think is still in  
39 existence somewhere in the office.  
40  
41 Q. Was that kept by the chambers prosecutor?  
42 A. That is correct.  
43  
44 Q. And then all inquiries were written in that book?  
45 A. Yes.  
46  
47 Q. Then if the matter proceeded to a prosecution within

1 the office, how would all that material be collated in  
2 respect of that particular prosecution?  
3 A. There was no set format as to how that might happen.  
4  
5 Q. Because you would agree it is quite important to keep  
6 those inquiries in case something came up later on?  
7 A. Yes.  
8  
9 Q. If we can bring up the document under tab 95, there  
10 was then some further discussion by Mr Newman with the DPP  
11 about this particular prosecution. Just pause there. We  
12 can see in that document a reference by Mr Newman to  
13 speaking with Senior Crown Prosecutor - yourself - at the  
14 DPP on 11 September 2000?  
15 A. Yes.  
16  
17 Q. You are said to explain to him the lack of  
18 corroboration re the complaint due to being unable to  
19 locate [AJD] and another witness not willing to pursue  
20 previous allegations.  
21  
22 MR GRANT: I object to that question, your Honour.  
23 I don't read the file note that it's recording the witness  
24 explaining something to Detective Newman. I read it the  
25 other way around, in fact.  
26  
27 MS DAVID: No, I said --  
28  
29 MR GRANT: "You are said to explain to him the lack of  
30 cooperation".  
31  
32 MS DAVID: It says "explaining to him". Newman reports  
33 speaking to Senior Crown Prosecutor and explaining to him  
34 - I see.  
35  
36 Q. Perhaps we will let the document speak for itself. Do  
37 you see the document?  
38 A. I do. I'm just reading it now.  
39  
40 Q. Do you have any recollection of this conversation that  
41 was noted?  
42 A. No, I don't.  
43  
44 Q. So do you have any recollection whether it was you who  
45 spoke of the lack of corroboration?  
46 A. No.  
47

1 Q. Or whether it was Mr Newman speaking of that topic?  
2 A. No, I can't say.  
3  
4 Q. It goes on to say that you stated on the face of the  
5 evidence to hand that it would be a difficult case to win  
6 due to the time taken to make the complaint, time since the  
7 offence was committed, and the lack of corroboration.  
8 A. I see that.  
9  
10 Q. Do you have any recollection of making those comments?  
11 A. No, not at all.  
12  
13 THE CHAIR: Just so we all understand, who creates this  
14 note?  
15  
16 MS DAVID: I think Mr Newman has given evidence that he  
17 created the note.  
18  
19 THE CHAIR: This precise note he created?  
20  
21 MS DAVID: Yes.  
22  
23 THE CHAIR: Q. So you wouldn't have known what was in  
24 the note at the time it was created?  
25 A. Not at all.  
26  
27 Q. It's not copied to you or anything?  
28 A. No, it is not, your Honour, no.  
29  
30 MS DAVID: Q. And you have no independent recollection  
31 of this note?  
32 A. No, I don't.  
33  
34 Q. I am sorry, of this conversation?  
35 A. No, I don't.  
36  
37 THE CHAIR: Q. In the ordinary course of things, would  
38 you have ever seen the note?  
39 A. No.  
40  
41 MS DAVID: Q. Can I ask you generally, though, if you  
42 were asked about a matter and the weight of a matter or the  
43 strength of a prosecution case by an investigating officer,  
44 would you normally see the relevant statements, or would  
45 there just be a precis of the allegations put to you?  
46 A. It varies. It varies from case to case, because it  
47 rather depends upon the stage of the investigation when the

1 inquiry is made and how much it is that the police are  
2 prepared to divulge to us at that point of time.  
3  
4 Q. In any event, you have no recollection of your  
5 involvement as at September 2000?  
6 A. No, I don't.  
7  
8 Q. But would you agree, it probably wouldn't be unusual  
9 for an investigating officer to ring yourself or some other  
10 senior member of the DPP to take some advice?  
11 A. No, it wouldn't be an unusual happening.  
12  
13 Q. We know that on --  
14  
15 THE CHAIR: Q. Would you have had a file by this time,  
16 in the office? We may know independently of your  
17 knowledge, but --  
18 A. No.  
19  
20 Q. When you get an inquiry like this, does it --  
21 A. No, there is - there wouldn't have been. I note the  
22 time that this was on 11 September 2000, and the charges  
23 weren't laid until 4 June 2001. So it's highly unlikely  
24 that we would have had a file. From time to time it does  
25 happen, and speaking of the practice today, sometimes  
26 police seek our advice in relation to whether charges  
27 should be laid and, if so, what charges are laid, and when  
28 that formal request is made, obviously, an opinion file is  
29 made up and that is then kept together with the prosecution  
30 file, should there be a prosecution that follows upon the  
31 advice. I don't recall whether that was the practice back  
32 in 2001 when these events happened.  
33  
34 MS DAVID: Q. What you are referring to is when the  
35 police might send through a set of statements or a list of  
36 allegations and ask for some formal advice?  
37 A. That's correct, yes.  
38  
39 Q. And, in those circumstances, you would create a file?  
40 A. That's correct.  
41  
42 Q. And provide that advice and place it on the file?  
43 A. That's correct.  
44  
45 Q. So it would be there if the charges were then pursued?  
46 A. That is correct, yes.  
47

1 Q. Or if they weren't?  
2 A. Yes.  
3  
4 THE CHAIR: Could you move the microphone a little closer  
5 or speak more directly into it? Thank you.  
6  
7 THE WITNESS: Yes.  
8  
9 MS DAVID: Q. But if there were circumstances where an  
10 investigating officer simply rang up for some advice on  
11 a particular matter, apart from the book that you have  
12 referred to, there would not be a file or document created  
13 within your office.  
14 A. No, that's correct.  
15  
16 Q. And so, as you said to his Honour, you wouldn't have  
17 had a copy of this case note?  
18 A. No, no, we would never get a copy of - this,  
19 I understand, is an internal police document.  
20  
21 Q. Can I now bring up the document under tab 96. Again,  
22 this is an internal memorandum within the Northern  
23 Territory police. It is dated 2 October 2000. It refers  
24 again to a meeting with yourself of Tuesday, 12 September  
25 2000.  
26 A. Yes.  
27  
28 Q. Just so you understand the context, this is an  
29 internal memorandum written by Detective Newman?  
30 A. Yes.  
31  
32 Q. It refers to a meeting on 12 September 2000, which  
33 seems to correlate with the previous case note?  
34 A. Yes.  
35  
36 Q. Then there is further explanation about that meeting.  
37 Then, in the penultimate paragraph, there is a reference to  
38 a conversation said to be had with you by Detective  
39 Newman --  
40 A. Yes.  
41  
42 Q. -- where he says that he told you, or explained to  
43 you, that he thought the complaint was one that needed to  
44 be pursued, and made inquiries as to whether the alleged  
45 offender should be interviewed and whether that would  
46 assist.  
47 A. Mmm-hmm, yes.

1  
2 Q. Can you see that?  
3 A. Yes, I see that, yes.  
4  
5 Q. Prior to coming to the hearing room, have you had an  
6 opportunity to look at this memorandum?  
7 A. Not this one, no. I don't think so. Could I just  
8 see - is that it in its entirety?  
9  
10 Q. If you could just read it in its entirety, there are  
11 another two paragraphs on the second page.  
12 A. Yes. I have now read that.  
13  
14 Q. Does that trigger your memory at all as to any such  
15 conversation?  
16 A. No, no, it doesn't.  
17  
18 Q. I don't suggest it should.  
19 A. No, no, it doesn't.  
20  
21 Q. Would you agree, though, that as of 2 October 2000 the  
22 DPP, through you, had been informed about the sensitive  
23 nature of the investigation?  
24 A. Yes.  
25  
26 Q. And, indeed, the fact that the investigating officer  
27 at least was of the view the matter needed to be pursued if  
28 possible?  
29 A. Yes.  
30  
31 THE CHAIR: Q. If you are correctly recorded there, can  
32 you just help us by understanding what your thinking would  
33 have been at the time? Do you see in the middle of the  
34 document, upon speaking to you it is said:  
35  
36 *... he advised the matter would be*  
37 *difficult to prosecute due to the age of*  
38 *the alleged offences and the time between*  
39 *when the offences occurred and when the*  
40 *complaint was made.*  
41  
42 What were the factors that would have led you to that  
43 conclusion at that stage?  
44 A. Sorry, could I see it on the screen, please?  
45  
46 Q. I am sorry. It is on the first page, in the middle of  
47 the page.

1 A. Yes, I've read that. Sorry, your Honour, what is the  
2 question?  
3  
4 Q. Can you see the paragraph there, "Upon speaking to  
5 Karczewski he advised that the matter would be a difficult  
6 matter to prosecute"?  
7 A. Yes.  
8  
9 Q. I am just wondering what you would have had in mind at  
10 the time.  
11 A. Well, I'm assuming that what I would have had in mind  
12 at the time was that historical sexual offences are always  
13 very difficult to pursue and there is generally a lack of  
14 evidence, and so if there was, for example, any evidence  
15 that may have been got, had the matter been reported in a  
16 timely fashion, then of course that has now long gone and  
17 there is no opportunity to gather evidence that might be,  
18 for example, in the form of corroboration - people dying,  
19 witness evidence just deteriorating in that fashion.  
20  
21 Q. So this is a generalised proposition, just time means  
22 that you may not have evidence that might have otherwise  
23 been available; is that what you're saying?  
24 A. Yes, that's correct. That's what I assume that I was  
25 saying at the time.  
26  
27 Q. But before you could make that judgment, you would  
28 need to know what the evidence actually was, wouldn't you?  
29 A. Oh, I think that - no, because I don't - I just don't  
30 know whether anything was shown to me at the time, so  
31 I can't say. But it would --  
32  
33 Q. But that would be right, wouldn't it? I mean, I can  
34 understand what you say, that evidence may be lost, but to  
35 pass a judgment as to the value of prosecuting, you would  
36 need to know what the evidence actually was that was now  
37 available, wouldn't you?  
38 A. I don't know that I was passing judgment on the value  
39 of prosecuting, your Honour; I was simply pointing out that  
40 it would be a difficult matter to prosecute.  
41  
42 Q. Yes, but it may not have been difficult if all of the  
43 evidence had been available?  
44 A. That's true, but that rather depends upon the extent  
45 of the conversation that I had with Detective Newman, and  
46 I just can't recall what it was.  
47



1 Q. Yes. There is a reference there to "lack of  
2 corroboration".  
3 A. Yes.  
4  
5 Q. As a general proposition, when prosecuting this type  
6 of matter, what do you contemplate as being corroboration?  
7 A. Corroboration in the technical sense that there is  
8 evidence that comes from a person other than the  
9 complainant which confirms, or tends to confirm, firstly,  
10 that an offence has been committed and, secondly, that the  
11 suspect, the accused person, committed the offence.  
12  
13 Q. Can we explore that a little bit further?  
14 A. Yes.  
15  
16 Q. Because, in most cases, a sexual offence is one which  
17 occurs in private - no-one actually sees it happen.  
18 A. That's true.  
19  
20 Q. What are you talking about when you are talking about  
21 corroboration then?  
22 A. Well, there may have been eyewitnesses, for example.  
23  
24 Q. But we're assuming in most cases there won't be  
25 eyewitnesses.  
26 A. Yes.  
27  
28 Q. So what do you have in mind as corroboration that's  
29 necessary in these sorts of cases?  
30 A. Well, any form of supporting evidence, your Honour.  
31 Because in the absence of supporting evidence, it becomes  
32 a case of oath upon oath.  
33  
34 Q. I am going to press you a little bit further. What do  
35 you mean by supporting evidence in this context?  
36 A. Any evidence that bolsters the evidence - the  
37 complaint made by the complainant.  
38  
39 Q. Do you mean by that evidence of others who were  
40 similarly assaulted by the alleged offender?  
41 A. I don't know that I would have had that in mind at the  
42 time I made this comment.  
43  
44 Q. I am asking as a generalised proposition. You see,  
45 I'm trying to work out for the benefit of all of us how the  
46 mind of the DPP operates when looking at the strength of  
47 the evidence available to prosecute these types of offences

1 in the Northern Territory. Do you understand?  
2 A. Yes, I do.  
3  
4 Q. I would like to know what it is that you would be  
5 looking for which falls into the category of corroboration,  
6 given that in most of these types of cases they will occur  
7 in private and there won't be an eyewitness.  
8 A. Well, if there is not, there is not, and it then  
9 becomes a case of oath upon oath.  
10  
11 Q. I understand that. But what is it that you have in  
12 mind that might provide you with corroboration?  
13 A. Well, I really can't answer that, your Honour, because  
14 it rather depends upon the facts of the case as to what  
15 material is available.  
16  
17 Q. Well, I know it will in a particular case. I am  
18 asking you as a generalised proposition what is it that you  
19 are talking about when you are talking about corroboration  
20 in these types of cases? What sorts of evidence is it that  
21 you have in mind?  
22 A. Is your Honour asking me about examples of the sorts  
23 of evidence?  
24  
25 Q. Yes.  
26 A. Well, your Honour has ruled out from contention  
27 eyewitness evidence, but, for example, there might be some  
28 medical records; it just depends upon the circumstances.  
29  
30 Q. I am sorry?  
31 A. It just depends upon the circumstances.  
32  
33 Q. Well, I can understand you say there might be some  
34 medical evidence or reports. Anything else that you have  
35 in mind?  
36 A. In the context of this case, nothing more comes to  
37 mind, your Honour.  
38  
39 MS DAVID: Q. Director, can I ask you this: in 2000,  
40 there was no requirement as a matter of law for sexual  
41 offences or allegations to have corroboration, was there?  
42 A. No.  
43  
44 Q. That rule had been abolished?  
45 A. That's right.  
46  
47 Q. So when you said "the need for corroboration", were

1 you really looking for some sort of material support --

2 A. That's right.

3

4 Q. -- which, in your mind, you thought was necessary to  
5 support these allegations.

6 A. Well, from a practical point of view, it is extremely  
7 difficult to succeed in these sorts of cases unless there  
8 is some supporting material of whatever kind. And so one  
9 always goes looking for this kind of material, otherwise it  
10 becomes a case of oath upon oath.

11

12 Q. Was that your perception in 2000, that if there was  
13 an historical allegation of sexual abuse - and this is  
14 a general proposition, because of course it will vary from  
15 case to case - but if there is an historical allegation of  
16 sexual abuse, where there is a delay between the time of  
17 the alleged offence and the time of any proceedings, and  
18 there is no evidence independent of the complainant's  
19 version of events, it was your view that it was difficult  
20 for a prosecution to be successful.

21 A. That's correct.

22

23 Q. And that was your view in 2000?

24 A. Yes.

25

26 Q. As best you can, can you explain the reasons for that  
27 point of view?

28 A. Just from - as I have already said, I'm not too sure  
29 that I can dilate upon this issue much more, and that is  
30 that given all the various warnings that have to be given -  
31 the *Longman* warning in relation to the difficulties  
32 associated with the delay in making the complaint and  
33 bringing the prosecution - then juries are required to  
34 consider the evidence very, very carefully and, of course,  
35 they will go looking, as a matter of practicality, for some  
36 evidence which supports the version given by the  
37 complainant. That's just a fact of life.

38

39 Q. But do you accept this as a general proposition, that  
40 if there is a *Calides*-type situation, where it is oath  
41 against oath, and notwithstanding the fact that it is an  
42 historical allegation, so there is some delay, that doesn't  
43 necessarily mean that a prosecution can't be successful,  
44 does it?

45 A. No, I'm not saying that at all, no.

46

47 Q. Because there are circumstances where a jury will just

1 believe what a complainant has to say.  
2 A. That is correct.  
3  
4 Q. It might be a situation where there is simply a force  
5 in the truth of something.  
6 A. That's correct.  
7  
8 Q. So as a general proposition, you accept - and did  
9 accept in 2000 - that the fact that it is oath against oath  
10 doesn't necessarily mean, even in the case of historical  
11 sexual allegations, that a matter is doomed to failure?  
12 A. I agree with that.  
13  
14 THE CHAIR: Q. When you have the circumstance of  
15 a complainant who has made a statement, the accused makes  
16 no statement at all, and before considering whether or not  
17 you would bring a prosecution following a committal, would  
18 you expect that the prosecutor who is charged with the  
19 matter to speak with the complainant?  
20 A. Yes, I would.  
21  
22 Q. And would you expect the prosecutor to form a view as  
23 to the integrity of the complainant's evidence?  
24 A. Yes.  
25  
26 Q. And if there was no other corroborative evidence, as  
27 we have discussed before, but just a complainant who your  
28 prosecutor forms the view is telling the truth, would that  
29 be sufficient for you to advance the matter to trial?  
30 A. Yes.  
31  
32 MS DAVID: Q. And was that the case in 2000?  
33 A. Yes, I believe so, yes.  
34  
35 Q. During the course of this memorandum, there is  
36 a reference to the fact that the investigating officer,  
37 Mr Newman, would like to interview the person who turned  
38 out to be the accused, Mr Henderson?  
39 A. Yes.  
40  
41 Q. And the reasoning for that seems to be that he might  
42 make admissions in the course of a record of interview?  
43 A. Yes.  
44  
45 Q. That was quite common, wasn't it, that sometimes,  
46 before charges are laid, a defendant or a suspect might be  
47 interviewed to see if they add anything to the prosecution

1 case.  
2 A. Yes.  
3  
4 Q. That appears to be, would you agree, one of the  
5 purposes of his conversation with you?  
6 A. Yes.  
7  
8 Q. We know through a perusal of the file that  
9 Mr Henderson was in fact interviewed on 6 March 2001.  
10 A. Yes.  
11  
12 Q. If we can just turn to tab 98, behind that tab is  
13 a transcript of the interview between Detective Sergeant  
14 Newman, as he then was, and Mr Henderson. Have you had an  
15 opportunity to look at this document before giving  
16 evidence?  
17 A. Yes.  
18  
19 Q. Did that refresh your memory?  
20 A. No.  
21  
22 Q. Can you recall being spoken to about the interview?  
23 A. No.  
24  
25 Q. If you can assume for the moment that during the  
26 course of the interview Mr Henderson agreed with certain  
27 peripheral matters, so he didn't make admissions to the  
28 offending but made admissions to the fact that he knew some  
29 of the complainants --  
30 A. Yes.  
31  
32 Q. -- would that have assisted in terms of the prospect  
33 of the matter proceeding to trial?  
34 A. That fact alone, no. No.  
35  
36 Q. I suppose it added, to some extent, to the brief  
37 of evidence?  
38 A. The reason why I say that is because one would assume  
39 in the context of the case that certain things wouldn't be  
40 in dispute, for example.  
41  
42 Q. So it didn't take the matter very much further?  
43 A. No, no.  
44  
45 Q. Do you have any recollection of that interview being  
46 discussed with you?  
47 A. No.

1  
2 Q. Or ever having seen the interview?  
3 A. No.  
4  
5 Q. As of March 2001 when that interview took place, we  
6 can see from the internal memorandums that you personally  
7 have been consulted about the investigation on at least two  
8 occasions.  
9 A. Yes.  
10  
11 Q. On 14 December 1999 and again on 13 September 2000.  
12 A. Yes.  
13  
14 Q. We know as a fact that on 4 June 2001 the Magistrates  
15 Court information was laid.  
16 A. Yes.  
17  
18 Q. So if we just have those dates as a time frame, we  
19 also know that statements were taken from [AJE]?  
20 A. Yes.  
21  
22 Q. And [AKU], the **REDACTED**?  
23 A. [AKU], yes.  
24  
25 Q. [AJE]'s statement was taken on 15 September 1999?  
26 A. Yes.  
27  
28 Q. And [AKU]'s statement was taken on 7 February 1999.  
29 [AJE] was on 15 September 1999 and [AKU] was on  
30 7 December 1999?  
31 A. Yes.  
32  
33 Q. So both those statements, and also a statement of  
34 [AJB], which was in existence from 1998 --  
35 A. [AJB]?  
36  
37 Q. [AJB]. He subsequently died, if that assists.  
38 A. Oh, right, yes, yes.  
39  
40 Q. As of your conversation, as of 2 October 2000, when  
41 this internal memorandum was produced, there is evidence  
42 that three statements were taken from complainants?  
43 A. Yes.  
44  
45 Q. Do you have any recollection of being provided those  
46 statements during the course of your conversations with  
47 Mr Newman?

1 A. No.  
2  
3 Q. Because all of those statements were in existence by  
4 the time of your first conversation with Mr Newman on  
5 14 December 1999?  
6 A. Yes. No, I have no recollection.  
7  
8 Q. In preparation for the hearing, have you had an  
9 opportunity to look at those statements?  
10 A. I have read the statements, yes.  
11  
12 Q. Did that trigger your memory as to those matters being  
13 raised with you?  
14 A. Not at all.  
15  
16 Q. Or to the time frame?  
17 A. No, not at all.  
18  
19 Q. I'm not suggesting they should have; I am just  
20 inquiring whether they did.  
21 A. No.  
22  
23 Q. And not to cover old ground, but would it be normal if  
24 an investigating officer was ringing you to discuss where  
25 to go with an investigation, what to do --  
26 A. Mmm-hmm.  
27  
28 Q. -- that he would send you a copy of those statements  
29 so you could have a look at it?  
30 A. There was no set format in place, nor is there now.  
31  
32 Q. Would you agree, though, to really give any meaningful  
33 advice you would need to read a copy of those statements?  
34 A. It rather depends upon what the question is. If I can  
35 go back to the previous notes written by  
36 Detective Newman --  
37  
38 Q. Is this the memorandum of 2 October 2000?  
39 A. Yes, it is.  
40  
41 Q. So the one under tab 96.  
42 A. Yes.  
43  
44 Q. Perhaps we can bring that up.  
45 A. The way that I read this is that what Detective Newman  
46 required was advice from somebody within the DPP that  
47 Mr Henderson should be interviewed, and on the strength of

1 the DPP's say-so, that would then be put forward to his  
2 superiors to give him authority to travel interstate to  
3 carry out the interview that he requested. So I'm assuming  
4 that this was - that those kinds of inquiries which I'm  
5 talking about are made from our office from time to time.  
6 For example, when police are seeking approval from their  
7 superiors to travel interstate to extradite some person to  
8 return to the Northern Territory, the General Orders say  
9 that what they require is the tick from the DPP.

10  
11 Q. To say, "We will prosecute this person before we spend  
12 thousands of dollars bringing him back"?

13 A. That is correct. And I see that that seems to be the  
14 tone of this note, and so it wouldn't have necessarily had  
15 to have been a long conversation, and the question really  
16 was, well, should we interview this person or not, and the  
17 answer is, of course, you should. So --

18  
19 Q. But in the course of this note there is a reference to  
20 you saying that it would be a difficult matter to  
21 prosecute.

22 A. Yes.

23  
24 Q. And I guess my question to you is: do you think you  
25 would have made that comment without seeing the statements  
26 and reading the statements and having a think about the  
27 statements?

28 A. Just on the strength of being told that the  
29 allegations were 30-odd years old and there wasn't any  
30 other evidence there and no evidence of sexual offences,  
31 I think that that would have been enough for me to say,  
32 "Well, that's not going to be easy, that's going to be  
33 a hard case."

34  
35 Q. So that would have been your mind set?

36 A. Yes, that's right.

37  
38 Q. So we know that on 4 June 2001 an information was laid  
39 in the Magistrates Court, and we can see that behind your  
40 annexure JK1. If we can just bring JK1 up, this is in fact  
41 a copy of the information after committal, isn't it?

42 Because if we look at it, the relevant amendments to the  
43 particulars made at the committal are marked on the  
44 information?

45 A. Yes, that appears to be the case, yes.

46  
47 Q. And, indeed, if we go to the very end of the document,



1 we can see the charges that were added by the stipendiary  
2 magistrate on the day.  
3 A. Yes.  
4  
5 Q. Which he found a case to answer on.  
6 A. Yes.  
7  
8 Q. So while this reflects the information that was  
9 originally laid, it has been amended and further charges  
10 have been added after the committal.  
11 A. Yes.  
12  
13 Q. I just wanted to make that clear. We can see by  
14 reference to this information that initially 80 charges  
15 were laid?  
16 A. Yes.  
17  
18 Q. And they related to three complainants?  
19 A. Yes. No, I think they actually related to four.  
20  
21 Q. I don't think [AJB] is included in there.  
22 A. If I could draw your attention to counts 27, 28, 29 --  
23  
24 Q. You are right.  
25 A. -- 30, 31, 32, 33.  
26  
27 Q. Sorry, yes, I apologise. So initially they related to  
28 four complainants?  
29 A. Yes.  
30  
31 Q. But the charges in respect of [AJB] were not proceeded  
32 with, or there was no evidence presented in respect of  
33 them, because he had passed away.  
34 A. Yes, that's correct.  
35  
36 Q. So, in effect, it only proceeded to committal in  
37 respect of three complainants.  
38 A. That's correct.  
39  
40 Q. At the commencement of those committal proceedings  
41 there were nine charges which in fact the Crown Prosecutor  
42 elected to proceed on?  
43 A. Yes.  
44  
45 Q. And we can see those charges marked at counts 1, 4, 5  
46 and 6 in respect of the complainant [AJD]?  
47 A. Yes.

1  
2 Q. Counts 34 and 54 in respect of the complainant [AKU]?  
3 A. Yes.  
4  
5 Q. And counts 55, 56 and 57 in respect of the complainant  
6 [AJE]?  
7 A. Yes.  
8  
9 Q. Then, at the end of the committal, the magistrate  
10 added counts 81 to 86.  
11 A. That's correct.  
12  
13 Q. And counts 81 and 82 related to the complainant [AJE]?  
14 A. Yes.  
15  
16 Q. And counts 83 to 86 inclusive related to the  
17 complainant [AKU].  
18 A. That's correct.  
19  
20 Q. I just want to take you through the process first, and  
21 we will come back to substantive matters secondly.  
22 A. Yes.  
23  
24 Q. So it was on 5, 6 and 7 July that the committal  
25 proceedings were heard?  
26 A. Yes.  
27  
28 Q. And, at the end of those committal proceedings,  
29 Mr Henderson was committed on 15 counts?  
30 A. Yes, I think that's right.  
31  
32 Q. Nine which were from the original information?  
33 A. Yes.  
34  
35 Q. Six that came out during the course of evidence?  
36 A. Yes.  
37  
38 Q. And where charges were laid by the magistrate?  
39 A. Yes.  
40  
41 Q. And he was committed for trial on a total of  
42 15 counts?  
43 A. Yes.  
44  
45 Q. It was after that that the DPP continued to assume  
46 conduct of the prosecution.  
47 A. That is correct.

1  
2 Q. Ultimately, a Supreme Court indictment was presented  
3 to the Supreme Court.  
4 A. Yes.  
5  
6 Q. We can see a copy of that Supreme Court indictment  
7 under the annexure JK4?  
8 A. Yes.  
9  
10 Q. That in fact replicated the 15 counts in a  
11 chronological order.  
12 A. Yes.  
13  
14 Q. I just want to make sure that we have the right date.  
15 That information was presented to the Supreme Court in June  
16 of 2002?  
17 A. I'm sorry, I don't have the date.  
18  
19 Q. I will find it. In any event, if I suggested to you  
20 that that information was presented in about June 2002,  
21 does that sound about right?  
22 A. I couldn't disagree with that.  
23  
24 Q. I am sorry, June 2001. Let me just find the date.  
25 I am sorry, I want to get the chronology right. I might  
26 come back to that. A Supreme Court information or  
27 indictment --  
28 A. Indictment.  
29  
30 Q. -- was presented?  
31 A. Yes.  
32  
33 Q. We can see in JK4 that the charges that were  
34 presented, in effect, replicated those that Mr Henderson  
35 had been committed on?  
36 A. Yes.  
37  
38 Q. So there were no changes between the point of the  
39 committal and the time that the information was presented  
40 to the Supreme Court?  
41 A. From memory, I think that's right, yes.  
42  
43 Q. Can I just ask you about the correspondence which  
44 occurred after that time. There was a series of --  
45 A. Sorry, after which time was that?  
46  
47 Q. Sorry, after the point of committal.

1 A. Yes.  
2  
3 Q. Because after that point, the DPP really assumes full  
4 conduct of the matter.  
5 A. That's correct.  
6  
7 Q. On 4 June 2001 the information is laid in the  
8 Magistrates Court?  
9 A. Yes.  
10  
11 Q. The committal is on 5, 6 and 7 of February 2002?  
12 A. Yes.  
13  
14 Q. If I first look at the correspondence with your office  
15 before the date of committal.  
16 A. Yes.  
17  
18 Q. So between the time the Magistrates Court information  
19 is laid --  
20 A. Yes.  
21  
22 Q. -- and the time of the committal.  
23 A. Yes.  
24  
25 Q. First of all, there is correspondence through the  
26 victim support service - you would agree with that?  
27 A. I believe that to be the case, yes.  
28  
29 Q. In effect, the victim support service, or VOCAL,  
30 writes to the relevant witnesses as to the fact that there  
31 are committal proceedings.  
32 A. Yes, I think that's right.  
33  
34 Q. We had earlier tendered some documents that you had  
35 recently located which set that out.  
36 A. Yes, that's correct.  
37  
38 Q. Indeed, on 3 September 2001, correspondence was  
39 written to the complainants in the matter who were giving  
40 evidence at the committal proceedings.  
41 A. Yes.  
42  
43 Q. And again on 12 September 2001 there was further  
44 correspondence.  
45 A. Yes.  
46  
47 Q. That was really to keep them informed of the fact of

1 the committal proceedings which were coming up.  
2 A. Yes.  
3  
4 Q. During those committal proceedings, what sort of  
5 support, in terms of victim support and counselling, was  
6 provided to the complainants who were to give evidence?  
7 A. If I could deal with the counselling first, I should  
8 make it clear that the Witness Assistance Service, in  
9 whatever guise, whether it is VSU or WAS, has never,  
10 itself, been a service provider - it has never provided  
11 counselling services. What it does is refer people - it  
12 tells victims or witnesses who require such support as to  
13 what is available and then directs them to a particular  
14 organisation.  
15  
16 Q. When I use the term "counselling", I mean in terms of  
17 counsel as to going to court, rather than counselling as to  
18 the actual offending itself.  
19 A. Yes.  
20  
21 Q. Or alleged offending itself.  
22 A. Yes.  
23  
24 Q. So it provides a support network, if you like --  
25 A. Support - yes.  
26  
27 Q. In respect of upcoming court proceedings?  
28 A. That's right. They take the witnesses to court and  
29 sit there with them, explain to them, and if the  
30 opportunity arises, give them an orientation tour of the  
31 courtroom to let the witnesses know what to expect.  
32  
33 Q. And that was provided to the complainants here?  
34 A. I can't say.  
35  
36 Q. We have some material, which I might just provide to  
37 you, which has the exhibit number 17-22, and which is  
38 a collection of documents which seem to suggest that the  
39 victims support service were involved with these  
40 complainants before committal.  
41 A. Yes.  
42  
43 Q. I think you have had an opportunity to see those  
44 documents before coming to court?  
45 A. Yes.  
46  
47 Q. So they were advised of the fact of the committal

1 proceedings --  
2 A. Yes.  
3  
4 Q. -- in September 2001?  
5 A. Yes.  
6  
7 Q. Then, leading up to the committal proceedings, there  
8 was also some correspondence and discussion between the  
9 Office of the DPP and the investigating officer, Mr Newman,  
10 about the prospect of success in respect to the matter?  
11 A. Yes.  
12  
13 Q. So if I can just look at that correspondence now, that  
14 correspondence was between about October 2001 and the time  
15 of committal in July 2002 [sic].  
16 A. Yes.  
17  
18 Q. First of all, if I can take you to the annexure JK5?  
19 A. Yes.  
20  
21 Q. If we can bring that up on the screen. This is  
22 a letter that we have seen in the course of this hearing,  
23 but I want to draw it to your attention - a letter written  
24 on 11 October 2001 to Mr Newman from Crown Prosecutor  
25 Mr Elliott?  
26 A. Yes.  
27  
28 Q. During the course of this letter, Mr Elliott sets out  
29 the difficulties he foreshadows in the forthcoming  
30 prosecution and, indeed, committal proceedings?  
31 A. Yes.  
32  
33 Q. He refers in particular to the case of *S v The Queen*?  
34 A. Yes.  
35  
36 Q. And the problem with some of the charges or potential  
37 charges having a latent ambiguity?  
38 A. That's correct.  
39  
40 Q. You understood that to mean that the occasions or the  
41 allegations weren't sufficiently particularised to allege  
42 a particular occasion upon which each alleged sexual  
43 offence occurred.  
44 A. That is correct.  
45  
46 Q. In that regard, do you agree that you didn't  
47 necessarily need a date; you needed an occasion?

1 A. That's correct.  
2  
3 Q. A date would help, obviously, but it was the fact of  
4 an occasion that was the problem.  
5 A. Yes, and to narrow it down to an occasion that could  
6 be identifiable and made distinct from other occasions,  
7 otherwise you have just a mass of charges which don't  
8 relate to any particular charge.  
9  
10 Q. So in sexual offences you might see occasions  
11 identified as the first occasion?  
12 A. Yes.  
13  
14 Q. The last occasion?  
15 A. Yes.  
16  
17 Q. A complainant's birthday?  
18 A. Yes.  
19  
20 Q. A day that was particular to them because of a school  
21 event?  
22 A. Yes.  
23  
24 Q. Those sorts of matters might trigger --  
25 A. Yes.  
26  
27 Q. -- memory of a particular occasion?  
28 A. Yes.  
29  
30 Q. And Mr Elliott was setting out in this letter the  
31 difficulty in the allegations, or the evidence as he saw  
32 it, that there wasn't sufficient particularity?  
33 A. That's correct.  
34  
35 Q. And when I say that, an occasion wasn't sufficiently  
36 particularised to charge?  
37 A. That's correct.  
38  
39 Q. And that is the reference to *S v The Queen*?  
40 A. Yes.  
41  
42 Q. Again, at the bottom of page 2 of the letter, we can  
43 see a reference to the fact that he is forewarning  
44 Mr Newman that there needs to be some sort of occasion  
45 isolated in respect of each type of offending.  
46 A. Yes.  
47

1 Q. Would you agree there seems to be - he refers to the  
2 fact that the counts will be reduced to one in number for  
3 each type of offending?  
4 A. Yes, I see that.  
5  
6 Q. That doesn't fix the problem, does it?  
7 A. No, it doesn't. That just does not.  
8  
9 Q. A representative count doesn't help?  
10 A. No.  
11  
12 Q. It's the next paragraph which is the salient one,  
13 isn't it - namely, that they need to describe at least one  
14 incident in each case?  
15 A. Yes.  
16  
17 Q. And then he gives examples of how that might be done.  
18 A. Yes. "For obvious reasons, it is the first incident  
19 of this type that usually qualifies", yes.  
20  
21 Q. Then at the top of page 3 Mr Elliott advises that it  
22 might be a good thing or expedient to take some further  
23 statements --  
24 A. Yes.  
25  
26 Q. -- dealing with that issue?  
27 A. Yes.  
28  
29 Q. At this stage, in October 2001, having now refreshed  
30 your memory or read this letter --  
31 A. Yes.  
32  
33 Q. -- do you recall having any input into these  
34 discussions?  
35 A. No.  
36  
37 Q. Do you recall this matter within the office?  
38 A. No.  
39  
40 Q. So you are looking at this really with fresh eyes?  
41 A. That's correct.  
42  
43 Q. This letter doesn't trigger your memory at all.  
44 A. No, it doesn't.  
45  
46 Q. If we then go to JK6, there is then some further  
47 correspondence between Mr Newman and Mr Elliott.



1 A. Yes.  
2  
3 Q. The letter from Mr Newman is dated 21 January 2002?  
4 A. The letter from Mr Elliott to Sergeant Newman is dated  
5 the 21st.  
6  
7 Q. I am sorry, from Mr Elliott to Sergeant Newman is  
8 dated 21 January 2002.  
9 A. Yes.  
10  
11 Q. In the first paragraph, we can see an email that has  
12 been reproduced in the body of the letter?  
13 A. Yes.  
14  
15 Q. There is a reference to that being 28 December of the  
16 previous year.  
17 A. Yes.  
18  
19 Q. Have you had an opportunity to read this before coming  
20 to court?  
21 A. Yes, I have read this within the last couple of weeks.  
22  
23 Q. Because you annexed it to your statement.  
24 A. That's correct, yes.  
25  
26 Q. And referred to it in your statement.  
27 A. Yes.  
28  
29 Q. You would agree in the email that Mr Newman is  
30 suggesting that the DPP simply proceed on an isolated  
31 occasion in [AJD]'s statement? In particular, he says his  
32 statement does contain --  
33 A. "Contain some specific instances" - yes, I see that,  
34 yes.  
35  
36 Q. Now, having read and considered [AJD]'s statement in  
37 the context of this hearing, you would agree that [AJD]'s  
38 statement does contain specific incidents?  
39 A. Yes, it does.  
40  
41 Q. That don't contravene the rules of latent ambiguity  
42 found in *R v S*?  
43 A. That is correct.  
44  
45 Q. And that was an option, wasn't it, for the DPP?  
46 A. Yes, it was.  
47

1 Q. Then if we turn to the bottom of page 2, we can see  
2 that Mr Elliott is advising or making it clear that there  
3 should be further statements taken from [AJE] and [AKU]?  
4 A. That's correct.  
5  
6 Q. Again, does this correspondence trigger any  
7 independent recollection or refresh your memory?  
8 A. No. Well, it wasn't my correspondence, so --  
9  
10 Q. But there was no discussion with you about the matter?  
11 A. Not that I can recall.  
12  
13 Q. You would agree it is common for prosecutors to bounce  
14 things off each other?  
15 A. Oh, indeed.  
16  
17 Q. But you don't have any memory of being involved in  
18 this?  
19 A. No.  
20  
21 Q. Then if we can turn to the annexure JK8, again, you  
22 have had an opportunity to review this letter before coming  
23 to court and giving evidence?  
24 A. Yes, I have, yes.  
25  
26 Q. And this is really an advice to the director of the  
27 day, Mr Wild QC?  
28 A. Yes, that is so.  
29  
30 Q. Again, this is written before the time of the oral  
31 committal?  
32 A. Yes, it is.  
33  
34 Q. It sets out the charges that exist as of January 2002  
35 against Mr Henderson?  
36 A. Yes, that's correct, yes.  
37  
38 Q. It refers again to the difficulties with the  
39 prosecution in terms of the latent ambiguity in the  
40 charges?  
41 A. Yes.  
42  
43 Q. And also the fact that [AJB] has died?  
44 A. Yes.  
45  
46 Q. Which disposes of some of the charges. And there is  
47 also a reference to taking further statements.

1 A. Yes.  
2  
3 Q. There is really a request for that further statement  
4 to be taken in Perth?  
5 A. Yes.  
6  
7 Q. So at least at this stage there is a recognition  
8 within the Office of the DPP, or a view within the Office  
9 of the DPP, that there needs to be some further material  
10 before the matter proceeds to committal?  
11 A. Yes.  
12  
13 Q. And at least at this stage there is a view that  
14 *S v The Queen* and the particulars are going to be  
15 a problem?  
16 A. Yes.  
17  
18 Q. On your review of the material up until this date,  
19 there is no memo or minute or discussion about the  
20 suggestion raised by Mr Newman in earlier correspondence to  
21 simply proceed on the specific incidents within the  
22 statements at hand?  
23 A. No; that's correct, I can't see any such document.  
24  
25 Q. There is no memo which sets out those specific  
26 incidents which can be found within the statements and  
27 advice as to whether you could just proceed on that?  
28 A. No. In fact, I can't see any document on the file at  
29 all which analyses the evidence in the manner in which  
30 I have done in my statement.  
31  
32 Q. Was it customary in 2001 and 2002 for solicitors and  
33 prosecutors at the DPP to do an advice on evidence?  
34 A. Not an advice on evidence, but it was customary for  
35 the prosecutor doing the committal hearing to prepare  
36 a document known as briefing notes, which set out the  
37 particulars of the committal hearing and the charges and  
38 the Crown facts to be alleged and a discussion of the  
39 issues in the case.  
40  
41 Q. And that was done for the purposes of the committal  
42 proceeding.  
43 A. No, that was done following the committal hearing for  
44 the purposes of the trial.  
45  
46 Q. Is that what this is said to be, the document under  
47 JK8, or is this --

1 A. No, no, no, not at all. No.  
2  
3 Q. Would you agree that it would be good practice to set  
4 out what I referred to as an advice on evidence, but just  
5 simply the charges, where the evidence lay, and what was in  
6 support of that?  
7 A. Absolutely.  
8  
9 Q. And that doesn't have to be a thesis, does it; it can  
10 just be simply the charge --  
11 A. Yes.  
12  
13 Q. -- what the evidence is and any support for it or any  
14 problems with it?  
15 A. That's correct.  
16  
17 Q. And there is no such document in this file, is there?  
18 A. No, there is not, no.  
19  
20 Q. Is that unusual? Would you expect to see that on  
21 a multiple complainant sex trial?  
22 A. Indeed, I would.  
23  
24 Q. Do you find it unusual that it is not there?  
25 A. Yes, I do.  
26  
27 Q. Because, would you agree, that that would have  
28 crystallised what exactly the problems were or were not  
29 with the proposed prosecution?  
30 A. Yes, it would.  
31  
32 Q. And that would have crystallised those matters  
33 in February 2002, after the committal?  
34 A. Yes, yes.  
35  
36 Q. That would also mean that if any further material  
37 could be obtained, there was plenty of time to do that  
38 before December 2002, when the trial date was set?  
39 A. That is correct.  
40  
41 Q. Is that normal practice now, in your office?  
42 A. Yes, it is.  
43  
44 Q. We have the document, which is behind tab JK8, dated  
45 25 January 2002. Then, prior to committal, on my reading  
46 of the materials, there is no further memorandum - would  
47 you agree with that?

1 A. I agree with that.  
2  
3 Q. Then the next documents we have relate to some  
4 correspondence from VOCAL or the victim support service to  
5 the complainants after committal advising them of the trial  
6 date, and they are dated 3 June 2002?  
7 A. In the bundle of documents that I have in front of me,  
8 there are three letters dated 5 June 2002.  
9  
10 Q. If I can take you to the end of the document, we can  
11 see letters to [AKU] on 5 June 2002?  
12 A. Yes.  
13  
14 Q. And to [AJD]?  
15 A. Yes.  
16  
17 Q. And to [AJE]?  
18 A. That's correct.  
19  
20 Q. Those documents advise the complainants of the trial  
21 date --  
22 A. Yes.  
23  
24 Q. -- of 11 December 2002?  
25 A. Yes.  
26  
27 Q. Apart from an email that I'm about to refer you to,  
28 that's the first correspondence from the DPP, or the Office  
29 of the DPP, albeit the victim support service within it --  
30 A. Yes.  
31  
32 Q. -- after committal?  
33 A. Yes.  
34  
35 Q. That correspondence seems to have been prompted by an  
36 email from Mr Dooley, who was a prosecutor at the time.  
37 Mr Dooley in fact conducted the committal proceedings,  
38 didn't he?  
39 A. Yes, he did, yes.  
40  
41 Q. Which advised the victim support services of the trial  
42 date on 3 June 2002?  
43 A. Yes.  
44  
45 Q. And from that email, the letters of 5 June 2002 were  
46 sent to the victims - one to each victim.  
47 A. Yes.

1  
2 Q. So apart from that correspondence on 3 June and  
3 5 June 2002, there seems to be no further memoranda or  
4 written correspondence until, I suggest, September 2002.  
5 A. I think that's correct, yes.  
6  
7 Q. If we can then turn to the document under JK10 --  
8 A. Yes.  
9  
10 Q. -- this is an email sent from Mr Dooley, who had  
11 conduct of the committal proceedings?  
12 A. Yes.  
13  
14 Q. It is an email which is sent to what appear to be  
15 senior Prosecutors within the office?  
16 A. Yes.  
17  
18 Q. So yourself, the deputy; the director of the day; and  
19 Mr Carey, who is referred to in the papers as a senior  
20 prosecutor?  
21 A. Yes, and Mr Noble.  
22  
23 Q. Was he also a senior prosecutor?  
24 A. Yes, he was.  
25  
26 Q. It is in this email that we see a reference to the  
27 upcoming trial date?  
28 A. Yes.  
29  
30 Q. Which is now referred to as commencing on  
31 9 December 2002?  
32 A. Yes, I think that the Supreme Court brought it forward  
33 by two days.  
34  
35 Q. There is a reference to Henderson?  
36 A. Yes.  
37  
38 Q. And his details?  
39 A. Yes.  
40  
41 Q. To the three children who are involved?  
42 A. Yes.  
43  
44 Q. Now adults - the three complainants.  
45 A. Yes.  
46  
47 Q. The committal proceedings?

1 A. Yes.  
2  
3 Q. Counsel for Mr Henderson?  
4 A. Yes.  
5  
6 Q. There is a reference to the fact that the matter is  
7 very high profile here in Darwin?  
8 A. Yes.  
9  
10 Q. And was that true?  
11 A. I can't recall.  
12  
13 Q. You can't remember?  
14 A. I don't have a recollection of the matter.  
15  
16 Q. And then there is a reference to the complainants, and  
17 it refers to the fact that the victims and their supporters  
18 were very pleased Henderson was committed and do not have  
19 high expectations for the trial. They were amazed he was  
20 committed. They seemed to think he was above the law, and  
21 understandably so, given his role in their lives.  
22 A. Yes.  
23  
24 Q. Then there is a reference to some proposed or  
25 anticipated applications?  
26 A. Yes.  
27  
28 Q. A separate trial application?  
29 A. Yes.  
30  
31 Q. And an application which is referred to as "that these  
32 matters not proceed" - was that in fact talking about  
33 a stay application or an abuse of process --  
34 A. I assume that that's what it is referring to.  
35  
36 Q. He refers to the fact, "If we get a start, perhaps  
37 three short trials, one after the other, delicate trial  
38 proceedings"?.  
39 A. Yes.  
40  
41 Q. Can I ask you this: reading this email now, we can  
42 assume, can we not, that as of 24 September 2002, as far as  
43 your office was concerned, this matter was proceeding to  
44 trial?  
45 A. The tenor of the email suggests that, yes.  
46  
47 Q. Would you agree with that?

1 A. Mmm.  
2  
3 Q. That's a fair reading of it?  
4 A. Yes, yes, yes.  
5  
6 Q. At that time, would you agree, reading this email,  
7 there is a reference to the anticipation that there will be  
8 an application that the matters not proceed and that there  
9 be a separate trial?  
10 A. That there be separate trial applications.  
11  
12 Q. Would you agree that that seems to assume or seems to  
13 accept that there hasn't actually been those applications  
14 filed yet?  
15 A. No, I think that where that information was gleaned  
16 from was that when the matter was mentioned from time to  
17 time in the Supreme Court, it was - the court was informed  
18 at some stage prior to 24 September that there would be an  
19 application for separate trials.  
20  
21 THE CHAIR: Q. It seems to be that Ms Cox had written  
22 foreshadowing that happening?  
23 A. Yes.  
24  
25 Q. This document was sent to, I assume, the senior  
26 prosecutors in the office; is that right?  
27 A. Yes, that's correct.  
28  
29 Q. Of which you were one?  
30 A. Yes.  
31  
32 Q. Who makes the decisions, or back then who made the  
33 decision, as to who would actually be the prosecutor?  
34 A. The director would have in this case, I should  
35 imagine, your Honour.  
36  
37 Q. So when Mr Dooley is writing to each of you saying,  
38 "I would like one of you" - it wasn't a question as to you  
39 between yourselves deciding; it would have been the  
40 director who decided?  
41 A. Yes, that's right, yes.  
42  
43 Q. Is that still the case today?  
44 A. If we had such a matter, yes, it would come to me, I'm  
45 sure.  
46  
47 Q. And do you see Mr Dooley expresses the view that this



1 matter should proceed even with its difficulties? Do you  
2 see that?

3 A. Yes.

4

5 Q. In your mind, is that a legitimate position for the  
6 DPP to take?

7 A. Assuming that the case meets the relevant guidelines,  
8 your Honour - it's one thing to wish for an outcome; it's  
9 another thing to actually get there, and that depends upon  
10 whether or not all the criteria governing the decision to  
11 prosecute are met.

12

13 Q. He summarises by saying "There should be a decent go  
14 even if not culminating in convictions."

15 A. Yes.

16

17 Q. Is that a legitimate position for a DPP to take?

18 A. That may be perhaps a reference to the public policy  
19 consideration that it is a high profile matter and - and  
20 I'm reading into this - that there is evidence to support  
21 the charges and, for that reason, there is good reason to  
22 pursue the matter for public policy reasons. That's what  
23 I'm reading into it.

24

25 Q. Here, from what you have read, there was plainly  
26 evidence to support the charges, wasn't there?

27 A. There was --

28

29 Q. In these cases, from what you have read, there was  
30 plainly evidence to support the charges.

31 A. There was evidence to support some charges.

32

33 Q. That's right. That's crystal clear.

34 A. Yes.

35

36 Q. That's crystal clear.

37 A. Yes, yes.

38

39 THE CHAIR: We might pause there until 10 in the morning.

40

41 MS DAVID: Thank you, your Honour.

42

43 THE CHAIR: We will adjourn.

44

45 **AT 4.10PM THE COMMISSION WAS ADJOURNED TO**  
46 **FRIDAY, 26 SEPTEMBER 2014 AT 10AM**

47