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Australian sex abuse inquiry concludes public hearings

Stephen Crittenden | Aug. 8, 2013
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After eight weeks of intense, graphic and sometimes sad testimony, public hearings have ended for the New South Wales special commission of inquiry into clerical abuse in the Maitland-Newcastle diocese, north of Sydney.

Forty witnesses have given testimony in open court before Commissioner Margaret Cunneen, and many others have been heard *in camera*, or in closed proceedings.

New South Wales Premier Barry O'Farrell created the inquiry in November, days before former Prime Minister Julia Gillard called a national royal commission into child sexual abuse in Australia.

O'Farrell and Gillard were responding to allegations by a senior police whistleblower, Chief Inspector Peter Fox, who said he could "testify from my own experience that the church covers up, silences victims, hinders police investigations, alerts offenders, destroys evidence and moves priests to protect the good name of the church."

The inquiry's mandate was to look into whether the Catholic church covered up abuse by two late priests, Denis McAlinden and James Fletcher, and whether Fox was inappropriately removed from his investigations.

Fox said McAlinden, an Irishman who arrived in Australia in 1949, might have had 100 victims, most of whom were girls between 4 and 12 years old.

The inquiry heard that officials of the Maitland-Newcastle diocese concealed information about his abuse for 50 years until reporting him to police in 2003.

In that time, McAlinden was moved from parish to parish and later to Papua New Guinea, New Zealand, the remote Pilbara region of western Australia and the United Kingdom. He was charged but acquitted in western Australia in 1992, and Maitland-Newcastle Bishop Leo Clarke stripped him of his priestly faculties the next year.

He was sent to retire in the United Kingdom, but he absconded and was soon working as a school chaplain in a remote diocese in the Philippines. In 1995, Clarke initiated a secret process to laicize McAlinden, but the priest refused to cooperate and the process was never completed. He died in 2005.

On the final day of public hearings, the Maitland-Newcastle diocesan coordinator for healing and support, Maureen O'Hearn, told the inquiry McAlinden's victims were still coming forward. She said she had spoken to 28 who said they were sexually assaulted as early as 1949 and as late as 1986.

In some ways, the Cunneen inquiry has been a groundbreaking event. Probably never before have so many Catholic clerics been subjected to such forensic cross-examination by so many lawyers. And if it is rare to see a

bishop under oath in the witness box for days, it is surely unprecedented that retired Bishop Michael Malone was cross-examined by a victim of sexual abuse, Peter Gogarty, who represented himself throughout the hearings.

The inquiry heard that Malone was almost charged in 2002 when he tipped off Fletcher that he was under police investigation and revealed the name of the complainant. Malone said he eventually experienced an "epiphany" about how abuse allegations had been handled.

"I came to the conclusion around that time that I couldn't sit on the fence and on the one hand try to defend the church and on the other hand try to look after the interests of victims of sexual abuse. So I publicly stated that I was prepared now to look after the interests of victims of sexual abuse," Malone said.

Malone also came under pressure in the witness box. At first he said he had not read about McAlinden's early history of abuse contained in a secret file in his office, but later contradicted this testimony under cross-examination.

He also was accused of altering his own personal diary to back up his story that he had met with a Catholic school principal in June 2002 to warn him to be vigilant about Fletcher, an accusation he denied. The school principal, Will Callinan, gave evidence that the meeting never took place.

By far the most extraordinary witness was the general secretary of the Australian Catholic Bishops conference, Fr. Brian Lucas, who spent three days testifying.

A lawyer who worked in the New South Wales Children's Court before his ordination, Lucas was a member of the Australian bishops' Committee for Professional Standards from 1988 to 1999. This was a transitional period when the issue of clergy sex abuse was first emerging as a national problem for the bishops, and he helped write a series of early protocols for handling the issue in the early 1990s.

Lucas described how he and another priest attached to Sydney's St. Mary's Cathedral, Fr. John Usher, formed a two-man "special issues" committee that could be called in by local bishops to deal with complaints in their dioceses. Usher was a social worker, and his role was to interview the victims.

Lucas said his role was to hold confidential meetings with the perpetrators during which he tried to "seduce" or "strong-arm" them into agreeing to resign from priestly ministry.

In doing so, Lucas said he operated outside canon law and said some canon lawyers saw his approach as an abuse of the priests' canonical rights.

"I think the general view at the time, and a view certainly that I had at the time, was that the canon law processes, the formal structural canon law processes, were unworkable, and we needed to find a different way of dealing with these allegations," he said.

Lucas estimated that between 1990 and 1996, he conducted 35 confidential interviews with accused priests and obtained admissions of criminal conduct from at least 10 of them. He took no notes during these interviews, telling the inquiry it was his experience that the priests would not have talked to him if he had a notebook in his hands.

Lucas said he never reported any of his information to the police. "Part of the inducement offered to priests was that this was a discreet way to deal with the problem of the complaint that may avoid police action?" barrister Maria Gerace asked.

"That was certainly the case," Lucas replied.

Julia Lonergan, counsel assisting the inquiry, asked whether, in conducting these interviews, Lucas was prepared to take the risk of potentially committing a felony.

He replied: "Yes."

He said he had no memory of a well-documented meeting in February 1993 during which he is alleged to have obtained a detailed confession from McAlinden about his crimes.

Longeran said Lucas' failure to recall the meeting defied belief.

"I'm very sorry. That is a very hurtful proposition," Lucas responded.

At times, it seemed as if the Cunneen inquiry became a prosecution of Fox. During his 13 days in the witness box, Fox defended his reliability as a witness but could not substantiate most allegations. Other police officers impugned his reputation: One described him as a "zealot" and another accused him of having "ridden on a saddle of lies."

Fox's case was further disabled when three key police officers, including his immediate superior, were granted leave not to participate in the inquiry on medical grounds.

Even so, a picture emerged of police reluctance to investigate what became known as the "McAlinden documents," which were passed back and forth among different local commands until intense media pressure led to the establishment of a police strike force, codenamed "Lantle," in December 2010.

Fox was excluded from the strike force, and three officers assigned to the investigation went on long-term sick leave.

Late last year, that investigation produced a 3,000-page brief of evidence that was submitted to the New South Wales director of public prosecutions to determine whether any charges should be filed. A decision has not been announced.

Meanwhile, Cunneen has taken care not to prejudice any future criminal proceedings. This has resulted in myriad nonpublication orders, *in camera* hearings and witness pseudonyms that have rendered proceedings opaque.

One of three senior church officials reportedly named as a person of interest in the brief of evidence was the archbishop of Adelaide, Philip Wilson, who refused to give a statement to police but was subpoenaed to appear before the Cunneen inquiry. He was asked to give his evidence *in camera*.

The Cunneen inquiry also has been hampered from the outset by its narrow scope. Established as a political gesture by O'Farrell and never intended to be broad-ranging, it focuses on the activities of two priests in a diocese in which seven priests, four religious brothers and six lay teachers have been convicted, and compensation has been paid to the victims of eight other priests. Three priests and three brothers face abuse or concealment charges.

Evidence already emerged of a wider story of senior clergy covering up the crimes of pedophile clergy in Maitland-Newcastle well before Cunneen embarked on her much more specific investigation.

In 1995, when Fr. Vincent Ryan was charged and later convicted, police also wanted to charge former vicar

general Msgr. Patrick Cotter with concealment, but the case was dropped because of his advanced age. Cotter died in 2007.

The bishop at the time, Leo Clarke, resigned as Ryan was being charged. Clarke died in 2006.

The Cunneen inquiry heard evidence that Clarke and Cotter knew about and concealed McAlinden's crimes, but not about the cover-up of Ryan.

In 2009, another former Maitland-Newcastle vicar general, Msgr. Tom Brennan, was convicted of making a false statement in relation to abuse by another priest, Fr. John Denham.

Denham was convicted three years ago of the sexual assault in the 1970s of 39 boys at a Catholic school near Newcastle, where Brennan was the headmaster. So far, the church has paid an estimated $10 million in compensation to his victims. Eleven are reported to have committed suicide.

On Aug. 2, the day after the Cunneen inquiry wound up its public hearings, Denham, 70, pleaded guilty to 25 more charges involving 18 more victims.

With Denham's trial pending throughout the hearings, his name was hardly mentioned, but his guilty plea is another reminder that there is still a much larger story to tell. A more comprehensive picture of the extent of child sex abuse in the Hunter Valley region will presumably have to wait for the national Royal Commission Into Institutional Responses to Child Sexual Abuse. Cunneen is already passing on material she judges be outside her own terms of reference.

The inquiry ended the last week of July as observers listened, sometimes tearfully, to statements written by the victims of the accused priests.

In one, a woman known only as AQ told of enduring a life of pain since McAlinden molested her when she was 11.

"Through my last two years at primary school in 1986 and 1987, this so-called priest sexually abused me in the presbytery, at the church, in my home, on the school playground, in his car, and during parish events and family outings to which he was frequently invited," she wrote.

"He got away with abusing me almost in front of people because everyone was blinded by his being a priest."

Days earlier, another survivor of abuse, going by the initials AH, appeared at the Newcastle Supreme Court to deliver his statement in person. His mother had rarely been absent from proceedings, often seen at the back of the court with tears in her eyes and sometimes leaving the room.

AH thanked his family and Fox for their support. He told the inquiry Fletcher had done "a terrible job on me" and said when he finally found the courage to tell someone about the abuse, he expected the church to do the right thing.

"That wasn't to be, and I believe that they've put more of an effort into damage control than into caring for me.

"Over the last six months in particular, I have had flowers delivered to work from strangers, people walking in off the street and congratulating me, other completely random people divulging abuse that they have endured from the church, schools or family members," AH went on.

"This, I guess, is a great reflection on what is going on at the moment, but no one understands that even now, the memories are vivid, and I am watching my life played out again in an environment which each day is

uncovering the truths about the Catholic church and its cover-ups."

As AH stepped down from the witness box and walked toward the back of the court, members of the public gallery began to applaud, joined by the assembly of lawyers and Cunneen herself.

"AH," Cunneen said, "I want to say you must always remember no shame attaches to you and your courage has placed the shame, all the shame, squarely where it belongs."

There were to be two more weeks of *in camera* hearings in August in Sydney. Cunneen's report is due in September.

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