

1 COMSR STEVENS

2

3 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION

4

5 FRIDAY, 13 OCTOBER 1995

6

7 RESUMING 10.08 A.M.

8 COMSR: There is one matter which perhaps I can
9 mention before I start. Have you returned, as yet, the
10 exhibit that was released into your care?

11 MR KENNY: The copy of the exhibit I have returned
12 three quarters of, and the other is apparently on its
13 way, and it's in good hands.

14 COMSR: A copy?

15 MR KENNY: I understood I didn't have the original
16 exhibit, it was merely a copy of it. I was just
17 clarifying that. Maybe I did have the original exhibit,
18 but I certainly didn't believe that I did. I expect it
19 to be here sometime today.

20 MR SMITH: At the outset, could I tender the
21 transcript of the raw footage of the Betty Fisher 7.30
22 Report of 7 August, and ask that you mark it Exhibit
23 22B. Exhibit 22 is the two cassettes and Exhibit 22A is
24 the transcript of the 7.30 Report to-air. The raw
25 footage is more expansive of course, so I ask that you
26 mark that Exhibit 22B.

27 EXHIBIT 22B Transcript of the raw footage of the
28 Betty Fisher 7.30 Report of 7 August
29 tendered by Mr Smith. Admitted.

30 WITNESS P.A. CLARKE, CROSS-EXAMINATION BY MS PYKE

CONTINUING

31 Q. I just want to put a couple of things to you on the
32 issue of your criticisms of Dr Fergie's methodology.
33 Firstly, you agree with me that the Aboriginal and
34 Torres Strait Islander Heritage Protection Act - I will
35 just call it 'the act' to save me repeating those words
36 - the focus of that act is the significance, according
37 to Aboriginal tradition, of certain sites.

38 A. That's probably the case, I don't have a copy of the

- 1 act, and I'm not intimate with it.
- 2 Q. In your criticisms of Dr Fergie's report conclusions and
3 methodology, you haven't particularly paid attention to
4 what the requirements of the act are.
- 5 A. My criticisms are on the validity of the findings and
6 the outcome of that report.
- 7 Q. Dr Fergie would say that the critical issue for her in
8 her preparing her report was the issue of how can you
9 assess that something is a tradition, and that in
10 deciding to go about that task, she formed the view that
11 the genealogies were not the highest priority. Would
12 you agree that that was a reasonable -
- 13 A. As I said yesterday, the genealogies, in my opinion,
14 would have to be in any report that was dealing with
15 matters that her report was dealing with.
- 16 Q. For the purposes of the act.
- 17 A. As I've just said, I'm not intimate with the act, but
18 I'd imagine that would be the case.
- 19 Q. Dr Fergie says that there was some literature and it was
20 also, she believed, appropriate to seek out some oral
21 testimony, if I can put it that way, to speak to people.
- 22 A. Sorry, is that another question?
- 23 Q. Perhaps if you just wait and I'll continue. Do you
24 agree that a methodology where one seeks out, for the
25 purposes of reports, oral testimony from people is
26 appropriate.
- 27 A. Yes, I do.
- 28 Q. That she believed it was important to undergo some
29 authorisation process for the oral testimony that she
30 received, do you agree that an authorisation process is
31 appropriate.
- 32 A. I'm not quite sure what you mean by 'authorisation'. If
33 one was to write a report, you would want to canvass all
34 the possible variations, the broadest possible range of
35 views, regardless of whether anyone was authorised by
36 some official means or otherwise.
- 37 Q. Dr Fergie says that - well, she uses the phrase
38 resonance, in essence, would be then necessary to, in

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- 1 essence, compare the material that you got orally, the
2 resonance of that material, with other material on the
3 culture.
- 4 A. Is the question comparing oral data with historic
5 ethnographic data? Is that question?
- 6 Q. Yes, on literature generally on the culture.
- 7 A. Yes. All of that would have to have been accounted for,
8 discrepancies discussed, that type of thing.
- 9 Q. Dr Fergie would say it's also relevant to make some
10 assessment of the political location, interests of the
11 source, in essence, to try and work out what the
12 alignments or interests of her informants were.
- 13 A. Sorry, you're asking about a description of the
14 political environment?
- 15 Q. No, what I'm putting to you is this; that Dr Fergie is
16 saying that something she believes was relevant to do
17 was to make some assessment of the political location -
18 by that I mean the political dynamics - of the persons
19 who were providing her with information and the
20 interests of her sources.
- 21 A. Are you saying that she said this in the report, or is
22 this something that she is saying now to me through
23 you?
- 24 Q. Listen to the question.
- 25 A. I want to know exactly what you say Dr Fergie says,
26 whether I'm being asked if it was in the report, or
27 whether I'm being asked -
- 28 Q. If if you listen to the question and answer the
29 question, your problem will be solved. What I'm putting
30 to you is this; Dr Fergie says it's important to test
31 the political dynamics of the sources in forming your
32 assessment, do you agree with that as a general
33 proposition, when you're writing the report.
- 34 COMSR: That is being put to you now. That's
35 the proposition, I take it.
- 36 XXN
- 37 Q. Do you believe that that's an appropriate process in
38 report writing.

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- 1 A. It is appropriate to describe the political environment
2 in which the report and the discussion, the data, is a
3 part of. If that's what you're asking me, the answer is
4 yes.
- 5 Q. That when weighing up or assessing information received
6 from informants, would you agree with me that it's
7 appropriate to weigh up one's own knowledge of the
8 informants in terms of a history of trust or a
9 relationship of that nature.
- 10 A. I think that's getting on dangerous ground, because then
11 you're in the position of saying 'Well, this person's a
12 good informant, that person is a bad informant'. If
13 there are a number of views within the community, then
14 they all have to be treated, at least initially, as
15 equal. I don't think an anthropologist should be ever
16 in the position of saying 'Well, this informant's views
17 are sound or bad for what I want to do, and I will go
18 with them'.
- 19 Q. I'm not putting that to you, I'm simply saying -
- 20 A. All views of informants would have to be recorded and,
21 if there needs to be some background material in order
22 to explain the background of those views, well that
23 should be in the report as well.
- 24 Q. So are you saying that when you, for example, are
25 assessing and weighing up information that is provided
26 to you by informants, that the previous knowledge of the
27 informant and the reliability of their information is
28 not something that you would take into account.
- 29 A. What I'm questioning is your use of 'reliability'. I
30 mean information is information. There is no sort of
31 'one truth' when you're dealing with those types of
32 belief. If one was to engage in that process that
33 you're suggesting, of selecting reliable informants,
34 then one ceases to be an anthropologist, but they become
35 advocates. I wouldn't do that.
- 36 Q. You've misconstrued the question, but if that's your
37 answer, I will leave it there. We might be here for
38 another five minutes. Now you have said in your

1 evidence, and this is at p.269 - or it's put as a
2 question to you, but I'm just wanting to ascertain what
3 you mean by this - the question from counsel assisting
4 was this, and this is in the connection of he is asking
5 you about the methodology, 'Just to descend from the
6 general into the particular for a moment, in respect of
7 this particular enquiry, if the model threw up, that is
8 the discretion of the literature and the establishing of
9 the model of the culture through up no secret sacred
10 women's business, then that would cause some concern to
11 the reporter, would it', and then your answer is 'That's
12 right, it would have to be flagged as a major
13 discrepancy, and the writer of the report would then be
14 obliged to account for that discrepancy'. Now do I
15 understand that you were suggesting there that there was
16 a defect in Dr Fergie's report, that it was your view
17 that she should have been accounting for the discrepancy
18 in her report.

19 A. That's correct, because some of the few references that
20 she does use in the report are from reports such as the
21 Lucas report and the Berndt ethnography, which would
22 propose that there isn't women's business, or at least
23 secret sacred women's business as I defined it, and that
24 the record of mythology is very poor, so she's already
25 fleetingly used those references but does not, through
26 the report, acknowledge that the full data in those
27 references are actually going against what she is
28 putting forth in her own report.

29 COMSR

30 Q. Just one thing, you say women's business as you define
31 it, but of course women's business is defined in the
32 terms of reference, is it not.

33 A. Yes. I was just referring to the problems we had
34 yesterday with it.

35 Q. Yes, I know, and the terms of reference, as I understand
36 it, are correct in the passage from Dr Fergie's report,
37 and women's business is defined in terms of that passage
38 from her report, that's your understanding.

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1 A. Sorry, are you asking me whether the terms of reference
2 - ?

3 Q. Yes, I just want to know what we are talking about when
4 we're talking about `women's business'.

5 A. Yes, I want to correct myself and say secret sacred
6 women's business, and I'm happy to use the commission's
7 definition of that.

8 Q. It is defined for the purposes of this Commission.

9 A. That's right.

10 XXN

11 Q. I simply want to put this to you; you say that Dr Fergie
12 should have pointed out in her report that secret sacred
13 women's business was not otherwise disclosed in the
14 literature in relation to the Lower Murray.

15 A. Yes.

16 Q. Again, getting back to the western desert, really what
17 you're saying is that there's no evidence of a western
18 desert-type secret sacred women's business being in any
19 way applicable to Ngarrindjeri tradition.

20 A. Ngarrindjeri tradition as has been recorded up until the
21 1990s yes.

22 COMSR: It's been recorded, but does it give any
23 indication of any, what is it, western desert-type
24 women's business? Is that your question Ms Pyke?

25 MS PYKE: Sorry?

26 COMSR: The witnesses answered that it's been
27 recorded up to 1990. I'm just wondering what the
28 implication of that answer is. It's been recorded
29 without reference to -

30 A. I'm not aware of any record whatsoever of secret sacred
31 women's business of the central Australian-type being
32 recorded in the Lower Murray region.

33 XXN

34 Q. I just want to put this series of propositions to you;
35 that you use the phrase `secret sacred women's business'
36 because it's your view that Dr Fergie, by her
37 conclusions in her report, has suggested that there is
38 an exclusive division of secret sacred women's

1 knowledge.

2 A. That's the thrust in the report, but my use of those
3 words can also be justified on the basis that she uses
4 those words, not in that exact combination, but they are
5 used through that report, so you're really asking two
6 questions and I'm answering both.

7 Q. I'm just simply putting this to you; it's your belief
8 that Dr Fergie's conclusion suggests that there is an
9 exclusive division of secret sacred women's knowledge,
10 and that's why you've used the phrase `secret sacred
11 women's business'.

12 A. It's not just the conclusions, it's right throughout her
13 whole report.

14 Q. That's your interpretation of it. Let me tell you that
15 Dr Fergie will give her own evidence.

16 A. Her conclusions.

17 COMSR: You ask the witness the questions, so
18 perhaps if we listen to his answers.

19 A. Her conclusions. If you mean recommendations, I gather
20 that's what you mean, in the back of her report - what
21 are you talking about when you say `her conclusions'?

22 XXN

23 Q. When you've read her report, you have formed the view
24 that Dr Fergie is maintaining an opinion that there is
25 an exclusive division of secret sacred women's
26 knowledge. That is your view, it's the conclusion
27 you've drawn from reading Dr Fergie's report.

28 A. Yes.

29 Q. You say that a gender exclusive division of secret
30 sacred knowledge exists in the western desert cultures
31 but not, in your view, Ngarrindjeri culture.

32 A. That's correct.

33 Q. It's appropriate, in your view, to use the term `secret
34 sacred women's business' to describe western desert
35 cultures.

36 A. It's recorded as appropriate in the literature that
37 relates to Central Australia, so whether it's my view or
38 whether it's appropriate or not, I'm conforming to the

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- 1 existing literature, which is quite extensive.
- 2 Q. I'm not testing it, I'm simply putting to you that
3 that's your view. What you're suggesting is that Dr
4 Fergie is using a western desert model for the
5 Ngarrindjeri people.
- 6 A. It could be seen as that, but I find her model to be
7 fairly unique in itself, to be quite honest.
- 8 Q. You have put or addressed to Dr Fergie your views about
9 the western model. (NOT ANSWERED)
- 10 COMSR: The witness has just said that he
11 considered her views unique, rather than they were in
12 the western model entirely.
- 13 XXN
- 14 Q. My question is you have put to Dr Fergie your views
15 about the western model in your telephone conversation.
- 16 A. As it being an influence, but I'm not saying one model
17 has totally come and supplanted another, I mean what's
18 happened is a lot more complex than that.
- 19 Q. In your conversation with Dr Fergie in July 1994, at
20 p.251 of the transcript, you said this, 'I had put
21 forward a model of the Central Australian influence upon
22 Doreen Kartinyeri, and mentioned to her the influences
23 that Doreen had on her through her sensitive sections
24 with people from the Ooldea West Coast region of
25 Australia'. Then you go to to say, 'She dismissed that
26 view that there was a Central Australian influence
27 involved, and my reason for introducing that fact. I
28 told Deane that it was my opinion that the definition
29 that Doreen was using of women's business was an
30 importation from Central Australia. She rejected that
31 idea'. That's the situation, isn't it. Dr Fergie has
32 put to you, quite clearly, that she rejects your notion
33 of an importation of the central desert.
- 34 A. She said on that occasion, yes.
- 35 Q. I put to you that the connection you make between the
36 central desert and the women's knowledge is, putting it
37 bluntly, a flight of fancy on your part.
- 38 A. Not at all. We discussed this yesterday, I gave

- 1 examples, that is still my opinion, and it's still a
2 very strong opinion.
- 3 Q. I suggest to you that there is, in fact, no basis for
4 that leap in -
- 5 COMSR: You've already put to him it's a flight
6 of fancy, and we covered it yesterday.
- 7 XXN
- 8 Q. You have referred in various places in your evidence - I
9 don't want to go through it all with you, but the
10 general gist of what you said was that you had found,
11 and I think you were responding to a question from
12 counsel assisting - in fact I will just put this brief
13 one to you, 'No doubt you take some solace, then, from
14 the absence of that in the Berndt book in relation to
15 the lower River Murray in terms of your view about
16 that', and that was secret sacred women's business.
- 17 A. Sorry, what page is this on?
- 18 CONTINUED

1 Q. 179.

2 A. Sorry, what line?

3 Q. 22.

4 A. Yes, I have got that. What is the question?

5 COMSR: We are now on to matters which were
6 heard in private session.

7 MS PYKE: I am only going to be talking about the
8 Berndt and Berndt book.

9 COMSR: I just draw your attention to it.

10 MS PYKE: Yes, as I understand, we have moved on a
11 little bit from where we were back then in terms of what
12 is or is not in private sessions.

13 COMSR: Yes, I appreciate that and, of course,
14 some things which are said in private session are
15 clearly not matters about which one needs to be
16 sensitive.

17 XXN

18 Q. You are clearly familiar with the work of the Berndts.

19 A. I am familiar. There is a lot in the volume. It is a
20 resource that one would have to read many, many times.
21 And, if you are looking for - you would have to reread
22 it each time you were looking for a particular aspect.
23 As an ethnography, it has got that value.

24 Q. You would agree - I want to put forward a brief
25 chronology of the Berndts to you. And I will put to
26 you, rather than referring you to numerous pages in
27 numerous books, I will simply put to you, at the moment,
28 that Ronald - this has been gleaned from various sources
29 and Dr Fergie will give her evidence in due course and
30 provide the source of this information and it will just
31 save, I think, half an hour or so of dredging through
32 it. Ronald Berndt, Ronald was born in 1916. In 1938 he
33 started subscribing to Oceania. In 1939 he was an
34 honorary ethnographer in the South Australian Museum -

35 MR ABBOTT: Do you mean subscribing or contributing?

36 MS PYKE: Subscribing.

37 XXN

38 Q. In 1939 he goes to Ooldea as part of an exhibition.

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1 From November 1939 to December 1939 he did intermittent
2 field work at Murray Bridge. In 1940 he went to Sydney
3 to study with Elkin. To that stage, he had no
4 university qualifications. Met his wife. At around
5 about that time Mark Wilson dies -

6 COMSR: Ms Pyke, what is the purpose of this?

7 MS PYKE: I want to give a general overview,
8 because I am going to be putting some views that we have
9 about the Berndt book and its reliability as an
10 ethnographic source. This witness has quoted at length
11 and indicated that he has taken solace and consolation
12 from the fact that certain things are not there and he
13 has made extensive references I might say.

14 COMSR: Is this going to be put to him on the
15 basis of the reliability that is in general attributed
16 to it, or is attributed to it by Dr Fergie?

17 MS PYKE: As an ethnographic work.

18 MR ABBOTT: I object to this. I don't see how a
19 potted history of significant aspects or what are said
20 to be significant aspects -

21 MS PYKE: What is his interest?

22 MR ABBOTT: The time this is going to take and the
23 futility of any answer given. I would submit strongly
24 that it is obvious that Dr Fergie doesn't place reliance
25 on the Berndt book whereas Dr Clarke does. There is a
26 method of cross-examination which would get to the heart
27 of this directly rather than in this round about way.

28 MS PYKE: Firstly, this witness asserts that the
29 Berndts had a specific interest in the role of gender in
30 that society, referring to the Ngarrindjeri people.

31 COMSR: How will a chronological history assist
32 me?

33 MS PYKE: I was simply endeavour to, in some ways,
34 make it easier for the witness. Dr Fergie will be
35 giving her own evidence. If people object to me
36 providing this witness with that information, I shan't.

37 COMSR: It is not a question of objecting.

38 MS PYKE: It is.

1 COMSR: I just can't see the utility of it, from
2 my point of view, Ms Pyke. I mean, if, for instance,
3 there is one aspect of that history that the witness
4 objects to, his answer will be no.

5 XXN

6 Q. Let me put this to you, at the time that the Berndts
7 were doing their study into the Ngarrindjeri people,
8 from 1939 through to 1942, they were not qualified
9 anthropologists. They had merely embarked upon
10 anthropological studies, at some stage. Are you aware
11 of that.

12 COMSR: You mean, qualified with a university
13 degree, or something like that?

14 MS PYKE: Any qualification.

15 COMSR: You can be qualified by experience,
16 can't you?

17 MS PYKE: I am putting this - that is why I am
18 trying to put the history and the chronology.

19 XXN

20 Q. I am simply putting to you that, at the time they were
21 doing their field work in relation to the Ngarrindjeri
22 people, the Berndts were young, unqualified people.
23 They were at the very beginning of any interest in their
24 anthropological studies and qualifications.

25 A. The first period of their field work they have said in
26 the book they were inexperienced - sorry, Professor
27 Berndt was inexperienced. He then went away, became
28 qualified and somewhere in that book there is a
29 description of how Albert Karloan recognised that the
30 quality of questions were, in terms of describing his
31 own culture, were much better. I mean, they make a big
32 thing of that in the book. So, if you are asking me
33 whether he was qualified, by the time he had finished
34 doing his ethnographic work, he clearly was.

35 Q. I suggest to you that they only received a diploma in
36 anthropology after their field work had - in the same
37 year that their field work was concluded.

38 A. Anthropologists were fairly thin on the ground back

- 1 then. That is certainly true. You would have had quite
2 a few people doing anthropology who were probably
3 primarily from the medical fraternity. Biologists. You
4 know, a whole host of people who would have been doing
5 anthropology back then who hadn't gone through the
6 formal scheme that we have now of undergraduate and
7 postgraduate work. So, I think it is unfair to
8 criticise them back in the 30s and 40s of not having the
9 qualifications that we all consider necessary today in
10 the 1990s.
- 11 Q. All I am simply putting to you is that from 1939 through
12 to 1943 during the period of time that jointly and
13 severally the Berndts were doing their field work, they
14 were young, comparatively inexperienced and, for a major
15 portion of that time, unqualified anthropologists.
- 16 A. Sorry, what is the question? Are you asking me to
17 confirm what's -
- 18 Q. I am simply putting that to you and you can agree or
19 disagree.
- 20 A. You will have to put it to me again, because I am not
21 actually sure of whether you are asking me to answer yes
22 or no or to comment upon the question.
- 23 Q. I will do it one by one, to make it easier for you.
24 Would you agree that in 1939 both of the Berndts were
25 quite young, in their early 20s.
- 26 A. I wouldn't consider that too young for doing field work.
- 27 Q. Beg your pardon.
- 28 A. I wouldn't consider that too young to do field work.
29 Most people doing their honours today in anthropology
30 would probably do it when they are 20, 21. And, as I
31 heard yesterday, having an honours degree in
32 anthropology is more important than having a PhD in
33 anthropology.
- 34 Q. You don't have a PhD in anthropology. You have a degree
35 granted from the university, as you well know.
- 36 A. No, my forms, if you want me to bring in my PhD forms,
37 the PhD is in anthropology and geology.
- 38 Q. It is a degree of the university, not of the Department.

1 A. No degree is a degree of the Department. They are all
2 degrees of a university.

3 Q. I will move on from that topic, or we will be here for
4 ever.

5 COMSR: Yes, I can't have evidence from you as
6 to this. I mean, the only evidence I have got of that
7 is from the witness.

8 MS PYKE: There will be other evidence in the
9 effluxion of time.

10 XXN

11 Q. I will move on from the Berndts and their experience.

12 We will get that in another way. As a general concept
13 you don't agree that they were young and inexperienced,
14 at the time they did their field work.

15 A. Young and inexperienced in what? I mean, they gained
16 experience -

17 Q. In anthropological field work.

18 A. They gained experience through their field work.

19 Naturally they were young and inexperienced in that
20 culture before they started their field work. Through
21 the course of that field work they gained experience.

22 That is what field work is about. Gaining experience
23 with a culture.

24 Q. On the topic of field work, let's deal with ethnography.

25 For the purposes of your thesis, do you consider
26 yourself to have done an ethnographic study of the
27 Ngarrindjeri people.

28 A. I have compiled ethnographic data which has an
29 ethnography that is put in my thesis. I have provided
30 an ethnography in terms of the historic work. I
31 provided ethnography in terms of my own field work.

32 Q. Would you agree with me that your thesis was a work of
33 oral history not an ethnography.

34 A. No.

35 Q. What do you understand by doing an ethnographic study.

36 A. An ethnographic study, as I have already said, there is
37 - involves historic work, comparative work, for
38 contiguous reasons, from work of other anthropologists.

1 And, also, in most cases, contemporary field work.
2 Although someone doing an ethnography based on
3 information, as I said yesterday, in the middle ages
4 obviously is not going to be able to reconstruct an
5 ethnography from field work.

6 Q. Let me put this to you as a proposition: that the
7 distinctive methodology of ethnography is participant
8 observation, would you agree with that.

9 A. Sorry?

10 Q. Distinctive methodology of ethnography is participant
11 observation.

12 A. Where is this being read from?

13 Q. Don't worry where it is read from, do you agree.

14 A. It is simplistic -

15 MR ABBOTT: If my learned friend is putting a
16 reference from an anthropological source, there is a
17 convention that the source is identified and the witness
18 is told. This is not an ambush. This is a search, an
19 inquiry that you are conducting and, if passages from
20 books are to be put, it is customary and, indeed, I
21 would have thought appropriate and proper for the
22 reference to be told to the witness so he knows where
23 it is coming from.

24 MS PYKE: I am actually reading it from my proof.

25 COMSR: Are you able to give the source for
26 that?

27 XXN

28 Q. What I am reading from is my proof, but the source from
29 what I have put in my proof is, as I understand it, the
30 handout given to first year anthropology students. So,
31 would you agree or disagree with that, that the
32 distinctive methodology of ethnography is participant
33 observation.

34 A. Again, I haven't got the handout in front of me and the
35 context in which it is used, if it is a course that is
36 talking about contemporary field work in anthropology,
37 it may well be an appropriate statement, but whether
38 that anthropology 1, whatever the course is, and I don't

- 1 have the handout in front of me, it is too dangerous for
2 me to say yes or no. If you want to put it as a general
3 thing that covers all anthropology, I would say it seems
4 a bit restrictive, but, again, it may well have been
5 used in the correct context on that handout.
- 6 Q. It might be correct for anthropologists as opposed to
7 geographers.
- 8 COMSR: I don't understand that to be the
9 witness's answer. It might be correct for a particular
10 course of first year study to which it was attached or
11 applied.
- 12 XXN
- 13 Q. I suggest to you, as a methodology for anthropologists,
14 not just first year students, that participant
15 observation is the major part of undertaking an
16 ethnography.
- 17 A. Do you want me to say yes or no?
- 18 Q. Would you agree or disagree with that.
- 19 A. It is a major part. I am not saying - I am not going to
20 be definitive. It is a major part of most
21 ethnographies.
- 22 Q. And the participant observation for the purposes of
23 undertaking an ethnography is undertaking it in the
24 field.
- 25 A. How do we define 'the field'? I mean, 'the field'
26 could, in a sense, even be this Commission, if things
27 are being said about Aboriginal culture, Aboriginal
28 people responding. I mean -
- 29 Q. I agree, but, if you are studying Ngarrindjeri people,
30 the field would be, for example, where Ngarrindjeri
31 people are.
- 32 A. What is the original question?
- 33 Q. That participant observation, for the purposes of
34 undertaking an ethnography, is undertaken in the field.
- 35 A. By definition, if you weren't in the field, you couldn't
36 observe, so the answer, of course, is yes.
- 37 Q. And that participant observation, for the purposes of
38 ethnographic research, entails a period of 12 to 24

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1 months in the field in which the research is, in effect,
2 the entirety of the researcher's every day life.

3 A. Yes, and 'in the field' could be from one's office in
4 the museum conducting, you know, research for galleries.
5 In my case a fair bit of social interaction on other
6 levels, but other anthropologists would also have their
7 social connections. I am a bit wary of saying that
8 there is a precise time limit to do field work and that
9 somehow you have got to put on a pith helmet and go out
10 and live in a shed somewhere out in the middle of
11 nowhere. I mean, it is a lot more complicated than
12 that, but you would want to obviously spend as much time
13 doing field work as possible. I wouldn't even put an
14 upper limit on it. I certainly wouldn't put a lower
15 limit on it, depending on how the, or what the field
16 work was for.

17 COMSR

18 Q. Just so that I can clarify this, if you are dealing with
19 a largely urbanised group or a group that is spread
20 through perhaps a number of towns, where would the field
21 be.

22 A. Once the anthropologists have embed themselves into that
23 situation, you will find that, in a sense, the rest of
24 the landscape slips away, because people are moving
25 between, let's say, their auntie's house at Murray
26 Bridge to their nephew's place at Salisbury. A funeral
27 happens and, you know, you are involved in helping take
28 people to a funeral. And there is a lot of interaction
29 between people that are particularly Aboriginal that,
30 although spacially are separated, they still maintain
31 links. And, although I wouldn't want to be definitive,
32 from my knowledge of western European style Australian
33 society, middle class society, we don't keep those
34 connections with kin anywhere near as much as Aboriginal
35 people do. I mean, their kinship network is quite
36 important. So, if people have to drive two or three
37 hours, you know, to see a relative on some family
38 business, you know, they do it. So, the disbursement

- 1 itself over the landscape is not really the problem.
- 2 XXN
- 3 Q. So far as your own thesis was concerned, you maintain,
- 4 presumably, that you did ethnographic participant
- 5 observation.
- 6 A. Employed as a museum anthropologist I was doing or using
- 7 a variety of methodologies including participant
- 8 observation long before I started officially involved in
- 9 the thesis and writing the thesis.
- 10 CONTINUED

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1 I make it quite clear that a lot of my insights and the
2 data that appear in there, in a sense, are outside my
3 PhD, from how I gained that knowledge. I am still doing
4 research today. `Today' in the sense of at this moment,
5 in the sense of being an anthropologist who is
6 interested in what's is going on in the Aboriginal
7 community.

8 Q. So I understand this, are you saying that you did go out
9 and do field work, that that is part of your day-to-day
10 life within your family.

11 A. I am saying you don't even have to go out and do field
12 work. I am immersed in it in the sense of what I do in
13 the museum and my various social obligations, and the
14 fact that at one point in time I enrolled in a degree
15 and started writing but continued all those other
16 activities. In a sense, it is besides the point. I
17 mean, I cannot nail down precise periods of field work
18 because, in a sense, it started from the moment I walked
19 through the museum doors up until the very present. I
20 do not say that there is a sort of different hat that I
21 can put on, a hat that says I am not doing field work
22 now and a hat that says I am doing it.

23 Q. So is it the reality that your field work was
24 intertwined with your day-to-day working life and your
25 family life.

26 A. All of that, yes.

27 Q. Was there any systematic field work that you did. By
28 that I mean go and immerse yourself for a period of
29 time.

30 A. Immerse myself into what? I have just said that I have
31 been immersed into field work.

32 Q. On a systematic basis as opposed to -

33 A. There is a number of projects that the museum has had
34 whereby, mainly through the 80s, in the company of Steve
35 Hemming, we did go out for weeks at a time doing
36 research for a variety of projects, not just the
37 gallery, but site recording projects, that type of
38 thing. That would entail basically using our car as an

1 office and staying at various Aboriginal homes
2 throughout the Lower Murray, Riverland and other parts
3 of the State.

4 COMSR

5 Q. Can I take it that that is the field, for the purposes
6 of when we are talking about field work, the Lower
7 Murray.

8 A. In a sense, a lot of the Lower Murray people,
9 Ngarrindjeri people that is, live in places outside the
10 Lower Murray, so we might still be doing research into
11 Lower Murray culture but be staying up at Berri, for
12 example, for a week. The Aboriginal people who define
13 themselves as Ngarrindjeri up there are still closely in
14 tune with events happenings down in the Lower Murray
15 itself. So it is quite acceptable to be going all over
16 the State to sort of plug into the Ngarrindjeri network,
17 if you like.

18 Q. So the field is where Ngarrindjeri people live.

19 A. That's a good way of looking at it, yes.

20 XXN

21 Q. In terms of the Berndt and Berndt book, that didn't
22 purport to be an ethnography, did it.

23 A. The Berndt and Berndt book?

24 Q. Yes.

25 A. I believe that that is put forward as an ethnography. I
26 would have to look through Professor Tonkinson's
27 introduction. He describes it as an ethnography in
28 there, I'm pretty certain.

29 Q. You wouldn't -

30 A. I consider it an ethnography.

31 Q. You would consider it an oral history, relying upon -

32 A. No. Oral history is quite different than an
33 ethnography. An ethnography incorporates quite a bit of
34 oral history, but oral history by itself is really a set
35 of quotes and views that the insiders of a culture put
36 forward. And oral history, if we consider it as
37 subdiscipline, may be just a matter of recording those
38 different, or sometimes different, perceptions, but

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1 they're insider perceptions, whereas an ethnography
2 would go beyond that, by interpreting and putting some
3 order, and using an outsider's perspective to try and
4 make sense of the data. So they are both not the same.
5 Ethnography does not equal oral history.

6 Q. You agree, from your reading of Berndt and Berndt, that
7 they relied upon a small number of informants.

8 A. I don't know how you define 'small', in the sense of
9 they were dealing with, from their point of view and
10 from the informants' point of view, a group of people
11 who were born pre-1900. If the community they have
12 defined is the Ngarrindjeri people who were born
13 pre-1900, then to describe their informants small in
14 number, if that was virtually the total number of
15 informants, would be doing them an injustice, I believe.
16 So how one defines 'small' - if they were just trying to
17 describe a complete community of people of Aboriginal
18 descent who were alive in the 1940s then, yes, that
19 number of people would be small. But their data has
20 been used to produce the book they called - or the
21 publishers called 'Black to White in South Australia',
22 and they clearly used a larger number of Ngarrindjeri
23 people in that publication.

24 Q. I am not talking about that publication.

25 A. But that publication is the other half of their total
26 Lower Murray field work. So we are splitting their
27 ethnography up. I am just, to avoid confusion later on,
28 signalling that if we are looking at all of their Lower
29 Murray field work, then you have to look at that rather
30 substantial body of work as well. So 'The World that
31 Was' is one aspect of their field work.

32 Q. I am just talking about that particular book. From what
33 is in that particular book, they seem to have had
34 primarily three or four informants.

35 A. I think it was more than that, but I would have to go
36 through to come up with a - I believe it was with people
37 like Clarence Long, who is mentioned in it, and possibly
38 Ruben Walker and others. The list would be longer.

1 COMSR

2 Q. 'The World that Was' is describing a world that existed
3 before when.

4 A. Before - it is attempting to describe a world before
5 European contact with Aboriginal people.

6 Q. So that I am clear about this, are you saying that, of
7 the people in the particular age group, they were small
8 in number, but their percentage of the total group was
9 not small.

10 A. That would be the case. By the 1940s there still would
11 have been quite a few people born in the latter half of
12 the 19th century. People like Albert Karloan were
13 involved in the last sequence of initiations some time
14 in the 1980s, and it is really that group of people that
15 the Berndts were concentrating on in terms of the data.
16 It is only - the data that appears in 'The World that
17 Was' is that data that related to that earlier period.

18 XXN

19 Q. The key informants for the Berndts, insofar as 'The
20 World that Was', were Albert Karloan, Pinkie Mack and
21 Mark Wilson. If that is not a proposition that you can
22 agree with just simply say so, or if you do agree with
23 it, please feel free to.

24 A. They are the main informants that I'm aware of.

25 Q. In your evidence, there was this question from counsel
26 assisting to you 'From a lay reader's point of view,
27 there appears in the Berndt work at least to be some -'

28 A. What page is this on?

29 Q. P.183.

30 COMSR: This was again in private session, but
31 you are not touching on anything?

32 MS PYKE: No. I will just be dealing with some
33 excerpts from the Berndt and Berndt book which I
34 understand, on the current criteria, is publicly
35 available.

36 XXN

37 Q. At line 32 the question was 'From a lay reader's point
38 of view, there appears in the Berndt work at least to be

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1 quite some intimate detail about matters of sexuality,
2 birthing, menstruation and that sort of thing'. That
3 was put to you by counsel assisting. You then went on
4 and said `Yes, there is quite a bit of detail in there,
5 and it appears to have been gathered from both Albert
6 Karloan and Pinkie Mack. So even the source of the
7 information wasn't restricted to either male or female,
8 and it doesn't appear to have been a major impediment to
9 be either male or female in terms of being the
10 recorder'. If you wish to have the Berndt and Berndt
11 book in front of you, I think it has been tendered as an
12 exhibit.

13 COMSR: Are we going to go into detail?

14 MS PYKE: I am just going to read a short passage
15 from it.

16 XXN

17 Q. I will ask the question, and if you want to check it for
18 yourself feel free to. At p.142 it says that the
19 information on birth was primarily from Karloan, who
20 obtained it from his wife's mother - I am summarising a
21 little bit here - who is recognised as an excellent
22 midwife. `The information was supplemented by details
23 given by Pinkie Mack'. From your perspective, as you
24 tell us as an anthropologist, are there any implications
25 of that, that information about child birth came from a
26 man.

27 A. No, there is - I can't see any problems with this. The
28 fact that Pinkie Mack gave extra details is
29 understandable because, unlike Albert Karloan, she had
30 actually given birth to children and she had also been
31 involved in birth. So I can't see any problem with
32 those sentences in relation to what I have said in
33 evidence.

34 Q. Do you think that there might be gaps in the knowledge
35 or information obtained by the Berndts about, for
36 example, birth and midwifery, on account of the fact
37 that their principal informant was a man.

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- 1 A. The sentence that you read out said that the information
2 was supplemented by details from Pinkie Mack. So
3 obviously the information that the Berndts collected was
4 considered by them to be fairly total.
- 5 Q. I suggest to you that that is not the implication at all
6 from that sentence. They are not suggesting that it was
7 total. They are saying that they got information
8 primarily from Karloan, and that was supplemented by
9 Pinkie Mack. They are not asserting there that they had
10 all the -
- 11 A. But they go on to say 'The usual pattern of the birth'.
12 So obviously they have got an overview of birthing
13 practices and they feel confident to say what is usual.
14 So I would say -
- 15 Q. I take it you don't agree with any proposition that
16 there may well have been gaps in the knowledge of the
17 Berndts about midwifery and birthing practices on
18 account of the fact that the information came from a
19 man, who had got it from his mother.
- 20 A. And the information, as you admitted then, was
21 supplemented by Pinkie Mack.
- 22 Q. Primarily came from a man.
- 23 A. It may well have primarily come from a man, but the
24 information was supplemented by Pinkie Mack so,
25 therefore, on the basis of what I see in this book, I
26 can only believe or consider that the Berndts had pretty
27 well recorded what there was to know about Ngarrindjeri
28 birthing.
- 29 Q. Primarily from one man, supplemented by information from
30 one woman.
- 31 A. If it is supplemented by Pinkie Mack. Presumably she
32 agreed with all the information that they had already
33 got. So they could have gone to Pinkie Mack and got the
34 information they had already got from Albert Karloan.
35 You are trying to separate two bodies of knowledge. I
36 think the use of the word 'supplement' makes it pretty
37 clear that she agreed with the information they had got
38 from Karloan, and she just added in a few details that

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1 Karloan omitted or, because he wasn't - because he had
2 never given birth himself, may not have felt was all
3 that important.

4 Q. I put it to you that you are making huge assumptions and
5 quantum leaps in the conclusions you are drawing from
6 that passage.

7 A. No, I think your questioning by neglecting to, well,
8 acknowledge the word 'supplement' is in there, that
9 you're in fact making the quantum leap.

10 Q. From your knowledge of Ngarrindjeri tradition and
11 culture, would you agree with me that one means or
12 method by which information was passed down or disclosed
13 was in song.

14 A. Are we talking about pre-European Ngarrindjeri culture,
15 or are we talking about 1990s, because I can't answer
16 the question until I know what Ngarrindjeri culture you
17 are talking about?

18 Q. I don't want to create a distinction of pre-European.

19 A. If we are talking about 'The World that Was', yes,
20 clearly song was a fairly important part of transferring
21 knowledge. If we are talking about 'The World that
22 Was'.

23 Q. In the Berndt book, and this is at p.154, there is
24 referred to, songs accompanying the rite relating to
25 menstruation, and Pinkie Mack couldn't remember them.

26 A. I was asked pretty closely this identical question by Ms
27 Nelson. My answer was that it is not surprising by the
28 1940s that Pinkie Mack had forgotten some or even all of
29 the songs that she had heard as a girl back in the
30 1880s, 60 years previously.

31 Q. You tell us of your extensive field work and work as an
32 anthropologist. Are you familiar in any way of any
33 reluctance on the part of Aboriginal people to disclose
34 ceremonies, songs, the rituals or the like.

35 A. Which Aboriginal people are we talking about?

36 Q. Ngarrindjeri people, Aboriginal people generally.

37 A. I am not aware of reluctance to talk about Ngarrindjeri
38 songs and things, because the only Ngarrindjeri songs

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1 that I have been aware of through field work are ones
2 that are very public, associated with singing in church,
3 for example. So I am not aware of any reluctance at
4 ceremonial level, if that's what you are talking about,
5 because I am not aware of a ceremonial level within a
6 contemporary society which would be akin to what you
7 would - what the Berndts would consider ceremonial in
8 terms of 'The World that Was'.

9 Q. Are you familiar with a publication called 'Religion in
10 Aboriginal Australia and Anthropology' edited by Mr Max
11 Charlesworth.

12 A. I do have a copy of that. It is an anthology of several
13 authors, is it not?

14 CONTINUED

- 1 Q. Yes, indeed it is. Looking at the book produced,
2 firstly there are some observations at p.295, and I'm
3 sorry, you will have to search for it, I haven't
4 actually got the line numbers, but it says this -
5 COMSR: Who is 'he'.
6 MS PYKE: This is Dianne Bell, her writings in
7 that particular book, 'Religion in Aboriginal Australia,
8 Anthology', edited by Max Charlesworth.
9 XXN
- 10 Q. At p.295, this is said - that was published, I might
11 say, in 1984, 'From the earliest casual observers to the
12 highly sophisticated analysis of contemporary cultural
13 symbolists, women have been peripheral to the mainstream
14 of interest in the Aboriginal culture and academic
15 anthropology'. In general terms, would you agree with
16 that.
- 17 A. In terms of Australia-wide and the existing detailed
18 ethnographies, there would be some validity in it. It's
19 the type of generalisation that I myself would be wary
20 of making, because it then opens the door for people
21 coming up with work, such as Goodall and Hamilton and
22 others, that falls outside of that general statement
23 but, in sum total, I would agree. Even women who are
24 writing ethnographies such as Daisy Bates, have probably
25 put, or have put more emphasis on men than women.
- 26 Q. At p.296, and again I will just read this out 'The
27 misunderstanding and misconceptions which have
28 characterised so many studies of Aboriginal women's role
29 and status may be seen as the result of the convergence
30 of a number of factors; A observer bias, B theoretical
31 orientation of academic anthropology, and C
32 philosophical assumptions regarding women's place in
33 society'. Again, as a general proposition, do you
34 accept that.
- 35 A. They are all elements that anthropologists, when
36 reviewing older work, would take into consideration, but
37 it doesn't negate the value of earlier work, it just
38 signals that, as she is suggesting here - in fact she

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- 1 says these factors are interwoven - that an
2 anthropologists has to be very careful in reviewing work
3 that's been produced from previous periods of
4 anthropology, but again I suggest that it doesn't negate
5 the value of those works, it just means that one has to
6 be alert to possible biases.
- 7 Q. Again on p.296 `Aboriginal women are reluctant to
8 entrust secrets to other women who seek to work on male
9 rituals.'
- 10 A. Yes. She is talking about Nancy Munn, who worked,
11 without naming the group, had worked in an area which we
12 have already have said in the commission had a strong
13 male versus female gender division of secret sacred
14 knowledge, so by using Munn's work there, what she is
15 saying is so. I would accept that it's quite correct.
- 16 Q. Then at p.297 she says this `Women fieldworkers face the
17 same problem as their male counterparts when it comes to
18 secret material which is restricted to one sex.
19 Aboriginal women have preferred to deny the existence of
20 certain ceremonies rather than allow the significance of
21 their beliefs and practices to be probed. Feigned
22 ignorance by ritual bosses has, in fact, protected
23 certain women's ceremonies which have been performed in
24 the bush and away from the gazes of their own men, and
25 also away from most fieldworkers'. Is that an
26 observation that you've made, or you accept or disagree
27 with.
- 28 A. If this is Dianne Bell, and presumably she's working in
29 the early 1980s in Central Australia, I accept that what
30 she is talking about here is probably quite correct. If
31 it's her experience, then it is correct, but again, I'm
32 not going to validate this to say that it can be
33 generalised right across Australia. Aboriginal people
34 are fairly diverse, and it would be almost insulting
35 really to come up with generalisations that worked for
36 all parts of Australia.
- 37 Q. But do you accept that it may be a situation that some
38 Aboriginal women do resort to denying the existence of

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1 certain ceremonies, or indeed certain beliefs and the
2 like, rather than disclose them.

3 A. Well, if this is Dianne Bell's experiences and they
4 relate to that central area, then I can only assume that
5 she is probably quite correct, and that that statement
6 is correct for that region.

7 Q. I'm simply putting to you this; do you think it might be
8 correct for other regions too, is that something that
9 you're prepared to concede. If that's been found, for
10 example, in the central area, that it might flag for
11 you, as an anthropologist, that there is perhaps an
12 issue.

13 A. The extent of work of, for example, Ian Keene, at least
14 for other regions, suggests that is not the case, so
15 therefore I would say this is a possibility, and also
16 the situation of it not being the case is a definite
17 possibility for other parts of Australia, so it is very
18 dangerous to generalise right across Australia. The
19 Central Australian religion is very much different from
20 many of the coastal religions, and it's very dangerous to
21 generalise from one area to another.

22 Q. Let me put this to you, there are various instances in
23 the Berndt and Berndt book where Pinkie Mack doesn't
24 remember certain songs, or says she doesn't remember
25 certain songs, and says that she doesn't remember the
26 significance of certain ceremonies or rituals. Do you
27 concede it's a possibility that Pinkie Mack is doing
28 what has been suggested by Dianne Bell has been
29 happening with the women in the central area, in essence
30 that she is deliberately not remembering as a defence
31 mechanism, if I can put it that way.

32 A. I regard it as an extremely remote possibility, in view
33 of what we also know through other works of Pinkie Mack,
34 and indeed the descriptions of Pinkie Mack that we get,
35 or the insights into her through this work and other
36 work and, when Professor Berndt and Dr Catherine Berndt
37 were alive, through their own reminiscences of the lady,
38 so I would say it's a very remote possibility. I would

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1 say, it's my explanation, that people do forget, over 60
2 years, songs to be by far the more plausible answer.

3 Q. I will just put this to you, that Pinkie Mack was
4 described by the Berndts as a renowned song maker who
5 had undergone at least the first stage of the female
6 cicatrisation ritual, and claimed not to remember the
7 critical meaning of songs, or didn't disclose their
8 meanings, particularly in respect to matters to do with
9 women and human reproduction. Do you concede at least
10 it's a possibility that there might have been a reason
11 for that beyond not being able to remember.

12 A. The fact that she was, if you want to simplify things,
13 only partly initiated, shows that it was an incomplete
14 sequence. It's only through a complete sequence that
15 you would be able to hear the songs and participate in
16 the songs enough to pass them on. I suppose - well,
17 another possibility could be that, you know, she
18 imperfectly remembered them and therefore, because she
19 didn't have perfect knowledge of them, didn't want to
20 pass them on, but again, that would be a fairly remote
21 possibility. I would tend to support that particularly
22 if she was a song maker, if she got involved in making
23 other songs which weren't of a ceremonial or a high
24 ceremonial nature and, as it was as suggested in this
25 book, 'The World That Was' was over in terms of the
26 informant's view, so songs and initiation practices
27 which were no longer relevant wouldn't be reinforced
28 through the years, so over the passage of 60 years,
29 people forgot things. I've been in similar ethnography
30 situations in another fieldwork areas, which I'd rather
31 not sort of specify, but where there was a similar
32 problem of informants being able to remember some songs,
33 but totally forgetting others, and it was reinforced
34 again and again to me that there was quite a bit of, in
35 Aboriginal English, 'shame' from the point of view of
36 the informant who couldn't remember, but it was, in this
37 one case that I'm thinking of, the truth, he could not
38 remember back, and that would have been a similar period

1 of 50 odd years.

2 Q. As I understand you, what you say is it might be, it's a
3 possibility, but you believe a remote possibility, that
4 Pinkie Mack was choosing not to remember.

5 A. An extremely remote possibility.

6 Q. An extremely remote possibility.

7 A. Without being able to collect more data, one can never
8 be a hundred per cent on anything, so I have to go with
9 the rules of probability.

10 Q. You would agree with me that there is certainly
11 contemporary writing which informs that at least in
12 Central Australia, there is a problem encountered by
13 fieldworkers of that region of women not wanting to
14 disclose -

15 A. Perhaps some parts of Central Australia for some
16 periods, depending on what the political situation was
17 at the time. I'd want to know more about what was going
18 on then, and that's probably available in 'Daughters of
19 the Dreaming', another book written by Dianne Bell.

20 Q. I won't put to you all of the instances where Pinkie
21 Mack says she doesn't remember, but am I right in saying
22 your general answer about the general question would be
23 applied in each and every instance I put to you.

24 A. I would tend to put up the same model to you until I had
25 data to show otherwise.

26 Q. So far as Ngarrindjeri people were concerned, do you
27 accept that there was a specific and specialist domain
28 of knowledge within Ngarrindjeri culture.

29 A. I accept that, and I would say that it would have been
30 primarily divided along the age distinction,
31 particularly if we use Ian Keene's recent book as an
32 insight into secret information in general, but although
33 there is often an element of gender in terms of how that
34 information is conveyed or perceived or publically
35 acknowledged, Ian Keene makes it quite plain that one of
36 its primary purposes is as a manner of making a
37 distinction between older people and younger people.

38 Q. Well, apart from older people and younger people, I

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1 suggest to you that there are well recorded, in
2 Ngarrindjeri culture, domains of specialist knowledge to
3 do with particular occupations, if I can put it that
4 way.

5 A. Yes, specialist knowledge which is reinforced through
6 practices of avoidance.

7 COMSR

8 Q. What is a practice of avoidance.

9 A. Well if we take, for example, birthing itself, as it's
10 quite clear in my opinion in the Berndt book, men knew
11 what was going on and the significance of it, but they
12 avoided that situation for a variety of prohibitions in
13 the popular sense, taboo reasons, and they avoided it
14 just like, in our own society, there are various,
15 without spelling them out, of avoidance practices that
16 gender and age have in relation to particular
17 activities. What I'm saying is that gender division in
18 itself can be either more in terms of avoidance or, in
19 some cultures, to do with secret sacred business.

20 XXN

21 Q. I suggest to you that, in Ngarrindjeri culture, there
22 were specialist knowledges that were separate and secret
23 to the particular group to which it related.

24 A. Are you referring to birthing? I'm having difficulty
25 with examples.

26 Q. As a general concept do you accept that, that there were
27 particular groups within Ngarrindjeri culture who had
28 specialist information that was secret to that group.

29 COMSR: You're not referring to a division by
30 sex for this purpose.

31 MS PYKE: Not at this stage.

32 A. I would have difficulty with that just as a general
33 statement. For example, Ngarrindjeri marriage
34 practices. At any one time, half the people in a
35 particular clan group would have come from outside of
36 that clan, so if you define group as a clan, then there
37 is obvious mechanisms where a lot of information is
38 going both in and out of that unit laterally. I'd need

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1 to know what that group was. I'd accept, as a general
2 term, 'secret' in terms of avoidance, or 'secret' in
3 terms of a division between older people and younger
4 people, but if your group, in fact, is an age category,
5 for example -

6 Q. I suggest to you that there were various groups in the
7 Ngarrindjeri community who had specialist and
8 differential knowledge which was secret in that sense of
9 the word, kept within that group and not disclosed to
10 others, and I will give you some categories. Sorcery.
11 Do you agree with me that there were sorcerers.

12 A. From my knowledge, going through the ethnography, at
13 least part of that was quite public in that -

14 Q. Not all of it.

15 A. Well, I mean obviously the people practising sorcery -
16 and I'm finding that I will be coming up against a s.35,
17 but in general terms -

18 Q. I don't want you to give me the information, but would
19 you agree in general terms there was knowledge of which
20 was confined to sorcerers.

21 A. No, now that you pose that question. I would be
22 willing, and in fact I would state that individuals who
23 were engaging in that activity would naturally keep
24 their own activity secret, because it would be an open
25 attack on someone, but I can't see that there is a group
26 that would be defined, through the act of sorcery, as a
27 group. Individuals would naturally keep their
28 activities secret.

29 Q. Just dealing with the sorcery, are you saying that there
30 was not, for example, a person who was a sorcerer and,
31 as a sorcerer, he had knowledge or information which was
32 not held by the general Ngarrindjeri community.

33 A. Well, you've said 'he', for starters, and women can -

34 Q. I'm just using that as an example, I'm just talking
35 about one person, a sorcerer.

36 A. In general terms it's been put to me by Aboriginal
37 people that sorcery, as a generalisation, could be seen
38 as a practice that older people started to use when

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1 their own physical strength is failing them and, in a
2 preEuropean situation, it was a control mechanism, one
3 of several, that older generations could have in
4 relation to, well, young men, for example, who could be
5 causing trouble, or disputes with other distant groups.
6 CONTINUED

1 So, I accept that there is a high level of secrecy
2 implied in sorcery. What I don't accept is there are
3 groups of people who have equal knowledge from within
4 and disguised from outside. What I am saying is that a
5 body of knowledge which is coterminous with a group of
6 people. There is secrecy in sorcery, yes, but not
7 groups defined through sorcery.

8 COMSR

9 Q. I am not sure that I am following this. You say that
10 sorcerers may have their own secrets, but the fact that
11 there is sorcery is known.

12 A. Widely known. In fact, it has to be widely known to be
13 effective.

14 Q. What about the first part of it. That there could be
15 sorcery practices that are secret to the particular
16 sorcerer.

17 A. Yes, each sorcerer would probably have their own
18 methodology, if you like, which they would - which, in
19 many cases, would involve their clan symbol. Their
20 kinship connections with the environment.

21 COMSR: Does that cover the question you were
22 asking?

23 XXN

24 Q. Do you agree with me that, in relation to sorcery, that
25 there are layers of knowledge. The sort of knowledge
26 that is generally described as inside and outside
27 knowledge. That there is a core that may be secret, but
28 there is a layer that perhaps would be more widely
29 known.

30 A. Naturally a sorcerer would work on the assumption that
31 they had gained or they work on the perception in terms
32 of the wider community that they had gained special
33 information through, say, visiting the sky world. But,
34 again, that would be them visiting the sky world as an
35 individual. And it is information that they would hold
36 as an individual. The fact that virtually every major
37 ethnographic source from the Lower Murray region has a
38 chapter or a substantial part in it on sorcery and the

1 fact that there are people today in the Ngarrindjeri
2 community who know at least the broad nature of how it
3 worked I think shows that it was - the public side of it
4 was quite significant.

5 Q. Yes, but there might - I was simply putting to you that
6 there might be a secret side of it.

7 A. And I have agreed and said that it was on an individual
8 level.

9 COMSR: Yes, I think the witness has agreed with
10 that proposition a few times now.

11 XXN

12 Q. Let me put this to you, according to Berndt and Berndt
13 there were aspects of Ngarrindjeri knowledge that were
14 passed on in a particular way and sorcery is an instance
15 that they have given which was by apprenticeship.

16 A. What page is that on?

17 Q. That is p.149.

18 A. The whole nature of passing through initiations,
19 becoming, in the case of, say, males going from a boy to
20 a man involves apprenticeship.

21 Q. I will read it out for the benefit of others `During the
22 latter part of this relatively long period of "running
23 about", as it was called, boys were attached to Elders
24 Who had specific professions: for instance, sorcery,
25 healing, preparation of the dead, composing songs or
26 processing furs. This was regarded as a preliminary
27 and, indeed, voluntary (depending on a child's interest)
28 apprenticeship.' Would you agree with me that that
29 would seem to indicate that there were particular Elders
30 who had particular knowledge which they passed on to
31 particular people depending on interest.

32 A. A better way of looking at it would be that particular
33 Elders had better skills in certain areas such as
34 preparation of the dead. It doesn't necessarily mean
35 that it is exclusive knowledge. But, in this case, it
36 probably means that they were more skillful with their
37 hands, for example. But it doesn't - I can't see here
38 that they are suggesting that there was - you had to be

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1 as a child enlisted in a certain apprenticeship to get
2 any information or at least the total information on a
3 particular aspect. I think, if it was as you are
4 suggesting, there would have been a couple of extra
5 sentences at least actually describing it that way. But
6 I see it as in any society that there are people who
7 have talents in particular areas and they are encouraged
8 through being attached to an Elder, in this case, in the
9 Aboriginal case, who also has talent and already gained
10 skills in that particular area to be like an
11 apprenticeship. I mean, it sounds like the, you know,
12 most efficient way of running a small group. So, you
13 could have people who are very good with making spears
14 and they specialise. It is a level of specialised
15 Aboriginal tradition. It doesn't imply that there are a
16 series of special clubs that people gain membership to
17 and then go on their business. I think you are reading
18 too much into it, with that proposal.

19 Q. I suggest to you another area where there is a clear
20 description of specialist and differential knowledge
21 relates to putari, Aboriginal doctors, if I can put it
22 in the colloquial.

23 A. It is seen in many ethnographies and that in a sense the
24 same body of knowledge that one could use for sorcery
25 could also be used differently. Used more positively,
26 let's put it that way. It could also be used for
27 healing. So, again, sure, someone could be regarded as
28 a putari, but in another context they could also be
29 regarded as a spearmaker or something like that.

30 Q. I will just read this out, at p.192 of the Berndt book
31 'Apart from home-treatment, a person who was ill usually
32 called for the services of a professional Aboriginal
33 doctor (putari).'

34 A. What line is this?

35 Q. I am not sure what line. I haven't noted the line
36 number. It is p.192.

37 A. I think it is p.193, isn't it?

38 Q. Right, sorry.

1 A. Yes.

2 Q. Yes, you are quite right. I will just read it out
3 `Apart from home-treatment, a person who was ill usually
4 called for the services of a professional Aboriginal
5 doctor (putari). Such a man gained prestige through his
6 successful cases and also received gifts in recompense
7 for his treatment. There were also female putari, but
8 their special area of expertise concerned midwifery and
9 menstruation, as well as contraceptive measures and so
10 forth. The handing on of knowledge was important: one
11 channel for this was serving an apprenticeship to a
12 putari of renown.' Again, would you agree with me that
13 that would seem to indicate the existence of specialist
14 and differential knowledge.

15 A. Differential knowledge based on almost like a class of
16 people through that broader cultural group. So, yes, I
17 accept the fact that a particular person would be
18 regarded as being a good healer and when there is an
19 occasion where they needed a very good healer, naturally
20 that person would be one that would be called for. In
21 the case of women here, someone who had a great deal of
22 success in terms of being a midwife, among other things,
23 would naturally be called for in times when they were
24 needed. It doesn't exclude the fact that other people
25 in the community, if the putari wasn't available,
26 couldn't take on the same functions. All it is saying
27 is that there is expertise and - within the community.
28 That all people are not equal in the sense that people
29 have talents in different areas. And, again, you know,
30 the group is capitalising on the, you know, talents and
31 by making people serve apprenticeships.

32 Q. You have got nothing to - it is a specialist knowledge,
33 isn't it. It is not just a talent or interest. Clearly
34 it is suggested there that it is a particular special
35 expertise and specialty. The handing on of knowledge in
36 relation to that was important.

37 A. It was effective. It made good common sense. Like, I
38 would around my own house, I could do my own carpentry,

- 1 but I prefer to get a professional in.
- 2 Q. Do you agree with me that there is nothing to suggest in
3 there that that specialist knowledge was handed on to
4 the general community. There is nothing in that segment
5 of Berndt and Berndt which suggests that the general
6 knowledge was handed on in a general - the specialist
7 knowledge was handed on in a general way to the
8 community.
- 9 A. There is nothing in it to suggest that the general
10 knowledge wasn't handed on to the general community.
- 11 Q. I am just suggesting to you that you -
- 12 A. So, both questions are equally valid. I would, as I
13 have said - my assumption is, through reading it, that a
14 high level of that knowledge would be widespread through
15 the community, but particularly individuals who had
16 served, as the Berndts say here, an apprenticeship would
17 be the people you would go looking for. But, if they
18 are not available, well, the knowledge is still out
19 there.
- 20 Q. I just simply put to you that there is no basis for you
21 to make that assumption.
- 22 A. There is no basis for you to deny my assumption, either.
- 23 Q. There are, I suggest to you, other -
- 24 COMSR: Are you going to pursue this line?
- 25 MS PYKE: Just a little bit, yes.
- 26 COMSR: Because, to a certain extent, it is
27 repetitive when the witness has made clear his general
28 position.
- 29 MS PYKE: I am not going on. I have just another
30 couple of - I mean, it is one that is probably not
31 necessary to put all of this to witness. Certainly
32 there will be - the book speaks for itself in a way.
- 33 COMSR: Yes, and his position is fairly clear,
34 at this stage, I think, Ms Pyke.
- 35 XXN
- 36 Q. I just want to put this to you: it is at p.170 of the
37 book and it is in about - it is in the second paragraph
38 there about just over half the way down through it, on

- 1 the right-hand side, the sentence 'Of the three young
2 men'. It says this that 'Of the three young men, only
3 Karloan showed an aptitude for assimilating the
4 information they wished to pass on.' And this is
5 talking about the initiation. 'Yet, however receptive
6 he was, he admitted to us that the greater part of the
7 traditional heritage died with those older men.
8 Moreover, he said, they deliberately withheld much of
9 the religious knowledge because in their view it was of
10 little use to members of the younger generation who were
11 coming increasingly under the influence of the mission
12 and of Europeans generally.' Do you agree with me that
13 that would seem to suggest that there was a large body
14 or perhaps a body of religious knowledge that certainly
15 wasn't passed down to those three young men as part of
16 their initiation.
- 17 A. And the latter part of what you read out explains that
18 the older men were recognising that their culture was
19 going through a transformation. So, from - we would
20 have to take that into consideration. That the
21 preEuropean rules that regard the passing on of that
22 information were being severely modified and in some
23 cases cut out altogether.
- 24 Q. I am simply putting to you that, as a general
25 proposition, that we have here a clear example of an
26 indication that there is a deliberate withholding of the
27 large or they say 'much' of the religious knowledge from
28 these particular young men, which would indicate -
- 29 A. Is it religious knowledge?
- 30 Q. Yes.
- 31 A. Earlier on it is talking about sorcery.
- 32 Q. It says 'Moreover, he said, they deliberately withheld
33 much of the religious knowledge because in their view it
34 was of little use to members of the younger generation.'
- 35 A. Again, I have to say that it is in the situation that
36 their culture is going through a rapid transformation
37 and the Berndts are putting that forward as at least
38 part of the explanation to say why information was being

1 cut off and selectively being passed on, in some cases
2 not being passed on. So, I would say it is not a clear
3 example of what you are suggesting it is.

4 Q. I suggest to you it is certainly a clear example of how
5 it might be that, as time went by, some people had
6 information, for example, in relation to religion, which
7 others didn't.

8 A. Given that, yes, given that Karloan was involved in
9 that last sequence of initiations some information
10 was, in relation to that part of the religion, was
11 naturally being handed on. Otherwise he wouldn't have
12 been in the initiation. So that this is what the - we
13 are talking about, a passing on of information in the
14 1880s, yes.

15 COMSR

16 Q. Are you suggesting that it was a deliberate withholding,
17 because it was secret, or because the younger members
18 weren't receptive to that information, because of other
19 influences.

20 A. Yes, I think, if it is the same model that we would
21 know of from other parts of Australia, there came a
22 time when older people made a decision, right or wrong,
23 that they wanted to withhold their culture. That it
24 was no longer relevant to the mission, to the new way.
25 The new forces that were controlling their community.
26 I mean, it is a very sad story, but it has happened
27 again and again and it is still happening in some parts
28 of Australia in terms of older groups of people
29 basically saying that they won't pass information on,
30 because the environment which - the social environment
31 that they knew when they were younger is no longer
32 around. And, in a sense, they are saying that their
33 time is over. The whole title of this book is, 'The
34 World That Was', is sort of a sad testimony to that
35 fact. So, I have a great deal of difficulty
36 extrapolating out of this a general rule, when it is
37 quite clearly - when the society or Yaraldi society,
38 if you want to call it that, was on the brink. The

- 1 last initiations were going through. And, for right
- 2 or wrong, older people were, at that time, evaluating
- 3 whether there would be another or an initiation,
- 4 whether the information would be passed on.
- 5 CONTINUED

1 XXN

2 Q. This is something I have picked up in Berndt and Berndt,
3 and I would like you to comment on it. This is at p.210
4 'Kukabrak society appears to have had no secret sacred
5 rituals'. Then the footnote says this 'While certain
6 elements of the male initiation ritual (see chapter 10)
7 was said to have been secret sacred, the ritual as a
8 whole was not'. Do you know -

9 A. Elsewhere in the book - and it is documented by other
10 sources such as Tindale, and I believe I put them in my
11 statement - they make the point that older women were
12 excluded from the prohibitions about who could be there
13 for the male initiation rituals. So I'm not clear
14 whether they are actually saying those older women were
15 excluded or just that women in general were excluded.
16 It is quite well documented - and it is in my statement
17 - that older women were not excluded in male
18 initiations.

19 Q. I have had an opportunity of looking at these articles
20 that you produced yesterday 'The Encyclopaedia of
21 Aboriginal Australia', the article on contemporary
22 religion that has been tendered. Firstly, who did you
23 say wrote that article.

24 A. Debra Bird Rose. Her initials are at the bottom of that
25 segment.

26 Q. Do you assert that what we are dealing with here, this
27 Ngarrindjeri case, if I can call it that, is a case of
28 the syncretic movement, as discussed by Debra Bird Rose
29 in that article. Are you drawing any -

30 A. I am saying that her model of what's happening in
31 south-eastern Australia - and it is not just her model,
32 there is a body of literature that Swain and Rose have
33 added quite a bit to, including some books which I refer
34 to in my statement - but what I am saying is that that
35 body of literature, and you have got two examples there,
36 does put forward a model that explains a fair bit of the
37 aspects, the formulations that we have on the Hindmarsh
38 Island secret sacred women's business.

- 1 Q. What is your basis for contending that what we are
2 dealing with here is in any way a case of a kind that is
3 referred to in that article.
- 4 A. The description in that last paragraph is one bit of
5 firm evidence. The papers and the books basically - I
6 am sort of having difficulty condensing it all into one
7 or two sentences - but they are talking about how the
8 landscape, to many Aboriginal people, particularly in
9 south-eastern Australia, although they have got examples
10 from other areas, symbolically takes on the role of a
11 body of a female ancestor in opposition to what was a
12 male dominated colonizing process a hundred odd years
13 ago. The Debra Bird Rose that you are reading at the
14 moment, points out elements of this spiritualism that
15 stress healing and other things. I would have to have a
16 copy of it in front of me if you wanted me to read out
17 the relevant sections.
- 18 Q. Presumably it has been tendered because you think it has
19 got some relevance to what we are dealing with in the
20 here and now.
- 21 A. Yes.
- 22 Q. When was that.
- 23 A. Is it 1994?
- 24 Q. 1994.
- 25 A. But again, that is just a summary of quite a large
26 literature which I believe should have been referred to
27 in the Fergie report.
- 28 Q. You better run that past me again. What do you think
29 should have been included in the Fergie report.
- 30 A. Those sources, that literature, what that literature
31 would add to the situation.
- 32 Q. Literature about syncretic healing methods and the like,
33 contemporary religion, Christianity - let met just read
34 them out to you -
- 35 A. Contemporary spirituality.
- 36 Q. Uniting Aboriginal and Islander Christian Congress
37 publications -
- 38 A. I am not sure what part you are reading. You are not

- 1 reading from the segment that was highlighted.
- 2 Q. In any event, you say that all of that should have been
3 referred to in Dr Fergie's report.
- 4 A. Yes. It is all literature that has been readily
5 available, particularly over the last six or seven
6 years. Swain and Debra Bird Rose have been working in
7 that area, as have other anthropologists -
- 8 Q. Is that sort of literature included in your appendix to
9 your - you have not referred to that -
- 10 A. I refer to some of that literature. I don't refer to
11 The Encyclopaedia. I refer to other writings by Debra
12 Bird Rose and Swain which make the same points. I have
13 brought the commission's attention to that because I
14 think it is a crystallization about what they are both
15 saying in their various publications.
- 16 Q. Have you read a review in Oceania, Volume 65, No.1, on
17 some of Swain's most recent book, which indeed
18 incorporates that argument that you have put to us.
- 19 A. I know there are some quarters where that would be - he
20 would be savagely attacked. That's the nature of the
21 academic game. You can't write anything significant
22 without being taken to task on it.
- 23 Q. I will read you this critique of it, which says `The
24 cover blurb is once again accurate in describing Swain's
25 unorthodox arguments as "provocative" and "controversial".
- 26 A. That does not mean it is not true. All advances within
27 a discipline are inevitably regarded, when they divert -
28 when they step outside of the mainstream, all advances
29 are always going to - in most cases are going to attract
30 that type of criticism.
- 31 Q. I am simply putting to you, do you seriously suggest
32 that Dr Fergie should have included all of that debate
33 in her report.
- 34 A. It was extremely relevant to the report that she was
35 doing, particularly in the sense that what she was
36 describing had never been described for the Lower Murray
37 region. I think it is criminal that she didn't refer to
38 that.

- 1 Q. If it is that criminal, why did we get this so late in
2 the event, after you have finished your evidence in
3 chief, made your statement and the like.
- 4 A. As I have just said, that's a crystallization of the
5 work that I have referred to in my statement. I wanted
6 to make it easy for people to digest the outcomes, the
7 generalisations that that literature puts forward.
- 8 Q. In any event, I suggest to you what you have done is
9 brought that along as a bit of an afterthought and -
- 10 A. Not at all. As I said in evidence yesterday, I was
11 shown the article about the Onkaparinga River the night
12 before -
- 13 Q. I am not talking about that. I was talking about just
14 that -
- 15 A. It is all relevant.
- 16 Q. We will get to that after. I am suggesting to you, to
17 come here late in your evidence, after having given your
18 examination-in-chief, having got halfway through being
19 cross-examined, to produce a 1994 article that is
20 described as 'provocative' and 'controversial', and say
21 it is criminal that Dr Fergie didn't include that
22 article in her report, is self-serving nonsense.
- 23 A. That information could well have been provided when I
24 originally gave my statement. Counsel assisting
25 considered that, in view of the information that had
26 been given so far, perhaps that should have been given
27 back then. It could have been given back then. I was
28 in possession of all of that material before I ever
29 stepped foot in this building.
- 30 Q. You have referred to the O'Brien Williams article. I
31 haven't got the transcript here in front of me, but, as
32 I understand it, if I remember correctly, you allege
33 that this was an example of some sort of mother earth
34 debate or conspiracy or recent development.
- 35 A. I never alleged conspiracy.
- 36 Q. Perhaps you can explain it to me. I clearly didn't
37 understand what you were talking about yesterday.
- 38 A. I explained it yesterday. Can you give me the page and

1 I will see if there is something I have left out?

2 Q. Page of what.

3 A. Page in the transcript.

4 Q. I just said to you I haven't got the transcript.

5 A. The parts of the article that I read out made a number
6 of points in terms of the recent importance, for
7 example, of looking on maps in order to determine
8 mythological spiritual significance. For example, the
9 way that the body was described in relation to the maps.

10 Q. Is this another example of perhaps a fabrication,
11 conspiracy, that we have got.

12 A. I have not used those words, and I wouldn't say - what I
13 am saying is - and I thought it was pretty clear from my
14 explanation of Rose and Swain's work - that these are
15 very strong influences on Aboriginal people, and that's
16 to do with the mother earth, the colonial images of the
17 colonized landscape, and that's another example of that
18 influence at work. I am not saying that the authors of
19 that paper have fabricated anything. I am not saying
20 that.

21 Q. So the authors of this article who have drawn some
22 analogy with the shape of the Onkaparinga River -

23 A. Not some analogy. That's their explanation for it.

24 Q. Yes, an explanation. The shape of the Onkaparinga River
25 representing the reproductive organs of a woman, you
26 haven't produced that as an example of fabrication.

27 A. As I have said twice already, I haven't said they were
28 fabricating. I am saying this is another example of how
29 these mother earth notions are becoming increasingly
30 important in contemporary - during the last 20 or 30
31 years of Aboriginal - it is an emergence of a
32 spiritualism that has mother earth as a major theme.

33 Q. There is no mention of mother earth or maps in this
34 article, is there.

35 A. Yes, there is a mention of the map. They include a Lake
36 Eyre Basin example of a myth, that suggests total
37 knowledge of the whole topography of Lake Eyre, and they
38 are using that as another example of how Aboriginal

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1 people could have a map-like view of the landscape. So
2 there is discussion. I mean, it is a very small paper.

3 In total number of words, it is not that great.

4 Q. What is the relevance of the Kaurna beliefs, that you
5 produced this article for, to the current debate about
6 Hindmarsh Island. I am just having some difficulty in
7 working out what the relevance of this is to what we're
8 talking about here in this Royal Commission.

9 A. I could spell it all out, and I would probably come up
10 against all the problems of Section 35, because I would
11 then have to talk about formulations.

12 COMSR: We are probably going into some private
13 session for a time.

14 MS PYKE: I would hope, seeing this has been
15 tendered in a public session -

16 COMSR: But discussion of it might well involve
17 matters -

18 MS PYKE: I don't know what is in the witness's
19 mind.

20 COMSR: I understand there are two or three
21 issues that you have touched upon, that if you are going
22 to develop them, would require a private session.

23 XXN

24 Q. In general terms, are you saying there have been
25 parallel developments of certain concepts over a period
26 of time.

27 A. That's as good a way of expressing it. It is showing
28 another - it is another example of the growing trends
29 that Rose and Swain have discussed in a number of
30 publications.

31 Q. You have just used the terminology of 20 or 30 years.
32 Are you able to tell us when this concept, vis-a-vis the
33 Onkaparinga River, started or -

34 A. From my knowledge, it is fairly recent, but I have not
35 made a detailed study. It seems to have been a piece of
36 work that two Aboriginal people have put forward as
37 their explanation of the landscape. In terms of 20 or
38 30 years, that's the time period that Swain and Rose

1 have tended to talk about in relation to south-eastern
2 Australia and these beliefs.

3 COMSR

4 Q. If a belief is introduced in that way and it persists
5 for a number of years, does it then become part of the
6 traditional values of -

7 A. Yes, if a belief like that is believed by a substantial
8 number of people, and it is reinforced over the years,
9 then whether it was technically an introduction or not,
10 or even - I'm not talking about a particular example -
11 but even if it was a fabrication, something introduced
12 by a total outside source, if it is imbedded in the
13 minds of a couple of significant people, and then they
14 gather a following around those beliefs, and presumably
15 it is modified to make it more workable to fit in with
16 other known body of data, then, yes, it can become a
17 belief - can become a tradition. That is perhaps some
18 insight into a whole wide range of modern beliefs that
19 come into being.

20 XXN

21 Q. As I understand it, you have got no difficulty in
22 accepting that this is a generally validly held belief
23 by the Kurna people.

24 A. I would say it is a generally held belief by the authors
25 of that paper, but I am not aware that the sum total of
26 all the people who call themselves Kurna are even aware
27 of it. With the nature of how the Kurna community is
28 still building - and it is a community that is built
29 from people who have grown up in some cases at Point
30 Pearce, in some cases at Point McLeay - I would doubt
31 very much whether those beliefs have been around long
32 enough, and, in a community sense, been tested and
33 discussed to be labelled then as something that all
34 Kurna people know. But I am not suggesting that the
35 authors have written that as fiction. They clearly
36 believe that, and I am not at all poking fun at them for
37 believing that.

- 1 Q. Do you think that that belief is restricted only to the
2 authors of that article.
- 3 A. That belief in terms of the detail, but that belief in
4 terms of the influence, I'm saying that that is another
5 example of what Rose and Swain are saying. There are
6 levels, there's a set of initial influences, and they
7 get expressed in different places of landscape in
8 different ways if there are people there who are in tune
9 with those influences. The influences that Swain and
10 Rose talk about do tend towards making connections
11 between an ever increasing wider body of Aboriginal
12 people, so there is a hint - not a hint, there is an
13 aspect of building a pan-Aboriginality through that
14 process, but it's a process that is still underway and
15 will continue, I'm sure, for many years to come but, in
16 terms of the landscape, to plug that landscape into
17 those beliefs, there is naturally going to be a
18 different expression of those beliefs in terms of
19 landscaper on each occasion. We don't live in a
20 homogenous landscape. There is much variation and,
21 therefore, any imposition on top of that, overlay on top
22 of that, on what Swain and Rose are talking about with
23 the mother earth concepts, naturally the expression of
24 it in detail will be different on each occasion.
- 25 Q. Getting back to your evidence, you made some reference
26 in your evidence to the nature of oral history, or you
27 talk about oral history, put it that way, and that's at
28 p.191 of the transcript. You say this, you're talking
29 about oral history, it's at line 11, I think, 'Oral
30 history has this tendency of coming in direct conflict
31 with recorded resources of history so, by its very
32 nature, oral history changes its very form virtually
33 with every speaking of it.'
- 34 A. That's correct.
- 35 Q. But do you accept that, in a community such as the
36 Ngarrindjeri community, that oral history forms a very
37 large part of the history of the people.
- 38 A. History of the people, are you talking about in a

1 definitive sense?

2 Q. Ngarrindjeri people.

3 A. Are you talking about the history of the Ngarrindjeri
4 people in a definitive sense?

5 Q. Yes.

6 A. Well again, as the number of points raised, first of all
7 an academic style history or, for that matter, an
8 academic style ethnography, is an author's perception,
9 whereas oral history is, by its very nature, an
10 insider's perception of what is important and what
11 happened, and oral history is very important in terms of
12 getting insights into how a group of people see
13 themselves, what's important about their own history, so
14 it's of immense importance in terms of building an
15 ethnography but, by building an ethnography, an
16 historian, as an outsider, will arrange those arguments
17 quite differently. Oral history should not be used or
18 seen as an attack on academic history or ethnography.
19 Oral history is very important, and I would not suggest
20 that people who have an oral history should be told that
21 that is wrong, and that they should be looking at
22 conventional history. Oral history is, in a sense, not
23 history, it's a view of what is important to them, what
24 has been of importance in their history. It's not a
25 lineal record of events in a western European academic
26 style of history.

27 Q. I suppose I'm simply asking or putting this; that until
28 Europeans came to this country, Aboriginal history was
29 entirely oral, if we exclude perhaps paintings.

30 A. Well, no, entirely oral in what sense? I mean
31 participating in ceremonies, I wouldn't consider that
32 oral, even though it may involve being put, for example,
33 in a psychic state and visiting the sky world. Learning
34 songs, being able to act out the songs, the movement, is
35 just as important as what is sung in many cases. If
36 you're saying that just the culture was just handed on
37 by someone sitting down and just giving a long narrative
38 to groups of people and saying `Well, now it's handed

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- 1 on', I don't think it's quite like that. It is
2 certainly true that Aboriginal people didn't have
3 computers and things and therefore a way of recording
4 things in a sort of physical or repetitive way. I just
5 think your generalisation was a bit too broad.
- 6 Q. The fact that European or academic history hasn't
7 recorded an aspect of the oral history of the
8 Ngarrindjeri people, doesn't mean that that didn't
9 exist, does it, the fact that it wasn't recorded in
10 writing.
- 11 A. Well, if we concede that oral history is something that
12 incorporates quite a bit of change, then if an academic
13 style history anthropology - we'll take it as a whole
14 body rather than one or two particular works - hasn't
15 recorded something as significant as that, and there is
16 a very strong suggestion that something of that
17 importance hasn't been recorded before, it may well have
18 been a recent import or formulation. I mean that
19 question would have to be asked. There may well be a
20 reason why something wasn't recorded before, but you
21 would have to look at the sum total of all of the
22 circumstances.
- 23 Q. I'm simply putting the simple proposition to you; the
24 fact that white man's history hasn't recorded a
25 particular oral Aboriginal piece of history or
26 tradition, does not mean that that didn't exist or
27 doesn't exist. The fact that it's not recorded doesn't
28 invalidate it.
- 29 A. It wouldn't in a region where there is not much history
30 or anthropology that has been done. In a very heavily
31 worked area like the Lower Murray, I would say that that
32 is extremely unlikely.
- 33 Q. We have already seen examples in Berndt and Berndt
34 where, for instance, certain religious information
35 wasn't passed down to particular people. If an element
36 of that that hasn't been recorded in white people's
37 literature, you're not going to suggest that that didn't
38 form part of the belief system of the Aboriginal people,

1 the Ngarrindjeri people.

2 A. Sorry, you've lost me that question. What is the
3 question?

4 Q. What I'm putting to you is this; the fact that white
5 European recording hasn't recorded particular pieces of
6 Ngarrindjeri history doesn't mean that it didn't exist
7 and wasn't important to the Ngarrindjeri people.

8 A. It depends on what that particular part of Ngarrindjeri
9 culture was. If it's something of such immense
10 importance that the very nature of the Ngarrindjeri
11 cosmos hanged off of that, then I would say that it is
12 significant that it hadn't been recorded, and that I
13 would then favour the weaknesses of oral history that we
14 have just discussed, and look towards a recent
15 formulation, but there are still new facts coming in in
16 terms of things that haven't been recorded. I myself,
17 for example, managed to identify a number of species of
18 plant food during the 1980s which we just had a name
19 for. New facts come into the ethnographic situation all
20 the time. It's just a matter of whether the new facts
21 challenge the overall body of knowledge that is already
22 there.

23 Q. Even if they do challenge the overall body of knowledge,
24 it doesn't mean that they are necessarily invalid.

25 A. If a new fact comes in which dramatically challenges the
26 model, the knowledge that's already there, then one
27 would have to investigate why there is that challenge,
28 and in terms of, say, the Lower Murray area, if the new
29 data is still not being able to be fitted into the
30 overall model, then you start looking broader, you start
31 looking at influences that are perhaps not indigenous,
32 brought up from within the Lower Murray region, things
33 that have come from outside of the region.

34 Q. Whose model. You keep refer to 'the model'.

35 A. The model. I would say, for example, the statements
36 about, you know, that the Berndts and Tonkinson have put
37 in theory about the nature of the secret sacred
38 business, that's part of the model. The model changes,

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1 of course, according to what you're taking about, but
2 perhaps a better way of looking at that is the
3 ramifications of the sum total of the literature that's
4 been written on a particular aspect of a region.

5 Q. I mean, you referred earlier to academic history, but
6 the reality is that academic history is a view as well,
7 isn't it. I mean there are biases in academic history.

8 A. There's always going to be biases, but one would hope -
9 and this is the same for anthropology - there is core
10 information there that if there are facts that can't be
11 disputed, that say that such and such happened in such
12 and such away or on such an such a date, that that forms
13 the cornerstone, the foundation, of other information
14 that's put on it, and of course someone, an Aboriginal
15 person, for example, writing a history of Point McLeay,
16 could use say the same basic core facts that I would
17 use, and they would come up with a different
18 interpretation in terms of stress, but it would still be
19 based on the same core knowledge and, therefore, their
20 version wouldn't necessarily challenge the version that
21 I put forward.

22 Q. You have referred to invention of tradition in your
23 evidence. You've said in your statement, at p.8 of your
24 statement, 'I have no doubt Ms Kartinyeri, or Dr
25 Kartinyeri as we know she is, and many of the women who
26 listen to her, wholeheartedly believe in her basic
27 account'. What were you referring to there when you
28 said 'her basic account'. Is that the secret sacred
29 women's business, her account of it.

30 A. I have to say 'basic account', because I haven't read
31 the other appendices of the Fergie report, but what I'm
32 saying is that due to the circumstances whereby this
33 information came about, that it gathered a following,
34 certainly not, as is the evidence of the dissident
35 women, totally throughout the community, but it gathered
36 a following, and I would not consider that many of the
37 people who follow Dr Kartinyeri's beliefs are
38 fabricators or liars or whatever, there is an obvious

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1 level of belief here, I'm saying there are some
2 variations and, in some cases the story seemed, if you
3 follow through the various quotes in the press, the
4 basic account has a number of variations put on top of
5 it but, yes, I'm saying that I am sure there are people
6 who believe in the women's business, the secret sacred
7 women's business on Hindmarsh Island.

8 Q. You say this in your evidence, and it's at p.204, 'I'm
9 not challenging anyone's view of the past, except in the
10 context of the secret sacred women's business connected
11 with Hindmarsh Island before the 90s'. As I understood
12 your evidence, were you trying to make the point there,
13 just as you've given your evidence now.

14 A. Sorry, I mean I can't see anything there that conflicts
15 with what I've said in the statement.

16 Q. All I meant is what you've said there is some marriage
17 of what you've just told us.

18 A. It's more than that. All I want to say is that that
19 statement is consistent with that statement, although
20 I've got more of an explanation in this (INDICATES), I
21 don't want to read it out again, but more of an
22 explanation.

23 Q. So certainly the bit, 'I'm not challenging anyone's view
24 of the past', again by that you are suggesting that you
25 accept that the opponent women, if I can put it that
26 way, have a belief.

27 A. I accept that they have a belief. Exactly how much of
28 that belief is part of the formulations, what we know
29 through looking through the media and other sources and
30 other reports, I don't know, but I'm sure that, deep
31 down, a lot of the women who support the women's
32 business do believe, at least at the most basic level.
33 The point, this is what is said in here, the question I
34 was asking myself is 'Sure, that's the case now, but was
35 that the case before the 1990s' and, from my knowledge,
36 it was not the case before the 1990s.

37 Q. Well, from your knowledge, you say that you hadn't heard
38 of it before the 1990s.

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1 A. More than that, from my knowledge through everything
2 that I've read, written, all of that.

3 Q. When I said `heard', I meant to incorporate that. So
4 what you're saying is that you hasn't read or heard of
5 it before the 1990s.

6 A. And since I did hear of it in, say, 1994, I have not
7 been able to find any evidence, re-reading all of these
8 sources, to support it, so it's more than that. There
9 wasn't any evidence I was aware of before and, in terms
10 of it being a preEuropean belief, I can't find any
11 evidence of it now.

12 Q. Well, let's not worry about preEuropean. I mean there
13 is nothing that suggests that an Aboriginal tradition
14 must be preEuropean.

15 A. Well, it is being put forward as a preEuropean belief.
16 I'm not aware that it's ever been stated to be a belief
17 that began in 1994.

18 Q. There is a huge deference between preEuropean and 1994.

19 MR MEYER: This one is stated to be 40,000 years
20 old, that's the evidence. We haven't been here quite
21 that long.

22 XXN

23 Q. I'm simply putting to you that there is no requirement
24 for Aboriginal tradition to be, for the purposes of the
25 act as I've called it, for it to be preEuropean or
26 indeed centred or located in any time frame, is there,
27 for the purposes of the Federal act.

28 A. The Federal act, again I've already stated I'm not
29 intimate with the act, but it would be important to
30 document all examples of that tradition, knowledge of
31 that tradition existing, even if the details aren't
32 known. It's such an important issue you would be
33 obliged to, I would imagine, if I was in that position,
34 prove, as much as possible, whether it was a 1994 belief
35 in terms of its beginning, or whether it was there much
36 earlier. I mean that's the use of the ethnography
37 literature that we have.

38 Q. Well, do you say that you're able to pinpoint for us the

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1 moment at which this belief started, and with whom it
2 started.

3 A. The evidence that you've heard through the commission
4 and my own narrative, my own knowledge of what was going
5 on and what information and how I gained information
6 from the major players, that to me suggests something
7 late March/April 1994, but until presumably the
8 investigation which the commission is undertaking is
9 over, I mean that might be modified, but that's my
10 theory, if you want to put it that way.

11 Q. So your pinpoint in time is around about the time that
12 Doreen Kartinyeri was speaking to you about the
13 connection between the name 'Kumarangk' and pregnancy.

14 A. Days or weeks, within that general process.

15 Q. Do you say that conversation with Doreen was in about
16 March, is that right.

17 A. No. I think I'd have to look at my statement, but April
18 was the main month that those things were happening.
19 I'd have to look at my statement, because a lot of these
20 events were placed in between known dates, like when I
21 started my leave, and when we unpacked the Tindale
22 collection at the museum, those kinds of things.

23 Q. Is what you're saying this; you see that as the origin
24 of it and from there, Doreen Kartinyeri has constructed
25 whatever.

26 A. I think the origin is probably more - correction, I
27 would say that it's quite likely that a number of
28 sources of information have sort of converged and come
29 up with a formulation that one or more of the sources
30 wouldn't have originally have had. That's just my
31 guess. You were asking me for my guess.

32 Q. Is what you're saying this; that Doreen Kartinyeri may
33 have had bits of information that she was acquiring over
34 a period of time, including what she -

35 A. What I did say in my statement was that she was working
36 it out.

37 Q. Let me just go on with with what you're saying. Is what
38 your taking this; Doreen Kartinyeri, as far as she is

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1 one of the opponent women, over a period of time was
2 getting information from a variety of sources, including
3 from the Ngarrindjeri community, the Central Australian
4 community and the western desert community over a period
5 of time, and this filtered down ultimately in April 1994
6 to the crystallisation of a view or theory.
7 CONTINUED

- 1 A. I think that is over - I think that is probably the
2 basis of it, but I would think it is a bit more complex
3 than that in that we can't discount other players
4 involved in that. As I have already said, a complex
5 interplay of a number of people. What their motives
6 were, I wouldn't guess.
- 7 Q. In terms of time frame, you don't know whether this is a
8 process that would have been going on for years.
- 9 A. As I have already said, I believe it to be from my
10 knowledge March/April, particularly April, but that
11 might be modified, depending on new evidence that comes
12 in.
- 13 Q. I am simply putting to you this, are you saying that
14 this whole concept of secret sacred women's business
15 just started off with a thought in April 1994 -
- 16 A. No.
- 17 Q. And evolved from there. That is what I am trying to put
18 to you, or is it the situation that you are saying that,
19 look, over a period of time, some of these women
20 acquired bits of information from Aboriginal communities
21 generally. Let's even put it that way, which finally
22 distilled itself down to being crystalised in 1994 as
23 being the concept that we heard about.
- 24 A. It is more of the latter. There are various trends out
25 there. The Aboriginal communities re-establishing links
26 to the landscape in the process of rebuilding their
27 identity. That is quite to be expected and justified.
28 And the various trends that I have talked about
29 converged on a series of other factors which - and I
30 don't see that those influences are the only factors. I
31 am just trying to explain as an expert witness on the
32 culture side those particular aspects. But those
33 influences have played a major role in why a very large
34 number of Aboriginal people, you know, believe, you
35 know, this secret sacred women's business on Hindmarsh
36 Island. So, it has to be said.
- 37 Q. Is what you are saying this, that the secret sacred
38 women's business on Hindmarsh Island is a - in your

1 definition of, or your concept of invention of tradition
2 similar to what has been happening in other Aboriginal
3 communities and that there has been a -

4 A. Sure, as 'The Invention of Tradition' is a title of a
5 book which talks about these processes and actually
6 talks about or the main papers that I am familiar with
7 in that volume are in relation to European examples of
8 reinvention of tradition. So, it is a fact that
9 cultural groups do start to play around with their own
10 origins, from time to time. Particularly groups perhaps
11 where there is quite a substantial shortage of
12 historical facts that are readily available to
13 challenge.

14 Q. What I am putting to you in general terms is this, that
15 it is just simply not possible to pinpoint the starting
16 point of - and I will use your terminology - the secret
17 sacred women's business in April 1994. Even on your own
18 discussion of invention of tradition. It is something
19 that clearly has evolved in its various pieces over a
20 period of time.

21 A. No, this is where we make the distinction between secret
22 sacred women's business on Hindmarsh Island, which is
23 what I am saying March/April 1994 and as distinct from
24 all of those other influences which have, in some cases,
25 if we follow the Swain and Debra Bird Rose literature,
26 have been growing over a number of years. Over the past
27 10, 20, 30 years. So, we can't roll them into one lump
28 and say, bang, it just all happened and all of its
29 origins, if you are just talking about those broader
30 influences. But, if you are talking about secret sacred
31 women's business on Hindmarsh Island, I have given you,
32 within a few weeks, whatever, my estimate, on the data
33 that I have had available, of when it happened. The
34 investigation in the Commission may modify that, in one
35 way or another.

36 Q. I am just trying to, I suppose, get some clearer idea of
37 what you talk about in terms of the invention of
38 tradition, because that is what you are saying has

1 happened here, isn't it.

2 A. I have used that term, because it is a term used in the
3 title of that book, which describes exactly those
4 processes.

5 Q. All I am trying to clarify with you is this, I suppose:
6 That, notwithstanding what you say that you believe is
7 the concept of secret sacred women's business
8 crystalised in April 1994, the forces giving rise to
9 crystallise Aboriginal tradition, the concepts, the ideas
10 would have - have been something that was acquired by
11 the players - again to use your phrase - over a period
12 of time.

13 OBJECTION Mr Abbott objects.

14 MR ABBOTT: I object to the question, because we are
15 slipping from secret sacred women's business to what
16 this witness has made clear is more specific. Secret
17 sacred women's business in relation to Hindmarsh Island.
18 And my learned friend can't ask questions on one and
19 expect an answer to the other.

20 MS PYKE: I thought I made it clear what I was
21 asking, but I will ask it again.

22 QUESTION REPHRASED
23 XXN

24 Q. You are saying that the concept of secret sacred women's
25 business on Hindmarsh Island was formulated - and I use
26 that phrase - in April 1994 or thereabouts.

27 A. Yes, I am saying that.

28 Q. But you are saying that that is something that has -
29 that that formulation has occurred by way of a process
30 of invention of tradition.

31 A. Yes, that's a convenient way of describing it.

32 Q. I am simply putting to you that the forces behind the
33 formulation must have been acquired over a period of
34 time. It just doesn't happen in a vacuum.

35 A. Nothing ever happens in in a vacuum, but there are
36 various influences out there and people can selectively
37 use those influences to push a particular political
38 line. I mean, that happens all the time.

1 Q. I am simply putting to you that the various influences
2 that may have lead, on your theory - and we don't accept
3 it, I might add - but the various influences would have
4 been or might have been influences that would have been
5 at play over a period of time.

6 A. What do you mean `at play'? With those particular
7 women, or just out there generally in the community?

8 Q. With those women, firstly.

9 COMSR: I don't know how this witness can answer
10 that question about what other people might have been
11 influenced by and when, Ms Pyke.

12 MS PYKE: He has purported to give in evidence
13 where he thinks it had its origins, where it was
14 formulated.

15 COMSR: The presents of influence is one thing,
16 but, when they influence particular people, I don't know
17 that it is something this witness can answer.

18 XXN

19 Q. The article or the book that you refer to is `The
20 Invention of Tradition', edited by Eric Hobsbawm and
21 Terence Ranger.

22 A. Yes.

23 Q. Would that be the article or the book that you refer to.

24 A. That's correct.

25 Q. The phrase used is `invention of tradition', but by
26 that, I mean, is what meant this: the evolution, not in
27 the sense of improvement, but an evolving of tradition.

28 A. I would be more comfortable with a change of tradition,
29 but we are talking about perceptions. If we are talking
30 about perceptions, then often the change is not
31 acknowledged. And the example in that book of, say, the
32 highland tradition of Scotland, that was an invented
33 tradition. And I will probably get in trouble for
34 saying that, but it is in the book. And it gives an
35 example of how that was changed and, yet, there has been
36 the perception of continuity. So that it would come as
37 a shock to a lot of people who are either immersed in
38 that culture or hold those views dear. So, we have to

1 make a distinction between the insiders knowing that
2 there is change and the change itself.

3 COMSR

4 Q. If it is an invention of tradition, does that mean that
5 something which was not there previously has appeared in
6 the tradition.

7 A. That's right. And it implies a - sort of a more radical
8 change. I mean, we accept that it is the nature of
9 culture to change all the time, but, in the case of
10 invention of tradition more particularly the examples
11 talked about there are talking about fairly major
12 changes.

13 XXN

14 Q. I will read out to you some passages from this book.

15 A. Which chapter, because there are several authors?

16 Q. The Eric Hobsbawm -

17 COMSR: Is this along the same lines of trying
18 to elicit from the witness what he means by invention of
19 tradition?

20 MS PYKE: Yes, I put to him a definition.

21 COMSR: Hasn't he covered that?

22 MS PYKE: I want to put to him the definition used
23 in the book. I want to put a couple of things in this
24 article and get his views about it.

25 COMSR: Yes, but we don't want to go over the
26 same ground over and over again once the witness has
27 expressed an opinion, do we?

28 MS PYKE: Right.

29 XXN

30 Q. I will just put this to you: that in the introduction -

31 MR ABBOTT: What page?

32 MS PYKE: P.1.

33 XXN

34 Q. I will read it out `The term "invented tradition" is
35 used in a broad, but not imprecise sense. It includes
36 both "traditions" actually invented, constructed and
37 formally instituted and those emerging in a less easily
38 traceable manner within a brief and dateable period.'

1 Is that the sense in which you have - either of those
2 senses, the senses in which you have used 'invented
3 tradition' to apply to what has happened in relation to
4 secret sacred women's business on Hindmarsh Island.

5 A. Yes, my use of that term is covered in part of what you
6 have said there, yes.

7 Q. Which part.

8 A. You will have to read it out to me again.

9 Q. Right, 'It includes both "traditions" actually invented,
10 constructed and formally instituted and those emerging
11 in a less easily traceable manner within a brief and
12 dateable period.'

13 A. More the latter.

14 COMSR

15 Q. That doesn't necessarily imply, though, does it, any
16 lack of belief in the genuineness, that it has been
17 invented necessarily, does it.

18 A. No, it is more a comment on the cultural processes of
19 inventing. I mean, it doesn't, for example, say that
20 the outside influences - people perhaps even having
21 knowledge of what they were doing. Presumably, for
22 example, in the article in that book on the Scottish
23 highland tradition, the various poets and writers who
24 reinvented that tradition had knowledge that they were
25 stretching the historical facts to breaking point and
26 repainting a picture that they would prefer rather than
27 what they saw. So, you can have active invention, if
28 you want to call it that. But, once it is taken on by a
29 group of people and becomes imbedded, either in the
30 literature or in belief, then the people who hold those
31 beliefs -

32 Q. Genuine believers.

33 A. Yes, would be genuine believers and will assume that the
34 generations before them had them as genuine beliefs,
35 even though they may not have. It is talking about the
36 mechanism whereby culture sort of lumps over a bit of a
37 problem in terms of the continuity of information or
38 practice.

1 XXN

2 Q. Again, can I just put to you, to you see if you agree
3 with it, it is on p.4 of this particular book, it says
4 `Inventing traditions, it is assumed here, is
5 essentially a process of formalisation and
6 ritualisation, characterised by reference to the past,
7 if only by imposing repetition. The actual process of
8 creating such ritual and symbolic complexes has not been
9 adequately studied by historians. Much of it is still
10 rather obscure.' Would you agree with that. That the
11 process and concept of inventing traditions is one that
12 is still an area that hasn't been adequately studied.

13 A. What is the date on that book? I mean, it was a fairly
14 significant piece, when it was published, but it is
15 getting a bit old, I think.

16 Q. 1983.

17 A. Yes, there has been quite a bit of work since then, but
18 I am willing to take a bit of a swipe at historians.
19 Historians, as distinct from anthropologists, have to
20 watch out a little bit more for that type of thing, but
21 that book is often referred to. And I think most
22 competent anthropologists are well-aware of the message
23 that that collection of papers brings about. I mean,
24 1983, I mean, it is, what, 12 years ago. It is a long
25 time, in terms of anthropology and history.

26 Q. Would you agree with me that, in so far as inventing
27 traditions as a concept is concerned, it is very
28 difficult to establish any precise date, time or place,
29 as to where the tradition was established.

30 A. It is always hard to prove a negative, but I believe
31 that's where the anthropologist has skills that perhaps
32 an historian wouldn't have. Just because something is
33 difficult doesn't mean we don't try and do it. And I
34 would say that the task in the general sense in every
35 case is one that just can't be fulfilled.

36 Q. Again, I will just read from here and we are talking
37 about the origins it says this `It is probably most
38 difficult to trace where such traditions are partly

1 invented, partly evolved in private groups (where the
2 process is less likely to be bureaucratically recorded),
3 or informally over a period of time.'

4 A. They are all problems. I wouldn't say in each and every
5 case they couldn't be solved. But, yes, it is a
6 complex, you know, interplay of a number of factors and
7 when that happens and that is what it is saying.

8 Q. The secret sacred women's business, as it relates to
9 Hindmarsh Island, shares those or has those problems,
10 doesn't it. In trying to establish when.

11 A. It has some of these problems and I think some of those
12 problems are well on the way to being solved.

13 Q. Did you hear the evidence of Betty Fisher or have you
14 seen a transcript of her evidence or a copy of her
15 statement.

16 A. I have seen some of that. She requested that I not be
17 in the Commission the first day she appeared and
18 possibly the second, so I have only got fragmentary
19 knowledge of what she has said, although I have watched
20 the full version of the 7.30 tape.

21 COMSR: I think some of that evidence, of
22 course, was taken at a hearing restricted to women only,
23 so the witness has a problem with that.

24 MS PYKE: I am only going to be general about
25 that.

26 XXN

27 Q. If the evidence of Betty Fisher is that there was
28 mention of secret sacred women's business or elements of
29 it back in 1967, which she recorded, would that affect
30 your views.

31 A. I was aware of her claims even before I gave evidence
32 and I was willing to concede, if the evidence became
33 available and could be tested, even if I was not
34 privileged to actually see the data, but, if it was
35 verified, that I would consider it and either modify my
36 statement or explain how it differed. But we are
37 talking about information that is said to exist and I
38 haven't seen it. And, at this stage, I think that it

1 would be wrong of me to make any allowance for it. So,
2 at this stage, I would say that, until it has been
3 verified, I wouldn't believe it. And I am not saying
4 anything beyond that, but I am here to verify my
5 information. I am not going to change what I have said
6 on the basis of something that is only said to exist.
7 CONTINUED

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1 I mean, that gets back into the problems we have got
2 with oral history.

3 Q. Are you not able to in any way say 'If some of this has
4 been documented back in 1967, I would certainly have to
5 rethink my position about a recent invention of
6 tradition'.

7 COMSR: If it has been proved to have been
8 documented.

9 MR ABBOTT: He has already said that if it was
10 proved, then he would. So it is the same question
11 again.

12 XXN

13 Q. Let me put the hypothetical. If it were proved that in
14 1967 there was mention of secret sacred women's
15 business, an element of it to Mrs Betty Fisher -

16 A. Are we assuming -

17 Q. Let's just assume that that is proved, I will put the
18 hypothetical.

19 A. Proved by whom?

20 Q. Let us not worry about proved by whom.

21 A. That is quite important to me.

22 Q. If madam commissioner, when she prepares her report,
23 says: I have heard the evidence of Betty Fisher, I have
24 seen her notebook perhaps, and this, this and this. I
25 have formed the view that in 1967, on whatever basis, or
26 I just accept, notwithstanding the comments that emanate
27 from the bar table, that Mrs Betty Fisher is a credible
28 witness. In essence, I accept the evidence of Mrs Betty
29 Fisher that in 1967 information was given to her that
30 relates to secret sacred women's business on Hindmarsh
31 Island. Let us just say the commissioner, having heard
32 all the evidence -

33 A. If it had been through such a rigorous testing and I was
34 told at least the basic fact that there was secret
35 sacred women's business on Hindmarsh Island, I would
36 accept that as a basic fact. It is quite a different
37 question, of course, whether the details behind that
38 basic fact, which I may not be privileged to see,

1 actually mesh at all, or may even contradict other
2 formulations which date from a more recent time.

3 Q. I am just putting the hypothetical to you. If it is
4 found that back in 1967, information was given to Betty
5 Fisher consistent with the formulations of secret sacred
6 women's business that we are dealing with in this
7 commission, what impact would that have on your view.

8 A. I would accept the basic statement if it had been
9 vigorously tested, but even in terms of history of the
10 Ngarrindjeri people, even if it was as recent as 1967,
11 there would need to be a question answered in terms of
12 other influences. As my thesis clearly states in terms
13 of time lines, population movements and things, the
14 1940s, the very time that the Berndts were doing their
15 field work was a time when a large number of Aboriginal
16 people from all over Australia started to converge on
17 the urban environment. The fact that Betty Fisher's
18 main informant was there in the house of someone who is
19 of another cultural group, that is, of Point Pearce -
20 what I am saying is still the same set of basic
21 questions would have to be answered, but I would accept
22 that there was an element there, and that would then
23 have to - if that was a fact that it had been vigorously
24 tested and come through, then we can get past that first
25 of many questions and then get onto the 'Well, how can
26 we explain it?' It may be that female anthropologists
27 would then have to do that on the basis of at least
28 background knowledge that they could get from my
29 writings and from me personally. So I don't think that
30 one question implies that everything I said will be
31 flushed down the toilet with just the mere fact that
32 what you have stated was proved to be true. But we are
33 talking about hypotheticals, aren't we?

34 Q. We are, but it is one that the commissioner is going to
35 have to grapple with.

36 COMSR: I note that it is 1 o'clock. I
37 appreciate in your case you have a fairly wide area to

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1 cover in this matter, but we do seem to be going through
2 a reasonable amount of repetition with this witness.

3 MS PYKE: With respect, I wouldn't necessarily
4 agree with that, but you are entitled to your view. I
5 have certainly covered the bulk of what I want to put.
6 There is still a couple of things remaining, but, given
7 that I am not answering the questions, it is a bit hard
8 to estimate time. With no disrespect to Mr Clarke, some
9 lengthy answers get tucked in there. I will certainly
10 hope to finish within the hour, if not the half hour.

11 MR MEYER: While we are on that subject, Ms Pyke
12 has referred, on a number of occasions, to having a
13 proof. I am interested in, since she has a proof,
14 whether a statement of her client has been presented to
15 counsel assisting yet.

16 MS PYKE: We have been asking for a summons since
17 the start of this commission. I am simply not prepared
18 to hand over anything that I have got it.

19 COMSR: You are requesting a summons before you
20 will hand the statement over?

21 MS PYKE: Certainly.

22 MR MEYER: That is the first we have heard that.
23 The question has come up from day one.

24 COMSR: In any event, I think I made it clear
25 yesterday that, notwithstanding the previous attitude of
26 the commission not to issue summonses, in the case of
27 professional witnesses who ask for a summons to issue, I
28 have decided that it is appropriate that they do have a
29 summons. I think that is being attended to.

30 MR SMITH: Yes.

31 ADJOURNED 1.03 P.M.

32 RESUMING 2.35 P.M.

33 Q. We were talking before lunchtime about the impact that
34 Betty Fisher might have upon you and your views. I
35 think what you said was that you want what she had to
36 say tested in some way.

37 A. That's part of what I'm saying. There can be no impact,

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1 of course, until I know what it is, what the nature of
2 that information is.

3 Q. Isn't what you are saying about Betty Fisher a little
4 bit inconsistent with what you were saying this morning,
5 when I was putting to you the concept of an
6 anthropologist having some trust or knowledge of an
7 informant, and using that as a way of weighing up the
8 extent to which perhaps they might take into account
9 information.

10 A. An informant in this case is not an indigenous person or
11 a person of that cultural group that is being discussed.
12 It is someone from outside, and it is information that,
13 for a variety of reasons, can't be tested. So it really
14 can't really be considered by someone like me until I
15 know more about that information.

16 Q. In your evidence at p.205 of the transcript, at line 34,
17 counsel assisting asked `For instance, I have heard
18 talk, in the context of this case, about the Seven Stars
19 Dreaming. Does that, in your view, have any relevance
20 to what has happened here in relation to Hindmarsh
21 Island'.

22 COMSR

23 Q. Is this information that can be discussed?

24 A. No, I don't believe it is.

25 COMSR: We will have to move into private
26 session at some time.

27 MS PYKE: I don't want to know anything about it.
28 I don't want the detail.

29 MR SMITH: Discussions about the Aboriginal
30 traditions in areas other than the Lower River Murray,
31 even though they perhaps don't go so far as requiring
32 any Section 35 authority, are matters of sensitivity for
33 those other Aboriginal communities. So even though Ms
34 Pyke may not want an answer which goes into detail about
35 the content of that tradition, I would be asking, on
36 behalf of the commission, that this be dealt with
37 privately out of broad consideration of confidentiality
38 and sensitivity.

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- 1 COMSR: We do have another difficulty, too, in
2 that the authorisation that we now hold does not cover
3 any matters of Aboriginal tradition outside the area of
4 the Lower Murray.
- 5 MS PYKE: Firstly, this is evidence that has
6 already been given at some length by this witness.
- 7 COMSR: Certainly, but the authorisation that
8 the commission thought it was in possession of at that
9 stage covered a wider area. We now have to work within
10 the ambit of the present authorisation. It may well be
11 that, to some extent, your questions can be framed as a
12 generalisation.
- 13 MS PYKE: I am certainly not wanting to ask any
14 detail about it. I will think about that.
- 15 COMSR: You can refer the witness perhaps to a
16 page without mentioning it.
- 17 MS PYKE: I do have a question, but I don't want
18 the detail of it. I just want to make sure I understand
19 what he is actually talking about. I will keep going
20 for a moment rather than enter private session and out
21 again. I am getting towards the end of what I want to
22 ask, and we can do it conveniently at the end.
- 23 XXN
- 24 Q. You are not suggesting that, as part of the process of
25 preparation of Dr Fergie's report, that she should have
26 consulted with every Ngarrindjeri woman.
- 27 A. As I've already said, that would be an extremely large
28 number of people. However, it is important to get as
29 many diverse opinions as possible, and, therefore, you
30 would have to widely consult.
- 31 Q. I am asking you: are you suggesting she should have
32 located each and every Ngarrindjeri woman in South
33 Australia.
- 34 A. She should have sought out many more people than are
35 reflected in the report. If she couldn't do that, then
36 the nature of her final report should have made mention
37 of that as a possible source of further work that needed
38 to be done.

1 Q. Did you do that with the Ngurunderi exhibition. Did you
2 consult each and every Ngarrindjeri person about their
3 view.

4 COMSR: The witness has said it is not necessary
5 to consult each and every one. He has said it would
6 have required a wider consultation.

7 QUESTION NOT PURSUED

8 XXN

9 Q. You became aware of Dr Fergie's report at a time when
10 your thesis had been submitted but not marked, is that
11 correct.

12 A. My thesis was submitted in March 1994. I would have
13 become aware of her report, I imagine, somewhere in
14 June/July, and my thesis was in the process of being
15 marked, of course, because it was submitted.

16 Q. You became aware in July that Dr Fergie's report
17 suggested that Hindmarsh Island was a significant part
18 of Ngarrindjeri tradition.

19 A. Sorry, am I aware that that was in the report, are you
20 saying?

21 Q. Yes. In July you became aware that there had been a
22 report of Dr Fergie which suggested that Hindmarsh
23 Island was significant to Ngarrindjeri people and women
24 in particular.

25 A. I became aware of that through talking to Deane. I
26 still didn't have much of an idea of what was in the
27 report, and I still don't, because a lot of it is of a
28 nature that I cannot read. So I had no real idea of
29 what was in the report. It is only in recent months I
30 have seen the report, and a lot of our conversation in
31 relation to what Deane was telling me, I see that in the
32 report. I had no knowledge of or idea really of the
33 shape or content of the report back in - at the time of
34 my conversation in July 1994.

35 Q. You knew that it related to secret sacred women's
36 business, as you've described it, and you knew that it
37 related to Ngarrindjeri women, and you knew that it
38 related to Hindmarsh Island.

1 A. They were aspects that Deane Fergie discussed with me,
2 but, again, I had no clear idea of what was in the
3 report. The report, for all I knew back then, may have
4 only just touched on one of those aspects. I hadn't
5 formulated any idea of what was in the Fergie report.

6 Q. You agree with me that your thesis contained no
7 reference to issues relating to secret sacred women's
8 business and Hindmarsh Island.

9 A. No, that's not correct, in the sense that Hindmarsh
10 Island is mentioned in my thesis.

11 Q. Secret sacred women's business of Hindmarsh Island.

12 A. Sorry, they are your words. Secret sacred women's
13 business on Hindmarsh Island, no, those words in that
14 order don't appear in the thesis, or any words of that
15 meaning - they don't appear in the thesis either.

16 Q. I suggest to you that you developed a model of what you
17 thought Dr Fergie's report said, that is, the secret
18 sacred women's business on the Western Desert model
19 relating to Hindmarsh Island, at the time of your
20 conversation with her on 11 July 1994.

21 A. Sorry, that that was the first time that I had, sorry,
22 what, brought in the Western Desert influence?

23 Q. Yes, I suggest to you -

24 A. No, that's not correct.

25 Q. You talked to her about it on 11 July.

26 A. I mentioned it and, if I mentioned it obviously then I'd
27 already thought of that and had had that as a
28 possibility, and it was a possibility since I had
29 already thought of it, and if my memory serves me
30 correct, I even discussed it with a couple of other
31 anthropologists in the museum, and I put it forward to
32 Deane to get a response. But my main aim through
33 talking to Deane was not to find out the words written
34 in the report. I was more interested in building - you
35 know, getting more data for my own interest in
36 explaining what was going on. I didn't really have an
37 interest in seeing her report. As I have said, I didn't
38 see her report until quite late in the game, and was not

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1 interested in it as a body of work in itself, although
2 interested in the information that maybe of help to me
3 in order to find out what's going on.

4 Q. I simply put it to you that you had formed and developed
5 a view of the contents of Dr Fergie's report before
6 reading it, that you have developed a model of secret
7 sacred women's business on the Western Desert model as
8 being your interpretation, if I can put it that way, of
9 Dr Fergie's report. You have elaborated that model
10 continuously since that time, and I suggest to you that
11 the model that you have developed is, putting it
12 bluntly, a figment of your imagination.

13 A. You have suggested several things there. First of all,
14 you seem to be suggesting that I had some expressed
15 interest in finding out about the Fergie report.
16 Clearly I didn't. I didn't see it until quite late in
17 the game. Secondly, no, it is not a figment of my
18 imagination, my ideas, my model of explaining what was
19 going on.

20 Q. I suggest to you that you have approached your
21 interpretation of Dr Fergie's report from a position of
22 bias.

23 A. How so?

24 Q. You formed a view about it before you'd even read it and
25 before you'd even spoken to her.

26 A. I keep saying I had not formed a view of the Fergie
27 report. I had formed a view of what was happening out
28 there in the community. The community and the whole
29 issue surrounding it kept going outside of the Fergie
30 report. The Fergie report is crucial for one aspect of
31 describing what went on and what's going on, but I was -
32 it was not central in terms of my interests to read the
33 Fergie report. So, therefore, opinions that I formed
34 were not of the Fergie report. Opinions I was forming
35 were of what was going on out there.

36 Q. I am putting it to you that your opinions had been
37 formed prior to 11 July 1994.

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1 COMSR: I only need to have it put to a witness
2 on one or possibly two occasions. If it is repeated
3 more often than that it really doesn't assist me a great
4 deal.

5 MS PYKE: With respect, the witness's answers are
6 perhaps more the subject of criticism than the
7 questions. If he answered the questions, I might not
8 have to ask them several times.

9 XXN

10 Q. I don't want to put to you each and every article if I
11 can avoid it. Would you agree, as a general
12 proposition, that our knowledge of Aboriginal women,
13 their culture lives and beliefs, is less than complete
14 than our understanding of Aboriginal men.

15 A. Like many generalisations, it is open for criticism. As
16 an anthropologist, you describe a society which includes
17 both men and women, and there is a lot of overlap
18 between the various cultural domains of both. If you
19 mean - if you want to add up the number of books written
20 about Aboriginal men's business, and put that number
21 against the number of publications written about
22 Aboriginal women's business, I wouldn't have a clue.

23 CONTINUED

1 Q. Let's talk about Ngarrindjeri.

2 A. I would have to say that that is an incorrect statement,
3 because in evidence I've given already, and which is
4 stated quite clearly by sources of information such as
5 Berndt and Tindale, that there wasn't women's knowledge
6 of sacred business as on a par with men, and therefore
7 the separation wasn't there so, by definition, you
8 couldn't discuss what women knew in contrast to what men
9 knew.

10 Q. Well, you don't agree with that, you think the body of
11 knowledge of Ngarrindjeri women's cultural lives and
12 beliefs is as compete as that of Ngarrindjeri Aboriginal
13 men.

14 A. Nothing is ever complete, but there is lots of data on
15 Aboriginal women, and there is lots of data from
16 Aboriginal men from that society, it depends really on
17 what aspect of that data that you want to investigate,
18 whether the literature is full enough in order to come
19 up with that answer. Beyond that, the question can't be
20 answered.

21 Q. Would you agree in the past that there has been a bias
22 in the literature in the sense that it has been
23 predominantly men that have written about Ngarrindjeri
24 women and men.

25 A. Well, in terms of the Lower Murray, I suppose the male
26 bias that anthropology certainly didn't suffer from was
27 very close to being balanced with the significant
28 contributions from people that have already been
29 mentioned, Catherine Berndt in particular, so I would
30 have difficulty with saying that there's a bias, a
31 strong bias, at least, towards Aboriginal men in that
32 particular research region.

33 Q. I don't want to repeat what Ms Nelson has already put to
34 you, you think that there's been a balance of views.

35 A. I mean there's broadly a balance, depending on again
36 what issue you're looking at. There may well be a gap
37 in the literature for something to do with Ngarrindjeri
38 men, just like there are probably gaps in literature to

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- 1 do with Ngarrindjeri women. The generalisations that
2 you're putting to me are not of the type that can be
3 easily answered, because it's a fairly complex
4 literature.
- 5 Q. I accept that, but I put it to you as a general
6 proposition, and you simply don't agree that there is
7 any bias.
- 8 A. No, that's not what I've said. There are many biases
9 throughout the literature, most of them minor in terms
10 of gender. I think it's too much of a generalisation to
11 say that there is a strong bias at least towards
12 Ngarrindjeri men.
- 13 Q. So what you're saying is there is not a strong bias, but
14 there is a bias.
- 15 A. In some issues, there probably is. If you were looking
16 into aspects of material culture, for example, in the
17 museum, we would concede that we know a little bit more
18 about Ngarrindjeri male artifact making perhaps than
19 Ngarrindjeri female artifacts, but even there it's not a
20 clear generalisation. What I'm pointing out to you are
21 just the problems that there are in making such a
22 generalisation.
- 23 Q. You said yesterday that you were an informant for the
24 Lucas reports, Mr Lucas had consulted you.
- 25 A. Which are report are you talking about, the Hindmarsh
26 Island report?
- 27 Q. Yes.
- 28 A. I have a copy somewhere where he acknowledges me in
29 that, as well as Steve Hemming and others.
- 30 Q. Did you refer him to the work of Alison Harvey or Mrs
31 Tindale.
- 32 A. Mrs Tindale's work, at that stage, we were unaware of.
33 Alison Harvey's work has been known to us for many
34 years, and I'd imagine that if Steve Hemming hadn't put
35 him on to that, that I would have.
- 36 Q. I'm not asking what you imagine, I'm asking you whether
37 you did or you didn't.
- 38 A. I can't remember the conversation going back that far.

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- 1 It would have been part of the literature. If he had
2 asked the right question, he would have got the right
3 answer. We would have been pointing out useful
4 references to him.
- 5 Q. That's simply what I'm asking. In pointing out the
6 useful references, do you recall whether you referred
7 him to either Alison Harvey or Mrs Tindale.
- 8 A. I can't recall it, but I can't deny, I can't say that I
9 wouldn't have. In every likelihood I would have
10 referred him to at least Alison Harvey's published work,
11 if not her diary, but I have no actual memory of what
12 was referred to him.
- 13 Q. What writers or reporters do you say specifically look
14 at Ngarrindjeri women's knowledge.
- 15 A. Well, Catherine Berndt, with her extensive literature,
16 even with papers titled words to the effect of
17 'Aboriginal Women', I would say she is a fairly
18 important source. There are other people who have
19 worked in the region as anthropologists, as geographers,
20 who have worked quite a bit with Ngarrindjeri women.
- 21 Q. Ngarrindjeri women in particular.
- 22 A. Yes.
- 23 Q. So we have referred to Catherine Berndt in relation to
24 women's knowledge.
- 25 A. I've already mentioned Alison Harvey and her work, then
26 there is Professor Faye Gale and some of her students
27 that were involved in her projects. Joy Wundersitz, I
28 believe, did her masters thesis on Lower Murray culture.
29 I'm not as familiar with it, but she worked extensively
30 with Aboriginal women.
- 31 Q. I understand I'm asking the question in relation to
32 women's knowledge, not just who worked with Aboriginal
33 women, Aboriginal women's knowledge.
- 34 A. Are you saying women's knowledge which men don't have?
- 35 Q. Generally.
- 36 A. Because I have problems in that you're introducing a
37 paradigm of separate knowledge and, as I'm arguing, it's
38 not a clear topic to do research on. If you're talking

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1 about people getting involved in what Aboriginal women
2 in the Lower Murray region do today, well, people like
3 Faye Gail with her various writings and books she has
4 edited has obviously worked quite a bit with Aboriginal
5 women, including Dr Doreen Kartinyeri.

6 Q. In your thesis, p.418, you said this, 'The histories of
7 Aboriginal and European interaction during the 19th
8 century in the northern parts of the Lower Murray at
9 places such as Goolwa, Milang, Strathalbyn, Wellington
10 and Murray Bridge, are relatively poorly known'. What
11 did you actually mean by that.

12 A. Sorry, what line is that?

13 Q. I haven't line numbered it, p.418.

14 A. Yes, I've got it. That's a general statement that can
15 be borne out by looking through a variety of maps, for
16 example, that I've got in terms of sites related to the
17 various spirit beings. It's also in something, for
18 example, that our museum collection of artifacts from
19 the Lower Murray region bears out; that there is a very
20 strong bias towards the Coorong/Point McLeay region,
21 with some things from, say, more the Victor Harbor end.
22 When we look at, say, Tindale's records, in his cards
23 which we have in the Tindale archive, he's got a note
24 there in relation to a tribal name he used, wanted to
25 use for roughly the Clayton through to Milang region. I
26 think that's warki, if I can just check that but, in
27 essence, he was saying that he continued to use that
28 name, but he suspected that it was a name that basically
29 meant 'other people'. When we come to Radcliffe-Brown's
30 work, that was actually earlier than Tindale's, in
31 relation to describing the clans on that top end of the
32 lake, he makes a similar statement, and he's got lots of
33 sort of question marks in terms of the totems of
34 particular groups of people and language groups. The
35 data from that I obtained from fieldwork in relation to
36 the places that contemporary Ngarrindjeri people hold
37 dear are pretty well, or do conform to that same pattern
38 along the Coorong, the bottom and very end of Lake

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1 Alexandrina around to Wellington, whereas places on the
2 top end of the lake, well, we have much less data for.
3 I believe you could see that - well, that bias, of
4 course, is in the Berndt volume because he was mainly
5 dealing with Yaraldi people, whose territory started
6 roughly around Wellington, and then down towards the
7 southern end of Lake Alexandrina/Point McLeay, getting
8 on towards the Coorong, so it's those types or
9 categories of information that I'm referring to. I'm
10 sure there is quite a bit of archaeological work that
11 could be done throughout that whole region, but the
12 archaeology of the region is still largely unknown
13 territory.

14 MS PIKE: I want to ask the witness a couple of
15 questions about something that we heard on the tape of
16 the voice of Rebecca Wilson. I know that we played that
17 in closed session, if I remember correctly, to Dulcie
18 Wilson, out of respect for - I don't want to play it,
19 but I want to ask some questions, so I just flag that,
20 and I don't know whether there is any difficulty with
21 that. As I remember, it was the concept of not wanting
22 the voice to be played.

23 COMSR: I understand the sensitivity. I don't
24 know the nature of the topic that you propose to cover.

25 MS PYKE: It relates to something that Rebecca
26 Wilson said about Dr Gale. I think if I put just this
27 much to you.

28 COMSR: You don't have the page references, I
29 suppose.

30 MS PYKE: I don't think it was on the transcript.

31 COMSR: I see, it wasn't transcript that was
32 typed up.

33 MS PYKE: Dr Fergie has written her memory of what
34 was said. If you like, I will hand it up to you,
35 perhaps through counsel assisting. It's just a general
36 summary.

37 MR SMITH: I think it's best if my learned friend
38 puts what she says the tape said, just on that basis, to

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- 1 Dr Clarke. That might be the safest way to deal with
2 it.
- 3 COMSR: Yes, I don't know how -
- 4 MR SMITH: It could be put as an assumption, short
5 of playing the tape.
- 6 COMSR: I don't really know how the witness is
7 going to answer any questions concerning Daisy Bates.
- 8 MS PYKE: I just want to put that to him and ask
9 him a general sort of question.
- 10 COMSR: Yes, well, I think the first proposition
11 can be put without offending in any way. Do you want a
12 copy of it back?
- 13 MS PYKE: It doesn't matter.
- 14 COMSR: I think that can quite clearly be put as
15 a general proposition to the witness to comment on.
- 16 MR ABBOTT: There is a lot left out. Haven't you
17 got a transcript of this?
- 18 COMSR: Yes, but it's this aspect that Ms Pike
19 wishes to concentrate on.
- 20 MR ABBOTT: This doesn't record the relevant tone.
- 21 MS PYKE: I'm saying it's our memory, we haven't.
22 Got a transcript. I didn't purport to have a
23 transcript.
- 24 XXN
- 25 Q. Let me put this to you; do you agree with the general
26 proposition that it takes quite a number of years for
27 white people to really understand Aboriginal people and
28 their traditions and practices.
- 29 A. I'm not sure quite what you mean, 'really understand',
30 though I would accept that if an anthropologist worked
31 outside of Australia, he would probably need some sort
32 of time to review relevant literature and do fieldwork
33 to sort of get a feel for a new ethnography situation,
34 so I'm not suggesting that all anthropologists could
35 just go zipping around and understand culture, the
36 language as much as anything, and even in contemporary
37 Australia, pidgin English, is quite important to get an
38 understanding for meaningful fieldwork to take place.

1 COMSR

2 Q. I don't think the question was a white anthropologist,
3 it's a white man, a white person. I think the question
4 put to you for comment was that it takes years for a
5 white man or a white person to really get to know
6 Aboriginal culture. (NOT ANSWERED)

7 COMSR: Is that what you were putting?

8 MS PYKE: Yes. It's a bit hard because I can't
9 put the whole context, but I'm doing the best I can.

10 COMSR

11 Q. I don't think you're asked to comment how an
12 anthropologist might understand, but how a white person.

13 A. I mean I'd accept that it takes some time. Some people
14 are more intuitive and are willing to listen and, if
15 they have got, daily, quite a bit of contact with
16 Aboriginal people, they might gain an affinity and
17 insight into that culture that other people might take
18 years to do. It really depends on the nature of the
19 white person, their personality and willingness to
20 learn, and also the situation in terms of what is the
21 nature of their contact. If they are a white station
22 owner, for example, and they only see Aboriginal
23 stockmen, then they are certainly going to have a fairly
24 biased view of Aboriginal culture, and it may take a
25 long while. If they were a white person who is living
26 in a camp with an Aboriginal family in a fringe camp
27 situation or some other situation, they would probably
28 learn quite a bit in a much shorter period.

29 CONTINUED

1 Q. Would you agree with me that, generally speaking, even
2 with someone in a professional capacity, be it as an
3 anthropologist or a cultural geographer or whatever,
4 that such a person is more likely to have information
5 imparted to them if there is a relationship of trust
6 between the Aboriginal person and the professional
7 worker.

8 A. It is certainly the case that there has to be a level of
9 trust there, but you wouldn't - it wouldn't be just a
10 matter of between, say, one Aboriginal person and one
11 anthropologist. An anthropologist would want a variety
12 of connections if possible with a variety of people.
13 And trust, of course, is an element in that if they are
14 going to penetrate, say, a family situation and be
15 around as a participant observer.

16 Q. The more sensitive the information perhaps the more
17 important it is that the relationship of trust exists
18 between the informant and the professional worker.

19 A. I think, in general, that is a fair comment and I
20 suppose there are other aspects of a culture that may
21 become apparent to a white person, even if they are not
22 - they have not got that trust. And where the trust
23 comes in, I think, is a matter of Aboriginal people, in
24 this case, having some idea of how that knowledge is
25 likely to be used by the white people involved.

26 Q. Your professional life, is that mainly or has that been
27 at the museum. When I say `professional life', I mean
28 as a geographer/anthropologist/curator, in essence, to
29 do with that, Aboriginal studies, for want of a better
30 phrase.

31 A. In terms of paid work, it has been pretty close to all
32 of my working life. I first started studying
33 anthropology as part of my science degree, so, I came to
34 the museum with an interest in anthropology and,
35 although I have had several jobs of differing nature,
36 although with a core of sameness, through the museum, I
37 have not moved out of the museum. So, anthropology has
38 been and contact with Aboriginal people has been a

- 1 consistent theme throughout my museum work.
- 2 Q. Have you worked at any institution, university or the
3 like, outside of the museum, any.
- 4 A. I have been paid to give a series of two or three
5 lectures here and there. I have worked on outside
6 consultancies for the Murray Darling Basin Commission.
7 A variety of other places. It is in my statement in
8 terms of other work. So, I have been forced to wear
9 other hats on occasion, but -
- 10 Q. Basically that being through the museum, though.
- 11 A. Yes, my museum standing as an anthropologist is what has
12 made other institutions seek me out.
- 13 Q. You said in your evidence and this is backtracking
14 slightly that, in terms of information that is conveyed,
15 being conveyed to, using the general phrase, a
16 professional worker - and it is on p.181 - you said this
17 -
- 18 A. Is this in the transcript?
- 19 Q. In the transcript, yes.
- 20 A. What line?
- 21 Q. About 28. You said this 'Having children and being
22 middle-aged is probably going to give someone better
23 access than being a young honours or, well, a young
24 graduate student in anthropology.'
- 25 A. Yes, I have got it here. Yes, that is a general
26 statement in the sense of having, as an anthropologist,
27 more in common with an age group of people that you were
28 probably wanting to communicate with. I communicate
29 fairly well with Aboriginal people my own age and older.
30 In some communities, it is seen as an advantage to be
31 middle-aged and, in a sense, have more in common with
32 the Aboriginal people of a similar age that you would be
33 working with.
- 34 Q. I just understood your evidence in that regard basically
35 to be that elements of trust and reliability between the
36 Aboriginal person and the worker are important and
37 things like being middle-aged and having children are
38 the sorts of things that might give indications of that

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1 reliability, for want of a better phrase.

2 A. Reliability, but also in as much as - and, again, I am
3 trying to imagine what I meant here. A person - an
4 anthropologist has probably got a more mature outlook on
5 the discipline and life in general at that age. I meant
6 as much as that as anything.

7 CROSS-EXAMINATION BY MR KENNY

8 Q. You are no doubt aware of Camp Coorong.

9 A. Yes, I am.

10 Q. You have been there many times.

11 A. Many times I have stayed there and have been involved,
12 particularly in the early phases, with helping them out
13 as we were in the museum, yes.

14 Q. You are aware that people such as Tom and George
15 Trevorrow run what may be called, I don't know,
16 educational tours down there.

17 A. Yes, they have got a number of tours. Some are bush
18 tucker. Some - I think they have a sort of race
19 relations sort of package of tours and discussions, yes,
20 I am aware.

21 Q. Essentially they invite people down and talk about
22 Aboriginal culture to them.

23 A. They may invite people down, but they have tapped fairly
24 successfully into the echo tourism market, so people
25 book in. So, it is not as if you have to be asked.
26 People book in.

27 Q. I am not suggesting that.

28 A. Yes.

29 Q. It is a commercial enterprise in a sense.

30 A. That's correct.

31 Q. One of the things that it is really based on is an
32 explanation of Aboriginal culture and beliefs.

33 A. That's correct.

34 Q. Have you been on some of these tours, if we can call
35 them that.

36 A. Yes, I have tagged along with teams of university
37 students on a couple of occasions when I have been down
38 there.

1 Q. During those tours, have you heard mention of, if I can
2 call it, just women's business.

3 A. No, I have never heard that mentioned. Most of the
4 tours - the tours that I have been on are the bush
5 tucker tours and tours around the fringe camps, which
6 Camp Coorong manage. And they are tours which tap into
7 the rich knowledge that the Trevorrow's, in particular,
8 have, about how and why the fringe camps operated.

9 Q. Have you ever heard them talk, just in general terms, I
10 am not applying any specific definition to this, but
11 just generally about the women's business or make any
12 reference to that.

13 A. No, I have never heard, or I have no memory of ever
14 hearing anything about women's business as a category,
15 either secret, sacred or just women's business in
16 general.

17 Q. You have never heard them mention anything about
18 particular plants, for example, being plants that relate
19 to women's business.

20 A. No, I haven't.

21 Q. Have you ever heard any of the Ngarrindjeri people talk
22 about women's business at all as a general term.

23 A. At this stage, I would have to say, no. I would need
24 more prompting in terms of what aspect of their life
25 they are talking about. In a sense, there are things
26 said where, say, the men will say 'We leave that to the
27 women to organise', and it might be a visiting
28 Aboriginal group that are, say, coming down to Point
29 McLeay and they need cooking -

30 Q. No, I am not talking about women's business as in the
31 kitchen being women's business, but the example I used
32 before was particular plants. I mean, that is an area
33 that you are interested in.

34 A. I am interested in it. It has been a few years since I
35 have been actively engaged in the field work. At this
36 moment, I can't think of plants - or, actually, there is
37 one plant that I had from one informant down in the
38 South East, which - she claimed this plant was used as a

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1 form of contraceptive. And that plant, if my memory
2 serves me, has also been, probably from the same source,
3 been published in the McCort & Mincham history of the
4 Coorong region. So, that is a plant that has been
5 spoken of in terms of a female use. It wasn't told - it
6 wasn't spoken of in terms of being a women's business
7 plant. That is the difficulty I am having. Women's
8 business as a category that then is imposed on plants I
9 have no knowledge of.

10 Q. Let's just clarify that: before, say, January 1994, to
11 put a specific date on it, had you ever heard, in
12 relation to the Ngarrindjeri people, the expression
13 'women's business', in any context.

14 A. I think, on a number of occasions, in a joking fashion,
15 if, say, a male person wanted to avoid doing something,
16 they would say 'This is women's business', and it might
17 be in relation to cooking or going to the supermarket.
18 So, on that level, sure, I have heard terms such as
19 'women's business' and 'men's business'. Men's
20 business, I have heard that in relation to, say, an
21 explanation of why a couple of men would go out shooting
22 rabbits. Sometimes they -

23 Q. No, I am not talking about that sort of use. I was
24 talking about something associated with Aboriginal
25 tradition or beliefs.

26 A. I can't think of any examples of the nature you are
27 looking for.

28 Q. Before 1994, were you aware of any, just generally,
29 restrictive or restricted information that the
30 Ngarrindjeri people had. When I say 'restricted
31 information', I mean information that wasn't generally
32 known to all of the people and was held essentially
33 secret by some of them.

34 A. No, I can't think of any examples. The way that, from
35 my knowledge, that such or the Ngarrindjeri community
36 works is that, because there are so many very close
37 lateral links between family units and sometimes it is
38 very hard to even point out a family unit, because it

1 changes and people's children, at some stage, get
2 brought up by aunties and grandparents and things. The
3 family tree sometimes, if they are done on just purely a
4 biology level, it wouldn't reflect how people were
5 socialising. And, in a sense, you would need another
6 tree to describe that. And I can't - I mean, there are
7 certain categories of information that are widely known
8 within the community, but they make it quite clear that
9 they don't want outsiders - for example, things that may
10 have something to do with a court case relating to one
11 of the young men, for example - and they wouldn't want
12 the details of that going outside the community.

13 Sometimes there is illegitimacy or a variety -

14 Q. No -

15 A. I am just giving examples of things that are widely
16 known, but secret, but I can't honestly think of any
17 examples of information that is restricted to a
18 particular unit within that community just because those
19 units don't correspond to particular families or
20 whatever within the community.

21 Q. No, perhaps we are a bit at cross-purposes there. I am
22 not suggesting just simply what we generally may call
23 private information, I am talking more of matters
24 relating to Aboriginal cultural understandings and
25 beliefs, but I will leave it there. You are not, as I
26 understand it, saying that there was no history in the
27 Ngarrindjeri people of restrictive information. You
28 would agree that there is a history of restrictive
29 information.

30 A. In the sort of preEuropean or at least the time of the
31 Berndts' book?

32 Q. Yes, for example, the Berndts' book, around that era.
33 There was certainly -

34 A. Yes, certainly up until the 1940s, with the informants
35 that the Berndts used, there was information that those
36 informants, for one reason or another, weren't imparting
37 full or all of the information on to their next or young
38 generation. And, as I have said, that is part of the

- 1 sad history of the demography, the changes within that
2 community. There were periods where there was
3 restricted information, sure, on the basis of a variety
4 of categories. I just can't -
- 5 Q. Certainly in the Berndts' book there was considerable
6 reference to at least restricted information.
- 7 A. In terms of the preEuropean style culture, that's
8 correct.
- 9 Q. An example is secret names they refer to in the Berndts'
10 book.
- 11 A. Yes, there is secret names.
- 12 Q. There is reference to gender specific children's
13 corroborates.
- 14 A. That could well be in the book. I can't -
- 15 Q. There is also segregation in terms of men's initiation
16 and things like that.
- 17 A. As we discussed, there are male and female domains and,
18 sure, there are aspects where they are separated, but,
19 on the level of the knowledge which sets up those
20 initiations, for example, it is the same in the sense
21 that, for example, initiations - it is the - primarily
22 the Waiyungari mythology that links all of that
23 together. So, I am not saying that there isn't
24 separation between the genders - the gender - two gender
25 categories in certain aspects of their life.
- 26 Q. I think all I am trying to say to you is that there is a
27 history, within the Ngarrindjeri culture, of some
28 secrecy, in a number of different areas.
- 29 A. In terms of the culture that, as I have described, was
30 coming to a close in the 1880s in relation to the
31 initiation and various other rituals coming to an end,
32 that is certainly true, if you are looking at the
33 pre1880s period.
- 34 Q. Even up to the Berndts, they have referred to it a
35 number of times.
- 36 A. They have referred to it as a memory culture. That is
37 one of the problems that their informants had. That the
38 Berndts were interested in basically preEuropean culture

1 without influence from Europeans and they were giving
2 the enormous intellectual task to their informants to
3 actually go back and, in many cases, report on the
4 memories of their fathers and grandfathers, mothers,
5 grandmothers. So, even in the 1940s, a lot of that
6 culture that was recorded was not actually experienced
7 directly by the informants, but they had heard about it,
8 through older relatives who had been alive, say, in the
9 1880s and 1890s. And some of the events, some of the
10 examples of Ngarrindjeri life are from early in the 19th
11 century that have been put in the book. And that is
12 why, because it is a memory culture that the Berndts
13 were doing ethnography in. They make no secret of that.
14 And obviously that was a source of bias that they would
15 have to deal with and did deal with in the course of
16 preparing the ethnography.

17 Q. Perhaps if we can just move to a different topic.
18 Currently Aboriginal people, that is, the Ngarrindjeri
19 people, are very sensitive about the use of information
20 that they have in relation to their culture. We have
21 seen examples of it here at the Commission.

22 CONTINUED

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- 1 A. From my experience, this is sort of an overview through
2 working for a museum, where we are constantly
3 negotiating, consulting with Aboriginal groups in
4 relation to restricted objects, information in our
5 archives, human remains. My overview is, the older the
6 information is in general, the less sensitive. So
7 information, for example, that we would have in the
8 Aboriginal family history project in the museum that
9 relates to the family trees of people who are still
10 living, there's lots of sensitivity in those areas.
11 Whereas from a generation or two back, there's more
12 interest and less sensitivity. It is the same with
13 artefacts. A lot of the information in the Berndt book
14 - I am staggered by the amount of detail which appears
15 in the Berndt book, and yet I am not aware of any
16 approach that an Aboriginal organisation have had in
17 terms of blocking the publishing or the sale of that
18 book. I think that proves my model, that the older the
19 information, the less sensitive. There may be examples
20 that go against that.
- 21 Q. What you are really saying is, people who are alive
22 today are very sensitive about their own approbation, if
23 that's a sort of brief summary.
- 24 A. Yes, and for that reason I had to deal with the
25 contemporary information in my thesis differently. When
26 I gave an ethnography, for example, on a Ngarrindjeri
27 funeral, I was obliged to change the names in order to
28 not embarrass any of the people involved.
- 29 Q. As a general proposition, they are also very sensitive
30 about the use of their names in anything written.
- 31 A. If you are talking in terms of providing a bit of
32 information and saying 'This person told me', that's
33 quite true. In fact, in my thesis I explain that
34 sensitivity, and for that reason, the people I was
35 associated with through the course of writing my thesis,
36 rather than acknowledge them in general through the body
37 of the texts, I acknowledged all the people that I work

- 1 with professionally and otherwise in the
2 acknowledgements part of my thesis.
- 3 Q. So that was really a recognition of the sensitivity of
4 the use of their name.
- 5 A. The use of their name in relation to particular bits of
6 cultural information. There is sensitivity. At the
7 same time, had I not acknowledged those people, there
8 would have been sensitivity that, after all the time I
9 had spent with them, you know, I didn't acknowledge
10 them. It was the best way out. I explain that
11 particularly in the appendix of my thesis. I think I
12 have got a section there explaining the sensitivity - it
13 is really sensitivity of information. Their names is a
14 way of saying 'That person said this'. If I did that
15 through the thesis, it would cause arguments because
16 someone else would say 'No, that person got it wrong.'
- 17 Q. That is sufficient. While we are on your thesis, in it,
18 you talk a lot about Aboriginal beliefs. Quite a lot of
19 that is devoted to that. Is that correct.
- 20 A. Aboriginal beliefs, perceptions -
- 21 Q. I am not asking you for a discussion on these matters.
22 I just want simple yes/no answers. If I put something
23 specific to you and you feel you need a longer answer,
24 that is fine. I am simply trying to introduce a general
25 topic at this stage. The question is, in your thesis
26 there is considerable discussion on various Aboriginal
27 Ngarrindjeri beliefs.
- 28 A. And, again, I would feel that I would have to make a
29 distinction between Aboriginal beliefs as already
30 recorded in the historic literature, and Aboriginal
31 beliefs and perceptions.
- 32 Q. Just -
- 33 COMSR: You have asked the question. Not every
34 question is capable of a yes/no answer.
- 35 MR KENNY: I am trying to get to a topic. I am
36 trying to direct him to where I am going.
- 37 COMSR: The witness doesn't accept what you are
38 putting to him.

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- 1 A. I just wanted to pave the way for saying it is not just
2 a matter of recording the beliefs as such, that it has
3 to go through a process. In order to get on, I will
4 say, yes, there are Aboriginal beliefs in my thesis.
5 XXN
- 6 Q. Not all of those beliefs came from the writings of white
7 people, do they.
- 8 A. That's true. There is a field work component, and there
9 are also Aboriginal people who have written about their
10 own culture that I have included in the thesis.
- 11 Q. Included in there, there are a number of beliefs that
12 you have obtained from oral histories of Aboriginal
13 people who are around today, or may have recently died.
14 I understand a number of people mentioned in your thesis
15 have in fact died.
- 16 A. That's correct. I have got quite a bit of notebook
17 material. Steve Hemmings has got lots of tapes. We
18 have gathered quite a bit of oral history and a lot of
19 that is incorporated into it. There is also another
20 layer of which - sorry, go on.
- 21 Q. Some of those beliefs that you have incorporated in
22 there, do you recall if there are any that essentially
23 was a belief - and I think you refer to them in many
24 cases as myths, but I use the word `belief' instead of
25 the word `myth' - did any of those beliefs essentially
26 come from only one source, one person.
- 27 A. As we discussed earlier in the commission, the Thukabi
28 story was one example where it was mainly one person who
29 came up with that story at a time when the Signal Point
30 Museum were interested in another explanation that
31 didn't involve Ngurunderi, which was about the lake and
32 the river. Of course, since that story has been used
33 there, a wide number of people, including non-Aboriginal
34 people, know the story and tell it.
- 35 Q. But Thukabi, which is referred at p.114 of your thesis,
36 Henry Rankine was your main informant for that.
- 37 A. That's correct.

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1 Q. You say there he was the main informant. Was there
2 anyone else that provided you with that belief.

3 A. Other people had heard Mr Rankine tell it in the
4 schools. So it was a story that I was hearing in other
5 places, and in other contexts. Of course, it is a major
6 story that is in the Signal Point Museum. There is a
7 video and -

8 Q. You have told us that. But essentially it all comes
9 back to the fact that that was Henry Rankine's story, if
10 I can put it that way.

11 A. He considers, and I am not arguing against this, that he
12 owns that story. That's certainly the case.

13 Q. But you have never actually heard anyone else say, quite
14 independently of Mr Rankine, that that story was passed
15 on to them by their ancestors.

16 A. I have no knowledge of other people of his generation or
17 older who have said that they have heard that, that's
18 correct.

19 Q. So that really is an example of a belief that was only
20 ever handed down to one person.

21 A. It is a fragment of a mythology. I don't say that in
22 terms of saying it is at all inferior, but it is a
23 fragment of a mythology that he's handed on. There is
24 similar versions of that in the Tindale archive, Tindale
25 notes, not exactly along the lines of Mr Rankine's
26 version, but, yes, it is fair to say that he is the main
27 informant, as I have described him in the thesis.

28 Q. Really, he is the only informant, is what I am putting
29 to you.

30 A. At this stage there are many other people who know the
31 story.

32 Q. But they only know it, as you understand it, from Mr
33 Rankine.

34 A. That would be correct. I imagine that - I know he has
35 quite a bit to do with the Raukkan Aboriginal School,
36 and I am sure he has told that story there to the
37 children.

- 1 Q. I am not saying he hasn't told it to anyone else, but I
2 am saying that he is the one who has told that story.
3 When you say there is a reference to it in Tindale's
4 writing, are you referring to your reference to the myth
5 of Pondi. Is that the one that you are saying is
6 similar to Mr Rankine's story.
- 7 A. There is certainly some sort of similarity between
8 Thukabi and Pondi. There is another series of stories
9 about Thukabi which relate to a different episode, and
10 that is what's recorded in Tindale. Whereas the word
11 'Thukabi', in terms of a literature survey I have done
12 on the actual use of that name, only pops up in a couple
13 of sources, and they seem to be further up the river.
14 So it is a story that would be interesting to know more
15 about, I agree.
- 16 Q. Were there other beliefs like that that came from only
17 one person.
- 18 A. There are other examples in the thesis of parts of
19 stories that particular people had. I think, after this
20 number of years, it is probably safe to mention the name
21 of Lola Bonney, or Cameron Bonney and Ron Bonney, as
22 being people who had quite a good deal of information
23 about the myths and things. I might add it is
24 information - and they would say this themselves - that
25 was not complete. They were fragments of information
26 that they can remember.
- 27 Q. Without going into detail of what those fragments of
28 information were, they were information on Ngarrindjeri
29 tradition and beliefs.
- 30 A. Sometimes - in the case of the Bonneys, sometimes they
31 would say that they - they would label something to be -
32 they preferred to use the landscape talk about lakes
33 belief, or Southern Coorong, Northern Coorong, up the
34 river, South-East, and even Victoria.
- 35 Q. So they had particular beliefs that were only
36 essentially known to them that related to the landscape.
- 37 A. They were stories that other people would hear, and
38 often, when I had heard a bit of mythology or fragment

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- 1 of myth or a story being told, you know, I would subtly
2 find out 'Where have you heard that? Who tells that
3 story?' You know, you would home in on people. But the
4 Bonneys were, in their own time, very knowledgeable
5 people of the type of information that was, in a sense,
6 a relic of the much greater body of information that the
7 Berndts recorded in the 40s.
- 8 Q. Essentially what you are saying is they had fragments of
9 information that often were unknown to a lot of the
10 other Ngarrindjeri people.
- 11 A. I would say that in those cases there were other
12 Aboriginal people who had heard those stories, or at
13 least some of them, but collectively all of them from
14 those same informants. Aboriginal people like Ron and
15 Lola, and there are other people, were often quite keen
16 to grab a young anthropologist, because they had said
17 'Our own younger generation, at this stage at least, are
18 interested in cars and other things'.
- 19 Q. So they realised, of course, that not everyone was
20 interested in all the traditions and beliefs of their
21 culture.
- 22 A. That's - yes, not everyone within their social sphere
23 were interested, that's true.
- 24 Q. The Bonneys, where did they live.
- 25 A. They lived on the extreme southern end of the Coorong at
26 a place called Teeluk.
- 27 Q. Did they have anything to do with the Bonney Reserve.
- 28 A. No. I have often thought there might have been a
29 connection, but I don't believe there is any connection.
30 I think it is a coincidence. There is an overlander who
31 had passed through the region, and I think it may even
32 have been a hundred of Bonney down that way as well, and
33 there is a family of -
- 34 Q. It is okay. Just another example at p.123 of your
35 thesis, you talk of the starts, the Seven Sisters. At
36 one stage you say that there was one -

1 COMSR

2 Q. Is this that area that I was told was a matter of some
3 sensitivity.

4 A. It would be if it related to the northern beliefs, but
5 this is - perhaps we will call it the Pleiades just to
6 steer away -

7 XXN

8 Q. We will call it the Pleiades.

9 A. Which is how I refer to it in the thesis.

10 Q. You do say there that there was one Lower Murray
11 informant who told you that all Aboriginal people are
12 thought to have been originated from the Pleiades, is
13 that correct.

14 A. I am just trying to -

15 Q. If I remember correctly, it is the last line of the
16 Pleiades on p.123.

17 A. Yes, that's correct.

18 Q. You only ever heard of that from one person, I take it.
19 You didn't ever hear anything else about it.

20 A. That's correct. It was from one person. I think it is
21 safe to say - no, perhaps I won't mention the
22 informant's name, even though they passed away a long
23 time ago.

24 Q. It was a Ngarrindjeri person though.

25 A. A Ngarrindjeri person who had very strong connections
26 with the South-East and Victorian region as well, but
27 saw themselves as - this particular person used to argue
28 that 'Ngarrindjeri' meant all Aboriginal people, and she
29 preferred to use a descent clan name which related to
30 part of the Coorong to define herself. So this
31 particular person was a bit of a maverick. In this
32 section of the thesis -

33 Q. I don't think I will ask for the name now.

34 A. I didn't mean that in a bad way. This person would have
35 quite enjoyed that comment, I think.

36 COMSR

37 Q. Did your informant indicate that they were the only

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- 1 persons who had that knowledge or that had been
2 restricted to them in any way.
- 3 A. No, no. There has never been any hint of that.
- 4 XXN
- 5 Q. You don't make mention that anyone else knows. You seem
6 to identify one individual as knowing and believing
7 that.
- 8 A. In general, in Adelaide similar things have been said.
9 I think even on the letterhead of the Aboriginal
10 curriculum unit in the Education Department, for
11 example, they had a statement which pretty well said
12 along the lines that -
- 13 Q. No, I am not interested in what they may have had on
14 some letterhead.
- 15 A. I am saying, as an example, that it was much broader
16 than this one person. That's why I was saying that.
- 17 Q. But within the Ngarrindjeri people, did you know of
18 anyone else that had this belief.
- 19 A. Let me put it this way, I am assuming that there are
20 quite a few Lower Murray people who would have that
21 belief if they were asked that specifically.
- 22 Q. But have you ever heard of anyone else stating they
23 believe that.
- 24 A. I can't think of anyone at the moment, no.
- 25 Q. The Ngurunderi story, we have seen the film. It has
26 been part of the discussion. That would be one of the
27 major beliefs of the Ngarrindjeri people.
- 28 A. Again, at the time when we started doing field work for
29 that display, there are only very small fragments of it
30 known by people that we found to be knowledgeable people
31 in terms of mythology. There were people who knew that
32 Ngurunderi was a prominent figure, but the site-related
33 information in relation to that dreaming, if we can call
34 it that, was very poorly known. I would say there were
35 fragments of that myth known, and for that reason we had
36 to rely very heavily on the Berndt data that also
37 appears in that book and has been published in a couple
38 of other forms. So there wasn't any -

P.A. CLARKE XXN (MR KENNY)

1 Q. How many people would have, ignoring the Berndts, in the
2 Aboriginal community, how many people would have known
3 anything about that, in your opinion.

4 A. In my opinion back, in the early 80s, even being a bit
5 on the generous side, I would say a handful of people.

6 Q. What, three or four, 10.

7 A. Something like that, of that order, and that is
8 fragments of that story.

9 Q. How many did you actually speak to that knew about it,
10 perhaps if we can put it that way.

11 A. Well, this is a topic that Steve Hemming and I often
12 talked about early on in terms of who had knowledge and
13 who hadn't. He spoke to people, for example, that I
14 didn't, and presumably I've spoken to people that he
15 hasn't spoken to. If we use both of our works
16 collectively, I would say that, you know, we're looking
17 at three or four people, perhaps, that knew of
18 Ngurunderi before the display as a concept was up and
19 running. Of course Ngurunderi -

20 Q. Thank you. I appreciate that it's now fairly well
21 known.

22 A. It has been in the popular literature right through 20th
23 century.

24 Q. Thank you, I'm aware of that. Looking at the transcript
25 of your evidence, pp.205 and 206, have you got it in
26 front of you there.

27 A. Yes.

28 MR KENNY: I will indicate to you very clearly that
29 this was taken originally in private session. I asked
30 originally that it remain private and that it be
31 suppressed. That suppression didn't continue, it was
32 ultimately lifted. I'm going to now continue to ask -

33 COMSR: Ask for a suppression?

34 MR KENNY: No, the genie is out of the bottle, as
35 it were, and it's a bit hard to put it -

36 COMSR: Not necessarily, it depends on the
37 extent.

38 MR KENNY: I will flag very clearly some of the

P.A. CLARKE XXN (MR KENNY)

1 questions that I'm going to ask.

2 COMSR: Now is it something that can be asked
3 under the terms of the present authorisation, is the
4 first thing.

5 MR KENNY: I was going to ask about dreamings, but
6 not the details of them.

7 MR SMITH: Well, could I be heard just on this, to
8 interrupt my learned friend? This is an area of
9 sensitivity rather than a matter which requires a
10 s.35 authority. It relates to a tradition in another
11 area, so we haven't got an authorisation for it. In so
12 far as it's only going to be dealt with generally,
13 therefore you won't have a divulgence of Aboriginal
14 tradition, or whether or not it's secret, but this is a
15 sensitive area, it's sensitive to the peoples that are
16 mentioned here, who are not the Lower Murray Aboriginal
17 people.

18 COMSR: You see, that's the problem I have now,
19 because we're restricted to dealing with the Lower
20 Murray Aboriginal area, which is a different situation
21 from what I was confronted with in the past. I'm not
22 aware of this having been publicised, despite the fact
23 that there was no suppression order. It may well be
24 that given the present state of the authorisation, that
25 it should have a suppression order.

26 MR SMITH: I think my learned friend is not going
27 to go into detail about it, so there is not going to be
28 a divulgence of Aboriginal tradition which is secret
29 here, as I understand it, but no matter that, this area
30 is sensitive to the people that are about to be
31 discussed, and that's all it is.

32 COMSR: What are you suggesting?

33 MR SMITH: I'm suggesting that it has to be taken
34 in closed session and be suppressed if Mr Kenny wants to
35 -

36 COMSR: If that's the case, as the transcript
37 now stands, as I understand what you're putting to me, I
38 should impose a suppression order.

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- 1 MR SMITH: You should reimpose it. I don't want to
2 elaborate on it any more. If I do, I will be asking you
3 to suppress what I say about it.
- 4 COMSR: If you just indicate the pages.
- 5 MR SMITH: The the very pages that my friend has
6 referred to, pp.205 and 206 of Dr Clarke's previous
7 evidence which was taken in closed session, but then the
8 suppression order was lifted on 3 August. Mr Kenny then
9 can have complete freedom to deal with it.
- 10 COMSR: In private session?
- 11 MR SMITH: In private session.
- 12 COMSR: I rather think that there are probably
13 two or three issues that will have to be dealt with in
14 private session by this witness at some stage.
- 15 MR KENNY: Certainly.
- 16 COMSR: Do you wish to perhaps leave this for
17 the time being and go on to matters that can be dealt
18 with in public session, or do you wish to move into
19 private session now?
- 20 MR KENNY: I think the situation is now, as I
21 understand from Ms Simpson, that the Aboriginal group, I
22 don't think that there is - I think I can probably name
23 the group who we're referring to.
- 24 MR SMITH: I wish my learned friend wouldn't.
- 25 MR KENNY: I will respect that, I don't have any
26 difficulty. What has happened is that this witness -
27 and you can have a look at it, p.206 - has made certain
28 assertions, and these people, from what I gather from Ms
29 Simpson, at least know about it and have become upset
30 about it.
- 31 MR ABBOTT: I think all this should be said in
32 private, rather than you providing a lead for the
33 newspaper articles.
- 34 MR KENNY: That is not my intention.
- 35 COMSR: Do you wish to move - are there any
36 other topics that can be dealt with in public session so
37 that we can deal with all those matters first?
- 38 MR KENNY: I have other topics.

P.A. CLARKE XXN (MR KENNY)

- 1 MR SMITH: Would you make a suppression order in
2 respect of that topic on pp.205 and 206?
- 3 COMSR: I thought I just had, I have only
4 suppressed pp.205 and 206.
- 5 MR ABBOTT: And the discussion that took place
6 today.
- 7 MR KENNY: I don't object to that, it's not my
8 intention -
- 9 COMSR: I suppress pp.205 and 206 and any
10 discussion concerning those matters.
- 11 MR KENNY: Perhaps if we can move to a completely
12 separate topic.
- 13 XXN
- 14 Q. In April 1994, you were at the museum and you had a
15 visit from Victor Wilson and Doug Milera.
- 16 A. That's correct.
- 17 Q. How did you become aware that they were at the museum.
- 18 A. I'd been asked by either the museum director or head of
19 division, I can't remember who, I'd been informed of
20 their visit - apparently one of them had rung up saying
21 they wanted access to the Tindale collection - I was
22 rung up by either of those two, the head of division or
23 museum director, and said well, 'Handle it'.
- 24 Q. Who was your head of division.
- 25 A. That would have been Mr Philip Jones then, our director,
26 the other previous head of division was Chris Sanderson.
27 I get so many of these questions, I'm afraid the actual
28 details of how it came about escape me. It was not an
29 extraordinary event in itself when it happened.
- 30 Q. You mean the entire event wasn't terribly extraordinary
31 to you.
- 32 A. On the day that it happened, that's correct.
- 33 Q. So what you're saying is that you don't remember
34 terribly much about it.
- 35 A. I remember, I remember what happened, because, with
36 other events that happened soon after, it was quite
37 clear that there was a pattern and something going on.
38 I have a memory of the actual event, but not how the

P.A. CLARKE XXN (MR KENNY)

1 event came into being.

2 Q. When did you first see them at the museum. (NOT
3 ANSWERED)

4 MR SMITH: On the last occasion, the witness gave
5 evidence about this. He had notes and gave evidence
6 from the notes. Is this a little test?

7 MR KENNY: I'm sorry, I didn't - perhaps I missed
8 the fact that he had notes.

9 A. I don't have notes about this particular visit. It's in
10 my statement, but I don't have journal notes. That's
11 why I haven't been able to pin it down to a precise
12 date.

13 XXN

14 Q. It's not a test of memory, I'm not testing your memory
15 I'm seeking details.

16 A. I have have a good memory of what was said and happened
17 in the visit.

18 Q. Do you remember if Steve Hemming was there during that
19 visit.

20 A. I'm very certain that he wasn't.

21 Q. So he wasn't there at all.

22 A. No. He had an office outside of the main museum and,
23 from my memory, it was just the three of us.

24 Q. What about Graham Pretty, is it, was there a Graham
25 Pretty at the museum.

26 A. Yes. He is no longer with us in the sense that he has
27 taken a package. I imagine he would have been there at
28 that stage.

29 Q. Did he have any role to play in this visit that you were
30 aware of.

31 A. None whatsoever. At that stage I was in the habit of
32 seeing Graham perhaps once a year, because his office
33 was so far away, and all of his projects were ones which
34 had no overlap with anything that I was doing.

35 Q. So I take it you're saying that Victor Wilson and Doug
36 Milera came to your office.

37 A. From my memory, they came to the main area, the main
38 anthropology area, which isn't far away from my office,

P.A. CLARKE XXN (MR KENNY)

1 and I took them through the store, it's a long building,
2 to the room which was at the opposite end of that from
3 our office, into the room where we, at that stage, had
4 the Tindale collection stored. They had come to see the
5 Tindale collection, there was no point in sitting down
6 and talking about it, so we headed straight in there.

7 Q. Did they talk to you about restrictions on access to the
8 Tindale collection.

9 A. I have no memory of any restrictions in terms of, well,
10 in terms of anything. I have no memory of there being
11 any restrictions.

12 Q. I'm asking was there any discussion that you recall.

13 A. Not that I recall.

14 Q. Do you recall any discussion about skeletal remains that
15 the museum held at that time.

16 A. I have no memory of any discussion on skeletal remains.
17 I think if there had been, I would have remembered it,
18 because it's a sensitive area in terms of the museum,
19 and has been for some years.

20 Q. Was that Graham Pretty's area.

21 A. No, it was Dr Colin Pardoe's area. Dr Colin Pardoe has
22 been with us several years, so had there been any
23 interest in that area, I would not have attempted to
24 deal with it by myself. Colin Pardoe would have either
25 dealt with it by himself, or in the company of either
26 myself or Steve Hemming.

27 Q. So what you're saying is you don't believe that Steve
28 Hemming was there at all.

29 A. That's correct.

30 Q. Do you recall any discussion about the fact that
31 Tindale's writing was hard to understand.

32 A. I certainly told them and showed them the difficulty
33 there was, and still is, with working with the Tindale
34 collection. I don't consider the handwriting difficult
35 to read. I showed them examples, and they would have
36 come to the conclusion it was difficult to read. It
37 does take a few weeks to get used to Tindale's
38 handwriting.

P.A. CLARKE XXN (MR KENNY)

1 Q. Was it possible there was a suggestion made at that time
2 by someone that his writing was hard to understand, but
3 that you could understand it.

4 A. I certainly would have told them that I was able to read
5 his handwriting. The most important obstacle from their
6 point of view, and one I would have stressed, was the
7 way that Tindale's information is dispersed through a
8 hundred odd journals. That's the prime obstacle. The
9 fact that his handwriting is hard to read is a secondary
10 one.

11 Q. I was simply asking you about discussion.

12 A. It would have been discussed, the difficulties, and they
13 would have seen for themselves. They wouldn't have had
14 to rely on my word for it, they would have come to that
15 conclusion themselves very quickly.

16 Q. Was there any discussion about the difficulties of
17 understanding the handwriting, do you recall.

18 A. It was talked about, that there would be a difficulty
19 for them to sit down and read through all the journals
20 and read the handwriting but, as I've said, the
21 discussion is one thing, their own eyes would have had
22 the evidence in front of them. There wouldn't have
23 needed to be a great deal of discussion.

24 Q. Was there a discussion.

25 A. It was talked about, yes.

26 Q. Is it possible it was talked about by Steve Hemming.

27 A. If Steve Hemming had other conversations with them
28 independent from that visit -

29 Q. No, I'm talking about at that visit at that time.

30 A. I've just said that Steve Hemming was not present at
31 that visit.

32 CONTINUED

- 1 Q. In your evidence, at p.226, you said that `They
2 desperately needed cultural information', referring to
3 Hindmarsh Island and their intention to stop the bridge.
4 Did they ever say that to you.
- 5 A. Yes, they said that to me. And the words -
- 6 Q. Did they say they desperately needed that information,
7 or is that your interpretation of it.
- 8 A. If they didn't use the word `desperate', there would
9 have been an equivalent word used. They said words to
10 the effect `We desperately need cultural information.'
- 11 Q. You are saying they desperately needed it to stop the
12 the Hindmarsh Island bridge.
- 13 A. They made it quite clear, yes.
- 14 Q. I would suggest to you that they didn't ever say that.
15 That they didn't say that they desperately needed
16 cultural information.
- 17 A. I deny that. I have got very strong memories and my
18 statement stands.
- 19 Q. After that discussion with you, what did they do, can
20 you recall.
- 21 A. When the conversation was winding up, I had already told
22 them that I had been through the -
- 23 Q. No, I am not asking you about the discussion during the
24 winding up. I said after you finished the discussion on
25 Tindale, do you know what they did after that.
- 26 A. I believe they had another meeting and they left and I
27 had no more contact with them.
- 28 Q. Did you understand that was another meeting within the
29 museum.
- 30 A. No, it definitely wasn't at the museum. It was a fairly
31 short visit by them and then they were off.
- 32 Q. When you say `a fairly short visit', how long do you
33 mean.
- 34 A. They might have been there quarter of an hour. I doubt
35 very much longer. Maybe a bit less.
- 36 Q. So, it could be as short as, what, five to ten minutes.
- 37 A. Probably would have been between 10 and, let's say, 20
38 minutes, to be on the safe side.

P.A. CLARKE XXN (MR KENNY)

- 1 Q. But you say that they definitely then were leaving the
2 museum to go to another meeting outside the museum.
- 3 A. Another meeting, another appointment. They left the
4 museum.
- 5 Q. Did you escort them out.
- 6 A. Only as far as showing them where the stairway was. It
7 is pretty confusing, the layout of the museum, the
8 public area, so, I escorted them as far as would have
9 been needed to say `That's the way out.'
- 10 Q. Is it possible they might have gone down to see Doreen
11 Kartinyeri, at that time.
- 12 A. From my memory, they were going out. Whether they came
13 back, at some later time the same day to see Dr
14 Kartinyeri, I have got no knowledge.
- 15 Q. No, I mean, immediately after seeing you.
- 16 A. My knowledge is that were heading out.
- 17 Q. Do you recall them saying - Victor Wilson saying
18 anything about wanting to look at the photos held by the
19 museum.
- 20 A. No, I can't recall anything like that.
- 21 Q. Or anything about having a look at his family tree.
- 22 A. No, I can't recall anything about his family tree.
- 23 Q. I suggest, rather than telling you they were desperate
24 for information, they asked simply if you would look and
25 see if there was anything in relation to Hindmarsh
26 Island in the Tindale journals.
- 27 A. They did both. They were desperate for information and
28 they wanted me to, as quickly as possible, look for
29 anything in relation to Hindmarsh Island in the Tindale
30 journals.
- 31 MR KENNY: I have a number of other areas that I
32 would like to ask this witness. The next topic -
- 33 COMSR: These relate to areas of interest, as
34 far as your clients are concerned?
- 35 MR KENNY: Specifically, yes.
36 The next topic I want to go to will take possibly a
37 half an hour or so and I don't really want to do it
38 Friday afternoon and then Monday or Tuesday and I will

P.A. CLARKE XXN (MR KENNY)

- 1 need to come back to this witness, in any event, on the
2 restricted material. And there are probably a couple of
3 topics there that I would like to ask some questions on.
- 4 COMSR: Do you have any idea how much longer you
5 are likely to be?
- 6 MR KENNY: I would expect three-quarters of an
7 hour, maybe an hour. I don't expect to go beyond that.
- 8 COMSR: You understand we have covered a whole
9 lot of material now?
- 10 MR KENNY: I assure you that the areas are very
11 specific.
- 12 COMSR: Yes, I just want to get some idea of the
13 total amount of time for this witness.
- 14 MR KENNY: I would say an hour should see me out,
15 unless I get very busy over the weekend and reconsider
16 it.
- 17 COMSR: I wonder if other counsel can give me
18 some idea of who will be cross-examining?
- 19 MR ABBOTT: Yes, I will be some while. I understand
20 on Monday morning we lead off with Ms Caldwell, is that
21 right?
- 22 MR SMITH: Yes, perhaps the programme for Monday is
23 - perhaps I will let you know what that is and
24 arrangements can be made, subject to that.
- 25 The programme for Monday is Alison Caldwell, first
26 thing.
- 27 COMSR: I see, is that likely to take any length
28 of time?
- 29 MR SMITH: No, I wouldn't have thought that would
30 take a great deal of time, at all.
- 31 MR ABBOTT: An hour or so.
- 32 MR SMITH: Then Betty Fisher straight after Alison
33 Caldwell. And, this might be a bit optimistic, 10
34 o'clock Alison Caldwell, approximately 10.30 Betty
35 Fisher -
- 36 COMSR: That sounds optimistic altogether.
- 37 MR SMITH: There is more to come. 2.15 Alison
38 Harvey. And then Dr Clarke to resume on Tuesday. And,

P.A. CLARKE XXN (MR KENNY)

- 1 at that time, Ms Nelson will be back. It is not to
2 accommodate Ms Nelson exactly, but I think that is the
3 way it will happen anyway, yes.
- 4 COMSR: I just want to give the witness some
5 idea of how long it will be.
- 6 MR SMITH: I would like you to release him until
7 Tuesday morning.
- 8 COMSR: All right.
- 9 MR MEYER: I come after Mr Abbott and I am likely
10 to be the shortest, because Mr Abbott, I think, will
11 cover the vast bulk of the material that I would touch
12 on. So, I would have very little, I would think, after
13 Mr Abbott.
- 14 COMSR: Dr Clarke will return on Tuesday.
- 15 MR SMITH: Yes, and Alison Harvey, we will release
16 Alison Harvey's statement now to counsel and we want Mrs
17 Harvey finished by the end of the afternoon. And I
18 remind everyone strictly about the confidentiality
19 undertakings in relation to Alison Harvey, because we
20 are releasing her statement ahead of time as against our
21 practice, so that she won't be held over.
- 22 COMSR: Is there any sensitive information
23 contained in that statement?
- 24 MR SMITH: There is no problem with the statement
25 of evidence, if counsel and solicitors comply with their
26 undertaking in relation to it.
- 27 COMSR: Is it covered by s.35?
- 28 MR SMITH: There is no s.35 material in it.
- 29 COMSR: There are no issues of confidentiality I
30 need concern myself about?
- 31 MR SMITH: None, other than are covered by the
32 undertakings. I just draw counsel's attention to that,
33 to the undertakings.
- 34 MR ABBOTT: It may be appropriate for Mr Smith to
35 ask counsel what issues they want to raise with her, so
36 that he can have some idea, before she gets into the
37 witness box, whether it should go into private session.
38 I know roughly what her evidence is likely to be.

P.A. CLARKE XXN (MR KENNY)

- 1 MR KENNY: We have got no idea. I don't think I
2 have even heard of her.
- 3 MR ABBOTT: Mr Hemming referred to her.
- 4 MR SMITH: She has been mentioned about thirty
5 times.
- 6 MR ABBOTT: I assume it is referral to Mr Hemming,
7 isn't it?
- 8 MR SMITH: Yes, it is to do with the statement that
9 I am concerned about, not so much her evidence.
- 10 MR KENNY: We have given undertakings. I don't
11 think there has been any breach of those undertakings.
12 But I certainly undertake to comply with my undertaking.
- 13 MR MEYER: While we are on that score, I spoke to
14 my friend, Mr Smith, earlier today and I rise in
15 Relation to Exhibit 197. That is the information
16 relating to the Department of State Aboriginal Affairs.
17 That has been handed out to us -
- 18 MR SMITH: Could I speak to my learned friend about
19 this first?
- 20 MR MEYER: I will come back to counsel assisting.
21 I spoke to him very briefly, but unfairly, because
22 evidence was still going and I didn't get a chance to
23 discuss it with him properly.
24 I will talk to Mr Smith.
- 25 MR ABBOTT: Exhibit 52? Still suppressed?
- 26 COMSR: Yes.
- 27 MR SMITH: Yes, is that the evidence in relation to
28 the minute, is it?
- 29 MR ABBOTT: Yes.
- 30 MR SMITH: Yes.
- 31 COMSR: I am wondering whether it is not
32 practicable to start a little earlier on Monday to
33 ensure that? A little early, or we may have to sit
34 late, if for some reason it is necessary to conclude
35 with the witness's evidence.
36 Do you have any indication, Mr Smith, as to what
37 other counsel are likely to be involved in the
38 cross-examination of the witness?

P.A. CLARKE XXN (MR KENNY)

- 1 MR SMITH: Of all three of these witnesses?
2 COMSR: All the witnesses or the afternoon
3 witness, in particular?
4 MR SMITH: No, I haven't formulated a view about
5 who should be interested in this lady. I think the
6 people who are interested in the anthropology evidence
7 will be interested in this lady. She is a field worker,
8 anthropologist/field worker.
9 MR MEYER: Early is a problem, but I don't think
10 late is.
11 MR SMITH: I think all the people who have been
12 cross-examining Dr Clarke will be interested in Alison
13 Harvey.
14 COMSR: We will adjourn then until Monday.
15 WITNESS STANDS DOWN
16 ADJOURNED 4.25 P.M. TO MONDAY, 16 OCTOBER 1995 AT 10.00 A.M.

1 COMSR STEVENS

2

3 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION

4

5 MONDAY 16 OCTOBER 1995

6

7 RESUMING 10.15 A.M.

8 MR SMITH: The programme for today is that the
9 first witness is Alison Caldwell, the ABC journalist.

10 The next witness is Mrs Betty Fisher for further
11 cross-examination. Then this afternoon at 2.15, Alison
12 Harvey.

13 Exhibit 22B is the transcript of the 7.30 Report,
14 the raw footage of 7 August 1995. That transcript was
15 tendered on Friday of last week but was incomplete, so I
16 seek to substitute that exhibit with the document I hand
17 to your clerk now. Copies have been given to counsel.

18 COMSR: We will substitute the transcript that
19 was previously on the exhibit with the complete
20 transcript.

21 MR SMITH: I tender now fresh the transcript of the
22 tape recording that was played last week. That is the
23 tape recording and the voices on it are Betty Fisher,
24 Gladys Elphick and Rebecca Wilson that was played in
25 closed session, you will recall, and that is Exhibit
26 20A. I ask that that be marked Exhibit 20A.

27 EXHIBIT 20A Transcript of tape recording tendered by
28 Mr Smith. Admitted.

29 MR ANDERSON: I represent the ABC and Miss Caldwell.

A. CALDWELL XN (MR SMITH)

1 MR SMITH CALLS

2 ALISON CALDWELL AFFIRMED

3 EXAMINATION BY MR SMITH

4 Q. I think you're a journalist employed in particular by
5 the ABC's 7.30 Report; is that so.

6 A. That's right, yes.

7 Q. I think you attend in answer to a subpoena to not only
8 give evidence, but to produce documents.

9 A. Yes.

10 Q. I think dealing, first of all, with the summons to the
11 extent that it requires you to produce records, that is
12 confined, of course, to the topic of the Betty Fisher
13 7.30 Report as we have called it.

14 A. Yes.

15 Q. I think you produce your records in relation to that, do
16 you not.

17 A. I have done via my counsel, yes.

18 Q. Looking at this bundle of documents produced to you, I
19 think they're the documents you produced via your legal
20 representatives.

21 A. Yes.

22 Q. I need you to describe them for us first of all.

23 A. Okay.

24 Q. I think, first of all, the first 8 pages are separate
25 document, aren't they.

26 A. Yes.

27 Q. How would you describe the first 8 pages.

28 A. I would describe those as being computer notes, computer
29 notes of a camera tape. When I go through a camera tape
30 after I have done the interview, we record in the
31 computer what sections we are interested in by time
32 code. So those first 8 pages are basically computer
33 notes of camera tapes involved in the story, notes
34 recorded on a computer.

35 COMSR

36 Q. These are actually your notes that you entered in.

37 A. That's right, and printed out.

38

A. CALDWELL XN (MR SMITH)

1 XN

2 Q. Looking at the first document, is it the case that -
3 looking at the first document then, can you look at the
4 camera tape, we will call it the raw footage.

5 A. Yes.

6 Q. And we have tape one there.

7 A. Yes.

8 Q. And the date 5 August, you are looking at it; is that
9 right.

10 A. That's right.

11 Q. You're looking at Betty Fisher tape one.

12 A. That's right.

13 Q. And the first entry there 'He is breaking laws which any
14 Aboriginal person' - I take it that is 'et cetera'.

15 A. Yes, that's right.

16 Q. What are the numerals above that line.

17 A. The numerals above that line are the numbers that are on
18 the playback machine, as we call it, which is next to
19 our computers in our offices. They are the numbers
20 recorded by the camera as it's recording an interview.
21 So it says 51 to one minute 6 seconds, 51 seconds to one
22 minute and 6 seconds. If you go to that particular
23 camera tape and you rewind to 51 seconds, you will find
24 that 'grab', as we call it, which is that sentence.

25 Q. And that is the sentence that is abbreviated there.

26 A. Yes.

27 Q. We can take it that that is about just over a minute,
28 that first grab.

29 A. No, that would be only about 15 seconds, 60 seconds.

30 Q. If we go through then the various tapes. That style of
31 entry accounts for pages 1 to, what did we say, 8.

32 A. Yes, that's right.

33 Q. Then, can we go to p.9 in the bundle. What is p.9.

34 A. P.9 is a printout of the script that I wrote for the
35 Betty Fisher story. That continues on pp.10, 11 and 12.

36 Q. When you say you wrote out the script, what does that
37 mean precisely; that they are the words recorded on the
38 TV video.

A. CALDWELL XN (MR SMITH)

- 1 A. That's right. What you see written here is what you
2 will hear when you watch the story.
- 3 Q. It will include a voice-over by you.
- 4 A. That includes a voice-over, yes.
- 5 Q. It says 'Betty Fisher kept' - this is a point 7 - 'Betty
6 Fisher kept her promise for 30 years', that would be you
7 talking.
- 8 A. That's right. In the darker type, that is the tape in -
9 the darker type is the tape.
- 10 Q. That goes from pp.9, 10, 11, 12; is that right.
- 11 A. Yes.
- 12 Q. That's, to some extent then, a transcript of what went
13 to air, is it.
- 14 A. Yes.
- 15 Q. The next section of documents are handwritten on A4
16 paper.
- 17 A. Yes.
- 18 Q. Is that in your handwriting.
- 19 A. That is my handwriting, yes.
- 20 Q. That's from an A4 book of yours; is that right.
- 21 A. That's right, yes.
- 22 Q. What would you describe this bundle of documents as.
- 23 A. I had - I would describe those as being my desk
24 notebook, a notebook that I use when I am sitting at my
25 desk at work as opposed to the reporter's notebook.
- 26 COMSR
- 27 Q. That first note, that is on the first handwritten pages,
28 has that anything to do with the matter.
- 29 A. No. I keep a notebook for anything that I'm working on.
30 At the same time, I was working on another story and
31 obviously that's nothing to do with the Royal
32 Commission.
- 33 XN
- 34 Q. I think what you have done after having taken advice
35 from your Mr Anderson and Mr Gretsas, you have actually
36 edited out confidential phone numbers and names in
37 relation to the morphine overdose notes; that style of
38 thing has been eliminated from the copy. Is that right.

A. CALDWELL XN (MR SMITH)

- 1 A. To an extent, yes.
- 2 Q. These two pages in your handwriting in your office
3 notebook, desk notebook notes, primarily relate to the
4 Betty Fisher story; is that right.
- 5 A. That's right.
- 6 Q. The next document is headed `Saturday, August 5, 1995,
7 Betty I/VS' and a tick.
- 8 A. Yes.
- 9 Q. That page, what is that.
- 10 A. This page is essentially on the start. August 5, I went
11 into work and I made notes of what I needed for my
12 story, the Betty Fisher story, to go to air on the
13 Monday. I was noting down for my own sake what I
14 needed, what I had already got and what I still had yet
15 to get my hands on.
- 16 Q. That's a plan for the story, is it.
- 17 A. That's right, yes.
- 18 Q. Then, the last five copy pages are your journalist's
19 notebook.
- 20 A. Yes.
- 21 Q. That is what you call it.
- 22 A. Reporter's notebook, yes.
- 23 Q. This is relating to this particular story.
- 24 A. Yes.
- 25 Q. Again, has no editing occurred there in respect to what
26 you copied.
- 27 A. No, there hasn't been.
- 28 Q. The first shooting, if you like, took place on 3 August
29 at Douglas Wardle's office in Gouger Street.
- 30 A. That's right.
- 31 Q. There was some library footage preceding that relating
32 to the story. Just focusing on this particular story
33 first of all, do you recall the location as Douglas
34 Wardle's office.
- 35 A. That's right.
- 36 Q. I think you have provided us with a what is called a
37 `shot list', have you not.
- 38 A. Yes.

A. CALDWELL XN (MR SMITH)

1 Q. Were you aware, prior to 3 August, that Mrs Fisher had,
2 for instance, conferred at the home of Douglas Wardle
3 with counsel assisting the Commission, the
4 anthropologist Philip Clarke, Lewis O'Brien and her
5 solicitor Mr Wardle.

6 A. No, I wasn't.

7 Q. Were you aware that she had provided a statement to the
8 Commission on 31 July.

9 A. I wasn't distinctly aware of the date she provided it,
10 but I had an understanding that there was a statement.

11 Q. Did you have an understanding that, as I think the 7.30
12 footage shows, Mrs Fisher was not, at least at that
13 particular time, going to give evidence.

14 A. Yes, I was.

15 Q. Can I take you then to the first location; that is the
16 office of Douglas Wardle at Gouger Street, Adelaide, on
17 3 August. That was of - we see the raw footage tape of
18 an interview with Betty Fisher there.

19 A. That's right.

20 Q. And we hear some discussion between you and Douglas
21 Wardle, don't we.

22 A. Yes.

23 Q. Who was it that orchestrated the story; how did you come
24 to be there in the first place; who made arrangements.

25 A. Betty Fisher contacted me on the morning of Thursday, 3
26 August. She told me that she didn't want to take part
27 in the Royal Commission any longer and said she would
28 speak to me on the 7.30 Report.

29 Q. Did you speak with her solicitor Mr Wardle.

30 A. I did. That morning, I rang Douglas Wardle's office and
31 I spoke to him briefly.

32 Q. Had you had any contact with Betty Fisher before this.

33 A. Only briefly. There were a couple of occasions when I
34 first met her and then out the front of this Royal
35 Commission when I spoke to her.

36 Q. There was - it's been mooted in evidence in this
37 Commission that there was to be a Betty Fisher tapes
38 press conference at the offices of the ALRM. Did you

A. CALDWELL XN (MR SMITH)

1 know anything about that.

2 A. I wasn't aware of that.

3 Q. In June.

4 A. I wasn't aware of that.

5 Q. When you went then to Douglas Wardle's offices in Gouger
6 Street, Adelaide, on 3 August, were you armed with any
7 material to facilitate the interview.

8 A. Yes. When we went to Douglas Wardle's offices, I was
9 with a cameraman and he had a camera and I was with a
10 sound recordist and he had sound recording equipment.

11 Q. Did you have any transcripts or documents, for instance,
12 from the ALRM or Doreen Kartinyeri.

13 A. No, I didn't.

14 Q. So, the footage we see on the tape, Exhibit 22, that was
15 taken at Douglas Wardle's offices on 3 August and that
16 was followed by Betty Fisher attending the Mortlock
17 Library.

18 A. That's right.

19 Q. I think Betty Fisher makes it plain to us that that was
20 a reconstruction, the package was a package that was
21 provided for the purpose; is that right.

22 A. Yes - no, that wasn't a reconstruction. What do you
23 mean by 'reconstruction'?

24 Q. The package that Betty Fisher opens, is that the genuine
25 package; that is, the package with the tapes, et cetera,
26 in it.

27 A. As I understood it, yes, it was. As I understood it,
28 she had brought out of this box this package and it was
29 the package containing the tapes. That was my
30 understanding.

31 Q. The third location is the ABC studios at North East
32 Road, Collinswood on 4 August.

33 A. Yes.

34 Q. I will give you a copy of the shot list produced. Were
35 you present on that occasion.

36 A. I was to an extent, yes.

37 Q. The shot taken there is footage of the typed transcript,
38 isn't it.

A. CALDWELL XN (MR SMITH)

1 A. Yes.

2 Q. How did you come or the ABC happen to have in its
3 possession, the typed transcript.

4 A. I knew that Doreen Kartinyeri had a copy of the typed
5 transcript. I got in touch with Sandra Saunders at the
6 Aboriginal Legal Rights Movement on 4 August, the
7 Friday, to find out where I do find Doreen Kartinyeri.
8 She told me that she was leaving Adelaide on a bus that
9 morning. I went to the bus station, found Doreen
10 Kartinyeri and asked her if she had a copy of the typed
11 transcript. I told her that I had done a interview with
12 Betty Fisher and discussed it with her for quite some
13 time and she agreed to hand over a copy of the taped
14 transcript.

15 Q. She handed it over to you at the bus station.

16 A. Yes, she did.

17 Q. Was that prearranged in the sense that when you were
18 getting the story together, did you have in mind getting
19 the transcript, or did you only discover it existed by
20 reason of talking to Betty Fisher.

21 A. No, I knew that the transcript existed.

22 Q. Had you made any prearrangement to secure it.

23 A. No, I hadn't.

24 COMSR

25 Q. Dr Kartinyeri didn't happened to have it in her
26 possession when you got to the bus stop.

27 A. She did.

28 XN

29 Q. Was that meeting at the bus station, was that
30 prearranged in the sense of occurring before 4 August.

31 A. No, it wasn't. I found out on the Friday morning, 4
32 August, that Doreen was at the bus station and I went to
33 the bus station.

34 A. She wasn't expecting me to show up as far as I know.

35 Q. When she handed the transcript over to you, did she give
36 you any instructions as to how you were to use it, any
37 safeguards, et cetera.

38 A. She had put markings on the transcript to tell us which

A. CALDWELL XN (MR SMITH)

1 sections of transcript we could use in our story. So
2 there are, you can see X's on the transcript on the
3 camera tapes and those are sections that she said we can
4 use.

5 COMSR

6 Q. There are X's on the camera tapes.

7 A. Not on the tape. She handed me the transcript and she'd
8 put markings on it.

9 XN

10 Q. In that meeting with Doreen Kartinyeri at the bus
11 station, did you, for instance, ask her whether or not
12 she might give you the handwritten exercise book.

13 A. I did.

14 Q. What was said about that.

15 A. She told me she didn't have it.

16 CONTINUED

A. CALDWELL XN (MR SMITH)

- 1 Q. Did she tell you where it was.
2 A. She told me that the notebook was in the possession of
3 the Aboriginal Legal Rights Movement.
4 Q. Anyone in particular.
5 A. No.
6 Q. Did she give you permission to access that.
7 A. She did.
8 COMSR
9 Q. Did you.
10 A. Yes.
11 XN
12 Q. You did later on, didn't you.
13 A. Yes, I did.
14 Q. Any other instructions given to you about the use of the
15 typed transcript.
16 A. She told me that I couldn't photocopy the typed
17 transcript, and that I should send it back to her as
18 soon as possible when I'd finished with it.
19 Q. The typed transcript has on it a fax header 'Aboriginal
20 Legal Rights', doesn't it.
21 A. Yes, it does.
22 Q. So the one we see on the raw footage, was that one given
23 to you.
24 A. That's right.
25 Q. Not faxed to you.
26 A. No.
27 Q. Any other constraints as to the use of the typed
28 transcript.
29 A. No.
30 Q. For instance, were there any instructions given about
31 male cameramen being able to read the transcript.
32 A. Certainly not.
33 Q. Even the sections that you weren't to copy, were they,
34 as far as you were aware, sections that could be read.
35 A. There was no instruction given that male cameramen could
36 not look at the transcript, or certain parts of the
37 transcript.
38 Q. Can I take you now, then, to the conversation at the bus

A. CALDWELL XN (MR SMITH)

- 1 station with Doreen Kartinyeri about the exercise book
2 with the cursive writing in it.
- 3 A. Yes.
- 4 Q. You knew that existed, did you not, at that stage.
- 5 A. Betty Fisher told me it existed on the Thursday, yes, so
6 I knew of its existence.
- 7 Q. You raised that with Doreen.
- 8 A. Yes.
- 9 Q. For the first time. You'd not spoken to Doreen
10 Kartinyeri about this topic before, or had you.
- 11 A. Yes, I had.
- 12 Q. When.
- 13 A. 29 June.
- 14 Q. Person to person or telephone.
- 15 A. Yes, person to person. Doreen Kartinyeri told me that
16 she had some evidence which would help support her case.
17 I asked if she would tell me about it, and she produced,
18 from her handbag, a yellow envelope and, from that
19 yellow envelope, she brought out some typed pages, and
20 she showed me a line on the typed pages. I read the
21 line - she didn't give me the typed transcript - I read
22 the line, it said something like 'Down there on
23 Hindmarsh Island', or it said 'Hind Is.', 'We do women's
24 things'. Then she told me that she was aware of a woman
25 who had done an interview back in the 60s with an
26 Aboriginal woman who had mentioned something about
27 women's business on Hindmarsh Island, and she had proof
28 of that. I obviously said 'I'd like to see that, and
29 I'd like to do something with it, I'd like to follow it
30 up'. At that time she said 'No, I will give it to you
31 at a later stage', and then she said she would save it
32 for the Tickner enquiry.
- 33 Q. So she actually produced at least one of the typed pages
34 that you eventually got hold of on 4 August, did she.
- 35 A. Yes.
- 36 Q. What about the exercise book that you subsequently saw.
- 37 A. She didn't tell me about the exercise book on 29 June.
38 The first time I heard of the exercise book was when I

A. CALDWELL XN (MR SMITH)

1 spoke to Betty Fisher.

2 Q. Can I take you, then, to the topic of the exercise book.

3 You made arrangements, or you got permission from
4 Doreen, to access that at ALRM. What do you remember
5 being said by her about that. (NOT ANSWERED)

6 COMSR

7 Q. This is not going to involve any divulgence of matters
8 covered by s.35, is it.

9 A. No. Because Betty Fisher had told me of the existence
10 of the notebook, and had told me that she had written in
11 the notebook. The only reason why I wanted to check it
12 with Doreen was because Betty had told me that the
13 notebook was now in the possession of Doreen Kartinyeri,
14 so I asked Doreen if I could see the notebook. She said
15 'I don't have it'. She told me where it was and that
16 was it, she didn't say anything else about it.

17 XN

18 Q. You actually went to the offices of the ALRM on 7 August
19 and saw the notebook there, didn't you.

20 A. Yes.

21 Q. Actually there is footage of you turning the pages of
22 the notebook, isn't there.

23 A. Yes.

24 Q. Whose permission did you have, then, to do that on 7
25 August.

26 A. Sandra Saunders'.

27 Q. Not Doreen Kartinyeri.

28 A. Doreen Kartinyeri gave me permission to ask to see the
29 notebook, to seek out the notebook, but Sandra Saunders
30 gave me permission to come and look at the notebook.

31 Q. Is that the extent of your conversation with Doreen
32 Kartinyeri at the bus station.

33 A. Yes.

34 Q. Two topics; typed transcript, exercise book.

35 A. Yes.

36 Q. I take it that your focus of attention, when you spoke
37 to Doreen at the bus station, was securing the exercise
38 book rather than the typed transcript.

A. CALDWELL XN (MR SMITH)

- 1 A. No, the main exercise was to get the typed transcript.
2 I knew she had a hard copy of it, and I wanted to get a
3 hold of the hard copy.
- 4 Q. Did you, however, understand that the typed transcript
5 itself did or did not contain details of the women's
6 business, other than a general description of it.
- 7 A. I was aware that it had a general description.
- 8 Q. But that the real hard evidence, if you like, of women's
9 business was in the handwritten exercise book.
- 10 A. I wasn't certain of that. Betty Fisher had told me the
11 typed transcript was a typed transcript of what was in
12 the notebook.
- 13 COMSR
- 14 Q. Just so that I'm clear, you understood it to be a
15 verbatim copy, did you.
- 16 A. Yes.
- 17 XN
- 18 Q. You thought by getting the typed transcript you were
19 getting, in effect, a typed up version of the notebook.
- 20 A. That's what I understood, yes.
- 21 Q. Then you'd made arrangements, or your employers had made
22 arrangements, to interview Bob Ellis, the man we saw on
23 in the 7.30 Report and on the raw footage, from
24 Queensland, presently in Queensland.
- 25 A. Yes.
- 26 Q. Who steered you on to him.
- 27 A. Betty Fisher.
- 28 Q. In what terms.
- 29 A. On the Thursday when I interviewed Betty Fisher,
30 afterwards I asked her if she could give me some
31 references, people who could speak on her behalf, people
32 who knew her. She gave me a couple of names, one of
33 which was Bob Ellis, who is now working in Queensland.
- 34 Q. 5 August 1995 was what day of the week.
- 35 A. 5 August would have been the Saturday.
- 36 Q. You went to the home of a relative of Veronica Brodie at
37 Paralowie.
- 38 A. Yes.

A. CALDWELL XN (MR SMITH)

1 Q. You then had in your possession the typed transcript,
2 didn't you.

3 A. Yes, I did.

4 Q. How many pages did that consist of.

5 A. I think there were four pages. I think she gave me four
6 pages of typed transcript, one sided, on one side of
7 each page.

8 COMSR

9 Q. So there were two pages and they were on the back and
10 front of each page, is that what you're saying.

11 A. No, there were four pages with typed transcript on each
12 page, one side of each page.

13 Q. How long did you have them in your possession.

14 A. I had them with me until Tuesday morning, Tuesday 8
15 August.

16 Q. How long a period of time was that.

17 A. Four days - five days including the Friday.

18 Q. You say you think you had four pages.

19 A. Yes.

20 XN

21 Q. There was present, apart from people who were
22 off-camera, but at least the people who were filmed at
23 the home of the relative of Veronica Brodie at
24 Paralowie, were Betty Fisher, Maggie Jacobs, Veronica
25 Brodie, yourself. They were the participants in at
26 least the film section of what went on.

27 A. Yes, and the camera crew.

28 Q. There were children and a dog about too, weren't there.

29 A. Yes.

30 Q. Who organised that, who got these people to Paralowie.

31 A. I did.

32 Q. Getting Maggie Jacobs along, that was something you did.
33 You contacted her, did you.

34 A. Veronica Brodie got in touch with Maggie Jacobs. She
35 wanted Maggie there when she listened to the cassette
36 tape. I contacted Maggie to see if she could be there,
37 and she said she would be.

38 Q. You decided to have Veronica Brodie participate because

A. CALDWELL XN (MR SMITH)

1 she was the daughter of Rebecca Wilson.

2 A. That's right.

3 Q. Sorry, Veronica asked for Maggie Jacobs to be present,
4 did she.

5 A. Yes, she did.

6 Q. You contacted her.

7 A. Yes.

8 Q. Why was it that this took place as far off as Paralowie.

9 A. I don't know. When I contacted Veronica, I was quite
10 happy to do the interview at her house, but she said she
11 wanted to do the interview at the house of her niece, I
12 understood it was.

13 Q. We see what took place from the raw footage and from the
14 7.30 Report itself. Can I take you to Monday, 7 August.
15 That was the day of the evening that this television item
16 Went to air on the 7.30 Report. That's right, isn't it.

17 A. Yes.

18 Q. On that day, you have recorded on the shot list that you
19 attended at the Aboriginal Legal Rights Movement office
20 in King William Street, and there was film of you
21 turning the pages of the notebook, the handwritten
22 notebook.

23 A. Yes.

24 Q. That is filmed by your crew.

25 A. By a cameraman and a sound recordist.

26 Q. A male cameraman.

27 A. Yes.

28 Q. Was that done in the presence of Sandra Saunders.

29 A. Yes, it was.

30 Q. Were there any constraints imposed in respect of this
31 filming by her.

32 A. She preferred that the camera was at a reasonable
33 distance away from the notebook, that we didn't get
34 close-up shots of the notebook, and I wasn't allowed to
35 take the notebook away.

36 Q. Can you tell us how many pages of the notebook did
37 contain cursive writing, all of the notebook.

38 A. I flipped through about three pages.

A. CALDWELL XN (MR SMITH)

- 1 Q. Did you yourself ascertain whether they contained
2 material relevant, if you like, to women's business on
3 Hindmarsh Island.
- 4 A. In a general sense. I briefly looked at three pages as
5 I was flipping through it.
- 6 Q. Did Sandra Saunders indicate these three pages to you.
- 7 A. The book was sitting on a desk, we filmed the book, I
8 asked if I could have a quick flick through of the book,
9 she said yes.
- 10 Q. The three pages you flicked through, they were three of
11 many handwritten pages, or not so many.
- 12 A. I didn't count them. I could say that it looked as if
13 there were about 15 or 20 pages.
- 14 Q. All handwritten.
- 15 A. Of handwritten.
- 16 Q. You know that Betty Fisher was taking material from
17 Gladys Elphick for a proposed book, and says that she
18 took some material from Rebecca Wilson also. Were you
19 able to identify in the notebook, in the exercise book
20 which was handwritten, which was which, or whether it
21 was the one topic.
- 22 A. The section of the notebook, the notebook as it was
23 sitting on the desk, had the word 'Koomi' on it, and
24 that's the only name I saw as I flicked through the
25 three pages of the notebook.
- 26 COMSR
- 27 Q. When you say 'I flicked through', did you read any
28 sentences.
- 29 A. Not closely, no.
- 30 XN
- 31 Q. At all.
- 32 A. No.
- 33 Q. When you got to your three pages, you told us you at
34 least identified it as dealing with women's business.
- 35 A. Yes.
- 36 Q. But did it provided any detail of women's business - I
37 don't want you to tell us what it was, but did it
38 provide any detail of the women's business.

A. CALDWELL XN (MR SMITH)

- 1 A. In that I had access to that typed transcript at the
2 time, I was looking to see if the notebook matched the
3 transcript, and it did as far as I could ascertain.
- 4 Q. Did you ascertain in the notebook whether there was any
5 detail of the women's business.
- 6 A. No, I did didn't, no.
- 7 Q. Did you look for it.
- 8 A. No, not specifically no.
- 9 Q. Why not.
- 10 A. Well, I didn't - when you say `the women's business',
11 are you talking sacred secret women's business?
- 12 A. Yes.
- 13 Q. I don't know what the sacred secret women's business is.
14 I was just looking to see if it matched that typed
15 transcript, and I saw words along the lines of what I
16 saw in the typed transcript, but whether or not that is
17 women's business, I'm not sure.
- 18 Q. We hear on the tapes, on both tapes, Veronica Brodie
19 reading out sections of the typed transcript, don't we.
- 20 A. Yes.
- 21 Q. Is that the extent of the material that you identified
22 in the handwritten notebook, or did you identify
23 anything new.
- 24 A. I didn't see anything new, no.
- 25 Q. At that time, Monday 7 August, you still had in your
26 possession the typed transcript.
- 27 A. Yes.
- 28 Q. Did you have it with you at the time you went to the
29 Aboriginal Legal Rights Movement office.
- 30 A. I may have, yes, had it in my bag.
- 31 Q. When did you hand that back.
- 32 A. I posted it back on Tuesday, 8 August.
- 33 Q. To Doreen Kartinyeri.
- 34 A. Yes.
- 35 Q. At what address.
- 36 A. I can't remember. It was a post office box in Port
37 Germein.
- 38 Q. She gave you that in the conversation at the bus depot,

A. CALDWELL XN (MR SMITH)
XXN (MR ABBOTT)

1 did she.

2 A. That's right.

3 MFI 212 Bundle of notes together with the shot

4 List marked 212 for identification.

5 CROSS-EXAMINATION BY MR ABBOTT

6 Q. In relation to the typed transcript - and you understand

7 when I used the words 'typed transcript', I'm referring

8 to the typed transcript of what was said to be Betty

9 Fisher's notebook.

10 A. Yes.

11 Q. You may not have personally have done this, but you

12 know, do you not, that a copy or copies were made by the

13 ABC of it.

14 A. No, I don't.

15 Q. You didn't make such a copy.

16 A. No, I didn't.

17 Q. Were you given any prohibition on making such a copy.

18 A. Yes. Doreen Kartinyeri asked me not to make any copies

19 of it whatsoever.

20 Q. You haven't mentioned that.

21 A. I did.

22 Q. When you say 'no copies', are you telling us that the
23 cameramen only had the copy that you had from Doreen.

24 A. That's right.

25 Q. You spoke to Doreen Kartinyeri at the bus station for
26 how long.

27 A. I could have been with her for about 15 minutes. She

28 was getting ready to catch a bus. It could have been

29 about 15 minutes, I'm not sure.

30 Q. You've told us that she wasn't expecting you, you just

31 turned up out of the blue, but you knew her from

32 previous contact, didn't you.

33 A. Yes.

34 Q. In fact, you'd interviewed her on previous occasions.

35 A. Yes.

36 Q. How many occasions prior to 4 August.

37 A. I couldn't say to be exact. Probably four times, four

38 or five times.

A. CALDWELL XXN (MR ABBOTT)

- 1 Q. After making the request of Doreen and after she
2 produced the transcript from her bag, did you read it
3 then and there with her, or part of it.
- 4 A. Partly, yes.
- 5 Q. I would like you to tell us what happened, because, you
6 see, you have told us of a discussion in the course of
7 which you and she both had the transcript and she was
8 going through it with you and she was putting asterisks
9 or crosses in the margin. Just tell us what was said,
10 would you.
- 11 A. I can't remember to be exact and I didn't take notes of
12 the discussion, but essentially I asked her if I could
13 see the typed transcript and if I could take it away.
14 She said that would be all right. I asked her if it
15 would be okay if we filmed it. She said that would be
16 all right. And then I said 'Are there any bits, in
17 particular, that you want us to steer clear of?' And
18 she said 'Oh, yes', and marked the transcript.
- 19 Q. How many marks did she put on it.
- 20 A. I think she only put four or six marks on it. She put a
21 mark at the top of a section of transcript and a mark at
22 the bottom of that section. So, two markings on, you
23 know, I think probably about six markings.
- 24 COMSR
- 25 Q. I haven't quite followed how many sections that
26 translates into.
- 27 A. Three.
- 28 XXN
- 29 Q. In fact, one of them was - we see one of the sections
30 with one of the asterisks alongside it, don't we.
- 31 A. That is the section she wanted us to film. When she put
32 an asterisk, that means you can film this section.
- 33 Q. The asterisks were to show that you could film, not what
34 you couldn't film.
- 35 A. That's right.
- 36 Q. After you got the transcript or, indeed, presumably at
37 the time and soon after you read it.
- 38 A. Yes, I did.

A. CALDWELL XXN (MR ABBOTT)

- 1 Q. There was no restriction placed on you in not reading
2 it.
- 3 A. No.
- 4 Q. And you read it right through.
- 5 A. Yes.
- 6 Q. Carefully.
- 7 A. Yes.
- 8 Q. I mean, this was the most important, at that stage,
9 document that in your eyes related to this Royal
10 Commission, wasn't it.
- 11 A. Yes.
- 12 Q. And it was something that was good for the ABC.
- 13 A. It was a good story.
- 14 Q. Thereafter it was - we know it was filmed by your
15 cameramen, male cameramen.
- 16 A. Yes.
- 17 Q. Both of them.
- 18 A. We have one cameraman and one sound recordist when
19 something like that is happening, yes.
- 20 Q. They obviously were able to look at it in its entirety.
- 21 A. Able to?
- 22 Q. Yes.
- 23 A. I didn't actually hand them the four pages of
24 transcript. I handed them the sections that she had put
25 markings on.
- 26 Q. How many pages was that.
- 27 A. I think I gave them four - three pages, three of the
28 pages.
- 29 Q. Out of four.
- 30 A. Yes.
- 31 Q. So, there was one page without any asterisks on it.
- 32 A. As I remember, yes.
- 33 Q. Which of the four pages in sequence was it.
- 34 A. I think it was the last page, but I can't remember
35 specifically.
- 36 Q. Are you suggesting then that, having read it through,
37 there was anything different on the last page than there
38 was on the other three pages.

A. CALDWELL XXN (MR ABBOTT)

1 A. I can't remember specifically what was on the last page.

2 Q. No, but was anything different in generality.

3 A. No.

4 Q. I mean, let's be frank about this, these four pages of
5 typed transcript were, without going into detail,
6 general in the extreme, weren't they.

7 A. I am not sure, I am not sure if I can say that from -

8 Q. Putting it another way, was there anything specific
9 about Hindmarsh Island.

10 A. Hindmarsh Island was mentioned, so was Kumarangk, I
11 think it was mentioned as Kum an, or something.

12 Q. But was there any mention of anything said to be secret
13 or sacred women's business.

14 A. When you say `secret or sacred women's business', what
15 do you mean?

16 Q. Forget what I mean. You read it through. You carefully
17 read it. You saw what was in it. Having read it
18 through, was there anything that you regarded as being
19 secret sacred women's business in view of what you had
20 heard.

21 A. There was mention of babies, going to Hindmarsh Island
22 to have babies.

23 Q. Women going to Hindmarsh Island to have babies.

24 A. Yes.

25 COMSR: If we are going to get any more
26 specific, there are certain things that are in the
27 public arena already.

28 COMSR

29 Q. Was there anything that is not the public arena.

30 A. No.

31 XXN

32 Q. You know that these four pages were said by Betty Fisher
33 on her oath to be a verbatim account of what is in - of
34 all that is in her notebook that relates to Hindmarsh
35 Island and secret sacred women's business, don't you.

36 A. At the time she told me that she had done a transcript
37 of her notebook.

38 Q. No, listen to my question.

A. CALDWELL XXN (MR ABBOTT)

1 A. Yes.

2 Q. You have heard Betty Fisher give evidence.

3 A. Yes.

4 Q. Haven't you.

5 A. Yes.

6 Q. You know that she said that, we now them to be four
7 pages and you think there were four pages, that the four
8 pages of transcript is an exact account of all that is
9 in her handwritten notebook that relates to secret
10 sacred women's business and Hindmarsh Island.

11 A. Yes.

12 Q. Having read it through, you are able to tell the
13 Commission that all of it that you read is in the public
14 arena already.

15 A. Certainly now.

16 Q. And that there is nothing that we haven't already heard
17 about that is referrable to secret sacred women's
18 business on Hindmarsh Island.

19 A. Not from what I saw in reading the transcript.

20 COMSR

21 Q. There is just one thing I would like to clarify, if I
22 could: as far as the tapes are concerned, you heard
23 those, did you.

24 A. The original reel-to-reel tapes, or the cassette tape?
25 The cassette tape that has been handed to you?

26 Q. Yes.

27 A. I listened to that cassette tape.

28 Q. It is not suggested, of course, that there is anything
29 in those relating to Hindmarsh Island, is it.

30 A. I think, doesn't Gladys Elphick talk about that area?
31 She talks about that area.

32 Q. She talks about hearing her mother's voice.

33 A. No, Gladys Elphick, on that tape, I think she talks
34 about that area. I think.

35 MR ABBOTT: The witness is referring to the
36 introduction, before Rebecca Wilson speaks. But we will
37 need to play it again, because I think that you are
38 right and the witness's recollection is inaccurate. I

A. CALDWELL XXN (MR ABBOTT)

1 don't think there is any reference to Hindmarsh Island.

2 A. Certainly not from Rebecca Wilson there isn't, no.

3 MR ABBOTT: Nor, I would suggest, from Gladys

4 Elphick, although we weren't allow to listen to it all.

5 There is a transcript already prepared, which is

6 Exhibit 20A.

7 COMSR: I was just trying to get the witness's

8 understanding, Mr Abbott, at this time.

9 MR ABBOTT: Yes.

10 COMSR: I have the evidence of what was actually

11 there.

12 XXN

13 Q. I need to ask you a few more questions about the

14 transcript.

15 A. Yes.

16 Q. We can see from the shots of the transcript on the raw

17 footage that there is written on the transcript a

18 section which says `NB not to be used', or `special to

19 Coorong people'. Do you remember seeing that section.

20 A. Yes, I do.

21 Q. Is there any other section in the typed transcript which

22 has that designation on it or anything like that.

23 A. I don't remember seeing that.

24 Q. You would have remembered if there was another such

25 section, wouldn't you.

26 A. I would hope so.

27 Q. What we see on the tape, and I can play the tape to you,

28 but you probably remember, are the words `Next three

29 pages not to be used' and then `NB special to Coorong

30 people'.

31 A. Yes.

32 Q. You actually saw those words in the typed transcripts.

33 A. Yes, I did.

34 Q. Did you see them when you were flicking over the

35 notebook.

36 A. I think I did.

37 Q. Do you remember Betty Fisher's evidence on this subject.

38 A. To an extent, yes.

A. CALDWELL XXN (MR ABBOTT)

- 1 Q. I paraphrase it, but Betty Fisher's evidence, I suggest,
2 was to this effect: that, when she came to the most
3 secret sacred section, that is, when Koomi came to the
4 most secret sacred section of what she was allegedly
5 recounting, she notified Betty Fisher, as a result of
6 which Betty Fisher wrote in her notebook over three
7 pages, three handwritten pages `NB not to be seen by
8 men', or something of that nature. Her evidence to this
9 extent is at p.1278 to p.1281. She said this at p.1277,
10 it starts at the bottom of p.1276, last line `That's not
11 quite an answer to my question. Are you telling us that
12 these three pages, which are entitled apparently "NB
13 special to Coorong people", are not the three pages that
14 relate to secret sacred women's business in relation to
15 Hindmarsh Island, as you have asserted it?' And she
16 said `No, no definitely not, definitely not.' And then
17 she went on to tell us that there were another three
18 pages headed by another note of exclusion in essence
19 saying that they were three pages which were preceded by
20 a note `Not to be seen by men'. You never saw anything
21 of that sort in this transcript.
- 22 A. Not in the four pages that I was handed, no.
- 23 Q. Nor in the notebook.
- 24 A. I'm not sure. I can't be sure about the notebook.
- 25 Q. You can't be sure, but not that you recall in the
26 notebook.
- 27 A. I can't recall.
- 28 Q. What size was the notebook in relation to an A4 page.
- 29 A. I would say in terms of its - it was A4 size, but
30 narrower, not as wide as an A4 page, but as long.
- 31 Q. You said it consisted of approximately 20 pages. I am
32 not asking you to say that that is an exact, but merely
33 an approximation.
- 34 A. Yes, could have been more.
- 35 Q. What was on the front cover.
- 36 A. There wasn't a front cover there.
- 37 Q. At all.
- 38 A. No.

A. CALDWELL XXN (MR ABBOTT)

- 1 Q. There was, what, just - you looked at it and there was a
2 page of writing in front of you.
- 3 A. That's right.
- 4 Q. How did that page of writing start off.
- 5 A. I can't give you the words.
- 6 Q. The effect.
- 7 A. No, I can't.
- 8 Q. Was it about -
- 9 A. I think 'Koomi' was at the top of the page, I think.
- 10 COMSR
- 11 Q. So, this was a section, a part of the notebook.
- 12 A. Yes.
- 13 Q. And you wouldn't know whether the cover and other pages
14 had been taken out or not.
- 15 A. It looked as if the cover and other pages had been taken
16 out. It looked as if the pages preceding the pages that
17 I saw had been cut away from the book.
- 18 XXN
- 19 Q. They were still double-sided pages.
- 20 A. No, all I saw was one side and, as it was sitting on the
21 desk, there were pages which had been cut away.
- 22 Q. So, they were loose pages.
- 23 A. No, it was part of a book.
- 24 Q. When you saw the front of the book, you saw that there
25 were some pages, including the cover, which had been cut
26 off the book.
- 27 A. Yes.
- 28 Q. Because you could see what was left and that indicated
29 that there previously had been a number of pages there.
- 30 A. Yes.
- 31 Q. And, of the pages that were left for your examination,
32 there were some 20 pages or 10 pages or 20 sides.
- 33 A. There could have been 20 pages with writing on both
34 sides. I don't know how many pages were there.
- 35 Q. But, in any event, how many of those pages related to
36 matters relevant to the Royal Commission and how many
37 pages didn't, you can't help us.
- 38 A. I am sorry, no.

A. CALDWELL XXN (MR ABBOTT)

1 Q. Because you only flipped through two or three. May I
2 take it they were the first two or three.

3 A. Yes.

4 Q. And they did appear to be relevant.

5 A. Yes.

6 COMSR

7 Q. Just for the sake of completeness, was it written in
8 pencil, pen, biro or what.

9 A. It looked like a pencil, an organy, yellowy sort of
10 pencil, but it wasn't biro.

11 XXN

12 Q. We know that you came to be involved in the Betty Fisher
13 aspect of this Royal Commission, I think, early on in
14 the week of 1 August.

15 A. When you say 'involved', what do you mean?

16 Q. By 3 August, you had arranged an interview with Betty
17 Fisher, at the offices of Mr Douglas Wardle.

18 A. Yes.

19 Q. How long before that had you decided to try and
20 interview Betty Fisher.

21 A. When Doreen Kartinyeri told me about this transcript
22 that she had, in the back of my mind I was interested in
23 doing a story about the transcript. On the first day of
24 the Royal Commission I saw listed on the list of
25 interested parties in the Commission the name Elizabeth
26 Fisher and I asked - at one stage during the Royal
27 Commission somebody tapped me on the shoulder in the
28 Commission. I turned around. She was talking to me
29 About my coverage of the Royal Commission. I think
30 during the lunch break we were talking outside and I
31 asked her if she was Elizabeth Fisher. She said 'Yes',
32 and I asked her if she had done any interviews with any
33 Aboriginal women in the 60s. She said 'Yes', she knew -
34 yes. And I can't give you a date of when that happened,
35 but it was after the Commission started.

36 Q. We know the Commission started on 19 July, so we are
37 talking about the latter part of July, are we not.

38 A. Yes.

A. CALDWELL XXN (MR ABBOTT)

- 1 Q. By Monday, 31 July, I think you were aware that Betty
2 Fisher had given a statement to the Royal Commission.
3 A. Yes, the first time I knew that she had given a
4 statement was when she told me she had given a
5 statement, provided a statement.
6 Q. When was that.
7 A. I can't give you a date.
8 Q. Did you get a copy of her statement.
9 A. No, I didn't.
10 Q. You have never had a copy of it.
11 A. No.
12 Q. Have you ever seen a copy of it.
13 A. No.
14 Q. How soon before 3 August 1995 was it that you made
15 arrangements for the interview.
16 A. I didn't.
17 Q. You tell us what happened then.
18 CONTINUED

A. CALDWELL XXN (MR ABBOTT)

1 A. On 3 August, I got a phone call from Betty Fisher at
2 work or at the ABC and she said that she was no longer
3 wanting to take part in the Royal Commission and
4 organised the interview there and then.

5 Q. You say this is entirely unsolicited by you.

6 A. Previously, when I had met her out the front of the
7 building or in here, we talked about what she had done
8 and I had said I would be interested in doing something.
9 But at that point, she was taking part in the Royal
10 Commission and her advice from her lawyer is that that
11 is what she will do.

12 Q. However, by 3 August, there was obviously a change of
13 heart on Betty Fisher's part. She told you that she
14 didn't intend to take any part in the Royal Commission
15 and she would now speak to you.

16 A. Yes.

17 Q. Did you make a note of that discussion.

18 A. No, I didn't.

19 Q. She told you to ring Doug Wardle.

20 A. The only note I made is Doug Wardle's address.

21 Q. Where is that.

22 A. In the notebook, reporter's notebook section.

23 Q. Is the original of that notebook available for perusal.

24 Have you got it here.

25 A. It's here.

26 Q. Could I have a look at the original please.

27 OBJECTION Mr Anderson objects.

28 MR ANDERSON: I object to that and I object to it on
29 the basis that it is not the practice in this Commission
30 for anyone to reveal their original notes if counsel
31 assisting is satisfied that what is provided is genuine;
32 and there's a wealth of information in there which is
33 not the province of anybody, including counsel
34 assisting. I have personally, with Mr Gretsas, assured
35 myself that what has been provided to the Commission is
36 what is relevant to this interview. That what he has
37 got in the copies here is all that he needs, with
38 respect.

A. CALDWELL XXN (MR ABBOTT)

- 1 MR ABBOTT: I would be happy if counsel assisting is
2 able to give us the same assurance.
- 3 MR SMITH: I can't at the moment. I can do that
4 very quickly.
- 5 MR ABBOTT: I would be happy for Mr Smith to inspect
6 that.
- 7 COMSR: Is there any objection to Mr Smith
8 inspecting that?
- 9 MR ANDERSON: No, none at all.
- 10 MR ABBOTT: Perhaps that can be done during the
11 break.
- 12 COMSR: What break are we talking about?
- 13 MR ABBOTT: The lunch break.
- 14 COMSR: You are not anticipating that the
15 examination of this witness will extend to that time?
16 There are limits.
- 17 MR ABBOTT: I am mindful of the limits and I'm
18 intending to be as brief as I can.
- 19 XXN
- 20 Q. On p.19 of the 20 pages it says: `10.30, 75 Gouger
21 Street, Doug Wardle's office' and the number. That is
22 the note that you refer to as the initial contact with
23 Betty Fisher on 3 August 1995.
- 24 A. I think so.
- 25 Q. So, events were moving fairly quickly then. She rang
26 you and by 10.30 you were going to be having an
27 interview with her.
- 28 A. Yes.
- 29 Q. The other notes on that page, what do they relate to.
- 30 A. The first name that you see there is one of the names of
31 a referee that she provided. The next two names, you
32 know what these names. And the last name is someone who
33 works at the library.
- 34 COMSR: Hasn't this ground been covered in the
35 examination?
- 36 MR ABBOTT: That ground hasn't been.
- 37 MR ANDERSON: I interrupt and ask how is it relevant?
- 38 MR ABBOTT: It's relevant as to what Betty Fisher

A. CALDWELL XXN (MR ABBOTT)

- 1 said to this witness and how they went about this
2 interview. And I'll turn straight to the interview that
3 is taken on 3 August.
- 4 XXN
- 5 Q. Would you look at Exhibit 22B the raw footage produced.
6 Of those pages, how many deal with the interview at
7 Douglas Wardle's offices on 3 August.
- 8 A. Down to p.10, I think.
- 9 Q. Surely at the top of p.11 is also Douglas Wardle's
10 office.
- 11 A. Yes. Sorry, yes, it is, yes.
- 12 Q. I would like you to help us as to what was said on the
13 the top of p.11. It's a male voice, is it not.
- 14 A. It could have been.
- 15 Q. Was it Mr Wardle's.
- 16 A. I'm not sure.
- 17 Q. We may have to play it and ask you to identify it.
18 Someone is saying something about 'One of those is
19 responsible. I think what we have done is' - and then
20 the Royal Commission staff couldn't translate what was
21 there, so it read in the transcript 'I think what we
22 have done is' - something - 'Have Tim Wooley present at
23 the time of the fabrication. I think we will now work
24 out how to get him out of there'. Do you remember that
25 discussion.
- 26 A. No, not clear, no.
- 27 Q. At all.
- 28 A. It wasn't all that important, so I didn't make a -
- 29 Q. Who else was there.
- 30 A. There was myself, the cameraman, the sound recordist,
31 Betty Fisher and Douglas Wardle.
- 32 Q. My suggestion is this is you: That it was Douglas Wardle
33 speaking and that there is a discussion about when Mr
34 Wardle is talking about Tim Wooley having been present
35 at the time of fabrication. Do you remember that
36 discussion.
- 37 A. Only vaguely.
- 38 Q. What was said.

A. CALDWELL XXN (MR ABBOTT)

1 A. I can't specifically remember. I think we were talking
2 about things in general.

3 Q. This is not things in general, this is about Tim Wooley
4 being there at the time of the fabrication occurring.

5 A. I don't think that was what he was saying. No, I'm not
6 sure. But I don't think that is what - it seems as if
7 there is a full sentence there and you have only taken
8 part of it.

9 Q. I put it to you that wasn't Mr Wardle in essence saying
10 to you that he, not him personally, but his client Betty
11 Fisher, was working hand in glove with the ALRM, that
12 the problem of Tim Wooley being present at the time of
13 the fabrication was a problem which they were addressing
14 with the view to working out how to get Tim Wooley out
15 of the problem that was presented by him having been
16 present during the fabrication.

17 OBJECTION Mr Anderson objects.

18 COMSR: Are you putting to the witness that that
19 is part of the conversation?

20 MR ABBOTT: Yes, I am. If necessary, we will play
21 it. In fact, I insist we play it.

22 MR SMITH: That would be better, I think. That is
23 Exhibit 22.

24 COMSR: Perhaps I will hear Mr Anderson.

25 MR ANDERSON: I can't object if my friend wants to
26 play it. I would have thought that by now someone would
27 have worked out whether it was Mr Wardle or not. It is
28 not for this unfortunate witness to guess about voices.

29 MR SMITH: It's certainly Mr Wardle, yes.

30 MR ANDERSON: It's unfair if some people in this
31 Commission know that it is Mr Wardle and this witness is
32 being asked to say whether it is or isn't - and I don't
33 know whether it is unless I ask.

34 MR ABBOTT: I assume that she would have a fair and
35 reasonable recollection of discussing it with Mr Wardle,
36 wouldn't she? I would now like to play the tape. My
37 view is that it is Mr Wardle and I can't give evidence
38 of who it is and I can only have it played.

A. CALDWELL XXN (MR ABBOTT)

1 MR ANDERSON: It would be quicker to listen to the
2 tape.

3 COMSR: Can we identify the portion of the tape.

4 Q. Can you recognise Mr Wardle's voice.

5 A. Probably.

6 COMSR: I suppose it will depend a little on the
7 quality of the tape. Are you able to identify in some
8 way what portion of the tape?

9 MR SMITH: It's the end of the first section. We
10 can get to that by fast forwarding it fairly smartly.

11 MR ABBOTT: I am going to make a suggestion which is
12 of slight variance to the transcript being provided to
13 the Royal Commission.

14 XXN

15 Q. I would like you to listen with this variation in mind.
16 That Mr Wardle says to you 'Tim Wooley was present at
17 the time of the fabrication. I think we will now work
18 out how to get him out of there'. That's what I'm
19 suggesting one hears on this tape. So can we now play
20 that section.

21 COMSR: Are you asking that I suppress any
22 mention of this at this stage?

23 MR WARDLE: Yes, I am.

24 COMSR: I notice from time to time members of
25 the media dash out of the hearing room. In view of the
26 nature of the suggestion that is being put, I certainly
27 would be suppressing this until we can hear what is
28 going on.

29 VIDEO PLAYED

30 XXN

31 Q. It says 'One of the big problems is we have Tim Wooley
32 present at the time of the fabrication.' That is what
33 you heard.

34 A. If you would play it again?

35 VIDEO PLAYED

36 Q. 'One of the big problems is we have Tim Wooley present
37 at the time of the fabrication'. Do you agree with
38 that.

A. CALDWELL XXN (MR ABBOTT)

- 1 A. Yes, something like that, yes. There was a couple of
2 words that were there after.
- 3 Q. `The whole thing gets down to how to get him out of
4 there. We will have to work out how to get him out of
5 there'.
- 6 A. I think it was `We will now work out how to get him out
7 of there'. That is the way they have transcribed it.
- 8 CONTINUED

A. CALDWELL XXN (MR ABBOTT)

1 VIDEO STOPPED

2 Q. Can you assist us with what was said.

3 A. I don't think we're talking about anything about Betty
4 Fisher, I said we're just talking generally.

5 Q. Maybe you are talking about Betty Fisher, you
6 personally, but how did it arise that Mr Wardle and you
7 are discussing about the fact that Tim Wooley was
8 present at the time of fabrication and how it can be
9 worked out to get him out of there.

10 OBJECTION Mr Anderson objects.

11 MR ANDERSON: My friend has inbuilt in that question
12 that she and Mr Wardle was discussing something. It's
13 not a fair question to ask her what she is discussing.

14 MR ABBOTT: Your Honour looks astonished, the next
15 words uttered by Alison Caldwell are 'Doug Milera fell
16 away.'

17 XXN

18 Q. Did you hear yourself saying that.

19 A. Yes.

20 Q. So you were discussing with Doug Wardle the problems
21 that the opponent women were having in relation to the
22 Royal Commission.

23 OBJECTION Mr Anderson objects.

24 OBJECTION Mr Wardle objects.

25 MR WARDLE: There is a whole slab missing from the
26 start of that, and he is elevating me to a major player.
27 It was off-camera discussion about nothing in particular.

28 COMSR: I still don't think you can put to this
29 witness as a proposition that you were discussing - are
30 you going to ask her 'Were you discussing'. At least
31 let's establish something.

32 MR ABBOTT: I will.

33 COMSR: The witness, I don't think, has
34 purported to identify the male voice at present.

35 MR ABBOTT: We'll come to that.

36 XXN

37 Q. First of all, now that I've played this portion of the
38 tape through to you, do you recognise, or are you able

A. CALDWELL XXN (MR ABBOTT)

1 to tell us that that was a discussion that you were
2 having with Douglas Wardle.

3 A. Yes.

4 Q. In the sense that he was talking to you, and you were
5 talking to him, correct.

6 A. Yes.

7 Q. Now that you've heard part of that discussion, could you
8 tell us what the discussion was about.

9 A. From what I can remember, it wasn't an important
10 conversation, and it wasn't a conversation which would
11 be recorded in any way. It was a general conversation
12 about the commission and what is before the commission,
13 what will be before the commission. Just a very, very
14 general conversation.

15 Q. Why did you raise Doug Milera.

16 A. I think that's because around that time Doug Milera was
17 part of the commission.

18 Q. You agree that we've now got Mr Wardle saying, in
19 essence, there was a problem because Tim Wooley was
20 present at the time of the fabrication. That's the
21 effect of what you heard him saying, isn't it.

22 A. Well, I'm not sure. I'd like to be able to hear the
23 whole, the beginning of that sentence.

24 Q. Come over here.

25 A. You don't have it. I think there is probably more
26 around that which would be useful to hear, but which
27 hasn't been recorded.

28 Q. I suggest you come over here again, and we'll listen to
29 the start of the sentence.

30 A. Okay.

31 VIDEO PLAYED

32 Q. `Otherwise dropped in cold'.

33 A. `You'd be dropped in cold'.

34 Q. Do you remember what that was about.

35 A. No.

36 VIDEO PLAYED

37 Q. `You're one of those responsible'.

38 A. Yes.

A. CALDWELL XXN (MR ABBOTT)

- 1 Q. Do you remember what that was about.
2 A. No.
3 VIDEO PLAYED
4 Q. `One of the big problems we had was about concerning Tim
5 Wooley'.
6 A. He may have said `one of the problems they have'.
7 Q. `One of the big problems they have is about concerning
8 Tim Wooley'. Would you like to hear that again. (NOT
9 ANSWERED)
10 VIDEO PLAYED
11 Q. `One of the big problems they had is having Tim Wooley
12 present'.
13 A. `Suddenly discover that you're one of those
14 responsible'. It sounds like `One of the big problems
15 they have concerns the fact that' -
16 Q. `About having Tim Wooley present at the time of the
17 fabrication'.
18 A. That's what.
19 Q. Is that right.
20 A. That's what it sounds like.
21 VIDEO PLAYED
22 Q. `I think they have now worked out to keep him out of
23 it'.
24 A. No, I don't think he says that. `I think that now they
25 have' -
26 Q. `They worked out how to get him out of there'.
27 A. Yes, that could have been it.
28 VIDEO PLAYED
29 Q. What are you saying there.
30 A. I'm not sure, something about the commission evidence.
31 Q. Just listen to it again. (NOT ANSWERED)
32 VIDEO PLAYED
33 Q. Can you tell us what you were saying.
34 A. No, I can't.
35 Q. I will have to get it enhanced.
36 VIDEO PLAYED
37 A. `The commissioner is now hearing something'.
38 Q. We'll play a bit more. (NOT ANSWERED)

1 VIDEO PLAYED

2 Q. `I think that was the story that was floating around
3 before the Royal Commission'.

4 A. That's what he says, yes.

5 Q. Then you say then `Doug Milera fell away'.

6 A. Yes.

7 Q. Do you remember why you said that.

8 A. I think we were talking about the Royal Commission and
9 different, you know the Tim Wooley evidence, the Doug
10 Milera evidence.

11 VIDEO STOPPED

12 Q. I think that's the end of it. Well, if there is
13 anything else that you can remember of the conversation
14 that will assist us in putting it in context or not,
15 please tell us.

16 A. I can't. It didn't seem to be terribly important at the
17 time, and I didn't make notes of it. This is the first
18 time I've thought about it the since.

19 Q. On this tape, this is the raw footage tape, there are a
20 couple of comments I want to make. First of all, the
21 raw footage tape has no raw footage of what took place
22 on 7 August 1995. Why is that.

23 A. I don't know.

24 Q. There surely would have been raw footage of that.

25 A. There would have been, but I don't know what happened to
26 it.

27 Q. Have you tried to find out what happened to it.

28 A. No.

29 Q. Has anyone, because there was a subpoena addressed.

30 A. I assume someone has, but I don't know.

31 Q. You do keep logs or records of how much footage is spent
32 at various places, do you not.

33 A. Not as such. What do you mean by that?

34 Q. Someone keeps a record of, on this particular tape, how
35 much is devoted to this section.

36 A. No.

37 Q. This topic.

38 A. No.

A. CALDWELL XXN (MR ABBOTT)

- 1 Q. You see, on the to-air tape, there is seconds of shots
2 showing your hands turning the pages of the book,
3 correct.
- 4 A. Yes.
- 5 Q. In essence, however, the photographing presumably took a
6 minute or so, at least.
- 7 A. Only that.
- 8 Q. Yes.
- 9 A. If not less. The camera could have been rolling only
10 for about 30 or 40 seconds, 20 seconds.
- 11 Q. Did you ask for any other shots to be taken that day,
12 like of Sandra Saunders, or the ALRM interior or
13 exterior.
- 14 A. No.
- 15 Q. So the only footage that is referable to your exercise
16 here is something on the order of a minute or less on 7
17 August of your hands turning the notebook.
- 18 A. On that particular tape?
- 19 Q. Well, on the tape that was taken by the cameramen on 7
20 August.
- 21 A. Are you asking is there anything else there?
- 22 Q. Yes.
- 23 A. I think on the same camera tape we got a shot of the
24 house that Gladys Elphick used to live in.
- 25 Q. Where is that camera tape.
- 26 A. I don't know.
- 27 Q. That is the one that I was looking for when we got the
28 raw footage, and it wasn't there.
- 29 A. I don't know. Basically as soon as I've written my
30 story and handed tapes over to an editor, I don't know
31 what happens to those tapes once I have handed them
32 over.
- 33 Q. So we can assist - no doubt counsel assisting will want
34 to pursue this - on the tape that relates to your trip
35 to ALRM on 7 August 1995, there will be or there was in
36 existence a raw footage tape which had shots of your
37 hands at the ALRM turning the notebook, shots of the
38 house where Gladys Elphick used to live, correct. What

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1 else did it have on it.

2 A. The only other thing that may have been on there is a
3 photograph that Betty Fisher gave us.

4 Q. When.

5 A. On that Monday.

6 Q. That's on Monday, the 7th.

7 A. Yes.

8 Q. How did you meet Betty Fisher on the 7th that she had
9 given you a photograph.

10 A. I didn't meet her on the 7th, I telephone her in the
11 morning, and she couriered an envelope of photographs to
12 the ABC.

13 Q. Where do we find in your notes reference to that raw
14 footage tape. First of all in the first -

15 A. We don't.

16 Q. Not at all.

17 A. No, because that was done at lunchtime on the Monday,
18 Monday afternoon I came back to the Royal Commission,
19 and I left the tape with the cameramen and I asked him
20 to take it back to the ABC, and I identified to the
21 editor which shots I'd need, so he would have just
22 looked for them himself, but I didn't make notes of them
23 in a computer.

24 Q. Anything else on this raw footage tape.

25 A. No.

26 Q. Other than those three topics.

27 A. No.

28 COMSR

29 Q. How long is the tape. Do you just use a section of it.

30 A. Yes. Tapes can sometimes be 20 minutes or a half an
31 hour. We may only use the first two minutes, we may use
32 15 minutes, whatever we record on that tape. Sometimes
33 we just do one quick interview, then change tapes. It's
34 different.

35 Q. I see, then you leave the rest of the tape blank, do
36 you.

37 A. That's right, yes.

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1 XXN

2 Q. Could I just ask you about the raw footage tape that we
3 have got. On some of the raw footage tape, there
4 appears to be a soundtrack overlaid, is that right.

5 A. It appears to be, yes.

6 Q. It appears to have been done deliberately.

7 A. I don't know. I wasn't there whether that happened, I
8 was in the Royal Commission.

9 A. But I mean you're an experienced television journalist,.

10 A. Have listened to hours and hours of tape, haven't you.

11 A. Yes.

12 Q. Someone has dubbed in noises on top of this tape in
13 parts, haven't they.

14 A. I don't know.

15 Q. I know you don't know, but that's what it appears to be,
16 traffic noises.

17 A. It could be that accidentally a channel has been left
18 open. I don't know how that would have been done.

19 Q. Look, the raw footage tape that we have got, and which
20 was the basis of the on-air tape, has obviously been
21 subsequently doctored, hasn't it.

22 A. I wouldn't say necessarily `doctored'.

23 Q. Someone's laid down, on one of the two sound tracks, a
24 noise to distort or minimise what we can here on the raw
25 footage.

26 A. I don't know.

27 Q. That's what appears to have happened.

28 A. I was in the Royal Commission, and I don't know what
29 happened.

30 Q. That's the effect of what's happened, isn't it.

31 A. Yes.

32 Q. Can you provide any explanation as to how that came to
33 happen.

34 A. I can't.

35 Q. Can you tell us who might have been responsible for it.

36 A. No, I don't know who did the dub.

37 Q. Is there a clean copy, or is this the only one.

38 A. I'm not sure now. I don't know what's happened.

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- 1 Q. You've now heard it, that there is an overlay and
2 someone's done some dubbing on top of the raw footage
3 tape. Have you asked anyone how this came to happen.
4 A. No, I didn't, no.
5 Q. Are you sure.
6 A. Yes.
7 Q. You've never asked anyone.
8 A. I haven't asked the person who did the dub what
9 happened.
10 Q. Who is the person who did the dub.
11 A. I'm not sure.
12 Q. Who could it have been.
13 A. I'm not sure.
14 Q. Give us a range of names, then.
15 A. No, I can't.
16 Q. You can't or won't.
17 A. I can't.
18 COMSR
19 Q. Do you mean by that that you really don't know, you've
20 got no idea.
21 A. I don't know who did the dub, no.
22 XXN
23 Q. Is what we have got in this video clip here the actual
24 raw footage that you've got back at the ABC, that is it,
25 or are those camera tapes still in existence.
26 A. I'm not sure.
27 Q. You see, just so the commissioner knows, what the ABC
28 have put together for the purposes of this Royal
29 Commission is a compilation from various separate camera
30 tapes.
31 A. Yes.
32 Q. Cameras go out, or one cameraman and one camera goes
33 out. He uses, say, 10 tapes, right.
34 A. Yes.
35 Q. Our Exhibit 22 is a copy of those camera tapes so it
36 runs continuously.
37 A. Yes.
38 Q. In the copy that we have, someone has dubbed on a lot of

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- 1 noises to make a lot of it unintelligible and very
2 difficult to hear, haven't they.
- 3 A. How it happened, I don't know.
- 4 Q. But that's the effect of what they have done, isn't it.
- 5 A. Yes.
- 6 Q. If we go back to the original raw footage, those noises
7 shouldn't be on it, should they.
- 8 A. I wouldn't have thought so.
- 9 Q. Where are the original raw footage tapes.
- 10 A. I don't know, I haven't asked.
- 11 MR ABBOTT: I ask that they be produced.
- 12 MR SMITH: The situation is that the subpoena was
13 broad enough -
- 14 MR ABBOTT: Exactly.
- 15 MR SMITH: - to encompass that, and I think we
16 received an assurance that all the raw footage available
17 was on the tape that was produced.
- 18 MR ABBOTT: I accept that assurance, but what they
19 have done is doctored the tape that we have got so you
20 can't hear some of it, or it's difficult to hear because
21 it's got an overdubbing of some traffic noises, whines,
22 electronic noises etc., and I ask that the original raw
23 footage camera tapes be produced in answer to the
24 subpoena.
- 25 COMSR: Are they available?
- 26 MR ANDERSON: I don't know, I will just get
27 instructions. I will ask my friend if he wishes to
28 pursue his persistence in relation to `doctored'. It
29 is a pretty serious suggestion. There has already been
30 a suggestion by the witness that a channel can be
31 accidentally be left open on a camera. I don't have any
32 instructions, but I will get them. I just wonder
33 whether my learned friend thinks he's got a bit more and
34 wishes to withdraw the allegation of doctored.
- 35 COMSR: The situation is, as I understand it,
36 that there are noises. How they got there -
- 37 MR ANDERSON: I don't know what the noises are.

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- 1 COMSR: As yet, I have no evidence before me,
2 one way or the other, as to the manner in which, the
3 time at which, or -
- 4 MR ANDERSON: I will get instructions, as soon as I
5 can. If you think it is important enough, I will get
6 them now.
- 7 MR MEYER: I happen to think that is important,
8 because I was concerned that we weren't able to hear. I
9 just assumed that every little while trucks go past.
- 10 MR ABBOTT: No. And jackhammers start up.
- 11 MR MEYER: And I think it is important that we
12 know, before we finish this cross-examination.
- 13 COMSR: Let me find out.
14 Mr Anderson, is this something that can readily be
15 done, or is it going to take some time?
- 16 MR ANDERSON: I don't even know that, but I am
17 prepared to ask for a short adjournment, to try and find
18 out whether it is a long-term or a short-term process.
- 19 MR ABBOTT: And the missing raw footage tape, as
20 well.
- 21 COMSR: Yes, is there available some raw
22 footage? Has something happened to it?
- 23 MR ANDERSON: I don't know. My instructions are that
24 everything that is available has been produced, but I
25 will check that, also.
- 26 COMSR: Perhaps that may mean this, Mr Anderson:
27 That previously there was something available, which is
28 no longer available. So, perhaps if you can just assert
29 that.
- 30 MR ANDERSON: That is certainly the case in relation
31 to the interview with Ellis.
32 I can tell you that, on my instructions, Ellis was
33 interviewed on a satellite -
- 34 MR ABBOTT: We are not asking for the Ellis one.
- 35 MR ANDERSON: Just a minute, I am just explaining
36 to the Commissioner.
37 The Ellis was interview was on a satellite link and
38 records aren't kept of that. And I can tell you that is

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- 1 not available, that previously was available. Other
2 than that, I can't help you. So, I think it is better
3 if I do get instructions.
- 4 COMSR: Yes, I mean, I am not familiar with what
5 happens to these tapes, whether they are kept for a
6 certain time, or what. And, if so, how long.
- 7 MR ANDERSON: I will find all that out for you and,
8 whether I can do it quickly or not, I am not certain.
- 9 COMSR: Perhaps you can at least find this out:
10 whether you can do it quickly?
- 11 MR ANDERSON: Yes.
- 12 COMSR: And, if you can't, you can let me know.
- 13 ADJOURNED 11.58 A.M.

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1 RESUMING 12.20 A.M.

2 MR ANDERSON: I think I can be of some help to you and
3 hopefully my learned friends.

4 My instructions are that, when the subpoena was
5 served on the ABC, the lady who served it indicated that
6 they wanted the tapes as quickly as possible. The ABC
7 and, indeed, I think most other television channels,
8 record on highly sophisticated Betacam equipment. You
9 haven't got Betacam. So, because of the subpoena, an
10 operator at the ABC was asked to transfer the tapes,
11 that is, the original carera tapes, from Beta on to VHS,
12 which is what you have got. In the course of that
13 transfer from Beta to VHS, he wasn't given any specific
14 instructions and it was all done in a hurry - and I
15 repeat, he wasn't given any specific instructions and it
16 was all done in a hurry - and the operator effectively,
17 when changing from Beta to VHS, had both channels
18 recording over the other. In other words, if it had
19 been going to air or whatever, one channel would have
20 been turned down. The channels very simply are one is a
21 camera microphone and one is a hand-held microphone and
22 one is sometimes put some distance in the background
23 near an open window or whatever and picks up all the
24 background noise. The two channels were both recorded
25 and that is what you hear. It was dubbed in a mixture,
26 in other words, in the situation of getting the VHS copy
27 to the Commission as quickly as possible. You won't
28 achieve anything by having the Beta tapes brought here,
29 but they can be. I have ascertained that they still are
30 available, but the ABC have offered their facilities to
31 enable you or anyone who wants to listen to the camera
32 tapes to go out there and listen to them, so that Mr
33 Abbott can be assured that his allegation is unfounded.

34 COMSR: No, I understand what you are saying.

35 MR ANDERSON: We can bring them in, but there is no
36 point.

37 COMSR: We can't do it. That seems to be a
38 pointless exercise to me.

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- 1 MR ANDERSON: We can bring them in by 2.15. We will
2 be happy to place them in your possession. If anyone
3 else wants to hear them, the ABC will make the
4 facilities available. They will have to go out there do
5 it. I am offering those facilities.
- 6 COMSR: I don't want the Commission to be held
7 up on a line of inquiry which is not going to assist me.
- 8 MR ABBOTT: Neither do I. I wonder whether the
9 assistance of the ABC could go this far: perhaps they
10 can make another copy of the raw footage that doesn't
11 have this problem on it?
- 12 MR ANDERSON: I didn't ask that question, I'm sorry.
- 13 MR ABBOTT: That would be the easiest way out and we
14 can substitute one without the background noise on it.
- 15 COMSR: Yes, I don't propose to spend any more
16 time pursuing this line of enquiry.
- 17 MR ANDERSON: We are happy to do that. Anything to
18 keep Mr Abbott happy.
- 19 MR ABBOTT: And the missing tape, can you keep me
20 happy and tell me where that is?
- 21 MR ANDERSON: I don't know anything about a missing
22 tape, I'm sorry.
- 23 MR ABBOTT: The one you were asked to get
24 instructions on. The tape of 7 August.
- 25 COMSR: Perhaps you can take instructions and
26 explain that to him. But, Mr Abbott, we seem to be
27 wasting a lot of time enquiring into the practices of
28 the ABC in relation to their -
- 29 MR ABBOTT: I don't intend to waste time at all.
- 30 COMSR: Their footage and such like. Whereas
31 this witness in the box at present I understand was
32 called so that we could pursue the matter of the
33 documents that Mrs Fisher is said to have been the
34 authoress of.
- 35 MR ABBOTT: Yes.
- 36 MR ANDERSON: I may have misunderstood Mr Abbott
37 earlier, but I was after instructions in relation to the
38 alleged doctoring. And I have got those instructions

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1 and I have conveyed them to you.

2 In relation to any missing tape, perhaps if he will
3 explain that to me in the adjournment, I will find out
4 about that. I didn't do that in the time available. I
5 am not sure which it is.

6 COMSR: As I understand it, the extraneous
7 noises which were there are explicable by virtue of the
8 fact that you are trying to transfer from one system to
9 another both the sound and the visual.

10 MR ANDERSON: Yes, and without specifically
11 designating that one channel only will go on to it.

12 Can I also say something else that is part of my
13 instructions?

14 COMSR: Yes.

15 MR ANDERSON: In relation to the cross-examination
16 that Mr Abbott was pursuing of the witness, in relation
17 to the Doug Wardle discussion, you would have noticed
18 there are several different camera shots during the
19 discussion which takes place. And I understand, from
20 speaking to Mr Smith, that there has been other evidence
21 in this Commission that, when that takes place, in other
22 words, when the camera shots change, so also does the
23 audio. And, for a variety of reasons, that seems to be
24 continuous, but it isn't necessarily so. There are
25 different conversations going on when the camera
26 changes.

27 MR ABBOTT: But the same conversation.

28 MR ANDERSON: Yes, but not that it was continuous and
29 I wouldn't want you thinking that that was the
30 situation. I understand that has been explained on an
31 earlier occasion, but I don't think that was made clear
32 in the cross-examination by Mr Abbott that he wasn't
33 suggesting other than it was continuous.

34 XXN

35 Q. So we are clear that about, this was the part I say was
36 continuous: Mr Wardle says to you `Otherwise, you would
37 be dropped in cold and suddenly discover you are one of
38 those responsible. Now, I think what they have done is

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- 1 to - ', and then there is a pause `one of the big
2 problems they have had has been about having Tim Wooley
3 present at the time of the fabrication, but I think that
4 now they have now worked out how to get him out of
5 there.' Does that accord with your recollection of what
6 you heard.
- 7 A. Yes, but in what context I do not - I think you might be
8 taking it out of context in terms of it was a much
9 longer conversation and you have heard a snippet of it.
- 10 COMSR: Just so that we are clear, Mr Abbott,
11 that wasn't what you were initially putting to the
12 witness and attributing to Mr Wardle, is it?
- 13 MR ABBOTT: It is similar, but we have now listened
14 to it in greater detail and it is to the same effect,
15 but with greater refinement.
- 16 XXN
- 17 Q. Just a couple of other matters: do you know a woman
18 called Katrina Power.
- 19 A. Yes, I do.
- 20 Q. Has she played a part in the provision of these
21 documents and the filming of them.
- 22 A. No, she didn't.
- 23 Q. Or any of the interviews that took place.
- 24 A. No, she didn't.
- 25 Q. There is a sheet of what you were going to do on
26 Saturday, 5 August, do you have that sheet.
- 27 A. Yes, I do.
- 28 Q. There is an asterisk on the right-hand side. These are
29 some notes added later `Shot of 30 Yorke Terrace,
30 Ferryden Park.'
- 31 A. Yes.
- 32 Q. That is the reference to what I have called the missing
33 tape, being Gladys Elphick's house, is it.
- 34 A. Yes, it would be.
- 35 Q. For Monday you have got `Notebook Monday ALRM.' That is
36 a reference to returning the notebook or seeing the
37 notebook, rather.
- 38 A. Yes, to seeing the notebook.

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- 1 Q. And you have got 'Take tape to Victor first thing
2 Monday.' What is that reference to.
- 3 A. That is a reference to the audio tape that Betty Fisher
4 gave me. Number 5 I have referred to it as. Taking it
5 to a sound recordist at the ABC for him to listen to and
6 see if there was any extra noise or fuzz on the tape he
7 might be able to do something about, but that wasn't
8 required.
- 9 Q. That is an audio taped now exhibited in the Royal
10 Commission and played in your absence the other day.
- 11 A. Yes.
- 12 Q. Dealing with the interview that took place on 5 August
13 at the home of Debbie Thomas whom you understood to be
14 the niece of Veronica Brodie, you have told us a little
15 about that and I would like to ask you a couple more
16 questions. You arranged for Betty Fisher to attend.
- 17 A. Yes.
- 18 Q. You came to that meeting with the transcript.
- 19 A. Yes.
- 20 Q. You handed the transcript over to Veronica Brodie.
- 21 A. Yes.
- 22 Q. We have seen some of the shots of what was taken. Who
23 else was handed that transcript, or who else read it or
24 part of it.
- 25 A. At that house that day?
- 26 Q. Yes, both on and off-camera. I am not restricting the
27 answer to on-camera.
- 28 A. I think Maggie Jacobs may have had a look at it. I
29 think Betty Fisher may have had another look at it.
- 30 Q. Certainly Veronica Brodie did, because she read out from
31 it.
- 32 A. Yes.
- 33 Q. You handed over to them all the transcript you had,
34 didn't you.
- 35 A. Yes.
- 36 Q. There was no restriction on any part of it.
- 37 A. No.
- 38 Q. And how did you decide what part Veronica Brodie would

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1 read out.

2 A. I think I went to the bits that had the asterisks on
3 them. I think those were the bits that I asked her to
4 read out.

5 Q. And that's why we see her going from page to page.

6 A. Yes.

7 Q. In the tape.

8 A. Yes.

9 Q. Those were the asterisks that had been placed on it by
10 Doreen Kartinyeri with a view to indicating areas that
11 could be shown to the public.

12 A. Yes.

13 Q. On film, at least. And certainly, in your
14 understanding, read out in public.

15 A. Yes.

16 Q. On film.

17 A. Yes.

18 Q. You never wrote anything on this transcript.

19 A. No.

20 Q. I want to ask you about another document and that
21 relates to another interview of yours. This is an
22 interview you conducted in March 1995 with Doreen
23 Kartinyeri, I think, and/or Sandra Saunders. And it
24 concerns a document said to have been signed or compiled
25 by the daughter of Pinkie Mack.

26 A. Yes.

27 Q. We are talking about what was variously described in the
28 media as an affidavit.

29 A. Yes.

30 Q. Have you seen that document.

31 A. No, I haven't, no.

32 Q. You were present when it was being filmed, though, were
33 you not.

34 A. No, I wasn't.

35 Q. Do you remember it being referred to in an interview.

36 A. I think Sandra Saunders referred to it in a studio
37 interview that was done one night in March.

38 Q. She claimed to have had an affidavit from the daughter

1 of Pinkie Mack.

2 A. Yes, she did, I think, in that interview.

3 Q. But you have never seen it.

4 A. No, I haven't.

5 Q. In relation to your contact with Betty Fisher, has she
6 mentioned to you a man called Lewis O'Brien.

7 A. Yes.

8 Q. In what connection.

9 A. The day that I met Betty Fisher here in the Royal
10 Commission hearing room, she introduced me to the man
11 sitting beside her and she said `This is Lewis O'Brien.
12 He is an Elder of the Kaurna tribe.'

13 Q. Is that the extent of her contact with Lewis O'Brien and
14 you.

15 A. As far as I know, yes.

16 CONTINUED

A. CALDWELL XXN (MR MEYER)

1 CROSS-EXAMINATION BY MR MEYER

2 Q. I want to ask you some questions firstly about the 29
3 June meeting that you had with Doreen Kartinyeri.

4 Firstly, whereabouts did that meeting take place.

5 A. It was on a flight between Port Germein and Renmark.

6 Q. On a flight.

7 A. Yes.

8 Q. In an aeroplane.

9 A. Yes.

10 Q. How did you come to be flying with Doreen Kartinyeri in
11 an aeroplane.

12 A. I was doing a half an hour special for the 7.30 Report.

13 We flew down to Port Germein on the 29th to get pictures
14 of Doreen at home, looking at her - I think she told us
15 of the Tindale genealogies - and then we wanted to fly
16 to Renmark to film Connie Roberts at her home at Berrie
17 and Doreen with Connie Roberts at Connie's home. We
18 were flying to make it easier, faster.

19 Q. I understand she took a transcript out of her bag.

20 A. Yes, she did.

21 Q. She said to you words to the effect that she had
22 evidence to show that women had talked about women's
23 business in the 60s.

24 A. She said she had evidence which would help support her
25 case. Then, she said that she had a transcript of an
26 interview that took place between a white woman in South
27 Australia and an Aboriginal woman in the 60s.

28 Q. I understand she took a transcript from her bag.

29 A. She took an envelope from her bag.

30 Q. Did she take anything out of the envelope.

31 A. She pulled what looked like a transcript out of the
32 envelope.

33 Q. Entirely out.

34 A. No, not completely.

35 Q. How much of the transcript did you see.

36 A. The only thing I remember seeing is the top half of a
37 page, a group of pages held together, and that line
38 which I recited to David Smith.

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- 1 Q. Was that the same transcript as you subsequently
2 received from Doreen Kartinyeri.
3 A. I'm not sure. I think so.
4 Q. Did it appear to be the same.
5 A. I only saw half of a page when she pulled it from an
6 envelope.
7 Q. Did it look like the same.
8 A. That half looked much like what I received in the end,
9 yes.
10 Q. About the same number of pages.
11 A. I would think so.
12 Q. Was that transcript represented to you as being a
13 transcript that had been prepared in the 1960s.
14 A. Not exactly, no.
15 Q. If 'not exactly', what was said in relation to the
16 production of the transcript.
17 A. 'This is a transcript of an interview that took place'.
18 Q. Was there any mention of when the transcript was made.
19 A. Not by Doreen Kartinyeri, no.
20 Q. What about by you.
21 A. No.
22 Q. So, you didn't enquire.
23 A. Not from Doreen, no.
24 Q. Did you enquire from anybody.
25 A. I asked Betty Fisher when the transcript was done.
26 Q. Was that because it was later.
27 A. Yes.
28 Q. In that flight, was there any mention of the notebook.
29 A. No.
30 Q. When was the first mention of the notebook.
31 A. I think the first time I heard about the notebook was
32 from Betty Fisher on 3 August when I was about to
33 interview her.
34 Q. What did you understand the transcript to represent.
35 A. I understood the typed transcript was a transcript of
36 the notebook.
37 COMSR
38 Q. I understood it that at that time no mention had been

- 1 made of the notebook.
2 A. No. The first time I heard of the notebook was on
3 August 3.
4 XXN
5 Q. The first time you saw this transcript was on 29 June in
6 your aeroplane.
7 A. Yes.
8 Q. No mention of a notebook.
9 A. No.
10 Q. What did you think the transcript, the typed transcript,
11 was a transcript of.
12 A. Notes.
13 Q. Did you enquire.
14 A. No.
15 Q. Was it represented as being a transcript of any tapes.
16 A. Doreen may have said something about tapes, but I don't
17 remember that, no.
18 Q. Had you heard of tapes by that time.
19 A. No, I hadn't.
20 Q. Have you got a copy of your notes.
21 A. Yes.
22 Q. Looking at the notes produced, the last page of the copy
23 of your notes there is an entry which reads 'Maggie
24 Jacobs 75 years'. I take it that these notes were taken
25 on the occasion when Veronica Brodie was filmed reading
26 from the transcript.
27 A. That's right.
28 Q. These notes are of your handwriting.
29 A. Yes.
30 Q. Maggie Jacobs told you that she is 75 years old.
31 A. She did.
32 Q. She told you that she heard stories from her
33 grandmother.
34 A. She did.
35 Q. That all related to women's business.
36 A. I think that is what she was referring to.
37 COMSR
38 Q. Is that what she said.

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- 1 A. All she said was 'I heard stories from my grandmother',
2 and I have just written that.
- 3 XXN
- 4 Q. You were talking about matters relating to women's
5 business, weren't you.
- 6 A. Yes, generally.
- 7 Q. That was the context of the conversation.
- 8 A. Yes.
- 9 Q. She also told you that she had heard those stories at
10 school.
- 11 A. That is what appears to have been said, yes, from there.
- 12 Q. We are talking about women's business.
- 13 A. That's what I've written 'She heard stories from', and
14 on the next line 'at school'.
- 15 Q. So I understand the relevance of this conversation, what
16 Maggie Jacobs was telling you was that she heard, she
17 says to you, stories about women's business both from
18 her grandmother and while she was at school.
- 19 A. I don't know if that is exactly what she was saying.
20 She did say 'I heard stories from my grandmother', and
21 then I have written 'at school', but I don't remember
22 the entire conversation.
- 23 Q. In this conversation, were you discussing stories other
24 than matters relating to women's business.
- 25 A. No.
- 26 Q. You have said to Mr Abbott this reference to the tape on
27 this full page of notes for August 5 relates to somebody
28 at the ABC.
- 29 A. Yes.
- 30 Q. It doesn't mean, for example, taking a tape to Victor
31 Harbor or alternatively taking a tape to Victor Wilson.
- 32 A. I thought you would think that, but that is not the
33 case.
- 34 Q. On the occasion of Monday, 7 August, that was when you
35 went to the ALRM to take the film of the notebook; is
36 that right.
- 37 A. Yes.
- 38 Q. You went there, I take it, with a camera person.

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- 1 A. Yes.
2 Q. And was that camera person the cameraman.
3 A. Yes.
4 Q. And did the cameraman take pictures of the notebook.
5 A. Yes.
6 Q. Who else was present.
7 A. The sound recordist.
8 Q. Was the sound recordist a male or a female.
9 A. A male.
10 Q. And there is you.
11 A. Yes.
12 Q. Who else.
13 A. Sandra Saunders - and I think Chris Charles was there as
14 well.
15 Q. Doreen.
16 A. No.
17 Q. At this time when this notebook is present, it is
18 present before three men and two women.
19 A. Yes.
20 Q. How long were you at the ALRM on that occasion.
21 A. All up, we're there for about, I would say, 25 minutes.
22 We're waiting in the front foyer for about 20 minutes.
23 I was talking to Sandra in a side office maybe for about
24 3 minutes, and that's the office where, yes, we saw the
25 notebook there. We're there about 3 minutes, so maybe
26 just over 20 minutes.
27 Q. I understood that this notebook was in the possession of
28 Doreen Kartinyeri. That is not how you saw it.
29 A. On that day, the notebook was at the ALRM.
30 Q. So, if the notebook had been given by Betty Fisher into
31 the custody of Doreen Kartinyeri, she has released it
32 from her custody to people at the ALRM.
33 OBJECTION Mr Anderson objects on the ground
34 that the witness could not know that
35 scenario.
36 MR MEYER: Maybe she is in the room without Doreen
37 Kartinyeri being there.
38 A. All I know is that the notebook was in an office at the

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(MR WARDLE)

- 1 ALRM on Monday is all I know.
2 XXN
3 Q. Doreen wasn't there.
4 A. No.
5 Q. There was an audio tape made of Veronica Brodie; is that
6 right.
7 A. Yes.
8 Q. Do you know where that audio tape came from.
9 A. From Betty Fisher.
10 Q. Did she bring it with her on that occasion.
11 A. Yes, she did.
12 CROSS-EXAMINATION BY MR WARDLE
13 Q. Do you have a copy of Exhibit 22B.
14 A. Is that the transcript of the tape?
15 Q. That is the transcript of the video tape.
16 A. No, I don't.
17 Q. Looking at the transcript of the video tape produced,
18 Exhibit 22B, at p.11, which is the page containing the
19 passage upon which you have been cross-examined, have
20 you got that.
21 A. Yes.
22 Q. Firstly, would you agree with me that there was more
23 conversation that took place than has actually been
24 recorded.
25 A. Yes.
26 Q. I don't simply mean the bits that are marked 'inaudible'
27 there, but there were other things said that were not
28 recorded at all.
29 A. Yes.
30 Q. Would you also agree that this was at a stage when the
31 interview with Betty Fisher had concluded, the
32 microphone, or the main microphone had been turned off.
33 A. Yes.
34 Q. And there was simply filming of the tapes.
35 A. Yes.
36 Q. Any conversation that was picked up, I assume, would
37 have only been picked up on the camera microphone.
38 A. That's right.

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1 COMSR

2 Q. Is there some difference in quality between the two
3 microphones.

4 A. There can be, yes.

5 XXN

6 Q. The camera microphone was pointing in the opposite
7 direction.

8 A. The camera microphone is pointing in the same direction
9 as the camera. The camera was recording on cassette
10 tapes.

11 Q. Whatever conversation was taking place between you and I
12 was taking place behind the cameraman.

13 A. It was.

14 Q. Can I suggest that what was discussed was a general
15 discussion about the issues facing the Royal Commission.

16 A. I'd say that's right.

17 Q. I suggest that, in particular, I was referring to the
18 original opening of counsel assisting, Mr Smith, and in
19 effect criticised that as being too generalised for
20 anyone to know what the allegation against them was.

21 A. That may have been the case.

22 COMSR

23 Q. Can you remember whether or not it was.

24 MR WARDLE: Can I put something additional, as that
25 may assist.

26 XXN

27 Q. The comment about being 'dropped in cold' related to the
28 original opening address by counsel assisting.

29 A. Yes.

30 Q. It was a reference to witnesses coming before the
31 Commission having no real idea, nor their counsel having
32 any idea of what was being alleged.

33 A. Yes.

34 OBJECTION Mr Abbott objects.

35 Q. Was that the effect of what was being discussed.

36 OBJECTION Mr Abbott objects.

37 COMSR: What is the basis of your objection?

38 MR ABBOTT: Until Mr Wardle gives evidence, this

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1 witness will not know what is in Mr Wardle's mind when
2 he offers the words that he wants this witness to
3 comment on. He can ask her how she found out about
4 this.

5 WITNESS: When we were talking with Betty Fisher,
6 I brought up the issue of the Doug Milera's issues.

7 MR ABBOTT: I remind you that the words on the tape
8 are `dropped in cold'.

9 XXN

10 Q. That is, I suggest, a reference to the witnesses, not
11 you personally.

12 A. No, not me. I didn't take it as a reference to myself.

13 No, certainly not.

14 Q. You understood from what was being put to you that it
15 was a reference to witnesses before the Commission.

16 A. Yes.

17 Q. Certainly not you personally.

18 A. No.

19 Q. I suggest that Tim Wooley was referred to.

20 A. Yes.

21 Q. I suggest that I referred to him in the context of it
22 being a problem for the Commission to find fabrication,
23 with the allegation being that Tim Wooley was present
24 during the fabrication.

25 OBJECTION Mr Abbott objects.

26 MR ABBOTT: He can read out the words which are on
27 the tape and I invite Mr Wardle to ask her how she
28 understood them. But the way this is being put is, in
29 my submission, quite wrong because the plain words on
30 the tape don't support this view. The tape talks of one
31 of the big problems they have had is about having Tim
32 Wooley present at the time of the fabrication. That is
33 not a problem for the Commission, that is a problem for
34 the ALRM.

35 MR SMITH: Mr Wardle has a difficulty in this area
36 in cross-examining a witness about what the witness said
37 to him.

38 MR WARDLE: I can put a version.

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1 COMSR: Yes, but I think what you are doing at
2 the present time is putting what you had intended to say
3 when you said that, and I can't say - what we are trying
4 to elicit is what the witness remembers of the
5 conversation.

6 MR SMITH: Mr Wardle is a potential witness on this
7 topic. I mean, he is really in a very difficult
8 situation to cross-examine about this.

9 COMSR: I find I am not persuaded that this
10 particular issue is going to take me too far. I know it
11 has been raised and Mr Wardle certainly has an interest
12 in pursuing it from his own point of view. How far it
13 will take me, Mr Wardle, might well be -

14 MR WARDLE: It may well be that I will have to give
15 evidence.

16 MR MEYER: I raise a problem as somebody
17 independent, as it were. I think that there is a
18 problem in Mr Wardle cross-examining in relation to
19 matters where he is putting specific details of a
20 conversation between himself and the witness. In the
21 normal course, I think - and I invite any other counsel
22 to comment - it would be to ensure that some other
23 counsel puts that in the normal practice and to ensure
24 that it is not your partner, because that places one's
25 partner in the difficult position of arguing the credit
26 or otherwise of one's partner. When that happens, you
27 go outside of your firm independently. That is a little
28 problem.

29 COMSR: I understand all of this, what I have to
30 give some consideration to. I understand Mr Wardle's
31 concern and that he should want to pursue that matter.
32 That is one issue. The other issue for me to consider
33 is to what extent will it assist me to answer the
34 questions that confront the Commission.

35 MR ANDERSON: I say that, doing the second one last.
36 What will assist you will be nothing unless Mr Abbott
37 can show what he was on about in relation to the
38 conversation, because you now know that it wasn't

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1 necessarily continuous. But whatever his theme is on
2 it, may or may not assist you. I can't comment on that
3 as I don't know what his theme is. In relation to Mr
4 Wardle, there is no problem with Mr Wardle - you suggest
5 the problem is that he might end up in the witness box
6 and the position of counsel cross-examining him about
7 his own involvement. That won't stop the problem -

8 MR ABBOTT: It will. What I'm on about is the
9 connection between Betty Fisher and the ALRM, and I'll
10 be submitting to you that when Mr Wardle uses the words,
11 'one of the big problems', that he is referring to the
12 ALRM. If Mr Wardle wants to give evidence, I will be
13 seeking leave to cross-examine him about the contact he
14 had with the ALRM on behalf of Betty Fisher.

15 COMSR: I don't know whether you want to
16 consider -

17 MR WARDLE: It is nearly time for lunch and perhaps
18 we will have lunch.

19 COMSR: Mr Wardle, if you want to pursue the
20 questions with the witness, that will be a matter for
21 you to decide. The concern I have is that you might be
22 putting to the witness what was in your mind rather than
23 what she remembers.

24 MR WARDLE: What I'm attempting to do is put the
25 conversations. That is what I'm trying to do.

26 COMSR: Conversations rather than a gloss on
27 conversations. I might have misinterpreted your
28 question. That is what was exercising my mind that you
29 put in the questions.

30 MR SMITH: Mr Wardle ought to consider his
31 position. This topic is in the arena, as it were, and
32 he jumped into the arena during this TV interview. If a
33 big issue is going to be made of it, it's quite
34 inappropriate for him to be cross-examining this witness
35 about what conversation he said took place. He is
36 representing Mrs Fisher. Who is he representing now on
37 this topic? That is a problem he has and perhaps he
38 ought to consider it over lunch time.

A. CALDWELL XXN (MR WARDLE)

1 I remind you before you rise that you did suppress
2 that part of this TV interview which forms part of the
3 wild footage as compared to the footage that went to
4 air. I would have thought that the only person with an
5 interest in maintaining that order of suppression would
6 be Mr Wardle.

7 COMSR: I think the reason was that here is a
8 conversation which has been caught on the tape, as it
9 were. Mr Wardle wasn't being interviewed himself at the
10 time. I don't know, Mr Wardle, if you are seeking to
11 have me continue the suppression?

12 MR WARDLE: Yes, of course I am.

13 COMSR: Because it is a matter that if this is
14 going to be taken to any lengths, it is a matter that
15 you might want some time to address some argument
16 concerning the taping of this particular segment.

17 Mr Abbott, I don't know whether you want to take Mr
18 Anderson up on his offer to listen to the original
19 tapes, but I don't - I'm not here to inquire into the
20 way particular television channels conduct -

21 MR ABBOTT: We have resolved that. I have spoken to
22 counsel assisting. I understand the original raw
23 footage camera tapes are or very shortly will be handed
24 into the Royal Commission. And I assume that -

25 CONTINUED

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1 MR ANDERSON: I think been suggest they wouldn't be
2 any good just handed in because they couldn't be played.

3 COMSR: If you would like to see them, but Mr
4 Anderson has given what, on the face of it, seems to me
5 to be a perfectly reasonable explanation.

6 MR ABBOTT: The answer is yes, I would like to see
7 them, and the only issue is whether I see them in their
8 raw footage state as separate unconnected tapes.

9 MR ANDERSON: You could only see them there.

10 MR ABBOTT: Go on the ABC and see them.

11 MR ANDERSON: That's the only way to see them.

12 MR ABBOTT: Or I will wait until another version of
13 the raw footage tapes has been produced.

14 COMSR: I don't want to be diverted into an
15 issue of what the ABC does with its tapes, or what any
16 other channel does with its tapes, when it's not going
17 to lead us anywhere. They have answered the subpoena
18 and Mr Anderson has explained these matters.

19 MR ABBOTT: There is one missing tape that is being
20 investigated.

21 ADJOURNED 12.57 P.M.

22 RESUMING 2.19 P.M.

23 MR ANDERSON: Just before the cross-examination
24 continues, can I inform you of two things; the tape
25 which has been raised as missing, remains missing. I'm
26 instructed that it's of short duration, and it was taken
27 by a freelance cameraman, and therefore catalogued
28 differently. It was searched for at the time when the
29 original subpoena was issued. It was not located.
30 Another search has been made today, and my client is
31 still unable to locate it. It is unlikely that we'll be
32 able to produce it. They are my instructions. I
33 apologise for that, but it's been lost.

34 Secondly, in relation to the allegations made by Mr
35 Abbott concerning my client, I've raised with Mr Smith -
36 and I understand it's acceptable to Mr Abbott - that my
37 client, whereas it was prepared to produce the tapes to
38 the commission, that was going to be of no avail, will

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1 invite Mr Abbott or anyone else that is interested,
2 representing any party, to go to the ABC and listen to
3 the tape and view it for themselves. I think that is,
4 with respect, the easiest solution. That can be done
5 early tomorrow morning, and I suggest it be done before
6 the commission resumes.

7 Because of the seriousness of those allegations,
8 which my client treats obviously very seriously, I ask
9 you to suppress any reference to Mr Abbott's allegations
10 until such time as he views the film at the ABC and
11 obtains his clients instructions to pursue those serious
12 allegations. He may not choose to but, in view of the
13 damage which can be done by a reporting of those
14 allegations, unsubstantiated, I ask that you give
15 consideration to suppressing any reference to them until
16 this matter is cleared up, which can be done very easily
17 tomorrow morning.

18 COMSR: I think that's reasonable in the
19 circumstances. The only way in which it can possibly be
20 of relevance in this Commission is on the issue of
21 whether or not you've answered the subpoena, or your
22 client's answered the subpoena.

23 MR ANDERSON: I have strictly, in as much as the
24 original Beta tapes were produced, we thought we did,
25 but that's caused a problem. We're happy to resolve it
26 but, until it's resolved, let's keep it clean as far as
27 my client is concerned. If, after seeing it, Mr Abbott
28 is instructed by his clients to pursue that allegation,
29 so be it. Until that happens, I would suggest the
30 fairest course would be to suppress any evidence in
31 relation to to it.

32 COMSR: I think that's reasonable.

33 MR ABBOTT: I don't want to say anything about what
34 course of action you take. It's a matter that needs to
35 be investigated, and I will continue to investigate it.

36 COMSR: I propose to make an order for
37 suppression of any mention of the allegation concerning,
38 well, the answer to the subpoena, I suppose.

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- 1 MR ANDERSON: That would cover it.
2 COMSR: By Channel 2.
3 MR WARDLE: I've given some for thought to the
4 matter over lunch. I think I would like to give
5 evidence.
6 MR SMITH: Could I just interrupt my learned friend
7 just to get that suppression order clear; I'm sure that
8 I will get requests from the media to elucidate that.
9 The objection that Mr Anderson takes, as I understand
10 it, is the allegation put in cross-examination of Ms
11 Caldwell that the dubbing over the sound amounted to
12 doctoring of the tapes.
13 MR ANDERSON: That's what I'm concerned about.
14 COMSR: Perhaps the best way is to suppress any
15 mention of the fact, of the issue of the dubbing over of
16 the tapes.
17 MR SMITH: Amounting to doctoring. That's the
18 point that Mr Anderson makes, or anything that tends to
19 suggest that.
20 COMSR: I think I will suppress any mention at
21 the present stage to, for want of a better expression,
22 the dubbing over of the tapes.
23 MR ANDERSON: Including any reference to doctoring.
24 COMSR: Including any suggestion of doctoring of
25 the tapes. Unfortunately it's afternoon. I don't know
26 what may or may not have been reported.
27 MR ANDERSON: I appreciate that. I should have done
28 it - I hadn't thought about it until I sat down at
29 lunchtime. I should have done it at 1 o'clock, but if
30 it's been done, it's been done. Perhaps I should say on
31 that, therefore, any reference to any report which has
32 already been made would be in breach of your order.
33 COMSR: I think the media would probably
34 understand that.
35 MR ANDERSON: I should say it in open hearing; these
36 facilities are available to Mr Abbott or Mr Meyer or
37 anyone else at 9 a.m. tomorrow morning.
38 MR SMITH: Could I raise another question of

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1 suppression? As I drew to your attention just before
2 the rise for lunch, you have suppressed the material on
3 the wild or raw footage which wasn't the subject of the
4 7.30 footage. Now could I suggest, to help the media
5 deal with this suppression, that that suppression order
6 be limited to the conversation between this witness, Ms
7 Caldwell, and Mr Wardle, because my submission would be
8 that there is nothing else on the raw footage.

9 COMSR: Well, it's a little while since I've
10 seen the raw footage. I don't know that there is
11 anything of a sensitive nature, as opposed to anything
12 of a -

13 MR SMITH: There are some conversations at the end
14 where the women are sitting about talking about such
15 things as the dissident ladies.

16 MR MEYER: That's all been established to be in the
17 public arena by this witness.

18 MR SMITH: We're really talking about the editing
19 conversations at the end. You suppressed that, because
20 that's distinct from what went to air, so I'm suggesting
21 that you look at that topic again, at least to clarify
22 what order of suppression you've made. At the moment,
23 the press could report nothing more than that which is
24 in the 7.30 Report proper that went to air. You need to
25 clarify that, if that's what you still intend.

26 COMSR: I certainly, at this stage, intend to
27 suppress any reference to the off-camera conversation,
28 as it were, between Mr Wardle and the witness.

29 MR SMITH: I think since the last order no-one's
30 come forward in connection with suppressing anything
31 else, but that may not necessarily be the test.

32 MR ANDERSON: Can I ask that you do that, and not do
33 it straight away, because I'd like, if I may, to have
34 the opportunity of revisiting it as well. I just can't
35 remember the exact circumstances.

36 COMSR: I can't remember in detail, but so many
37 tapes have gone in at this stage.

38 MR ANDERSON: Although I made the application which

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1 you ultimately granted, I can't remember the background
2 to it, and I would like to get some fresh instructions
3 on it. I'm just not familiar with those at the moment,
4 I'm sorry.

5 COMSR: As the suppression order stands, the
6 suppression order relates to all but the footage on air.
7 That would certainly cover the conversation that I'm
8 concerned should be covered at this time.

9 MR MEYER: I'm opposed to that course. That course
10 has not been followed in relation to Channel 10's tape
11 or all the other tapes that we have had. There is no
12 reason.

13 COMSR: I don't say this is a permanent order,
14 but you see what has happened is that Mr Anderson has
15 asked for an opportunity to refresh his memory about.

16 MR MEYER: Is that for the course of this
17 afternoon?

18 MR ANDERSON: I can do that by the end of the day, but
19 for tomorrow morning.

20 MR MEYER: I think tomorrow morning is too long. I
21 don't see why these tapes should be treated any
22 differently from what any other material has been in
23 relation to TV evidence.

24 COMSR: Eventually, of course, that may be the
25 outcome, but I don't think it's unreasonable for Mr
26 Anderson to have the opportunity.

27 MR MEYER: I wouldn't deny him a proper
28 opportunity.

29 MR ANDERSON: I'd ask until tomorrow morning. I need
30 to see about three or four different people, and I don't
31 know their availability.

32 COMSR: I don't think that's an unreasonable
33 request in the circumstances, Mr Meyer, and I propose to
34 continue the suppression order until tomorrow morning
35 when I will review it. That is of all but the to-air
36 footage.

37 MR SMITH: Sorry to drag this topic out, but I note
38 from the list of your suppression orders, you made that

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1 suppression order in relation to this raw footage tape,
2 Exhibit 22, on 23 August 1995 at p.1231 of the
3 transcript. We're just checking the transcript now, but
4 your order was 'I suppress from publication any material
5 by way of audio and video record additional to that
6 which was shown on the videotape which went to air,
7 which involves Maggie Jacobs and Veronica Brodie', so
8 you focused on that end conversation.

9 COMSR: Yes, well, that doesn't cover the part
10 that we're concerned with, it relates to the
11 conversation between Mr Wardle and Ms Caldwell.

12 MR SMITH: So that's the order you previously made,
13 and you might add to that, if you are so disposed, to
14 embrace the conversation between Mr Wardle and Ms
15 Caldwell.

16 COMSR: That's what I am disposed to, to make an
17 order for a suppression that there be no publication of
18 the conversation between Mr Wardle and Ms Caldwell.

19 MR SMITH: I think perhaps the commission may
20 reconsider that initial order on 23 August.

21 COMSR: I may reconsider it but that, I take it,
22 is what Mr Anderson is asking for time, until tomorrow
23 morning, to make submissions on. That is not unduly
24 restrictive, that end part.

25 MR SMITH: No, it's just the last bit, then.

26 MR WARDLE: I've given further thought to the matter
27 over lunch. I would like to give evidence. I would
28 like Mr Abbott's allegation to be suppressed as part of
29 that order. I would like to be separately represented.
30 I would like, having arranged separate representation,
31 to have other counsel continue the cross-examination of
32 this witness.

33 COMSR: I'm not quite sure the basis of Mr
34 Abbott's allegation, but on the evidence as it comes
35 out, it's not quite clear to me that you have anything
36 to answer at this stage.

37 MR WARDLE: The allegation has been put, as I
38 understand it, by Mr Abbott that I and Mrs Fisher were

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- 1 part of some conspiracy to somehow salvage Mr Wooley.
2 That's the allegation that has been made.
- 3 COMSR: What I've heard of the conversation - I
4 don't know whether there is more to come, but at this
5 stage -
- 6 MR WARDLE: I don't think it's been withdrawn. An
7 allegation has been made, not withdrawn, and I imagine
8 it will be continued with.
- 9 COMSR: Perhaps we can get some clarification on
10 it. I don't know whether it's made on the basis of an
11 assumption as to what was in that particular
12 conversation.
- 13 MR ABBOTT: Not merely that. The situation, as we
14 see it, is that Betty Fisher, for reasons which I think
15 are becoming more and more obvious as this commission
16 proceeds, has made herself available to the ALRM for the
17 ends that they are pushing, and -
- 18 INTERJECTOR: Rubbish.
- 19 MR ABBOTT: - moreover, as I've already put to Mrs
20 Fisher, it is our view that the notebook has been
21 recently compiled.
- 22 INTERJECTOR: Rubbish.
- 23 MR ABBOTT: Unless and until that notebook is
24 produced, we take the view that Betty Fisher has, to put
25 it bluntly, come along and told a number of lies to you,
26 and in the witness box, and we'll be making submissions
27 that you should find, at the end of the day, that she
28 has perjured herself in the witness box.
- 29 COMSR: I'm concerned with an allegation against
30 Mr Wardle.
- 31 MR ABBOTT: I'm not making any allegation against Mr
32 Wardle personally; he acts at all times on instructions.
33 What I'm suggesting is that, on instruction, Mr Wardle,
34 because of those instructions, has had numerous contacts
35 with ALRM on behalf of Betty Fisher.
- 36 COMSR: Is there something that I should read
37 into that?
- 38 MR ABBOTT: Yes, that Betty Fisher is prepared to

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1 toe the ALRM line. It's as simple as that. When it
2 comes to fabricating, in short, Betty Fisher is right in
3 the middle of it.

4 MR WARDLE: On that, not only Betty Fisher, I'm
5 supposed to have had contact with ALRM on her behalf.
6 I'm going to have to give evidence about that as well.

7 COMSR: We have a witness in the box here who
8 was called for the purpose of giving evidence concerning
9 the documents that came into her possession. I'm going
10 to suggest that we finish the examination of this
11 witness on the basis that if it should be necessary to
12 recall her, Mr Wardle, because you've indicated that you
13 don't propose to cross-examine the witness at this
14 stage, but I think that Ms Caldwell should be released
15 at this stage on the understanding that if she is
16 required to be recalled, that you'll be available to do
17 so.

18 MR WARDLE: I would certainly want to give evidence
19 about what is, I understand, Mr Abbott's suggestion that
20 I am busily chatting about this conspiracy to this
21 witness, and exposing the conspiracy to her. I want to
22 give evidence about that myself, and I would like
23 someone to put my version to the witness. I can't do
24 that now. I need time to arrange representation for
25 myself.

26 COMSR: I will have to give some consideration
27 as to whether or not there is something in the evidence
28 to date that you're called upon to answer.

29 MR WARDLE: Mr Abbott has said that this is what I
30 said in relation to saving Tim Wooley, and that I've
31 been making contact with the ALRM. I dispute both of
32 those things but I can't do it from here.

33 COMSR: Well, Mr Wardle, I think the convenient
34 course to adopt is to release the witness on the
35 understanding that she will be available, if required to
36 be recalled.

37 MR WARDLE: Yes. That brings me to Mrs Fisher, she
38 is present today but, given the nature of the allegation

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1 being made against both of us, I ask that she be
2 released as well. I would like to consider whether she
3 ought to be further represented by somebody else.
4 COMSR: Mrs Fisher is virtually at the end of
5 her evidence.
6 MR WARDLE: I don't think so, I don't think we'll
7 finish today.
8 MR ABBOTT: I don't have many more topics left.
9 MR WARDLE: You would have to put to her, at the
10 very at least, I would have thought, that she has been
11 instructing me to contact ALRM, just in the light of the
12 last comment Mr Abbott made.
13 COMSR: First of all, can we release this
14 witness? We can get that far, I think. Then I will
15 deal with your next point.
16 The witness will be released on the understanding
17 that she will be available if required to be recalled.
18 WITNESS STANDS DOWN
19 COMSR: Now dealing with her evidence you, I
20 understand, are applying for the continuation of the
21 suppression order in relation to -
22 MR WARDLE: Yes, I am, and I also ask that that
23 order extends to Mr Abbott's allegation, which I regard
24 as an allegation of conspiracy, in effect.
25 COMSR: I had hoped the order covered any
26 mentioned of your name.
27 MR WARDLE: And Mrs Fisher. She is supposed to be
28 part of it as well.
29 CONTINUED

- 1 COMSR: I am just wondering whether or not this
2 allegation has been put to Mrs Fisher?
- 3 MR WARDLE: I don't think it has.
- 4 COMSR: Not in quite so many words.
- 5 MR WARDLE: Not as part of a conspiracy, anyway.
- 6 MR ABBOTT: I would like to point out that
7 conspiracy is Mr Wardle's word, not mine.
- 8 MR WARDLE: I am reading from Mr Kenny's note.
- 9 MR KENNY: Just on my notes, I'm not sure, but I
10 wrote it down. I don't know if he said it, but I wrote
11 it down as the clear inference, discussing it with Mr
12 Tilmouth. I am not sure that is the suggestion as I ran
13 it. And, in fact, I clearly saw what Mr Abbott has
14 later said and it is quite clear that he is suggesting,
15 in my opinion, a conspiracy.
- 16 MR MEYER: I am opposed to that. I have got a
17 consistent position, today. I am opposed to that
18 suppression order, as well, because what it mounts to is
19 an application for a suppression each time something
20 unpalatable has been said against somebody. The press
21 is against that and don't hesitate to report when
22 something unpalatable is said about somebody. Mr Abbott
23 has made it absolutely clear that he has not made an
24 allegation against Mr Wardle of a personal nature
25 whatsoever, but has been careful to say that Mr Wardle
26 is carrying out his instructions. He has made direct
27 allegations against Mrs Fisher and, in doing that, he
28 has very fairly and frankly stated his position in very
29 blunt terms. We are not under any illusions as to what
30 his thrust is. He is not ambushing anyone. None of
31 that is a ground for a suppression order. There is
32 nothing secret, distasteful or abusive in any of that
33 material, just because somebody might not like it.
- 34 COMSR: I understood the thrust of Mr Abbott's
35 comments, but I must say that I had understood them to
36 have an implication that Mr Wardle was, in the course of
37 the conversation, at least demonstrating that he was
38 implicated in some way in approaches to the ALRM. I

1 don't know if we have the transcript.

2 Mr Abbott, you can correct me if I am wrong, but I
3 had gained the impression that you were suggesting that
4 Mr Wardle personally was involved in some sort of
5 approaches to the ALRM.

6 MR ABBOTT: On his own behalf?

7 COMSR: Yes.

8 MR ABBOTT: No, I have not and would not suggest
9 that Mr Wardle was, for some personal reason of his own,
10 approaching ALRM.

11 I will say it again:

12 What I have been endeavouring to put to Mrs Fisher,
13 but have not yet completed putting, is the suggestion
14 that she has decided, for reasons which, as I said, are
15 becoming more apparent as this Commission goes on, to
16 come forward with what we suggest is a made up notebook.
17 And that she has, thereafter, using Mr Wardle, then
18 involved with ALRM, in putting forward this story that
19 there exists in this notebook - that it came into
20 existence, so she claims, in 1967 - alleged secret
21 sacred information. We say as to that that, firstly, it
22 did not come into existence in 1967, but is a recent
23 invention. And, secondly, we say that, because she was
24 then unaware as to what the secret sacred business was
25 that might eventually be raised, we do not have all the
26 parties in the proponent side marching to the same tune.
27 There is about four tunes playing and they are marching
28 out of step.

29 COMSR: Yes, I just want to get one thing
30 clarified, because Mr Wardle seems to have interpreted
31 your statement in the same way as I am. That it
32 contained something personal.

33 MR ABBOTT: I certainly think Mr Wardle needs to be
34 represented and certainly needs to explain why he is
35 saying to Alison Caldwell 'One of the big problems that
36 we have has been about having Tim Wooley present at the
37 time of the fabrication, but I think that now they have
38 worked out how to get him out of that.' How he came to

- 1 make that statement. He claims it was made by him
2 apropos of counsel's opening, saying it was from
3 information obtained from ALRM.
- 4 MR WARDLE: I think Mr Abbott is saying that that
5 part on the video is an acknowledgement by me of some
6 sort of conspiracy.
- 7 MR ABBOTT: I am not saying it was a conspiracy, at
8 all.
- 9 MR WARDLE: Or whatever you want to call it. An
10 admission. I would like to be represented. I would
11 like to give evidence.
- 12 COMSR: Yes, I am wondering where it is leading.
- 13 MR WARDLE: I don't think it is leading anywhere.
14 It is an allegation made against me.
- 15 COMSR: Exactly, the allegation has been made.
16 As yet, as I say, Mr Wardle, as far as you are
17 concerned -
- 18 MR WARDLE: It has not been withdrawn yet.
- 19 COMSR: I know it hasn't been withdrawn.
- 20 MR WARDLE: If it is not, I have no choice but to
21 refute it. I don't think it is going anywhere, either.
- 22 COMSR: I am prepared to make the suppression
23 order, as far as you are concerned, at this stage.
24 Mrs Fisher, I will have to wait and see what course
25 the evidence takes, as far as she is concerned.
26 So, I am going to suppress from publication any
27 reference to the allegations by Mr Abbott concerning Mr
28 Wardle and the ALRM, at this stage.
- 29 MR WARDLE: That leaves, it seems to me, Mrs
30 Fisher's part in this.
- 31 COMSR: I don't know. We will have to wait and
32 see what comes of that.
- 33 MR WARDLE: I have provisionally arranged to see
34 someone to instruct this afternoon, at 3.30. I would
35 like to leave and do that and I would like Mrs Fisher to
36 leave, while I further consider whether it is possible
37 for me to continue to represent her. I have reached a
38 decision about that, but I would certainly like to think

1 about it.

2 MR ABBOTT: I would hope that I would finish Mrs
3 Fisher by 3.30. It is only three-quarters of an hour.

4 MR WARDLE: One of the things someone will want to
5 ask her about is what was said, because she was present.

6 MR ABBOTT: Indeed I will.

7 MR WARDLE: I know, but someone representing me
8 might want to be here for that. I ask that she be
9 released. I am sorry it is inconvenient, but I would
10 prefer to come back at another time. Haven't we got
11 another witness to go on with?

12 MR SMITH: No, we haven't, because the way things
13 went this morning Mrs Harvey has been sent away for the
14 afternoon rather than having her sit around.

15 I would urge Mr Wardle to see his way clear to
16 represent Mrs Fisher this afternoon and let's get on.
17 It must be an arduous business for Mrs Fisher to be
18 hanging about all the time. She ought to be concluded.

19 MR WARDLE: That would be nice, but, given the
20 allegation that has been made, I don't think it is
21 possible.

22 MR SMITH: We could leave that topic of the
23 conversation.

24 MR ABBOTT: Yes.

25 MR SMITH: And Mrs Fisher's rights and Mr Wardle's
26 rights in respect of that limited topic of the
27 off-camera conversation between Ms Caldwell and Mr
28 Wardle could be left.

29 MR WARDLE: But that is not what it is about. There
30 is going to be allegations that somehow or another Mrs
31 Fisher was using me to do something with Aboriginal
32 Legal Rights.

33 MR ABBOTT: I am happy to leave those allegations
34 this afternoon for the sake of getting on with it.

35 COMSR: Yes, I think, if we leave those topics,
36 because the plain fact of the matter is that, if someone
37 else is going to represent Mrs Fisher, if that is what
38 you decide, a lot of her evidence has already been given

1 in the absence of that person. And, in fact, for most
2 of it, I don't think you were present, in any event.

3 MR WARDLE: No.

4 COMSR: So, I would suggest then that we
5 continue with Mrs Fisher, avoiding that particular
6 topic, because with the available time, Mr Wardle, I
7 would think that -

8 MR WARDLE: I would like a moment to ask Mrs Fisher
9 if she has got a view on that. I haven't done that yet.

10 COMSR: That may be the case, Mr Wardle, but I
11 think we have to press on, as I say, leaving that
12 particular topic for a later hearing. It may be that
13 there won't be very much evidence that we can take from
14 Mrs Fisher this afternoon, in any case. But, if she is
15 going to be represented by someone else, then the rest
16 of the evidence will all be available for that person.

17 I think it is best that we press on, at this stage,
18 reserve the particular topic, and -

19 MRS FISHER: I would like to have discussion with my
20 legal representative. Thank you.

21 MR WARDLE: That saves me going out to ask that
22 question.

23 The other difficulty, of course, is that I would
24 like to see someone myself, at 3.30, in relation to
25 being represented. If we put that off, I don't know
26 when I am going to fit that in.

27 MR SMITH: That is really quite remiss of Mr Wardle
28 to make an appointment in the middle of the afternoon's
29 hearing like that.

30 MR WARDLE: I am sorry about that, but I thought it
31 was important to get in as soon as I could.

32 COMSR: Yes, Mr Wardle, as I say, for most of
33 Mrs Fisher's evidence, you have not been in attendance,
34 as I understand it.

35 MR WARDLE: That is because it has been in closed
36 session.

37 COMSR: Yes, a lot of it has been. A lot of it
38 has been in open session, also. But perhaps I will give

1 you the opportunity, then, it shouldn't take more than a
2 few minutes.

3 MR WARDLE: No, it shouldn't.

4 COMSR: But what I would propose to do is to
5 continue with Mrs Fisher's evidence, which will be in
6 open court. There won't be any discussion of any
7 sensitive subjects. And, if you could explain to her
8 that what is proposed is that, as far as the allegations
9 by Mr Abbott are concerned, that that topic will be
10 reserved.

11 MR WARDLE: Thank you.

12 COMSR: We will adjourn then for five or ten
13 minutes.

14 ADJOURNED 2.52 P.M.

E.M. FISHER XXN (MR ABBOTT)

- 1 RESUMING 3.07 P.M.
2 WITNESS E.M. FISHER ENTERS WITNESS BOX
3 COMSR: Mrs Fisher, you are under oath, you
4 understand, so you don't have to be sworn again.
5 MR SMITH: Just before Mr Abbott starts, could I
6 clear up one outstanding matter from Alison Caldwell's
7 evidence.
8 I was to check the notebooks against the photocopied
9 notes just to ensure that the photocopies reflected all
10 the notes in Ms Caldwell's notebook about this Betty
11 Fisher issue.
12 I checked the notebooks against the photocopies and
13 I am satisfied that they do reflect all there is in the
14 notebooks pertinent to the Betty Fisher 7.30 Report
15 matter.
16 CROSS-EXAMINATION BY MR ABBOTT CONTINUING
17 Q. When you commenced giving evidence in this matter, you
18 said, when you heard of Sarah Milera's photograph in the
19 local press and -
20 COMSR: Could you refer to the passage of the
21 evidence so the witness can have it in front of her?
22 MR ABBOTT: Yes.
23 XXN
24 Q. P.371 and we know from other evidence that the
25 photograph of Sarah Milera to which you are speaking was
26 on 7 June 1995 in the article entitled 'The great lie of
27 Hindmarsh Island.' You said 'I rang the Narrunga people
28 who are responsible for the tapes and everything and I
29 got their permission to speak to Doreen Kartinyeri.'
30 Why did you need their permission to speak to Doreen
31 Kartinyeri.
32 A. I thought I had made this clear. I was asked to take
33 down a number of pieces of information by the late
34 Gladys Elphick in order to what she called 'Tell the
35 story of my people.' Therefore, the bulk of the
36 recordings and of the hours of recordings which I made
37 belong in the main except for those few minutes of -
38 where Koomi speaks, belong to the Narrunga people.

E.M. FISHER XXN (MR ABBOTT)

- 1 Q. We know all that and you have made that clear, but my
2 question is why did you need the permission of the
3 Narrunga people to speak to Doreen Kartinyeri.
- 4 A. Because Gladys Elphick was present at that interview
5 and it is as much their business as it is anyone
6 else's. I regard myself, Madam Commissioner, as
7 a keeper of that information and I cannot do anything
8 with it unless I ask their permission.
- 9 Q. So you regarded it as necessary to obtain the permission
10 of the Narrunga people before you could even have any
11 words with Doreen Kartinyeri.
- 12 A. Yes.
- 13 Q. And you have told us who you got permission from and it
14 was Paul McHughes, I think.
- 15 A. No, I got permission in Lewis O'Brien and Paul Hughes.
- 16 Q. And Katrina Power.
- 17 A. Katrina Power had nothing whatsoever to do with this.
- 18 Q. You know her, do you.
- 19 A. Yes.
- 20 Q. And you have had dealings with her.
- 21 A. I know her, yes.
- 22 Q. And you have had dealings with her.
- 23 A. Yes, I regard myself as a reasonably - a good friend
24 of her and you do have dealings with - yes, with
25 friends.
- 26 Q. What is her position.
- 27 A. She is a young woman whom I met after the announcement
28 of the Royal Commission.
- 29 Q. And she works for the ALRM, doesn't she.
- 30 A. No.
- 31 OBJECTION Mr Wardle objects.
- 32 MR WARDLE: Isn't this one of the topics we are
33 going to leave until later? I don't want to be sucked
34 in and find out it is, a bit later on.
- 35 MR ABBOTT: I will leave the topic of who Katrina
36 Power works for.
- 37 A. I didn't meet her at all at ALRM, if that's what you are
38 getting at.

1 XXN

2 Q. But are you suggesting that you did not obtain
3 permission from Paul Hughes and Katrina Power.

4 A. No, I did not have to ask Katrina.

5 Q. Why did you, in giving evidence, at p.429, when you were
6 asked this very question you said there were three
7 people, Lewis O'Brien, Paul Hughes and Katrina Power.

8 A. The permission from Katrina, that was something that I
9 added, because of present-day younger people. I didn't
10 really have to get permission from Paul Hughes - from
11 Katrina. I had to get permission from the Elder and she
12 had spoken to that Elder, I understood.

13 Q. What Elder. Who is the Elder.

14 A. She is a Narrunga woman.

15 Q. What is her name.

16 A. That doesn't come into this Commission, Madam
17 Commissioner. I don't think it is relevant.

18 MR ABBOTT: I submit it is. There is an
19 inconsistency in her evidence. The last time when she
20 was asked about who she got permission from, she
21 nominated three persons. One of them was Katrina Power.
22 This time she has told us she did not get permission
23 from Katrina Power. When I put the inconsistency in the
24 evidence to her she said `Yes, I did get permission from
25 Katrina Power.' But A. That was much later. And B,
26 she was only in a representative capacity.

27 COMSR

28 Q. Yes, I think it is relevant, Mrs Fisher, that you tell
29 us that.

30 A. I would have to ask Katrina whether she consulted one or
31 the other of an Elder Narrunga woman and so I will have
32 to give that information later. I'm not sure.

33 XXN

34 Q. Can you tell us who the two would be.

35 A. Not at moment, I can't remember.

36 Q. You can't remember either of the two names.

37 A. No, not at the moment.

38 Q. May I suggests you are just making this up as you are

1 going along.

2 A. I am sorry, it is not true.

3 Q. The fact of the matter is that a few minutes -

4 A. The fact of the matter is that I am not making it up.

5 Q. A few minutes ago you were giving evidence that you had
6 only spoken to Lewis O'Brien and Paul Hughes, weren't
7 you.

8 A. Yes.

9 Q. When I pointed out on your oath a few pages on from when
10 you initially said Paul Hughes and Lewis O'Brien, you
11 were definite of Katrina Power. You now tell us that,
12 yes, you did consult Katrina Power. That is so, isn't
13 it.

14 CONTINUED

E.M. FISHER XXN (MR ABBOTT)

- 1 A. If you refer back to the rest of my evidence, you will
2 find, too, I had to get permission from a woman among
3 the Aboriginal people. The woman in question was the
4 late Gladys Elphick. I had to find one who could give
5 permission on her behalf. The reason I said `straight
6 away' to Katrina Power, I didn't want to involve the
7 other two women.
- 8 Q. Why didn't you tell us that before.
- 9 A. Because there is a certain thing called Narrunga
10 etiquette.
- 11 Q. Why did you lead us to believe in the Royal Commission,
12 with any view and on any reading of your evidence - at
13 p.429 you consulted three persons Lewis O'Brien, Paul
14 Hughes and Katrina Power in their capacities as
15 spokespersons for the Narrunga people.
- 16 A. I have already said that there is very little knowledge
17 of Narrunga etiquette between the legal profession, and
18 I didn't want to go on further and further into it where
19 nobody understands.
- 20 Q. I suggest you are making this up, because at p.450 -
- 21 A. That is rubbish.
- 22 Q. At p.450, you were asked `From whom had you received
23 permission to speak to the ABC'. I am going onto a
24 different topic. I don't want to confuse you. I am not
25 talking about permission to speak to Doreen Kartinyeri.
26 Once you had seen `The Great Lie of Hindmarsh Island'
27 article, whom did you get permission from to speak to
28 the ABC.
- 29 A. The ABC?
- 30 Q. Yes.
- 31 A. The same people.
- 32 Q. Paul Hughes, Lewis O'Brien and Katrina Power.
- 33 A. Yes, on behalf of -
- 34 A. I didn't say it was on behalf of.
- 35 Q. You didn't say on behalf of at that stage, did you.
- 36 A. I knew that Narrunga people knew what I was doing when I
37 spoke to Katrina Power, so they knew who were the people
38 who needed to be talked to.

- 1 Q. The fact of the matter is that you had no idea on whose
2 behalf Katrina Power was speaking on, did you.
- 3 A. Yes, I did.
- 4 Q. You say they are -
- 5 A. You're making that up.
- 6 Q. You are saying -
- 7 A. I say you're inventing that. I have -
- 8 COMSR
- 9 Q. Can you tell us who Katrina Power -
- 10 A. Represents. Katrina Power is identified as a Narrunga
11 Kurna person - sorry, a Narrunga person with
12 Ngarrindjeri connections. And Katrina Power knows the
13 older women, the women who should have given permission
14 for these things. I trusted Katrina to ask for on
15 behalf of -
- 16 Q. So that I'm clear, she herself -
- 17 A. Is not an elder.
- 18 Q. She couldn't give any permission or approval.
- 19 A. Yes. I discussed that with Lewis: 'I think that Katrina
20 will ask the women', and he said 'Yes', and I said
21 'Okay'.
- 22 XXN
- 23 Q. You don't know what women, do you.
- 24 A. Yes.
- 25 Q. You won't give us their names.
- 26 A. This is Narrunga material could not come into the
27 Commission. I have to go to the Narrunga material and I
28 did make that very clear right at the beginning of my
29 evidence.
- 30 Q. I'm not asking for the Narrunga material, I am only
31 asking for the names of the -
- 32 A. That is Narrunga material.
- 33 Q. What, a name.
- 34 A. Yes.
- 35 Q. 'Mrs Smith' is Narrunga material.
- 36 A. I'm sorry, I have to take what I believe to be Narrunga
37 etiquette in what I say. If I feel - if you feel that
38 I'm avoiding something, you may feel that I am avoiding

1 naming people in this Commission.

2 COMSR

3 Q. I have to -

4 A. They take it seriously.

5 Q. I have heard a lot of information about who are the
6 elders in and among the Aboriginal women. I haven't
7 gained the impression to date that there is any sort of
8 embargo on naming anyone, but -

9 MR ABBOTT: Other than recently deceased people.

10 COMSR

11 Q. Have you been given to understand that you cannot name
12 those who are the elders of the Ngarrindjeri people.

13 MR ABBOTT: The Narrunga people.

14 A. I have been given to understand that I should not speak.

15 XXN

16 Q. Not speak at all, or not tell the Commissioner of their
17 names.

18 A. No, nothing to do - just not speak.

19 Q. Will you write them down for the Commissioner only.

20 A. I could write one down.

21 Q. That will do.

22 PAPER GIVEN TO WITNESS

23 WITNESS WRITES DOWN NAME

24 PIECE OF PAPER HANDED TO COMMISSIONER

25 MR ABBOTT: I ask that that be marked or received as
26 an exhibit and seen only by you at this stage.

27 XXN

28 Q. There is the name of one of the Narrunga women whom you
29 think Katrina Power -

30 A. May have contacted.

31 Q. May have contacted, but whom you never ascertained from
32 Katrina Power had been contacted.

33 A. No. You see -

34 Q. Wait a minute. Either with reference to obtaining
35 permission for you to speak to Doreen Kartinyeri or with
36 reference to you giving the interview to the ABC; is
37 that so.

38 A. What, as a fact?

1 Q. Can you tell us whether that is the position or not.

2 A. Well, I think that is what your saying. I think that is
3 the position. I mean, you're beginning to sound as if -
4 you are making it sound as if every word I say is
5 something that I personally have cooked up - which is a
6 load of rubbish. And let me say, sir, that you are
7 inventing more than I could believe possible in your
8 questions.

9 Q. What have I invented.

10 A. I might say that those who do not know Narrunga
11 etiquette and find this matter amusing will find
12 something the opposite later on in their lives, because
13 in 50 years time this will be viewed as a rather painful
14 episode if you continue to -

15 Q. What sort of a threat is that.

16 A. To indicate it's a threat of posterity's judgment on the
17 approach you might make of these things.

18 Q. I will move on to something else more useful to this
19 present -

20 COMSR: Most of your cross-examination appears
21 to be directed towards the issue of credibility rather
22 than to put the matters that are relevant to your
23 parties you are representing.

24 MR ABBOTT: Obviously her credibility is central to
25 the issue of the parties I represent.

26 XXN

27 Q. I was asking you about the - I will return to where I
28 was at p.321. I will give you the quote: `I rang the
29 Narrunga people who are responsible for the tapes and
30 everything and I got their permission to speak to Doreen
31 Kartinyeri. I rushed down and I got the notebook and
32 the tape I had from the donors copy from the Mortlock
33 Library and delivered them. My husband drove me to town
34 - I don't drive - to town and I delivered them to the
35 people at the ALRM and left them there with Doreen
36 Kartinyeri'.

37 A. Yes.

38 Q. Where did you rush down to.

E.M. FISHER XXN (MR ABBOTT)

- 1 A. Down to the room where I keep all of my notes and things
2 - which is in grave disorder.
- 3 Q. We are not to read that as 'I rushed down and got the
4 notebook and the tape I had from the donors copy from
5 the Mortlock Library and delivered them' as the
6 reference to going to the Mortlock Library.
- 7 A. No.
- 8 Q. You rushed from the top part of the house to the bottom
9 part.
- 10 A. Yes, I rushed down to the room which is -
- 11 Q. The basement.
- 12 A. No, there is no basement. I went down the passageway to
13 the room where I keep all of my boxes of material and
14 sorted through and found that notebook.
- 15 Q. I suggest that you are endeavouring to give us the
16 impression that you rushed down to the Mortlock Library.
- 17 A. No.
- 18 Q. It's rushing down the passageway, is it.
- 19 A. Yes, of -
- 20 Q. Of your home.
- 21 A. Yes, that's right.
- 22 Q. The consequence of this, you reading the article in the
23 paper 'The Great Lie of Hindmarsh Island' and saw Sarah
24 Milera on the front cover.
- 25 A. Yes.
- 26 Q. You then phoned around to Paul Hughes, Lewis O'Brien.
- 27 A. Yes.
- 28 Q. And Katrina Power.
- 29 A. Yes.
- 30 Q. That day.
- 31 A. Indeed.
- 32 Q. As soon as you got off the phone, you returned down and
33 got the notebook and the tape.
- 34 A. I got the tape before.
- 35 Q. You rushed down and got the notebook and the tape from
36 your room.
- 37 COMSR: The witness has answered this, has she
38 not?

E.M. FISHER XXN (MR ABBOTT)

- 1 MR ABBOTT: I don't think this is right. I think
2 she is -
3 Q. You rushed down, what, to another house.
4 A. My kitchen is here and there is a room around there and
5 I rushed down there.
6 COMSR
7 Q. From one room to the other, is that what you are saying.
8 A. Yes. I had one room next to the other. Exactly.
9 XXN
10 Q. Mr Lewis O'Brien is a good friend of yours.
11 A. Indeed.
12 Q. We have heard of a meeting, as Mr Smith said today, at
13 Mr Wardle's home or office where you attended to see Dr
14 Clarke.
15 A. Yes.
16 Q. Lewis O'Brien was present then.
17 A. Yes.
18 Q. Where was that meeting.
19 A. Can I have a word with Mr Smith please before I answer
20 this?
21 MR SMITH: Perhaps I could raise it like a lot of
22 meetings that the Commission have with witnesses before
23 they give evidence. If Mr Abbott is going to go no
24 further to establish the effect of this occurrence, I
25 have no problems with it.
26 MR ABBOTT: No father than the production of the
27 exhibit which has been put in evidence. That is all it
28 is.
29 XXN
30 Q. Could you tell us where that was.
31 A. Yes. It was at the house - Mr Douglas Wardle's house.
32 Q. Present at that meeting, as we heard from counsel
33 assisting, was Dr Philip Clarke.
34 A. Yes.
35 Q. Would you look at Exhibit 210 produced, which is an
36 extract from the Kaurua High Education Journal, an
37 article headed 'Similarity between river shape and
38 reproductive organs'.

- 1 A. I can't answer that question. Lewis has indicated an
2 anger with Kurna material being mentioned in
3 conjunction with Ngarrindjeri material. I can't answer
4 that question, I'm sorry.
- 5 Q. You haven't heard the question.
- 6 COMSR: Perhaps if you listen to the question
7 and then you can tell me what your objection is.
- 8 XXN
- 9 Q. Despite Mr Lewis O'Brien's anger, so you tell us, at the
10 use of Kurna material being mixed with Ngarrindjeri
11 material, on this occasion you were being spoken to with
12 reference to Ngarrindjeri material, were you not.
- 13 A. Yes.
- 14 Q. Did not Mr Lewis O'Brien produce this very article
15 consisting of Kurna material at that meeting.
- 16 A. I can't remember that.
- 17 Q. Do you deny that.
- 18 A. No, I can't remember it. I might have been discussing
19 something with someone else at the time.
- 20 Q. I suggest to you that Mr Lewis O'Brien at that meeting
21 at Mr Wardle's house produced a Royal Commission exhibit
22 210 in your presence when you were there.
- 23 A. He may have, but I may not have noticed.
- 24 Q. Looking at this document 210 produced, would you look at
25 it please.
- 26 A. I can't discuss it if it's to do with Kurna things.
- 27 Q. I want to ask you one question about it. I'm not going
28 to discuss it.
- 29 A. You mean there?
- 30 Q. Yes, that book. At p.69 it is entitled `Similarity
31 between river shape and reproductive organs`.
- 32 A. No, I can't discuss it, I'm sorry.
- 33 Q. I'm sorry -
- 34 A. I can't discuss it.
- 35 Q. Why not.
- 36 A. Lewis has already rung me about that matter. I can't
37 discuss this. I have -
38

1 COMSR

2 Q. I'm not quite clear of the basis of the problem.

3 A. The basis is this is material that was written for
4 Kaurna people and this Royal Commission has nothing to
5 do with Kaurna people.

6 COMSR: I understood it was the Department of
7 Education.

8 MR ABBOTT: It is and there is an article by Gough
9 Whitlam in it.

10 WITNESS: When I knew of him.

11 COMSR

12 Q. I understand that this is, and correct me if I am wrong,
13 a course that anyone can enrol for.

14 MR ABBOTT: Anyone can buy it.

15 A. That has nothing to do with it and this is a different
16 nation and Lewis indicated to me that -

17 COMSR

18 Q. That he doesn't want you to mention it in this
19 Commission.

20 A. That's right.

21 XXN

22 Q. I will confine my question to this: Could you turn to
23 p.69 just so that I can show you what I am asking one
24 question about.

25 A. Yes, I see this.

26 Q. I think it actually starts two pages before it, does it
27 not, at p.67.

28 A. Yes.

29 Q. Had you ever seen that article before.

30 A. No, never. I have not got a copy of Lewis's book.

31 Q. Or of this article.

32 A. No.

33 COMSR

34 Q. So that I'm clear about it, you understand that Lewis
35 doesn't want you to discuss it.

36 A. He stated that never, despite the fact that it is a
37 public matter and someone can enrol, and so on, in all
38 of the discussions on it, it is a question of

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1 approaching it under the Kurna, in the Kurna way, and
2 has nothing to do with the Ngarrindjeri. And,
3 therefore, comparisons that obviously could be made
4 should not be made. It is a Kurna question and mixing
5 up the two nations is an error that is commonly made.

6 MR ABBOTT CALLS FOR THE PRODUCTION OF THE RECORDS OF THE
7 DEPOSITING OF THE ELPHICK WILSON MATERIAL IN THE MORTLOCK.
8 LIBRARY.

9 MR SMITH: We will endeavour to locate those.

10 MR ABBOTT: I have a photocopy, but mine is marked.

11 MR SMITH: Perhaps that could be used for the
12 meantime and we will supply a clean copy.

13 XXN

14 Q. The Mortlock Library records indicate that you and Lewis
15 O'Brien together deposited this material.

16 A. Yes. I asked him to come in when I took the tapes in,
17 yes.

18 Q. It's more than that. He is described as one of the
19 donors, is he not.

20 A. Yes, on behalf of the family.

21 Q. There is no suggestion it is on behalf of anyone. The
22 donors are described as you and Mr O'Brien.

23 A. That was fine with the Mortlock Library.

24 Q. And fine by you.

25 A. Yes, indeed.

26 Q. And the copyright in these materials is owned by Lewis
27 O'Brien.

28 A. Yes.

29 Q. So you wrote, or so you caused to be written: Lewis
30 O'Brien, Betty Fisher, Paul Hughes and Denise Troon.

31 A. Yes.

32 Q. Who is Denise Troon.

33 A. A daughter of the late Tim Hughes.

34 Q. In relation to the depositing of the tapes, Lewis
35 O'Brien who deposited the Rebecca Wilson taped and who
36 is asserted to be the joint donor and owner of the
37 copyright is the same Lewis O'Brien with you at Mr
38 Wardle's house and the same Lewis O'Brien -

- 1 A. That is - no, that is not so. Known as the Wilson -
2 sorry, is known as the Gladys Elphick.
3 Q. You know what I'm talking about.
4 A. Yes, I do.
5 Q. That is the Gladys Elphick that is the tapes of the
6 material of Rebecca Wilson.
7 A. Lewis didn't know that was on there.
8 Q. Maybe so, but he is the same Lewis Brian who is
9 described as the donor at that time or as being the
10 donor or the author of the copyright, et cetera, et
11 cetera.
12 A. Yes.
13 CONTINUED

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1 Q. It's the same as you believed to be the authors of the
2 Kurna journal.

3 A. Yes.

4 Q. Whilst you were doing the taping of Rebecca Wilson on
5 the occasion in 1967, you've mentioned that Gladys
6 Elphick's son was there.

7 A. That's the youngest son you're talking about.

8 Q. Yes.

9 A. Yes.

10 Q. How old is he.

11 A. Well, he is the late -

12 Q. I don't want his name, how old was he at the time,
13 approximately. Are we talking about a young boy, a
14 teenager or what.

15 A. No, he would have been in his 20s, I think, even been in
16 his 30s - must have been in the 30s, he went to the
17 Korean War, so he must have been in his 30s.

18 Q. Did anyone else arrive.

19 A. I think somebody else came in that day, one of the many
20 families with whom Gladys is connected, and their
21 children. I can't remember exactly who they were, but
22 Veronica has identified some of them, I think.

23 Q. Veronica Brodie has identified some of the voices on,
24 we'll call it the Rebecca Wilson tape, even though it's
25 Gladys Elphick's on which Rebecca Wilson's voice is
26 heard, but we'll call with the Rebecca Wilson tape.

27 A. Yes.

28 Q. Veronica Brodie has identified a number of the voices on
29 it, so it's clear that there were a number of relatives
30 who arrived.

31 A. Yes.

32 Q. Apart from Gladys Elphick's son in his 20s or -

33 A. 30s.

34 Q. At the time when you received this information, when you
35 wrote it down as distinct from recorded on the tape, was
36 anyone else present.

37 A. Well, people were always coming and going in Gladie's
38 house. To the best of my knowledge, I don't think so.

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1 There would have been - when the visitors came, they had
2 to go out again, I think. To the best of my knowledge,
3 no.

4 Q. I'm suggesting to you that your story, which I
5 understand to be 'A taped discussion with Koomi. Then,
6 at Gladys Elphick's request or suggestion, we moved into
7 the other room. Then, at Gladys Elphick's direction,
8 Koomi told me various secret sacred things which I wrote
9 down in my notebook', is just made up.

10 A. Is it? That is what you've just made up. I didn't make
11 it up.

12 Q. Because there were people coming in and out all day at
13 that house.

14 A. Not all day.

15 Q. All that afternoon when you were allegedly writing down
16 these secret sacred things, weren't there.

17 A. Well, there may have been, but they wouldn't have
18 interrupted those two older women if they did.

19 Q. Are you suggesting that Koomi, Rebecca Wilson, chose
20 this occasion, in Gladys Elphick's house, with people
21 coming and going, to impart to you what some proponent
22 women have described as being the secret of the
23 universe.

24 A. I don't think we have any point further to discuss. You
25 won't believe me, and I will accuse you of making things
26 up. Sorry.

27 Q. In other words you say 'Yes, that's exactly what
28 happened', don't you.

29 A. Yes.

30 Q. I want to ask you some questions about Rebecca Wilson,
31 whom you'd never met before until you saw her on this
32 day in 1967.

33 A. I'd heard a lot about her, and she had heard a lot about
34 me.

35 Q. You'd never met her before.

36 A. No, not face to face.

37 COMSR: Have you covered this?

38 MR ABBOTT: Not this particular aspect. I will be

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- 1 brief. I have to set the scene.
2 XXN
3 Q. Rebecca Wilson, according to your notes, told you, and I
4 can read out what is in your -
5 COMSR: Is it something that can be read out?
6 MR ABBOTT: Yes, it is, because, I assure you it's
7 not in any way within the suppressed realm.
8 COMSR: Well, not in the suppressed and not
9 something that is information of the type referred to in
10 s.35.
11 MR ABBOTT: No.
12 XXN
13 Q. If we look at the raw footage, p.21 of the raw footage
14 transcript, which is Exhibit 22B.
15 A. Am I supposed to be looking at this.
16 COMSR
17 Q. In a minute.
18 A. I will put my glasses on. What page?
19 XXN
20 Q. Page 21 of the raw footage.
21 A. Yes.
22 Q. The last three lines. I tell you `VB' represents
23 Veronica Brodie. This is a transcript of what Veronica
24 Brodie is reading out from your notes. Do you
25 understand what I'm putting to you.
26 A. Yes.
27 Q. Veronica Brodie is reading out for the camera some of
28 the transcript that has been brought to that meeting.
29 A. Yes.
30 Q. On that Saturday, 5 August.
31 A. Yes.
32 Q. Veronica Brodie says `Mum said', then she reads what is
33 there. This is in quotes from your transcript -
34 A. Yes.
35 Q. - of your handwritten notes originally, but then
36 transcribed into your typewritten notes, `See Betty,
37 like church, we go every time to church. By these
38 ideas, these parts, these are parts of my mother, my

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1 granny's stuff', so Rebecca Wilson is talking about her
2 granny.

3 A. I'm making rough notes of what is she is saying.

4 Q. But Rebecca Wilson is talking about her granny. This is
5 not Veronica Brodie talking about granny, but Rebecca
6 Wilson talking about her granny. 'These are parts of my
7 mother, my granny's stuff. She came from the Coorong.
8 Her religion is very important. She didn't say a lot,
9 but all the old ones now know not to say very much or
10 tell me'. I will pause there. It is clear, if your
11 notes are accepted, that Rebecca Wilson was claiming
12 that her grandmother came from the Coorong.

13 A. Yes, she did, she does make that statement.

14 Q. Indeed, your notes have a number of references as a
15 result of what you claim Rebecca Wilson told you, and
16 you've also made in note in your notes 'Special to the
17 Coorong people'.

18 A. Yes.

19 Q. And not to be used because they are special to the
20 Coorong people. Do you remember the notation.

21 A. Yes.

22 Q. So it was clear, if we accept what you say, that Rebecca
23 Wilson was claiming to know secret sacred material
24 special to the Coorong people.

25 A. Yes. She knew material that we don't talk about, quote
26 unquote. By the way, I want to emphasise that in my
27 note form I'm not indicating in any way that Rebecca
28 Wilson was speaking pidgin English, it was a note form
29 and therefore it reads. So long as that is well
30 understood.

31 Q. Indeed, I suggested that to you.

32 A. And I suggested to you that I was very well aware of
33 that.

34 Q. She was an erudite and well-spoken woman, and that your
35 notes didn't do her justice.

36 A. A wonderful lady. Sorry if I'm an amateur historian.

37 Q. You see, I suggest that Rebecca Wilson never told you
38 that her grandmother came from the Coorong. Do you know

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- 1 where her grandmother came from.
- 2 A. Well, I go according to my notes. I haven't done any
3 recent research on it at all.
- 4 Q. Let me tell you what Veronica Brodie says about her
5 grandmother, her great grandmother.
- 6 A. I'd love to hear it.
- 7 Q. That's an exhibit, it's in the Colin James exhibits in
8 the schedule, it's Exhibit 105, and it's attachment 71.
9 It's an article of 25 August 1994. You recognise the
10 photo of Veronica Brodie.
- 11 A. Yes.
- 12 Q. She is recorded as saying, and we have heard evidence
13 from Mr James that this is what she said, and I will
14 read out the relevant part. This is an article about
15 Mrs Brodie losing patience about the CSR factory at
16 Glanville because it contained the birth place of her
17 great grandmother and grandmother. Mrs Brodie is saying
18 that her great grandmother, Rebecca Wilson's grandmother
19 -
- 20 A. Lartalare.
- 21 Q. - was born at Glanville.
- 22 A. That's okay.
- 23 Q. Did you know that she was known as Granny Glanville.
- 24 A. No.
- 25 Q. That she was not from the Coorong.
- 26 A. I'm sorry, I had not researched Coorong people. I've
27 only given the Commission what I was told.
- 28 Q. I want to continue with this article, because I suggest
29 that in your attempts to make up this story, you have
30 nominated Rebecca Wilson's family as coming from the
31 Coorong and, therefore, having some reference to
32 Ngarrindjeri matters, when in fact the real truth of the
33 matter is that Rebecca Wilson's genealogy is Kurna or,
34 in fact, from Glanville on her grandmother's side.
- 35 A. Well, look, I can only tell you what Koomi told me that
36 I wrote down, and that's all that I've given you.
- 37 Q. You see, we are talking about women's business
38 descendant on the women's side not the male's side.

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1 A. I didn't do any research among the Ngarrindjeri people.
2 I've already told you that many times.

3 Q. Go back to this account please, from Veronica Brodie in
4 The Advertiser.

5 A. I don't know where it is now. You don't have to
6 convince me historically. If that's what Koomi said at
7 the time, there must have been some reason for her
8 saying that. I have no idea.

9 Q. What, some reason for telling you an untruth.

10 A. No, I don't think she would ever tell you an untruth.
11 She was not a person who would ever tell anybody an
12 untruth, as far as I know.

13 Q. That's why I'm suggesting she told you nothing about -

14 A. You would say that.

15 Q. - about her mother and grandmother coming from the
16 Coorong, since the fact of the matter is that they did
17 not. They were both born, according to Veronica Brodie,
18 at Glanville.

19 A. But I didn't write that, I wrote what I was told. Maybe
20 she was saying she had connections. She didn't say that
21 her grandmother was born there, she came from. Maybe
22 she lived there, I don't know. Dear sir, I have no
23 idea, I have not researched the Ngarrindjeri.

24 Q. Just have a look at this article.

25 COMSR: The witness has given her explanation.

26 A. A lot of people say they come from places, like Gladie
27 did. She was born in Adelaide, but she said 'I come
28 from Point Pearce'.

29 Q. Just read on, 'Mrs Brodie's Great Grandmother Lartalare
30 was born at the camp site' that's in Glanville 'In 1851
31 when it was surrounded by mangrove, dunes, tea-tree
32 forests and creeks'. Now Mrs Brodie's Great Grandmother
33 Lartalare, was Rebecca Wilson, Koomi's mother.

34 A. Yes.

35 Q. Veronica Brodie has also told Mr James, if you look in
36 the next column, 'The family shifted between Adelaide
37 fringe camps before 16 year old Laura', that's Nanna
38 Laura, 'Married Jacob Harris in 1892. Four years later,

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1 she gave birth to Veronica Brodie's mother Rebecca'.
2 That is Rebecca Wilson, Koomi, isn't it.

3 A. Yes. It's a pity to the CSR didn't give them their land
4 back.

5 Q. It is a great pity, but unfortunately that's not a
6 matter in this Royal Commission.

7 A. That's a pity too.

8 Q. I'm only putting this to you to ask you to tell us
9 whether you still persist in the fabrication of this
10 material, in asserting that Rebecca Wilson, on this day,
11 was telling you that she was from the Coorong, that she
12 had the Ngarrindjeri secrets in her head, and that this
13 was the day when she was going to pass them on to you.

14 A. She never said she had the Ngarrindjeri secrets in her
15 head, and you would say that, wouldn't you? I must say
16 to you, all I can tell you is what those old women said
17 to me, and I would not invent those matters, and I'm
18 very sorry. They are too important to me in my life.

19 Q. I'd like you to look at your statement, which is Exhibit
20 6.

21 A. Yes.

22 MR ABBOTT: I don't want to read this out because
23 this is covered by an order your Honour made.

24 COMSR: That's right.

25 XXN

26 Q. On p.1, down the bottom, is the reference to a claim by
27 you that Rebecca Wilson told you something about
28 Hindmarsh Island, which she called Kumarangk, and other
29 islands.

30 A. Yes.

31 Q. On p.2, you detail some of the things you claim Rebecca
32 Wilson said to you.

33 A. Yes.

34 Q. All those matters that are set out in your statement are
35 now in the public domain, are they not.

36 A. They may be.

37 Q. Via the ABC.

38 A. They may be.

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- 1 Q. I'm not going to therefore ask you about them, but was
2 there anything else that Rebecca Wilson told you other
3 than those matters on p.2.
- 4 COMSR
- 5 Q. Don't say what it was, just answer whether there was
6 anything or there wasn't anything. Just a yes or a no
7 to this question.
- 8 A. It's very difficult.
- 9 Q. You're being asked whether there was anything else. I
10 don't want to know what it was because it might -
- 11 A. Well, yes, there was.
- 12 XXN
- 13 Q. Did you write the 'anything else' down, or have we seen
14 all there was that you've written down.
- 15 A. Yes.
- 16 Q. We have seen all you've written down, haven't we.
- 17 A. No.
- 18 COMSR
- 19 Q. Sorry, I don't understand.
- 20 A. No.
- 21 Q. You didn't write the additional -
- 22 A. I wrote things down and no, you haven't seen all there
23 is to be seen, but I won't release them to anybody.
- 24 Q. There is more, is there. (NOT ANSWERED)
- 25 COMSR: I just want to make sure what Mrs Fisher
26 has said.
- 27 COMSR
- 28 Q. Were there some things that you were told that you
29 didn't write down, is that what you're telling me.
- 30 A. There were things that I was asked never to write down,
31 and never to tell, which eventually I did write down
32 because it was driving me mad, but they will never be
33 released.
- 34 Q. When did you eventually - I'm not asking you what, I'm
35 just asking you when.
- 36 A. Not long after.
- 37 XXN
- 38 Q. Where are those notes.

- 1 A. They are not notes.
2 Q. Where are they.
3 A. In a keeping, in a place, a keeping place.
4 Q. This is another lot of notes or documents.
5 A. No.
6 Q. Another lot of writings by you.
7 A. No, not by me.
8 COMSR
9 Q. Not writings.
10 A. Recording, just a recording of something, that's all.
11 XXN
12 Q. This is the first time you've mentioned it.
13 A. This is the first time you've asked me the question, to
14 my knowledge.
15 Q. Who did the recording, you on your own or someone else.
16 A. Recording? You mean writing?
17 Q. Writing, recording.
18 A. Yes, I did, yes.
19 COMSR
20 Q. Just so that I'm clear, this is the recording that you
21 eventually made, is that what you're taking about.
22 A. No. I'm sorry.
23 Q. I think you told me that you eventually recorded it, and
24 is this the eventual recording that we're talking about
25 now.
26 A. Yes.
27 CONTINUED

1 XXN

2 Q. And you have still got them.

3 A. They are in care, they are in safe hands, I suppose you
4 could say.

5 Q. What, Doreen Kartinyeri and Sandra Saunders.

6 A. No.

7 Q. Who has got this lot.

8 A. You are very dismissive of something about which you
9 know little.

10 Q. I am trying to find out more, that's why I am asking
11 these questions.

12 A. You have no right to find out more. I have no right to
13 say any more.

14 COMSR

15 Q. You are not being asked what they were.

16 A. A bank.

17 XXN

18 Q. What year did you write out this other material.

19 A. The same year.

20 Q. 1967.

21 A. Yes.

22 Q. How many pages -

23 A. To the best of my knowledge it was 1967 or 1968.

24 Q. How many pages.

25 A. Not a page.

26 Q. Less than a page.

27 A. Much less.

28 Q. How many lines.

29 A. About - there is nothing - anything further I can
30 discuss about that, I'm sorry.

31 Q. You can tell us how many lines.

32 A. No.

33 COMSR

34 Q. Is that because you can't remember, or -

35 A. No, because I can't speak about it any more. Sorry.

36 XXN

37 Q. I want to ask you a couple more questions. It is in the
38 bank.

1 A. Yes.

2 Q. Lodged by you.

3 A. Yes.

4 Q. And it is still there.

5 A. Yes.

6 Q. And this is the most secret thing that Rebecca Wilson
7 known as Koomi told you.

8 A. Yes.

9 Q. And you could get it for us, if we asked you.

10 A. I would never give it to anybody. She asked me not to.

11 COMSR: You see, Mrs Fisher hasn't said it has
12 got anything to do with women's business.

13 MR ABBOTT: I will ask her that. I must say I
14 assumed that.

15 A. I can't answer that. I can't answer any more questions
16 on that matter.

17 MR ABBOTT: This is an intolerable position.

18 A. It is very intolerable for me, too, as a keeper of
19 secrets.

20 COMSR

21 Q. I don't think anyone is asking you to tell us what
22 the secrets were. I certainly wouldn't be allowing
23 that sort of evidence to be taken. I think this is
24 just a matter of establishing how much was involved
25 in it, whether it was something lengthy or something
26 Short.

27 A. It was less than half a page.

28 Q. That is, half a page of your writing.

29 A. Much less than half a page, yes.

30 Q. What, about a quarter of a page.

31 A. Yes, I suppose, yes.

32 XXN

33 Q. When did you put that in the bank.

34 A. When I put everything else in.

35 Q. When.

36 A. A safe deposit. Before I came and gave evidence in the
37 Royal Commission. When the Royal Commission began, I
38 suppose.

- 1 Q. So, we are talking about August -
2 A. I can't remember a whole lot of things.
3 Q. We are talking about July 1995.
4 A. Yes.
5 Q. You took this one sheet of page that you -
6 A. No, I took tapes and one sheet of paper and a couple of
7 other things.
8 Q. So, we learn today, for the first time that, apart from
9 your notebook, which was written out, so you claim, in
10 1967, you wrote on a sheet of paper, in 1967 and 1968,
11 an initial piece of information, which Rebecca Wilson
12 had given you.
13 A. Yes.
14 Q. Have you made enquiries as to the whereabouts of your
15 notebook.
16 A. Yes.
17 Q. Where is it.
18 A. I understand that somebody's got it in safekeeping. I
19 don't know where, I don't know who. And I have tried to
20 find out and my lawyer has tried to find out. I want
21 the notebook back in order to bring it into the
22 Commission. It has not been given to me. I will
23 continue to make representations that it should come
24 into the Commission. And that's the situation, your
25 Honour.
26 Q. With whom are you experiencing difficulties.
27 A. The women who have it in their keeping.
28 Q. That is the ALRM.
29 A. I don't think it is the ALRM.
30 Q. To give them names: Sandra Saunders and Doreen
31 Kartinyeri. They are the women.
32 A. It may be Doreen. I understand they have a great deal
33 of hesitation, because of the doubts which have been
34 cast already upon my evidence and also the doubts by you
35 of anything worthy to be called the name of honourable
36 and important that belong to Ngarrindjeri or any other
37 Aboriginal person in historical terms.
38 Q. I reject utterly the accusation that you make.

- 1 A. That's how they feel.
- 2 Q. I am extremely interested and concerned about the
3 traditions of Aboriginal people, of Ngarrindjeri -
- 4 A. They don't feel that you are.
- 5 Q. Ngarrindjeri and otherwise.
- 6 A. They feel that you are very much to the contrary.
- 7 Q. And I have had -
- 8 A. And, in fact, they are convinced you are to the
9 contrary.
- 10 Q. Next time you meet them, you can tell them -
- 11 COMSR
- 12 Q. This is not taking us much further, but Mr Abbott does
13 represent a number of Ngarrindjeri women, Mrs Fisher.
- 14 XXN
- 15 Q. And I also had the honour to act for Mrs Fisher's good
16 friend, Mr Bob Ellis, when he was in charge of the
17 Sacred Sites Registration Authority of the Northern
18 Territory.
- 19 A. I hope you did a good job.
- 20 Q. I think he will say I did a good job acting for him.
- 21 A. Congratulations. That's very good. That's men's stuff,
22 isn't it? It is different when it comes to women's
23 stuff, isn't it?
- 24 Q. I am not allowed to reveal that.
- 25 COMSR
- 26 Q. So, it is not because of any compunction about the
27 contents of the material, it is because you feel that,
28 because of Mr Abbott's attitude here, that you won't -
- 29 A. That the women won't surrender it.
- 30 MR ABBOTT: I am to blame.
- 31 COMSR: I am trying to understand the witness's
32 answer, Mr Abbott. That is as I understand the thrust
33 of it to be.
- 34 XXN
- 35 Q. And we are talking about Muriel Van Der Byl.
- 36 A. No.
- 37 Q. Val Power.
- 38 A. No, nothing to do with it.

1 Q. Doreen Kartinyeri, yes.

2 A. Doreen, yes.

3 Q. Anyone else.

4 A. Don't know. I deal with Doreen on this question,
5 because it was to her I entrusted this, because that was
6 how I felt it - that's how it began and that's how it
7 goes on.

8 Q. Do you know Mr Chris Charles.

9 A. Yes, I do.

10 Q. Have you spoken to him about this matter.

11 A. I spoke to him very early in the piece.

12 Q. Indeed, did he make some notes of an interview with you.

13 A. Yes.

14 Q. Indeed, he prepared a draft statement for you, didn't
15 he.

16 A. Yes.

17 Q. Where is that.

18 A. Don't know.

19 Q. Mr Chris Charles is employed by the Aboriginal Legal
20 Rights Movement.

21 A. That doesn't mean I am in a concerted plot against the
22 Commission and nor would I be.

23 Q. How did it come about that Chris Charles, on behalf of
24 the Aboriginal Legal Rights Movement, took a statement
25 from you and prepared a draft statement.

26 A. I don't know. I said `yes' to a statement, Madam
27 Commissioner, but I am not quite sure it was a
28 statement. What I understood I was signing was a
29 receipt and a statement about, first of all, a statement
30 about how I met Gladys and how I made the recordings
31 with Koomi and the other things. He signed a receipt
32 for material which I had given him, which were printed
33 matters relevant to this business.

34 Q. Did you get a copy of it.

35 A. No, I haven't, actually.

36 Q. Have you asked for a copy of the statement and/or
37 receipt that you signed.

38 A. Yes, he said he would send me one out. I haven't got it

1 yet.

2 Q. He never did.

3 A. I haven't got it yet.

4 COMSR

5 Q. You were talking about some other material. Printed
6 material.

7 A. Yes, I think they have got it all. It was just material
8 that I had from the time about Hindmarsh Island, the
9 Coorong and so on. And they said 'We've got all that,
10 but we'll keep it. We might need a second copy.' It
11 was just stuff in the public domain.

12 MR ABBOTT: I have no further questions unless if
13 and when we see this one page document as well as the
14 notebook.

15 COMSR

16 Q. I take it from what you have said, Mrs Fisher, you are
17 using your best endeavours -

18 A. Yes.

19 Q. To get the book back, the notebook back. And you would
20 be requesting -

21 A. Yes, I thought I was going to get it last week and it
22 didn't happen. I will try again.

23 MR ABBOTT: I should add, so Mrs Fisher knows why I
24 am sitting down, that I will be making a submission to
25 you that her evidence was, if not directly then
26 certainly by implication, that the notebook was the only
27 record that she made.

28 COMSR: I understand that to be the case.

29 COMSR

30 Q. You haven't claimed otherwise, have you?

31 MR ABBOTT: Until today.

32 COMSR: You are talking about the other -

33 MR ABBOTT: Yes.

34 A. That had nothing to do with anything that is in the
35 notebook. Nothing whatsoever with anything in the
36 notebook.

37 COMSR

38 Q. Just so I am clear about this, as I understand your

E.M. FISHER XXN (MR ABBOTT)
(MR MEYER)

- 1 evidence, tell me if I am -
2 A. He has reminded me that I am on oath, so I have told you
3 that I took down a small amount of information from
4 Koomi, which I promised never to tell anybody about.
5 Q. Right, I understand that, but I am just trying to
6 clarify this: the only written record or record of any
7 sort that you took concerning women's business is that
8 which is contained in your handwriting in your notebook.
9 A. That's right.
10 Q. There is nothing on any tapes about that.
11 A. No. No, she wouldn't tell that.
12 Q. And that sheet of paper that you are referring to that
13 is in the bank vault has nothing to do with women's
14 business.
15 A. Not as being discussed in this Commission.
16 MR MEYER: You will recall that I reserved, at the
17 end of the cross-examination, that I did have other
18 matters that might be relevant to raise. I have only
19 got about five minutes of questions, so I won't keep you
20 very long. The notebook is one of the topics.
21 CROSS-EXAMINATION BY MR MEYER
22 Q. Why was it necessary to remove the tapes from the
23 Mortlock Library.
24 A. I must a very suspicious person. I thought that, in
25 fact, since I had used or asked permission for the
26 Mortlock Library to be a keeping place for those tapes,
27 I felt a very, very strong personal responsibility
28 towards what Gladys - the late Gladys Elphick had given
29 me and what Tim Hughes and quite a few others had given
30 me. I knew what was in the tapes. I didn't want anyone
31 else to see them. So, I removed them and put them in a
32 bank vault.
33 Q. That hasn't told me why.
34 A. Because of my sense of responsibility. I felt, if they
35 were under my care, nobody else was having to take my
36 responsibility. It was my responsibility to look after
37 them. And that's -
38 Q. How long had the tapes been at the library.

1 A. You have got a copy of the statement from my lawyer
2 about that, have you not?

3 Q. Can you recall how long the tapes had been at the
4 library.

5 A. At the moment, no. Is this another attempt to make out
6 I am senile?

7 Q. I am just asking you a number of questions. How long
8 were the tapes at the library.

9 A. Years.

10 Q. There is a form that you signed when you lodged the
11 documents at the library.

12 A. Yes.

13 Q. You didn't seek to restrict access -

14 A. Yes.

15 Q. By anybody to those documents.

16 A. Yes, there was a red sticker on that and they are not to
17 be seen by anybody under any - not documents, tapes.
18 Not to be heard, recorded, used or etc by anybody
19 without permission of the persons signing.

20 COMSR

21 Q. Who were the persons who signed.

22 A. Myself, Lewis O'Brien and Paul Hughes - well, Paul
23 didn't sign, but myself and Lewis signed with the
24 library people, yes. It is a legal agreement. You have
25 got a copy of that, I am sure.

26 Q. So you would be the only two people who could take that
27 material out of the Mortlock Library.

28 A. Yes.

29 Q. Is that what you are saying.

30 A. Yes.

31 XXN

32 Q. Did you lodge the notebook in the library.

33 A. No.

34 Q. Why not.

35 A. I didn't know the Commission was going to happen. I
36 didn't think it would be necessary. If you could see my
37 room where I keep everything, you would understand why
38 not.

E.M. FISHER XXN (MR MEYER)

- 1 Q. Years ago why didn't you lodge the notebook with the
2 secretary in the library.
- 3 A. Because paper doesn't degrade at the rate that I
4 understood that the tapes were going or may degrade and
5 they get sticky. Stick together and tear and then fall
6 apart and paper doesn't do that. To my knowledge.
7 Unless you spill your coffee on it.
- 8 Q. Besides the notebook that you have referred to, for the
9 purposes of giving evidence and that Ms Caldwell has
10 described, are there any other notebooks.
- 11 A. No.
- 12 Q. You have only ever had one notebook.
- 13 A. Yes.
- 14 Q. Did you cut the front cover off the notebook.
- 15 A. Yes.
- 16 Q. Why.
- 17 A. Because it had material on it that belonged to a
18 conversation with myself with Gladys Elphick. It was
19 Narrunga business, nothing to do with Ngarrindjeri.
- 20 Q. Where is the balance of the notebook.
- 21 A. In a bank vault.
- 22 Q. Can that be produced.
- 23 A. No.
- 24 Q. Why not.
- 25 A. It is Narrunga material.
- 26 Q. So the reality of it is that you are not prepared to
27 produce any part of this notebook whatsoever, whether it
28 is in your possession or not.
- 29 A. I have been asked not to put Gladys's words into this
30 Commission.
- 31 Q. Because you say that you couldn't produce the section of
32 the notebook that did relate to this Commission, because
33 you gave it to somebody else and they won't give it
34 back, that's right, isn't it.
- 35 A. Yes.
- 36 Q. The other part that is in your control, you won't give
37 that, because you haven't got permission.
- 38 A. That's right.

1 Q. You have asked for permission.

2 A. Yes.

3 Q. And it has been refused.

4 A. Yes.

5 Q. You say that, realising that the production of the
6 notebook could validate its age.

7 A. Yes, but, you see -

8 Q. But you still refuse to produce it.

9 A. Beg your pardon? What did you say?

10 Q. You realise that you won't produce the notebook,
11 although realising that the production of the notebook
12 could validate its age.

13 A. Yes, I will produce the rest of the notebook, as soon as
14 I can.

15 Q. If you produce the first part of the notebook, that
16 would at least date the notebook.

17 A. Yes, that's what I told them.

18 Q. But, you refuse to -

19 OBJECTION Mr Wardle objects.

20 MR WARDLE: She said that's what they told her.

21 XXN

22 Q. You have got the notebook.

23 A. Who?

24 Q. You have.

25 A. I have got the notebook.

26 Q. You have got the first section of the notebook, haven't
27 you.

28 A. Yes.

29 Q. And you refuse to produce it.

30 A. I have not been given permission to produce it by the
31 Narrunga people.

32 Q. Regardless of that, you refuse -

33 COMSR: The witness has made her position clear.

34 She is refusing to produce it, because she does not have
35 permission to produce it, as I understand what she is
36 saying.

37 MR MEYER: There are some people unconnected with
38 this Royal Commission and the point I am making is this:

- 1 that she refuses to produce it.
- 2 XXN
- 3 Q. Despite the fact that, if you did produce it, the age of
- 4 the notebook could be validated.
- 5 A. I will have a discussion with them further and see if we
- 6 can get something arranged about that.
- 7 Q. Have a discussion with who.
- 8 A. With the Narrunga people.
- 9 Q. Could you name them.
- 10 A. No.
- 11 Q. Why not.
- 12 A. It has nothing to do with the Royal Commission. I
- 13 can't, I can't keep on -
- 14 COMSR
- 15 Q. When you say 'people', who are we talking about. A
- 16 person. Two people.
- 17 A. Yes, two or three people.
- 18 Q. Who, in your opinion, represent the Narrunga nation.
- 19 A. Yes, I am very unfortunate in that I take this very
- 20 seriously, you see. I can't.
- 21 Q. But, if some other persons came along who said that they
- 22 also represent the Narrunga nation, what then.
- 23 A. I would like to meet them.
- 24 XXN
- 25 Q. So, two or three people represent the entire Narrunga
- 26 nation, do they.
- 27 A. No, they represent what is on the notebook. They
- 28 represent the - what is known as the ownership of the
- 29 material in the notebook, of that front page.
- 30 COMSR
- 31 Q. Is there anyone here who, in your opinion, represents
- 32 the Narrunga nation in the court, in the hearing.
- 33 A. In the court? The Narrunga?
- 34 Q. Yes.
- 35 A. Somebody has got their hand up back there.
- 36 INTERJECTOR: I have been on the Reserve since 1949.
- 37 INTERJECTOR: She is a Narrunga.
- 38 A. I have never met. Have we met?

- 1 INTERJECTOR: She is definitely not a man.
- 2 COMSR: Just a moment. We can't have that sort
- 3 of evidence from the body of the hearing room.
- 4 A. That is Chirpy, is it?
- 5 COMSR
- 6 Q. In any event, you are saying that you recognise two or
- 7 three people as representing the Narrunga nation, do
- 8 you.
- 9 CONTINUED

E.M. FISHER XXN (MR MEYER)

- 1 A. Yes, well, I mean not representing the Ngarrindjeri
2 nation, no, representing by the person who gave me all
3 of this material - it's on all of these tapes - and that
4 was Gladys Elphick. And she asked me always to go to
5 Paul to go to Lewis and to go to one of the senior
6 woman, and she never named the senior woman.
7 XXN
- 8 Q. In the last few weeks have you addressed some national
9 women's conference.
- 10 A. Yes. No, I haven't actually addressed them, they gave
11 me a dinner in my honour, but I made a speech that
12 night. But it wasn't actually addressing them.
- 13 Q. Was Doreen Kartinyeri at that function.
- 14 A. Yes.
- 15 Q. And did she speak to the same programme.
- 16 A. She addressed the conference, yes.
- 17 Q. Was the thrust of the speeches that both you and Doreen
18 Kartinyeri made against any criticism of this
19 Commission.
- 20 A. I didn't make a criticism of this Commission - certainly
21 not of her Honour under any circumstances.
- 22 Q. You say that if I obtain a copy or a transcript of your
23 speech, there is no criticism of this Royal Commission
24 by you.
- 25 A. Not of the Commissioner herself.
- 26 Q. That wasn't my question. Of this Commission.
- 27 A. That is my answer.
- 28 Q. Of this Commission I said.
- 29 A. No, not critical of her Honour.
- 30 Q. So, I take the answer to the question to be this: I was
31 critical of the Royal Commission but I wasn't critical
32 of the Royal Commissioner.
- 33 A. No. I will say I was critical of those who undertook to
34 institute the Royal Commission.
- 35 NO FURTHER QUESTIONS
- 36 MR WARDLE RESERVES HIS RIGHT TO CROSS-EXAMINE

E.M. FISHER REXN (MR SMITH)

1 RE-EXAMINATION BY MR SMITH

2 Q. I think that at the conference that took place at your
3 solicitor's place, Mr Wardle, on 26 July, you spent a
4 lot of time in private consultation with Mrs Simpson,
5 didn't you.

6 A. That's true.

7 Q. So, if a document were passed to Dr Clarke by Lewis
8 O'Brien, it could have happened in your absence.

9 A. That is what I tried to indicate, yes.

10 Q. You told us that I think on one of the earlier occasions
11 you gave evidence, that you first met Doreen Kartinyeri
12 in a coffee shop.

13 A. Back of Old Parliament House, yes.

14 Q. And I think you finally placed it around an Anzac Day
15 and then fixed it on 26 April 1994.

16 A. I think so.

17 Q. Would that be about right.

18 A. As well as I can recall it, it would be, yes.

19 Q. You recounted to us how Doreen had asked you if you had
20 any information that could help in respect of, words to
21 that effect, the Hindmarsh Island Bridge dispute.

22 A. Yes. And I first told her no, I didn't.

23 Q. You resisted communicating to her what you say Rebecca
24 Wilson had disclosed to you.

25 A. Yes. Well, I was asked never to talk about those things
26 and never to disclose.

27 Q. In fact, it took until I think you saw the article in
28 the Advertiser called 'The Great Lie of Hindmarsh
29 Island'.

30 A. Yes.

31 Q. For you to go to the ALRM and disclose some of this
32 material; that is right, isn't it.

33 A. Yes.

34 Q. Perhaps fixing that day. Looking at Exhibit 24
35 produced, which is an Advertiser article. Looking at
36 that article which is headlined 'The Great Lie of
37 Hindmarsh Island', that's the Advertiser article that
38 provoked you to -

E.M. FISHER REXN (MR SMITH)

1 A. Yes. I don't know whether this was a city edition or
2 whether I got a different edition, but that photo was on
3 the front page. Yes, that is virtually so.

4 Q. You will see that is 7 June 1995.

5 A. Yes.

6 Q. You agree then that it was at this time that you decided
7 to disclose the Rebecca Wilson information that you say
8 you had.

9 A. Yes. The tape particularly was and the notebook, yes.

10 Q. You took that into the offices of the ALRM.

11 A. Yes.

12 COMSR

13 Q. When you say 'the tape', I'm not quite clear why you say
14 'the tape'. I understood that the tape contained no
15 information about the women's business.

16 A. Yes, but at least it demonstrated to them that I had met
17 her and that she had an opinion on those tapes that was
18 interesting.

19 REXN

20 Q. I think you told us that you left that material there,
21 which included the notebook, for Doreen Kartinyeri.

22 A. Yes.

23 Q. Can I take you through some of the events that happened
24 in between time. You agree, do you, that that is
25 between April 1994 and this occasion June 1995 when you
26 took the decision to disclose this information.

27 A. Yes.

28 Q. The Minister, the Federal Minister had made the
29 permanent declaration, hadn't he, in May 1994.

30 A. Yes. Well, I can't remember, but if you tell me that,
31 yes.

32 Q. I think that as 1994 proceeded, isn't it the case that
33 the dissident ladies started to come out to speak
34 against women's business.

35 A. Yes. Well -

36 Q. Do you remember that occurring.

37 A. I do remember women coming out and saying to myself 'Oh
38 well, all of these historians will now come out of the

E.M. FISHER REXN (MR SMITH)

- 1 woodwork and that will be that', but they didn't, did
2 they.
- 3 Q. Isn't it the case that late in 1994, Mr McLachlan made a
4 speech that received some publicity in Parliament about
5 the challenge to secret women's business on Hindmarsh
6 Island.
- 7 A. Yes.
- 8 Q. You were aware of that, weren't you.
- 9 A. Yes.
- 10 Q. You were aware that in March 1995, the Parliamentarian
11 McLachlan resigned over the question of handling the
12 envelopes.
- 13 A. That was on the television. Knew a lot, yes.
- 14 Q. Isn't it the case that in March 1995, you helped
15 organise a key note address by Mrs Kartinyeri to the
16 International Women's Day Luncheon.
- 17 A. Yes.
- 18 Q. Do you agree that that is one of the most important
19 dates on the State's feminists' calendar.
- 20 A. I'm very flattered to have you say that.
- 21 Q. Isn't that so recorded.
- 22 A. I hope so, yes.
- 23 Q. Isn't it the case that you're the longest, or have been
24 the longest serving president of the International
25 Women's Day Committee.
- 26 A. Haven't counted up the years. I was on it for a while,
27 yes.
- 28 Q. Is it correct, as it's said in the press, that you were
29 pivotal in arranging a motion that Mr McLachlan resign
30 over his handling of the secret envelopes.
- 31 A. I think the press got it wrong as the point pivotal.
32 There were about three other women involved in that.
- 33 COMSR
- 34 Q. Do you mean you had no part to play in it.
- 35 A. As a president, it's hardly the role of the president to
36 - it's hardly the part of the president to initiate
37 motions. Certainly there were several motions handed up
38 to me. So the press did their usual thing, I think, on

E.M. FISHER REXN (MR SMITH)

- 1 that one - and the press always attribute a lot of
2 things to people that are not always precisely so. They
3 get things wrong sometimes.
- 4 REXN
- 5 Q. Were you active in arranging the motion against Mr
6 McLachlan.
- 7 A. No. Not in arranging it, no. They kept saying to me
8 'Should we say this?', and I said 'Look, you have to go
9 and talk to so and so. Go and talk amongst yourselves.
10 I can take the motion. Go and do it'.
- 11 Q. Is it correct, however.
- 12 A. I didn't make the motion.
- 13 Q. Do you agree that you arranged the key note address by
14 Doreen Kartinyeri.
- 15 A. Certainly.
- 16 Q. That was in March 1995.
- 17 A. Well, it took place in March. Arranging it three months
18 before, I asked her to speak and she said 'I don't know
19 where I'll be or what I'll be doing', and I asked
20 another woman to speak in case she can't do it and that
21 was Shirley Piersley. I said 'Look, if Doreen
22 Kartinyeri cannot speak, can you?'. You know, nearer
23 the event I had to ask somebody in case, because Doreen
24 was very sick and still continues to be quite sick and
25 so I had a fall-back position in asking Shirley.
- 26 Q. You have obviously - you obviously have an admiration
27 for Doreen Kartinyeri.
- 28 A. Indeed.
- 29 Q. Could you tell us then, bearing in mind the fact that
30 the dispute about women's business was fermenting right
31 through the latter part of 1994, was it not, and into
32 early 1995.
- 33 A. Yes. I suppose you could say that, yes, but, you know,
34 I had a lot of family problems around about the time and
35 I can't tell you that I read in detail, but I only know
36 that I was expecting as this tiny cog in the great
37 machine of history that all of these historians would
38 come out and say 'Look this is the case', and for all of

E.M. FISHER REXN (MR SMITH)

1 that to be resolved, but it didn't. I couldn't
2 understand why.

3 Q. You're not a tiny cog in the feminist movement in South
4 Australia, are you.

5 A. The feminist movement has nothing to do with the
6 Aboriginal people. I asked Gladys about that once and
7 she said it would be a very good idea.

8 Q. Why did you wait until 7 June to take your information
9 into the Aboriginal Legal Rights Movement. Why did you
10 you not convey that at an earlier time.

11 A. Why didn't I forget about it and not do it at all?
12 Precisely. Well, why did I wait until 7 June? Because,
13 in fact, as I was told, probably erroneously, that the
14 gentleman called Doug Milera was in some way related to
15 Gladys Elphick and that immediately, in my mind, brought
16 a great difficulty for me to hold silence any longer.
17 Because Gladys is involved, somebody related to Gladys
18 immediately involved Gladys, you see, or her memory.

19 Q. On the tape, Exhibit 226, that is the raw footage tape -
20 Exhibit 22B, sorry, at the end of the tape you say to
21 Maggie Jacobs and Veronica Brodie in front of Miss
22 Caldwell, the transcript reads 'In a whisper'- this is
23 you according to the transcript - 'Now listen kids, the
24 Tickner inquiry is coming up'. Veronica Brodie said
25 'Yes'. You say 'And we aren't going to speak to anyone
26 until that is finished in my opinion.' Do you agree
27 you said that.

28 A. I possibly did.

29 Q. What changed your mind.

30 A. What date was that?

31 Q. This was 7 August 1995. You had met with - you had the
32 conference.

33 A. Probably a number of things. I may have already given
34 evidence on this, I'm not sure. I can't remember.

35 Q. It might have been actually on an earlier date than the
36 7th, but it was around about 7 August that you said
37 that. You agree you said it to these ladies.

38 A. Yes.

E.M. FISHER REXN (MR SMITH)

1 Q. Having given a statement to this Commission.

2 A. I don't know, I must have been out of my mind. No, I
3 think in fairness I have to say that I can't recall. I
4 may have already given evidence on this when I could
5 recall things. There have been recent events in my life
6 that have driven a few things out of my mind.

7 COMSR

8 Q. I understand that you have unfortunately had a
9 bereavement in your family.

10 A. I don't want to play any records on that. But, yes, I'm
11 not agreeing to be admitting that I'm even senile. I
12 have a few problems of memory. If I have given evidence
13 on that, perhaps somebody can tell me?

14 REXN

15 Q. I'm not going to put any evidence to you about the
16 topic. I'm suggesting to you that you advised the
17 ladies present during that television interview to not
18 say a word until the Tickner inquiry had come up, words
19 to that effect.

20 A. I veer between wanting to come in and making a long
21 speech in the Commission, saying nothing whatsoever,
22 going to England or Timbuktu or burying myself
23 somewhere. The emotions vary.

24 Q. What do you mean by making a speech, saying nothing
25 whatever.

26 A. I vary from coming in and making a very long speech or
27 saying nothing whatever or - and, in other words, I have
28 variations of the reactions. And this may have been
29 another one that I suddenly felt, look, we shouldn't say
30 another word about anything that has to do with
31 Aboriginality, we should wait until a more propitious
32 time when the general mind set in the public ceases to
33 destroy the cultural heritage of this country. Anyway,
34 that is how I feel.

35 CONTINUED

E.M. FISHER REXN (MR SMITH)

- 1 Q. In any event, despite that television interview that we
2 have the transcript of here, Exhibit 22B, you made a
3 decision to come in and give evidence here, didn't you.
4 A. Yes.
5 Q. Can you tell us what provoked you to do that, or who
6 provoked you to do that.
7 A. I can't recall. I mean I will have to think about it.
8 If you'd ask me that question again, I'd try.
9 Q. Would you think about it now, please.
10 A. It was after this - no, before this. 7 June, this is.
11 Q. About 7 August 1995, in front of the television camera.
12 A. I said I wouldn't come in here.
13 Q. You not only said - I will put what you said to you. In
14 a whisper - in fact it was sotto voce, more than a
15 whisper - 'Now listen, kids, the Tickner enquiry is
16 coming up'. Veronica Brodie says 'Yeah', and you said
17 'And we aren't going to speak to anyone until that is
18 finished, in my opinion', yet you were in here giving
19 evidence in the Commission for the first time on Tuesday
20 8 August.
21 A. It might have been a phone call from my lawyer that
22 persuaded me to come and give evidence, I'm not sure.
23 It probably was.
24 Q. Is it not correct that you came to the commission in the
25 early days together with and sat with people such as
26 Sandra Saunders. That's correct, isn't it.
27 A. I sat with women I knew, asking them where Doreen was.
28 Q. My question really is have you come in here to give
29 evidence at the instigation of people such as Sandra
30 Saunders from the Aboriginal Legal Rights Movement.
31 A. No. No way. No. Sandra is a very much younger woman
32 than me, and I would not be directed by Sandra. By
33 Doreen, perhaps, but not by Sandra. Doreen could say to
34 me 'Look, so and so and so and so', I would then speak
35 to my lawyer and we would sort of have a discussion and
36 I would decide what he said generally I would do.
37 Q. Did that happen. Did Doreen Kartinyeri suggest you
38 might come in here.

E.M. FISHER REXN (MR SMITH)

- 1 A. No, Doreen said 'Stay out'. She doesn't think I should
2 come in. As a matter of fact, Sandra has always said
3 'Why do you go in there'. I've been to my lawyer, my
4 lawyer I rely on, I think he is a good, honest man.
- 5 MR WARDLE: I would add to that and say it was
6 inspired by a phone call from my learned friend after
7 the television interview.
- 8 A. Sorry, I'm not persuaded by Sandra. She is a very good
9 young woman, absolutely dedicated, but I'm not persuaded
10 by her.
- 11 REXN
- 12 Q. You're a member, are you not, of the Union of Australian
13 women.
- 14 A. No.
- 15 Q. You have been.
- 16 A. No, not since 1970, thank you, and that's a long time
17 ago.
- 18 Q. Does that organisation publish a newsletter called 'Our
19 Women'.
- 20 A. It might. I never get it.
- 21 Q. You've contributed to that in the past, have you not.
- 22 A. Before 1968.
- 23 COMSR: Where is this taking us?
- 24 A. Towards the Russian intervention in Czechoslovakia.
- 25 REXN
- 26 Q. Are you a member of the Women's Electoral Lobby.
- 27 A. I am.
- 28 Q. Would you regard yourself as a senior member of the
29 Women's Electoral Lobby.
- 30 A. A senior retired member.
- 31 Q. Are you a member of the Women Against Demeaning Images.
- 32 A. WADI, yes.
- 33 Q. Do you regard Aboriginal women as under a disadvantage
34 in terms of their relationship with their men.
- 35 A. No. I've always disagreed with that. They worked it
36 out many, many thousands of years ago. White women are
37 still working it out.
- 38 Q. Could you tell us, because this submission will be made

E.M. FISHER REXN (MR SMITH)

- 1 at the end of this commission about your evidence, can
2 you tell the commissioner why you came here to give
3 evidence without the notebook, the vital piece of
4 evidence that supported, well, you say supports what you
5 say.
- 6 A. Well, I was hoping to get it back later, I was. I was
7 relying on getting it back. I don't know whether you
8 believe me, but that's a fact. I was relying on getting
9 it back.
- 10 MR SMITH: I don't know whether Mr Abbott tendered
11 this document in the end, the Mortlock Library.
- 12 MR ABBOTT: No, it wasn't produced at that stage.
- 13 MR SMITH: I produce the original now.
- 14 MR ABBOTT: Would you also tender the notes about
15 the deposition, the notes of the transcript as well.
- 16 COMSR: What are we tendering? What is the
17 first document?
- 18 MR SMITH: This is documentation from the Mortlock
19 Library relating to the deposit and removal of the tapes
20 of Mrs Fisher. That's dated 14 August 1995.
- 21 EXHIBIT 213 Documentation from the Mortlock Library
22 relating to the deposit and removal of
23 the tapes of Mrs Fisher tendered by Mr
24 Smith. Admitted.
- 25 COMSR: I have this sheet of paper on which Mrs
26 Fisher has written a name of an elder. What do you
27 propose I do with that?
- 28 MR SMITH: That has to be marked, but it has to be
29 kept to yourself, I imagine.
- 30 COMSR: Yes.
- 31 MR MEYER: I make the submission that it be
32 extended to Ms Simpson as the female junior counsel
33 assisting. That might help your Honour make some use of
34 it.
- 35 COMSR
- 36 Q. Is this information restricted just to women counsel or
37 can men counsel look at it. It's a name, isn't it.
- 38 A. The thing is I don't want her name, or any Nurrunga

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1 name, further to go into the commission, because the
2 Nurrunga people have asked me not to, and I'm going to
3 be in diabolical strife if I do.

4 Q. That is, of course, unless someone from the Nurrunga
5 people come along saying they don't mind the name being
6 revealed. That would get you out of the difficulty.

7 A. But it has to be someone who is connected with the
8 person whose name it is, and that may not even be the
9 person that Katrina went to. She may have gone to
10 someone else, I didn't ask her. I was in a big hurry at
11 the time. I said 'Have you got permission', and she
12 said 'Yes'.

13 Q. So this is just someone whom you think she could have
14 gone to, or she might have gone to.

15 A. Yes. She is certainly someone whom I have recorded, and
16 someone who knew Gladys very well indeed.

17 COMSR: The difficulty, of course, will be, if
18 it's not possible to disclose this name, to determine
19 from whom one gets permission to reveal it.

20 MR ABBOTT: There is a further document which I
21 thought Mr Smith was going to put in with the Mortlock
22 Library material. I'd seek permission to put this to
23 the witness to have identified so Mr Smith can put it
24 in. Ignore the red notation on the line.

25 REXN

26 Q. I will show this document to you first of all. Is that
27 a document of yours.

28 A. Yes.

29 Q. Is that in your handwriting.

30 A. Yes. This was addressed to Beth Robertson, the person
31 who is the Coordinator of the Sommerville Oral History
32 Collection at the Mortlock Library, and I wrote to her
33 about this. I've got several sets of tape-recordings
34 that I'm putting in, so I know her quite well.

35 Q. The attachments to it are all your documents also.

36 A. Yes.

37 Q. They are just details of the Gladys Elphick material,
38 are they.

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1 A. Yes.

2 Q. Is that what it is.

3 A. Yes.

4 Q. Just giving the library an idea of what it is that
5 you've got in there, records.

6 A. Yes. She asked me to do a description, a brief
7 description of what was contained.

8 Q. For their records.

9 A. Yes.

10 Q. That document relates to that.

11 A. Yes, because she always needs more staff. I said I'd
12 save her the trouble.

13 EXHIBIT 214 Notes of records for the Mortlock
14 Library tendered by Mr Smith. Admitted.

15 MR ABBOTT: Could I get my copy back and a clean
16 copy substituted by the commission.

17 MR SMITH: Of the last document?

18 MR ABBOTT: Of the last exhibit, yes.

19 MR SMITH: Have you dealt with that last exhibit?

20 COMSR

21 Q. I'm just wondering, the evidence is not really very
22 conclusive at linking that up. I mean the evidence is
23 it could have been someone, it might have been someone.
24 I think to admit it as an exhibit on that basis would be
25 - you're not able to say for certain that this person
26 was ever spoken to.

27 A. No. She rang me up a couple of weeks ago, and I said -
28 she's going to come down and see me, or I'm going to see
29 her, but I didn't think to ask her at the time if
30 Katrina did ask her or who she asked. She knows a lot
31 of women at Point Pearce, you see, so it could have been
32 one of the other women.

33 Q. It's hard to say that that has been a sufficient
34 identification of that person as one of the persons.

35 A. I'm sorry, I never thought I'd be asked the question,
36 you see.

37 COMSR: I mean I can marked for identification.

38 MR SMITH: Yes.

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- 1 COMSR: I'm not certain that there's been any
2 sufficient link between the person named and Mrs Fisher
3 receiving or seeking approval.
- 4 A. I'm sorry about that, I didn't think of it.
- 5 MR SMITH: For the time being, you can return it to
6 the witness if you want to. I suspect it will clutter
7 up the exhibits.
- 8 COMSR: I suspect that might be the safest
9 course, because I just don't see a connection at
10 present. It's a bit too tenuous. I will return this to
11 Mrs Fisher.
- 12 DOCUMENT RETURNED TO WITNESS
- 13 MR SMITH: Exhibit 212 was marked for
14 identification. That was the bundle of notes of the
15 witness Alison Caldwell.
- 16 COMSR: That's right.
- 17 MR SMITH: And the shot sequence as well. Perhaps
18 in light of the cross-examination, that ought to now
19 become an exhibit. So could that be admitted as an
20 Exhibit 212.
- 21 COMSR: Yes.
- 22 EXHIBIT 212 MFI 212 tendered by Mr Smith. Admitted.
- 23 MR SMITH: That should include the shot list that
24 was given.
- 25 COMSR: The what?
- 26 MR SMITH: It's a document with a schedule of
27 camera shots.
- 28 COMSR: That will form part of Exhibit 212.
29 What is going to happen with respect to Mrs Fisher?
30 I'm sure Mrs Fisher will be grateful if her evidence can
31 be concluded, and she can be finally released.
- 32 MR SMITH: I think she should be released subject
33 to any more implications occurring with the question of
34 Mr Wardle.
- 35 A. I'm not very happy, if you don't mind me saying so, I'm
36 not very happy with senior counsel's explanation that I
37 was in a plot with the ALRM. If I make a plot, people
38 don't find out about it, so it is a plot, and plots such

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1 as that are beneath me. It's ridiculous, totally
2 ridiculous.

3 COMSR: The thing is I'd like to release you,
4 but your counsel might be requiring you to return for
5 some further questions concerning that matter, so Mr
6 Wardle, shall I release Mrs Fisher subject to any
7 requirement that you might have to question her, or
8 anyone ask her further questions concerning that matter?

9 MR WARDLE: If you would.

10 COMSR

11 Q. Do you understand that, I'm releasing you, but there is
12 the possibility -

13 A. I might have to come back.

14 WITNESS STANDS DOWN

15 MR SMITH: So the witness Philip Clarke for
16 cross-examination tomorrow.

17 ADJOURNED 4.44 P.M. TO TUESDAY, 17 OCTOBER 1995 AT 10.00 A.M.

