

1 (RULING FOLLOWS - next page)

R U L I N G

HIS HONOUR: The defendants are charged on two counts of criminal contempt by scandalizing the court. The offences being alleged to be constituted by published statements in two books written by the first defendant and published by the second defendant. The first book is titled, "Victoria Police Corruption" and the second is titled, "Victoria Police Corruption 2". Both books were published in 1999.

On the first count there are 23 separate particulars, being passages in the second book, "Victoria Police Corruption 2" to which the count relates. Eleven particulars relate to His Honour Judge Neesham, three to His Honour Chief Judge Waldron, three to Her Honour Judge Balmford as she then was, four to Magistrate Ms J Heffey and one to Magistrate Mr H.F. Adams.

The second count relates to one passage only in the book, "Victoria Police Corruption". That passage referring to Magistrate Mr H.F. Adams.

The Crown puts its case that on the first count, the charges made out, whether the particulars are taken individually or collectively and whether or not all of the particulars are held to be capable of constituting contempt.

The Crown has closed its case having tendered evidence by Affidavit, including exhibits and with one deponent having been cross examined.

Counsel for the defendants have now submitted that there is no case to answer on either count. In the

1 course of his submissions, Mr Maxwell QC, senior counsel
2 for the defendants addressed each particular and
3 contended that each was of itself, incapable of
4 constituting the offence and also submitted that
5 collectively the publications particularised in the first
6 count, were incapable of supporting that charge.

7 On a no case submission the evidence must be taken
8 by the defendants at its highest, in favour of the
9 prosecution. The court must, on that evidentiary basis,
10 determine whether as a matter of law, the evidence taken
11 at its highest, is capable of supporting a conviction.
12 In taking the evidence at its highest, that includes
13 drawing in favour of the Crown, any adverse inferences
14 which may reasonably be drawn from the evidence. Even if
15 alternative inferences, which would favour the
16 defendants, might also be open to be drawn.

17 In other words, the question which I must now
18 decide is not whether I should be satisfied beyond
19 reasonable doubt that either offence has been proved.
20 The question is whether on this evidence, the defendant
21 could be convicted, not whether they should be convicted.

22 A no case submission raises a question of law.
23 Thus the weight of the evidence is not the relevant
24 issue. It is not appropriate therefore, for me to engage
25 in an assessment of the weight of evidence at this stage,
26 nor of the strength of inferences which may be drawn.

27 The propositions, which I have just stated, as to
28 the principles governing a no case submission, were
29 accepted by counsel on both sides to be the appropriate
30 principles to be applied. See *May v. O'Sullivan* 1955, 92
31 Commonwealth Law Report 654 at 658. Attorney General's

1 reference, no. 1 of 1983 to Victorian Reports 410 at 414
2 to 616. To restate the overriding principle in terms
3 used by Justice Kitto in *Zanetti v. Hill*, 1962 108
4 Commonwealth Law Reports 433 at 442, the question is
5 whether, with respect to every element of the offence,
6 there is some evidence which you have accepted would
7 either prove the element or enable its existence to be
8 inferred.

9 Both Mr Maxwell and the Solicitor-General Mr Graham
10 QC, made comprehensive and very helpful submissions on
11 questions of fact and law on the no case application.
12 There was substantive agreement as to the principles of
13 fact and law on the no case application.

14 There was substantive agreement as to the
15 principles of law which governed the question of what
16 constitutes the offence, contempt by comments which
17 scandalize the court. Although there were some
18 differences both in substance and in emphasis as to the
19 elements of the offence.

20 On area on which there was substantial disagreement
21 related to the question whether the implied
22 constitutional freedom, discussed in *Lange v. Australian*
23 *Broadcasting Commission* 1997, 189 Commonwealth Law
24 Reports 520, had application to the present case. I have
25 concluded that it is unnecessary that I deal with that
26 question for the purpose of this application but it will
27 be appropriate at a later date, that I analyse the case
28 law in some detail as to that and other issues. It is
29 unnecessary that I prolong this ruling for that purpose
30 however.

31 The offence of contempt which scandalizes the

1 court, was described in the following terms by Justice
2 Rich in R v.Dunbabin, ex parte Williams 1935, 53
3 Commonwealth Law Reports, 434 at 442. When speaking of
4 interference's with the course of Justice, His Honour
5 said, "But such interference's may also arise from
6 publications which tend to detract from the authority and
7 influence of judicial determinations. Publications
8 calculated to influence the confidence of the people in
9 the court's judgments because the matter published aims
10 at lower the authority of the court as a whole or that of
11 its judges and excites misgivings as to the integrity,
12 propriety and impartiality brought to the exercise of the
13 judicial office. The jurisdiction is not given for the
14 purpose of protecting judges personally from imputations
15 to which they may be exposed as individuals. It is not
16 given for the purpose of restricting honest criticism
17 base on rational grounds, of the manner in which the
18 court performs its functions. The law permits in respect
19 of courts, as of other institutions, the fullest
20 discussion of their doings so long as that discussion is
21 fairly conducted and is honestly directed to some
22 definite public purpose. The jurisdiction exists in
23 order that the authority of the law, as administered in
24 the courts, may be established and maintained."

25 That general principle is being discussed and
26 developed in many decided cases. In identifying the
27 relevant question as it would apply to a no case
28 submission, I apply the principle stated in the joint
29 judgment of the high court in Gallagher v. Durack, 1983,
30 152 Commonwealth Law Reports, 238 at 243.

31 Thus the question now is whether the evidence taken

1 at its highest is capable of being regarded as
2 scandalizing the court. By virtue of the statements
3 constituting a baseless attack on the integrity or
4 impartiality of the judges and magistrates against whom
5 the comments are directed.

6 There are generally recognised to be two categories
7 of publications which scandalize the court, although they
8 tend to overlap, see Borrie and Lowe, *The Law of*
9 *Contempt*, third edition at 340.

10 In the first place there are those which impugn the
11 impartiality of the court, that being the category
12 primarily identified by the Crown with respect to the
13 paragraphs in the particulars.

14 The second category relates to scurrilous abuse.
15 As to scurrilous abuse of a judge or magistrate
16 constituting contempt by scandalizing the court, see
17 *R v. Gray*, 1900, to Queens Bench, 36. "Abuse or attacks
18 on the personal character of a judge or magistrate which
19 reflect upon the capacity of the person to act as a judge
20 or magistrate, for example calling the judge or
21 magistrate a liar, would be capable of constituting
22 scurrilous abuse.", see Borrie and Lowe at 343.

23 The exercise of the jurisdiction to punish for
24 statements which scandalize the court is undertaken, not
25 to assuage the personal feelings of the judge or
26 magistrate, but to prevent undue interference with the
27 administration of justice, by undermining the confidence
28 in and respect held by the community for the judicial
29 system.

30 The learned authors, Borrie and Lowe at 343
31 summarise the principle as being, "that abuse of a judge

1 or magistrate, amounts to contempt if it reflects upon
2 his or her capacity as a judge or magistrate. But
3 criticism of a judge's conduct so long as no aspersions
4 are cast on the judge's character, do not amount to
5 scurrilous abuse."

6 In Attorney General of NSW v. Munday, 1972, to NSW
7 Law Reports 887 at 910 - 911, Justice of Appeal Hope,
8 held that it may and generally will constitute contempt
9 to make unjustified allegations that a judge had been
10 affected by some personal bias against a party or had
11 acted mala fide or had failed to act with the
12 impartiality required of the judicial office.

13 In Ahnee & Ors v. Director of Public Prosecutions,
14 1999, to appeal cases 294 at 3045, Lord Steen held that
15 the imputation of improper motives to a judge, could not
16 be regarded as always and absolutely constituting
17 contempt and gave as an example of a possible exception,
18 an instance where a judge engaged in patently biased
19 conduct in a criminal trial.

20 For the purpose of the no case application, the
21 issue as I've said, is whether there is any evidence
22 which is capable of proving those elements of the offence
23 which have to be proved by the Crown. It was not
24 contended before me that there was an absence of evidence
25 as to formal matters such as the fact that the first
26 defendant was the author of the two books and that the
27 second defendant was the publisher.

28 Mr Maxwell, senior counsel for defendants, advanced
29 his no case submission on broader grounds. In effect
30 that when taken in proper context, none of the particular
31 published statements, either alone or together, were

1 capable of constituting contempt as it was characterised
2 by decided authority.

3 The submissions of Mr Maxwell, helpful as they
4 were, ranged at times beyond the question which is at
5 issue on a no case submission and addressed the factual
6 and legal considerations which would be appropriate to a
7 submission at the close of both prosecution and defence
8 cases and which was directed to the question, whether the
9 offences had been proved beyond reasonable doubt.

10 The distinction is important and must be kept in
11 mind at all times when dealing with the no case
12 submission. I will not therefore, in dealing with this
13 application, be addressing all of the matters raised by
14 Mr Maxwell. There were however, particular factors which
15 he submitted were essential elements of the offence of
16 contempt and which had not been proved.

17 It is those matters to which I turn my attention.
18 Mr Maxwell submitted that it is an element of the offence
19 and one on which the Crown must have adduced some evidence
20 for there to be a case to answer, that the published
21 material had, as a matter of practical reality, a
22 tendency to interfere with the due administration of
23 justice. He cited *John Fairfax & Sons Pty Ltd v. McRae*
24 1955, 93 Commonwealth Law Reports, 351 at 370 in the
25 joint judgment of the High Court. A closely related
26 proposition, if it is not in fact merely an alternative
27 way of stating the same proposition, which counsel also
28 identified as an element of the offence was, he
29 submitted, that there must be a real risk of prejudice to
30 the due administration of justice rather than a remote
31 possibility, if contempt was to be made out.

1 As to that latter proposition, see the opinion of
2 Lord Steen, giving the judgment of the Judicial Committee
3 of the Privy Council in *Ahnee & Ors. v. D.P.P.* at 304 -5.

4 In the passage of the *John Fairfax v. McRae* case in
5 which the court discussed the requirement of a practical
6 reality in the tendency to interfere with the
7 administration of justice, a distinction is drawn between
8 technical contempts, which the court chooses not to
9 punish and instances of contempt where punishment is
10 appropriate. That case was not concerned with an
11 allegation of contempt by scandalizing the court, but
12 with the newspaper publication which was held by the
13 trial judge, to constitute contempt by having a tendency
14 to interfere with a pending proceeding in a court.

15 The tendency to interfere with justice, with which
16 the court was concerned, related to the risk that the
17 fair trial of the defendant in the other court
18 proceedings would have been compromised by the offending
19 publication. That is a significant difference from the
20 present case and so too is the fact that the *John Fairfax*
21 *v. McRae* case, was not concerned with the submission of
22 no case to answer but with determining whether contempt
23 had been proved beyond reasonable doubt.

24 The case of *Ahnee* did however, involve an
25 allegation of contempt by scandalizing the court but once
26 again, the case did not concern a no case submission but
27 instead, was concerned with the question whether the case
28 had been proved beyond reasonable doubt. Likewise the
29 decision of Mr Justice Ellis in *Colina v. Torney*,
30 unreported decision of the Family Court, delivered on
31 2 March 2000 on which counsel for the defendant placed

1 considerable weight, was once again not a case concerning
2 a no case submission but concerned the question whether
3 the charge had been proved beyond reasonable doubt.

4 The analysis of conduct, alleged to constitute
5 contempt, requires a balancing of the competing
6 considerations of the right of free speech and in
7 particular, the right to comment in good faith, on
8 matters of public importance, including the
9 administration of justice on the one hand, against the
10 necessity for the purpose of maintaining public
11 confidence in the administration of justice, of ensuring
12 that the institutions be protected against baseless
13 attacks on the integrity and impartiality of judges and
14 magistrates at against scandalous disparagement of both
15 judges and magistrates, see *Gallagher v. Durack* at 243.
16 It is that balancing process which must be undertaken
17 when considering whether to exercise the jurisdiction to
18 punish for contempt. That is an exercise which arises
19 after it has been held in the first place that there is a
20 case to answer.

21 Although the concept of technical contempts has been
22 doubted to be now relevant, see *Borrie and Lowe* at 77-78,
23 that debate has been conducted in the context where a
24 publication had already been held to be capable of
25 constituting contempt. See for example the discussion in
26 *Gallagher* at 243 and in *John Fairfax v. McRae* at 370.
27 Thus what was under discussion as a technical contempt
28 was a published statement which established or
29 constituted a case to answer.

30 In *Attorney General of NSW against John Fairfax &*
31 *Sons v. Bacon* 1985 six NSW Law Reports 695 at 708,

1 Justice of Appeal McHugh with whom Justices of Appeal
2 Glass and Samuels agreed, held that the distinction
3 between punishable contempts and those which would not be
4 punished should no longer be applied and contempts which
5 were not worthy of being punished should be regarded as
6 not being contempts at all.

7 The court held that the test is to whether a
8 publication did constitute contempt should be that stated
9 in John Fairfax v. McRae, mainly whether as a matter of
10 practical reality it had a tendency to interfere with the
11 course of justice. Once again I note the decision of the
12 NSW Court of Appeal as was the case for the decision of
13 the High Court in McRae was concerned with the
14 publication which dealt with pending court proceedings
15 and the issue was whether the publication had a tendency
16 to interfere with the due conduct of those proceedings.
17 It was not a case where the offence of scandalising the
18 court was alleged.

19 In both cases passages in the judgment make it clear
20 the fact that the contempt related to pending court
21 proceedings was the focus for the discussion about the
22 need to demonstrate that the interference with justice
23 was a practical reality. Furthermore the NSW case once
24 again was not one where the question was whether a case
25 to answer had been established.

26 I accept that in determining whether the offence has
27 been proved beyond reasonable doubt as to any particular
28 of contempt which is pleaded, the passage must be shown
29 to have the real risk whether by itself or in combination
30 with other particulars of interfering with the
31 administration of justice in the way discussed, or put in

1 the alternative way, it must have the tendency to achieve
2 that result as a matter of practical reality.

3 The question however, on a no case submission is
4 whether as to each of these particulars separately or
5 together, it is open on the evidence taken at its highest
6 and including all adverse inferences reasonably open to
7 be drawn to conclude that the particular is capable of
8 constituting contempt. If it is open to so conclude as a
9 matter of practical reality that there was a real risk,
10 then there is a case to answer.

11 If as to any particular, even if it was taken in
12 combination with others it was not so open, then as to
13 that particular the defendant would have no case to
14 answer. Whether it should later be concluded that a
15 particular which had been held to constitute a prima
16 facie case of contempt was sufficient to prove contempt
17 beyond reasonable doubt, would be the question which
18 would fall to be answered at the conclusion of the case
19 for the defence.

20 Mr Maxwell submitted that the Crown had failed to
21 prove that the statements made in the publications were
22 not true. No authority was cited to me which suggested
23 that the Crown was obliged as part of its case to prove
24 that the published assertions were untrue. As I have
25 said the essence of the offence is that the published
26 statement has an inherent tendency to scandalise the
27 court and it is consistent with that principle that it is
28 not a requirement that the Crown prove the allegations to
29 be false.

30 For the purpose of establishing a case to answer,
31 the Crown need only establish a prima facie case that it

1 is open to the tribunal of fact to conclude that the
2 published statement does have an inherent tendency to
3 undermine public confidence in the administration of
4 justice. Likewise it is not an essential element for the
5 Crown to produce evidence to prove that the public
6 reputation or authority of the courts has been impaired
7 by the publications. The court is required to decide for
8 itself whether the published material has a tendency to
9 that outcome or as it is sometimes put, is calculated to
10 produce that outcome, see Gallagher and Durack at 243.

11 Mr Maxwell submitted that for there to be a case to
12 answer for contempt, there must be an urgent danger of
13 the administration of justice being undermined, and that
14 delay in bringing these proceedings after publication of
15 the books of which complaint is made, demonstrates that
16 there is no such urgency. Furthermore so counsel
17 submitted, the statements must be regarded as being made
18 in good faith, and by an author who was aggrieved by the
19 outcome of criminal proceedings in which he was
20 unsuccessfully involved as an unrepresented accused.

21 In that context there could be no urgent
22 apprehension that the administration of justice will be,
23 or has been undermined by publication being submitted. I
24 am not persuaded that the question of urgency is one
25 which constitutes a prerequisite for conduct to
26 constitute contempt. Counsel referred to a passage in
27 the joint judgment in Gallagher v. Durack at 242, but
28 that does not in my opinion indicate that as one element
29 of the offence the Crown must prove an urgent need for
30 action.

31 The court in that case was merely addressing the

1 importance of there being an ability to take immediate
2 action when required to protect the administration of
3 justice. The court was discussing the continued
4 relevance of there being a summary jurisdiction to punish
5 such contempt. As their Honours made clear, they were
6 there addressing what would be without urgent action, a
7 continuing risk to the reputation of the courts. They
8 were not discussing whether the continuing contempt might
9 cease to be such by the passage of time.

10 In the passages of the joint judgments in both
11 Gallagher and Durack and John Fairfax v. McRae to which I
12 have referred, it's quite clear in the arguments of
13 counsel in the former case were directed to the exercise
14 of the summary power to punish, that the existence of a
15 prima facie case of contempt was not in dispute. I
16 accept that there could be instances where the passage of
17 time between publication of the statements and the
18 hearing of the charge was so great that of itself or in
19 combination with other factors, it rendered the
20 publication incapable of impairing public confidence in
21 the courts. This is not such a case where the passage of
22 time would mean that a prima facie case could not be
23 established.

24 I accept however, that the question of delay may be
25 a relevant factor when considering whether the charge has
26 been proved beyond reasonable doubt and also when
27 considering what, if any punishment should be imposed for
28 proven contempt, but those are not the questions I am now
29 addressing.

30 I am also not persuaded that proof of good faith
31 would mean the conduct which otherwise would have

1 constituted contempt could not do so. See the Attorney
2 General of NSW against Fairfax v. Bacon at 709. In any
3 event whilst the question of good faith is a relevant
4 consideration in determining whether a charge of contempt
5 had been proved beyond reasonable doubt, see Fairfax v.
6 McRae at 371, when taken at its highest, the evidence
7 relied on by the Crown would not demonstrate good faith
8 and even if it did that factor would not be decisive in
9 determining whether the offence had been proved.

10 The question of the intention or purpose for
11 publication is a relevant consideration in determining
12 whether a case had been proved beyond reasonable doubt
13 but absence of good faith is not an essential element for
14 the Crown to prove. The issue is whether there is an
15 inherent tendency in the publication to interfere with
16 public confidence in the administration of justice, not
17 whether it was intended to do so. But even if that
18 intention is a prerequisite, then it is open to conclude
19 that the intention of the first defendant was in fact, to
20 lower public confidence in the administration of justice.

21 Insofar as I determine that there was a case to
22 answer with respect to any publication identified in the
23 particulars, I would then have to turn to the question
24 whether, having regard to all of the evidence, including
25 any evidence which might be called in the defence case, I
26 was satisfied beyond reasonable doubt that the particular
27 publication did constitute contempt. Either of itself or
28 in combination with other particulars which I had ruled
29 were capable of constituting contempt. When regard is
30 had to the difference between the legal question which is
31 raised at the time of the no case submission, and the

1 question which is raised at the conclusion of all
2 evidence, it may be seen that there would be nothing
3 inconsistent with a judge or magistrate when sitting
4 alone to find that there was a case to answer and yet not
5 ultimately be satisfied beyond reasonable doubt. The
6 charge had been proved as to any particular or as to some
7 of the particulars.

8 Mr Maxwell dealt with each passage relied on by the
9 Crown for the purpose of demonstrating that in context
10 the passage constituted no more than a disappointed
11 litigant railing against the decisions of the courts and
12 against what he perceived to be the unfairness of
13 decisions, both procedural and substantive which went
14 against him. He stressed that the passages related to
15 criminal proceedings, which the defendant was
16 unrepresented before the court and that that was not by
17 choice. Having regard to the principles of law that I
18 have discussed, I am persuaded that in context many of
19 the passages, however insulting or offensive towards the
20 court, are not capable being viewed as scandalising the
21 court and of thus constituting contempt. There are,
22 however, passages, which in my opinion, having regard to
23 those principles of law concerning contempt, are capable
24 of constituting contempt.

25 I turn then to the particulars so as to identify
26 those which I hold are capable of constituting the
27 offence of contempt. Given that it will be my later task
28 to decide whether those passages have been proved beyond
29 reasonable doubt to constitute contempt and that I must
30 have regard to the evidence as it then stands and after
31 considering further submissions and given that I must

1 then publish my reasons for decision, it is inappropriate
2 that I do more now than broadly state why I am satisfied
3 that there is a case to answer in those instances. Lest
4 there be any doubt, I make it clear that in deciding that
5 there is no case to answer as to any of the following
6 passages, I am not thereby accepting that there is any
7 justification for or validity in the statements made in
8 the passages. In most if not all instances, the passages
9 are arguably defamatory and constitute offensive and
10 extravagant abuse, but they do not cross the line into
11 the category of criminal contempt, in my opinion. But in
12 reaching the decision as to whether there is a case to
13 answer, far from concluding that the statements made in
14 these passages are true, or they are complaints
15 justified, I have proceeded on the basis that they are
16 false and unjustified, but that nonetheless they could
17 not constitute the criminal offence of scandalising the
18 court as it is recognised in the authorities to which I
19 have referred.

20 As to those passages on which I rule that there is
21 not a case to answer, I have concluded that assuming that
22 the readers exercise some common sense and do not abandon
23 all critical faculties, that those passages would be
24 incapable of impairing public confidence in the authority
25 of the courts. I will not delay this ruling by reading
26 out the passages to which I will now refer. When I later
27 revise my ruling for the purpose of publication, I may
28 then insert some or all of the passages at that time.

29 Firstly, as to the particulars relating
30 Judge Neesham, I have concluded that as to the following
31 passages, there is no case to answer. Particulars 1 at

1 p.245, particular 2 at 246, particular 5 at 280,
2 particular 6 at 304, particular 8 at 350, particular 9 at
3 353, particular 10 at 367, particular 11 at 435. The
4 passages on which I find that there is a case to answer
5 are particulars 3 at 260, 4 at 274, 7 at 329. In those
6 passages it is open to conclude the judge is accused of
7 bias, corruption and of improperly seeking a conviction.
8 As to Chief Judge Waldron, in my view there is no case to
9 answer as to any of the three particulars. As to
10 Judge Balmford, firstly as to item 1 at p.140, I find
11 there is no case to answer. As to particulars 2 at 142,
12 and 3 at 144, I find there is a case to answer. In those
13 passages it is open to conclude that the judge is accused
14 of deciding the case without regard to the evidence and
15 of bias. These are capable of constituting contempt.

16 In the second passage, not only does it assert bias,
17 but it states that three judges have held the judge to be
18 biased in favour of the Director of Public Prosecution
19 and police. It is open to conclude that that
20 misrepresents the decision of the Court of Appeal. As to
21 Magistrate Heffey, there is no case to answer as to
22 particulars 1 at 205 and 2 at 207. As to particulars 3
23 at 208 and 4 at 212, there is a case to answer. The
24 accusation that the magistrate had lied and or
25 deliberately disregarded evidence is capable of
26 constituting contempt. As to the second passage, the
27 suggestion that a magistrate had decided to commit for
28 trial without regard for any evidence called is capable
29 of constituting contempt.

30 As to Magistrate Mr H F Adams, the back cover of the
31 second book is in my view capable of constituting

1 contempt. One relevant factor in that conclusion is the
2 reference to a confession, which might be regarded as
3 carrying an implication that there was a formal
4 confession in some official way than court proceedings
5 which implicated the magistrate in corruption. As to
6 count 2, which relates to book one and refers to p.57 and
7 concerns Magistrate Adams again. The reference to a
8 separate quote matter is capable of conveying and to be
9 taken to do so deliberately, that an admission was made
10 in the course of court proceedings whereby the magistrate
11 was implicated in corruption. There is a case to answer
12 on this count.

13 I conclude therefore that there is a case to answer
14 as to both counts and as against both defendants, but
15 only with respect to those particular which I have just
16 identified and I so rule.

17 Mr Maxwell, do you want an opportunity to consider
18 that before moving to the defence case.

19 MR MAXWELL: Your Honour, I do, but only a short opportunity if
20 Your Honour please. Would it be convenient for Your
21 Honour to stand the matter down till 11.30, that would
22 give me sufficient time and then I'll proceed with the
23 defence case.

24 HIS HONOUR: All right. We'll stand down until 11.30

25 MR MAXWELL: The court pleases.

26 (Short adjournment)

27 - - -

1 HIS HONOUR: Yes Mr Maxwell.

2 MR MAXWELL: If the court pleases, I call Raymond Hoser.

3 <RAYMOND TERRENCE HOSER, sworn and examined:

4 Mr Hoser, what's your full name?---Raymond Terrence Hoser.

5 Your address?---It was - my current address is 488 Park Road,

6 Park Orchards and I have only been there for two weeks.

7 Your occupation?---I call myself investigative author and a

8 zoologist.

9 Have you prepared for the purposes of this proceeding and sworn

10 before court commenced this morning an affidavit?---Yes.

11 Would you look at that please, and we have a copy for court, a

12 copy for our learned friends, Mr Hoser has the original

13 at the moment, is that the affidavit?---Yes the affidavit

14 is correct.

15 Are those the exhibits to it. It might be convenient Your

16 Honour if we handed the copy to Your Honour while Mr

17 Hoser is looking at the original, and then - - -?

18 ---There is another - I have just torn off two pages, I

19 haven't seen these two pages, can I just pass them back

20 to you, my legal counsel. I don't know those two pages,

21 I haven't seen them before.

22 It maybe Your Honour that in Exhibit B there are some pages at

23 the back of the photocopy, Exhibit A I'm sorry, which is

24 a list of publications, two pages which don't form part

25 of that. If Your Honour would remove the last two pages

26 headed the Hoser books, they are not part of the list of

27 publications.

28 HIS HONOUR: This is on which exhibits?

29 MR MAXWELL: Exhibit A Your Honour which is a list of

30 publications, and it's the back two pages beginning the

31 Hoser books, they have been copied inadvertently?---Those

1 last two pages aren't my documents but the rest - that
2 other thing is, of Exhibit A is taken from my web site,
3 yes.

4 Mr Hoser, are the contents of that affidavit true and correct?

5 ---I believe so yes.

6 I want to ask you one matter, additional to the affidavit, you
7 mention in paragraph 3, the book, the Hoser Files?---Yes.

8 You've been in court and you are aware that that book is in
9 evidence, you make certain statements in paragraphs 7,8,9
10 and 10 relating to the writing of the relevant books,
11 that is Police Corruption and Police Corruption 2, the
12 books that are the subject of these proceedings, I want
13 to ask you about the Hoser Files and whether the
14 statements made in those paragraphs are applicable to
15 your approach to and the content of the Hoser Files or
16 whether you would say something different?---Your Honour,
17 when I write all my books, and this isn't just books on
18 corruption, it's also stuff to do with reptiles and frogs
19 and endangered animals, the whole box and dice, I do my
20 best to ascertain all facts to be true and correct within
21 my ability. I take all reasonable steps and invariably,
22 particularly with the corruption books, publication is
23 quite often delayed by a substantial period so that the
24 facts can be checked and double checked and persons
25 adversely named can be sent relevant manuscripts so that
26 if they believe I've got something wrong, they have the
27 opportunity to correct the whole thing.

28 HIS HONOUR: I think the point you were being asked though, was
29 whether those particular paragraphs which appeared to be
30 referring only to the two books should be taken as
31 including - - -?---The Hoser Files.

1 - - - equally applicable to the Hoser Files?---Essentially yes.

2 MR MAXWELL: Your Honour please I have no further questions.

3 HIS HONOUR: Mr Langmead.

4 MR LANGMEAD: I haven't read this, so could I just have a
5 moment to read it.

6 HIS HONOUR: Of course.

7 MR LANGMEAD: Yes I've read that thank you.

8 MR MAXWELL: Your Honour please.

9 HIS HONOUR: Yes Mr Langmead.

10 MR LANGMEAD: Mr Hoser the trial before Judge Neesham, which
11 has been mentioned to date at this trial. It's a trial
12 for perjury by you and you are convicted of it, is that
13 correct?---In those words, I suppose yes.

14 Yes and you served a gaol sentence pursuant to that
15 conviction?---As documented in the book, yes.

16 I think you were sentenced to six months and you served a
17 lesser period?---Four months.

18 Now when you, through using counsel, sought to appeal that
19 conviction, initially I think there were 26 grounds of
20 appeal, which you had generated, is that correct?---I -
21 about that number. It might have been 23, but if you say
22 26, I'll go along with it.

23 HIS HONOUR: The question had another part to it. You were
24 being asked whether you generated - were they grounds
25 that you had actually drafted yourself?---Your Honour in
26 the perjury appeal I sought legal representation, I was
27 denied it by Judge Waldron and I took out the relevant -
28 I went everywhere for legal representation, but didn't
29 get it.

30 But if it's possible to just answer that particular question?
31 Were they your grounds or were

1 they argued by counsel?---I did them myself, yes I did
2 them myself.

3 Fine that was the question that he was asking.

4 MR LANGMEAD: You were represented by Mr Deane of senior
5 counsel at the appeal, were you?---At the appeal
6 Chris Deane represented me, that's correct.

7 Is it fair to say and I'll just paraphrase some of the grounds
8 that you were the author of, or the draft grounds, that
9 if - what I can refer to as interference with the jury,
10 or jury tampering, just to give it a global description
11 that featured, expressed in a number of different ways in
12 the 26 grounds which you drafted?---Yes. I believe
13 they're reproduced in the book as well, the exhibit.

14 It's correct, isn't it, that the appeal proceeded on grounds
15 that did not include jury tampering, or interference with
16 the jury?---Mr Deane ran the appeal.

17 HIS HONOUR: Mr Hoser. Just to make it clear and this applies
18 to everyone, when the questions are asked, you have to
19 address the questions which are put to you?---I'm sorry.

20 If you want to explain - just a second?---Yes.

21 If you want to explain them your counsel has got a right of re-
22 examination to expand - - -?---Right, I know what you're
23 saying.

24 But counsel who is asking you questions is entitled to ask you
25 to direct you to particular questions and to seek your
26 answer to those questions?---All right. I'm trying to
27 help. Mr Deane - - -

28 Yes, just listen carefully to the questions and wait for it to
29 be asked?---Sorry. Mr Deane the barrister only argued
30 three grounds, which my understanding is did not include
31 any of the grounds that I had generated myself. You

1 don't ask this question - - -

2 MR LANGMEAD: (Indistinct) to terminate his services on that
3 basis, did you?---I certainly considered it, but I was
4 between a rock and a hard place and we couldn't get an
5 adjournment so he proceeded.

6 HIS HONOUR: Do I take it you were present in court were you?
7 ---I was present in court, yes.

8 MR LANGMEAD: When you say you considered it, you were
9 obviously aware before Mr Deane conducted the appeal on
10 your behalf that you would have had a right to terminate
11 his services had you so chosen?---It's a bridge I hadn't
12 crossed, but it would be a fair assumption, yes.

13 Could the witness be handed Exhibits A and B please Your
14 Honour. Your Honour I think has a copy of these don't
15 you?

16 HIS HONOUR: Yes?---I've got a pair in my bag if you want to
17 keep your copies.

18 I've got my copies, two books?---No not those ones.

19 MR LANGMEAD: Yes, well the top two are?---No, no, he hasn't
20 got the Victoria Police Corruption ones.

21 I see, Exhibits A and B in any event. To the affidavit.

22 MR MAXWELL: I have no objection to the respondent using his
23 own copies.

24 HIS HONOUR: If you have some spare copies?---I was thinking of
25 it easy to make it easier. They're inside a airlines
26 plastic container. Thank you.

27 MR LANGMEAD: Before I come to these publications Mr Hoser,
28 it's fair to say that both in those exhibits and indeed
29 in your affidavit sworn today, that you present yourself
30 as a zoologist, amongst other things?---Yes.

31 And you do so in expressed terms, not just by inference you do

1 it expressly don't you? I am a zoologist in effect?

2 ---Yes.

3 That's a branch of science as you would understand it?---Yes.

4 Do you consider yourself a scientist and do you agree that in

5 your publications, Exhibits A and B, that you have at

6 various stages presented yourself as a scientist in

7 effect?---No argument there.

8 Do you have any formal qualifications as a zoologist?---I do.

9 I've done two thirds of a science degree and I've also

10 done an applied - I've got an applied herpetology

11 certificate from the Sydney Institute - no sorry, Sydney

12 Technical College I think it's known as and that's

13 completed and that was completed some - about 1981 or

14 thereabouts. So I've been in the field of herpetology

15 for basically all my life.

16 If you just have a look at p.613 of Exhibit B please?---That's

17 book two?

18 Yes it is?---Page?

19 Six hundred and thirteen. See there under the heading, "A

20 forgery". "Twenty seven February, saw myself and a large

21 contingent of observers from Whistleblowers, with a

22 capital W, Lawatch, with a capital L, and elsewhere from

23 the Magistrate's Court"?---Sorry?

24 This is under the heading, "A forgery"?---Yes, yes.

25 Do you have that passage?---Yes.

26 The reference to Whistleblowers there, with the capital letter,

27 is that an organisation?---Yes.

28 Indeed, is Lawatch an organisation?---Yes.

29 Are you a member of one or both of those organisations?---At

30 the time I believe I was a paid up member of both.

31 Currently I'm a paid up member of Whistleblowers and

1 they're known generally as Whistleblowers Australia, I
2 think is what they're known as.

3 You may not know the answer to this but is it an incorporated
4 association or a loose collection of people, how would
5 you describe the organisation?---My understanding is they
6 are both incorporated. I would stand corrected if you
7 were to produce evidence to the contrary, but my
8 understanding is they are incorporated.

9 I don't propose to contradict you on this, I was just seeing
10 what you know about them. And is Whistleblowers a large
11 organisation? What knowledge do you have of that?

12 MR MAXWELL: I object to this on the grounds of relevance. I
13 don't see how this can possibly be on anything before the
14 court.

15 HIS HONOUR: How is it put as to relevance?

16 MR LANGMEAD: Your Honour it's put that the status of the
17 author of the publication alleged to constitute contempt
18 by scandalising the court, is relevant to whether or not
19 it poses a real risk or the practical reality tested as
20 being talked about. I intend to take Your Honour later
21 to a Canadian authority where it was highly relevant that
22 they minister the Crown made a particular statement and
23 his status for example was said to bear, and indeed we
24 don't need to go to other jurisdictions, we can look at
25 the Trade Union cases in this State.

26 HIS HONOUR: Well put expressly by Mr Maxwell that status was
27 important for the purpose of the defence case to
28 establish that there was a minimal risk of prejudice to
29 the administration of justice and it was written by
30 someone with serious intent et cetera and with a
31 reputation for such. I don't think that issue is in

1 dispute, but a particular challenge to the question
2 though is how does the membership of Whistleblowers, or
3 what it does, bear upon the question of the status
4 insofar as that issue was conceded to be a relevant one.

5 MR LANGMEAD: Without flagging every issue I wish to put to the
6 witness, it will ultimately be put that rather than being
7 a disgruntled litigant with an obsessive tendency to
8 publicise his own perception of what occurred in the
9 criminal justice system and that accordingly as
10 Mr Maxwell, I think, put it, although not necessarily in
11 these terms, that that diminishes the real - the
12 practical reality of the impact of the published
13 statements, we would seek to lead evidence to the effect
14 that, indeed, Mr Hoser, without putting too fine a point
15 on it, is a campaigner. That he presents himself in his
16 book as a focal point for those concerned with issues of
17 official corruption and that's the relevance of it, it's
18 squarely to rebut the point that my friend in submissions
19 has - - -

20 HIS HONOUR: I'm not sure that you're rebutting a point that
21 was put by your opponents, I think it's the point that
22 they were accepting and I'm not sure that there's in fact
23 any dispute by Mr Hoser but it seems to me that might
24 emerge fairly promptly. I'll let you ask the questions
25 for the moment, but it seems to me it's only got that
26 limited relevance.

27 MR LANGMEAD: As Your Honour pleases and in terms of these
28 organisations have you publicised your book or published
29 it to them, distributed amongst the members of these
30 organisations?---Yes and elsewhere for that matter.

31 And would you accept that you have presented yourself in

1 Exhibit B, Victoria Police Corruption 2, as a person to
2 whom people who are members of Whistleblowers of Lawatch
3 and people who share similar concerns about the judicial
4 and legal system, that you presented yourself as a focal
5 point, that they have asked you questions about how to
6 protect themselves for example?---I think I'm going to
7 answer your question. It's a bit long winded. Whether
8 that was my aim or not, I don't know, I write the books
9 to document - there is a whole complexity of reasons as
10 to why one writes a book and after you've written a book
11 when somebody actually - one of the few questions I can't
12 answer very well is to why did I write the book, but one
13 of the consequences of my writing earlier books has been
14 that people have approached me after reading the books
15 for advice in terms of dealing with alleged corruption,
16 the legal system as unrepresented litigants, and a whole
17 host of associated matters. So much so that in the final
18 chapter of the second book there is actually a chapter
19 detailing advice which I believe is useful for people in
20 similar situations, so yes, the consequence has emerged I
21 think along the lines of your question and within the
22 best of my abilities, I have presented what I believe is
23 the best way to protect peoples' rights on the assumption
24 that they are doing the right thing.

25 And the chapter you refer you contains detailed advice for
26 example, on how to tape covertly, doesn't it?---Yes.

27 You see Exhibit B, at least in that chapter, as expressly
28 advising those who are concerned about corruption in the
29 general sense in the legal system?---I can't answer that
30 question, but I will say that that chapter speaks for
31 itself, if that helps in any way. My recollection of the

1 exact wording in the book, I think you're trying to ask
2 me about, I can't recall, it was written some years ago
3 and as you can see, they're vast, and I've done other
4 publications since then.

5 But whether one wanted to tape a conversation in the street or
6 court proceedings covertly, you accept that the final
7 chapter in Exhibit B would be of considerable use to
8 somebody wishing to do either of those things?---The
9 chapter was written with a view to establishing the truth
10 in all circumstances.

11 HIS HONOUR: That question is capable of being answered I think
12 Mr Hoser?---Sorry, I - - -

13 HIS HONOUR: Listen to the question - - -?---I apologise Your
14 Honour.

15 MR LANGMEAD: Whether a person wished to tape a conversation
16 with someone in the street or court proceedings and to
17 tape it covertly, do you agree that the final chapter in
18 Exhibit B would be of use to such a person?---Yes.

19 And would you agree that you directed it at such people?---It
20 is offered as advice which must be taken on a case by
21 case basis as stated at the beginning of that chapter I
22 think.

23 Exhibit A certainly relates in many parts to proceedings other
24 than ones in which you've been involved, doesn't it
25 Mr Hoser?---Mainly, yes.

26 Yes if you could go to p.57 of it which is - - -?---Exhibit A?
27 Yes of Exhibit A. Just bear with me for one moment. I do
28 recall that that was one of the passages on which Your
29 Honour certainly ruled, but and an originating motion
30 that I marked up?---Yes it is.

31 Unlike Exhibit B, the reference here to Magistrate H.F. Adams

1 and the allegation of a bribe and a confession by a
2 policeman, there is no related reference to Bingley in
3 any obvious place in this book, is there. You recall in
4 Exhibit B how on the front cover there is a - on the back
5 cover you talk about Magistrate Adams and on the front
6 cover there's a photo too and a reference to Mr Bingley?
7 ---In number 2, yes.

8 Well in the first book, there's no such similar reference is
9 there to Mr Bingley?---My understanding is there would
10 be, but not on that page, but if you want to do - my
11 counsel doesn't have a computer, but if you did a word
12 search you would almost certainly find a reference to
13 Bingley there - - -

14 Are you able to point the court to any related text other than
15 that which appears under the photo on p.57?---If you
16 would allow me access to the word for windows file for
17 the book, I could tell you straight away.

18 MR MAXWELL: Your Honour in my respectful submission that -
19 assuming that to be proper question, it's a submission
20 that can be made on the face of the book. I will seek
21 instructions about whether there is or there isn't. It's
22 either there or it's not.

23 HIS HONOUR: Yes, I, I - - -

24 MR MAXWELL: And I don't think the witness can be expected to
25 have a photographic memory for the first of two volumes
26 totalling 1400 pages.

27 MR LANGMEAD: He might well in fact.

28 MR MAXWELL: He might?---I found it already. I've already
29 found it. I under estimated my (indistinct). There is
30 one reference on - it says p.54, second last paragraph.
31 This is just, there's probably others, but I've just

1 found one and I'll read it, it says, "Adams is well known
2 for doing deals with prosecution to pre-determine a
3 trial. Refer to the Hoser Files, p.71". Now that's on
4 p.54 and the photo is p.57, so one would assume that one
5 would see the photo with that reference - refer - rel-,
6 on the understanding it's referred to in the Hoser Files
7 and if one refers back to the Hoser Files you'll find
8 the - - -

9 MR LANGMEAD: Thank you Mr Hoser are you able to say where the
10 words appear, "In a separate matter a policeman admitted
11 to paying a bribe to Adams" and it goes on. The
12 reference to a separate matter, can you point to anything
13 in the book which identifies what that separate matter
14 was?---Yes back, p.54. We've just been there.

15 So it's just a reference again to the - - -?---Page 54 - - -
16 Bribe issue?---It says, "Adams is well known for doing deals
17 with prosecution to pre-determine trials. Refer to the
18 Hoser Files, p.71". Now - - -

19 The reference on p.57 if I can interrupt you there is, "In a
20 separate matter a policeman admitted". What is the
21 separate matter in which the policeman made the relevant
22 admission?---The Bingley Hoser matter.

23 Isn't it your position as revealed through the books that
24 Mr Bingley made the admission in a conversation with you
25 which you covertly taped?---That's correct.

26 So that's not in a separate matter, that's privately in a
27 conversation between you and Mr Bingley?---No, it's a -
28 well my, my context is separate legal matter. I heard
29 the argument the other day but it went over my head, I've
30 got to admit, but it was a different court case, there
31 was the - my understanding is this. In the first

1 paragraph it refers to the case involving Higgins,
2 Gerring and Strang, the three policemen who were involved
3 with Geoff Lamb and the separate paragraph refers to a
4 separate matter, as in a separate legal matter, referring
5 to the matter involving myself. Then it goes on and it
6 talks about Adams who presided over the Jennifer Tanner
7 inquest and then it goes on about Adams and the Wagnig
8 and Walsh Street matters. And they're all described in
9 the same way as matters and my, my layman's perspective,
10 I'm trying to put a layman's - well non-legal person's
11 perspective, is each matter is a separate case.

12 You Describe Mr Bingley do you not, on the inside of the cover
13 of Exhibit B, as a "crooked cop, one who has been
14 involved in falsifying charges, perjury." Is that
15 correct?---Most certainly, yes.

16 Is there any other basis for the allegations you make against
17 Magistrate Adams, of which you are aware, other than the
18 covertly taped conversation with Mr Bingley, who you
19 describe as one involved in "falsifying charges and
20 perjury"?---The only evidence I have in relation to
21 Adams, which is documented in the Hoser Files, and I
22 don't go any further and I don't go any less, is twofold.

23 Firstly there is the, well I suppose referred to as
24 the tape recorded conversation.

25 Secondly there is the case itself which was in fact
26 transcribed at my cost and the result of the - my view
27 and the view of others who have read the transcript is
28 that based on the evidence that was led, particularly
29 when cross referencing it with other material such as the
30 various statements tendered by Bingley, as in a record of
31 interview and sworn statements and so forth, it would be

1 impossible for a reasonable judge to have convicted me.
2 I was convicted and I was sentenced and there could be a
3 whole host of reasons.

4 I am not privy to reading Mr Magistrate's mind but
5 the policeman then offered an explanation for it, which
6 was covertly taped recorded, which inasmuch as the
7 decision itself didn't seem to make sense, it did offer
8 an explanation.

9 So the case was lost, you have the covert tape and you are
10 happy to move from there to a full page photo of
11 Magistrate Adams in which he is squarely accused of
12 accepting a bribe, is that the basis? Is there any more
13 to it?---Well, there's - in terms of Adams, he's come
14 under criticism for a load of other cases including the
15 Wakeneek matters, the Tanner matter and a whole host of
16 things and what I - what the aim of the exercise was, was
17 basically to flag an area of possible further
18 investigation, if that makes sense.

19 I'm not asking you about what knowledge you have of whether or
20 not Magistrate Adams has come under criticism, I'm asking
21 you if there's any basis other than the fact that the
22 case you referred to was lost, that Mr Bingley, in a
23 conversation with you, alleged that there was a bribe
24 taken by Mr Adams, is there any other basis for this
25 allegation?

26 MR MAXWELL: Your Honour there's no basis for re-asking that
27 question. It was answered lucidly about two minutes ago
28 and Mr Hoser said there were two bases and I won't repeat
29 them.

30 HIS HONOUR: No, I thought the question was appropriately put.

31 MR MAXWELL: If Your Honour pleases.

1 WITNESS: Just to - the question is, on what basis have I made
2 the accusation against Bingley, is that right?

3 HIS HONOUR: You've given two bases.

4 MR LANGMEAD: The question was, whether there was any other
5 basis, apart from the outcome of the case and the
6 statement that you said you taped - - -?---Most certainly
7 there was. The other basis is the fact that the outcome
8 was determined on evidence overwhelmingly and I mean
9 overwhelmingly to the contrary. It wasn't just a case
10 where one person said one word, another person said
11 another and the Magistrate said, "Well I accept this
12 witness over that witness", because the Hoser files deals
13 with cases like that and that's the, the Adams, Bingley
14 case is detailed at length, it occupies several chapters
15 of the Hoser Files.

16 Now the Adams decision wasn't just one of these
17 cases where, in the view of myself and others who were
18 present at the case, including the lawyer, that you know,
19 in the face of the facts there was no option but to
20 acquit and yet it appears - well the fact is I was
21 convicted and it was overturned on Appeal, but I was
22 convicted in the first round and it is on the basis of
23 the overwhelming evidence of my innocence that I was
24 convicted and the only explanation that has been
25 presented to date is the explanation, by Bingley, which
26 was covertly tape recorded, and I don't - I have never,
27 ever said point blank that is definitely what happened, I
28 am not in a position, but I do make the point that in the
29 Hoser Files, I talk about what the likely scenario's are
30 and what - and I do expand on that quite extensively and
31 I think that - you've tendered it, it speaks for itself.

1 Would you direct your mind to Exhibit B, that the title of the
2 book indicates, a lot of it is about police corruption,
3 but the issue of police corruption as you present it in
4 Exhibit B is necessarily intertwined with judicial
5 corruption on some occasions, as you allege, isn't it?
6 ---Yes, you could put it that way.

7 It is fair to say, without going to specific passages, that you
8 link police corruption in some instances, with improper
9 relationships with judicial officers.

10 MR MAXWELL: Your Honour, with respect that question is not
11 clear. The word link is capable of half a dozen
12 different meanings and - - -

13 MR LANGMEAD: I'll re-ask the question.

14 MR MAXWELL: - - - is it factually or whatever?

15 MR LANGMEAD: One example of police corruption that you give in
16 Exhibit B, is of improper relations with judicial
17 officers, is it not?---If you can identify the page and
18 it's there, I'll accept it on - I'll accept the book as
19 it is but if I can just help you Your Honour.

20 HIS HONOUR: I'm not sure actually that I understand how the
21 question's being put, improper relations?

22 MR LANGMEAD: With judicial officers.

23 HIS HONOUR: I'm not sure what you mean by that.

24 MR LANGMEAD: I'll withdraw the question. Could you look at
25 p.693 please?---693? Exhibit B?

26 Exhibit B yes. Just below the middle of the page, there is a
27 paragraph that reads, "However, as one who has made a
28 study of police corruption Australia wide, I can assure
29 readers that the problems are general." Now do you agree
30 that in this book, in that passage in particular that you
31 have presented, that you have indeed not only made a

1 study but made out that you have a sound basis for some
2 of the things you've said?---Your Honour, the sentence
3 speaks for itself but there are qualifying sentences
4 immediately underneath. For example, "Now I'm not saying
5 that all police do this, far from it." You know, and the
6 point is made early in both books that the vast majority
7 of judges and magistrates and police and so forth, are
8 doing a very difficult job, very well and I think in the
9 context of the books, what I'm worried about Your Honour,
10 is that a perception is being put across that I have some
11 sort of bent or vendetta against all judges and
12 magistrates which is very far from the case. I make it
13 patently clear, repeatedly in both books that the
14 majority of these people are in fact, doing a difficult
15 job, very well and I'm just worried that these paragraphs
16 quoted out of context are in fact putting the wrong slant
17 on the books as a whole.

18 Mr Hoser, your answer indicates that my question was unclear
19 and I apologise for that. I want you to focus not on the
20 police corruption part of that sentence but on the study
21 part?---Yes, yes.

22 You represent yourself as a zoologist, scientist and one who
23 has turned his skills to a study of police corruption?
24 ---Most certainly, yes.

25 Has that study involved anything beyond accounts of different
26 people who've been just as involved with police action
27 and court action?---Yes, yes, yes.

28 So what does the study involve?---Basically, it's hard to
29 explain to someone on the outside, but my whole modus
30 operandi is gathering information for books, long before
31 I actually intend - before I actually write them so at

1 any give time, I'm gathering information for about six
2 books which may or may not eventually be printed.

3 In the case of the Victoria Police Corruption
4 books, which are subject to this case, they took me about
5 two and a half years, full time, to write. Now different
6 sections of the information came from different areas.

7 Now basically, what usually happens is I get a
8 lead, whether it's by the mainstream tabloid media,
9 whether it's by a disgruntled litigant ringing me or
10 whether it's by a policeman or ex policeman ringing me,
11 equally to point out something that they believe is wrong
12 that I should write a book about and I get people - and
13 my wife will tell you the same thing - I get people
14 coming to me daily, wanting me to write their books about
15 corruption.

16 Now, by way of example, in the exhibit, this book,
17 Victoria Police Corruption 1, there's a chapter about the
18 police shootings. Now besides what was in the tabloid
19 media, I spent several weeks at the Coroners' Court going
20 through all the different files for all the different
21 shootings so that I could, as best as possible, establish
22 what actually happened in every case and I have presented
23 that and then, where I deemed appropriate, put my own
24 slant on it or my own opinions, which is quite outlined
25 and I also chased up witnesses who were involved in these
26 various Coroners' Court hearings, to try to get further
27 and better information that may or may not have been
28 excluded because of legal privilege or whatever.

29 Different areas came from different areas.
30 Different information came from different areas but it
31 came from all over but probably, in answer to your

1 question, how I went about the study, is explained if you
2 look at the list of the sources which has been published
3 for the very reason that, if I have got something wrong,
4 which is always a possibility, I don't - I'm not God, I
5 get things wrong.

6 Others can view all the sources and independently
7 decide whether I've got it right, whether I've got it
8 wrong, whether I've quoted in context, whether I've
9 quoted out of context and the list of sources - I have a
10 print out in my bag, but it runs about a hundred and
11 something pages in the similar font to what you're
12 looking at there and that explains where all the
13 information came from.

14 These are the so called facts that you base your opinions on?

15 ---Well, no evidence to the contrary at this stage.

16 Would you accept that your book, Exhibit B, considering the
17 context there are specific passages I will take you to,
18 but considering the book as a whole, would you accept
19 that it aims several blows at the judicial system as a
20 whole, in other words it goes well beyond your case?

21 MR MAXWELL: I object again to the formulation of the press, it
22 is not helpful in my respectful submission to Your Honour
23 and certainly not to the witness, for metaphors like,
24 "aim several blows" to be used, if there is a question of
25 fact to be investigated, the question should be asked and
26 to add that kind of colourful language means that it is
27 not possible for the witness to know what he is
28 answering.

29 MR LANGMEAD: I am happy to rephrase it Your Honour.

30 HIS HONOUR: Yes Mr Langmead, there is no problem about general
31 questions can have application, but I think that counsel

1 is right, that to be helpful they need to be precise.

2 MR LANGMEAD: All right. Could you go to p.17 of Exhibit B
3 please. It has been presented through your counsel, Mr
4 Hoser that the majority of this book in fact relates to
5 matters to do with your case. The proposition that I
6 want to take you to several passages in the book and put
7 to you the final proposition that it is also aimed at
8 very general criticisms of the judicial system as a whole
9 beyond your case, do you understand that proposition?---I
10 understand your question, I don't know if I can answer
11 it.

12 HIS HONOUR: Just wait for the question.

13 MR LANGMEAD: I am asking if you understood it at this point,
14 where we are heading. So I will take you to the
15 particular aspects, at p.17 beside the definitions that
16 appear in black there, do you have that page?---Yes.

17 It says, "This book delves beyond the police force and into the
18 equally corrupt legal system, that includes judges,
19 magistrates, their support staff, bent lawyers and again
20 the bent police". Now in terms of evidence you have
21 given about if you did indeed conduct a study of police
22 corruption, are you able to tell the court what study you
23 undertook and indeed what are the bases for that
24 statement?---Again, they are outlined in all the sources,
25 but essentially the subject matter we are dealing with
26 Your Honour, is so vast that it is impossible for one
27 person to comprehensively look at it all, so it is by its
28 very nature a piecemeal account, and there is no hiding
29 that. And again I say, it's not because all police are
30 corrupt, but assuming say a one per cent corruption rate,
31 that would give you such a vast amount of corruption to

1 deal with, no one person could cover that in their
2 lifetime and I think justice would have said much the
3 same thing.

4 But the information in terms of the legal system I
5 think, was the question I was asked, came from people who
6 had their own cases in grievances, and they presented me
7 with whatever information they had, and I also went to
8 the various legal data bases of which there is a great
9 one on the Internet now, called Auslit, which gives you
10 case judgments, and also various litigants present to me
11 with transcripts. I even spoke to some judges at
12 different times and former judges and many lawyers, and
13 the information came from everywhere. A lot of the
14 evidence was hearsay, a lot of it was backed up with
15 documents, which I might say I didn't forensically test
16 which could have been my downfall in the past. But as
17 best as was possible within my limited means and
18 resources, I did try to verify and corroborate everything
19 as best as is possible, and yes information came from all
20 over the place.

21 Mr Hoser I put to you, that what you have done repeatedly in
22 this book, and I will take you to the specific passages,
23 is, because of your experience with the court system and
24 perceptions you have of what occurred to you, and you
25 have given detailed accounts of those, but I put to you
26 that the device you have repeatedly used is to then
27 engage in a highly exaggerated generalisation about the
28 system, with no more foundation than your disgruntlement
29 with your case, what do you say to that proposition?---I
30 think you've got it wrong, you are Mr Langmead aren't
31 you?

1 MR LANGMEAD: Yes that's right?---I think you have got it
2 wrong. Do I address you as Mr Langmead or just sir or
3 counsel.

4 HIS HONOUR: I think just address your answers to His Honour?
5 ---Sorry. I think he's got it wrong there and if I can
6 just elaborate, I don't believe that disgruntled is
7 really a complete accurate portrayal of myself. Anyone
8 who is robbed of something that they believe they are
9 entitled to of course will have a sense of
10 disgruntlement. When I've written the books a couple of
11 aims I have tried to do is to as best as I can, present
12 it unbiasedly, the other thing I've tried to present is
13 to show, and that's why there are other cases involving
14 other people, that the sorts of thing that happened to
15 Raymond Hoser as an entity are not unique and there are
16 other people that do suffer the same fate and of course
17 it also has to be put in the perspective that there are
18 thousands of court cases every week in this country, and
19 not all of them are miscarriages of justice, and in this
20 particular book, Exhibit 2, which is I think the one they
21 have taken the strongest umbrage to, there is a chapter
22 about the prisons and my term in prison, and I make a
23 number of passing comments to the effect that most of the
24 time the legal system gets it right, and most of the
25 people that are in gaols actually deserve to be there.
26 And I talk about that and if Your Honour has read it you
27 will see there is even a passing mention of a person that
28 you imprisoned at that same section.

29 MR LANGMEAD: Mr Hoser if you could go to p.241 and Your Honour
30 I do appreciate that this is one of the passages that is
31 no longer - - -

1 HIS HONOUR: What page is it?

2 MR LANGMEAD: Page 241 of Exhibit B. What you say there Mr

3 Hoser is in relation to Chief Judge Waldron of the County

4 Court, "That like I have already said, the Chief County

5 Court Judge doesn't seem too concerned with the truth".

6 Now that part of the sentence relates to your experience

7 in court with Chief Judge Waldron doesn't it?---Yes.

8 Then you ask, "Then what faith can Victorians have in their

9 legal system", and you go on, "Not only that but myself

10 and any other concerned citizen have absolutely no power

11 to do anything about the recklessness of judges like

12 Waldron". Now what basis do you have for the

13 generalisation that the legal system is such that people

14 can't have faith in it, and that there indeed are judges

15 like Chief Judge Waldron, as you have presented him, what

16 is the basis for the generalisations?---The basis, well

17 the basis for the bit about Waldron is actually you have

18 referred to a paragraph on p.241. Now the basis of that

19 actually is on pp.238, 239, 240 and the top of 241 in

20 relation to a legal aid application and when Waldron was

21 giving his reasons for refusing me legal aid, he actually

22 got his facts wrong. Now - - -

23 HIS HONOUR: I think you might have missed the question

24 which was being asked, it was accepting - - -?---He asked

25 me the basis of it.

26 No you are not listening to the question, he is asking you the

27 question not with respect to Chief Judge Waldron - - -?

28 ---But the generalisation?

29 Yes. The question that was being asked was, apart from what

30 you say about the experience with Chief Judge Waldron,

31 what was the basis for extending it to a statement that

1 concerned judges generally in the legal system, in other
2 words I think the question is, apart from that experience
3 with Waldron, was there some other material relating to
4 judges generally which supported the statement which you
5 there make?---I thank you Your Honour for clarifying
6 that. He had actually asked me a double barrelled
7 question though.

8 MR MAXWELL: Before the witness answers that, my learned
9 friend's question with respect was a little different and
10 we would object to it on the basis that it misreads the
11 sentence. It says, "If the Chief County Court Judge
12 doesn't seem too concerned with the truth, then what
13 faith can Victorians have in their legal system". That
14 is not a statement about any other judge, it is what is
15 said to be a question which arises from a particular
16 matter just documented. So to ask what's the basis for
17 the generalisation, is in our respectful submission, to
18 put a question on a false basis, there is no
19 generalisation, there is a question raised based on one
20 specific judge.

21 HIS HONOUR: That seems to me to have some force Mr Langmead.

22 MR LANGMEAD: Your Honour, the use of the word "if" is not in
23 the sense of it being a mere possibility, it's a
24 rhetorical question that if the judge doesn't seem too
25 concerned with the truth, then the pages to which Mr
26 Hoser referred indeed seem to be at pains to establish
27 that that is a flaw suffered by Chief Judge Waldron, so
28 in other words it should be, its meaning properly read
29 is, given that the Chief Judge doesn't seem too
30 concerned, then what faith can judges have, but the
31 entire context makes that clear and the literal

1 interpretation my friend puts on it with respect - - -

2 MR MAXWELL: Well I think frankly that subtlety is one which
3 short of a 20 minute debate is unlikely to assist me
4 over - - -.

5 MR LANGMEAD: I will take the option of moving on rather than a
6 20 minute debate Your Honour?---Can I just apologise Your
7 Honour I actually thought he had identified that
8 paragraph at the top of p.241, so I was also a bit
9 confused.

10 If you look at p.44 please Mr Hoser of Exhibit B, I'm sorry
11 it's p.45, it doesn't have a number on it, do you have
12 that page?---Yes.

13 Near the bottom of the page, you talk about how magistrates and
14 judges are appointed. You say, "This is a secretive
15 process based on patronage and not what you know but
16 rather who you know. Appointments to the bench are
17 usually treated as repayment for past favours"?---I'm not
18 sure where you are reading from.

19 I'm reading from the bottom of p.44, the last words, "It seems
20 that integrity or ability aren't always part of the job
21 requirement", and you go on. Now in the general context,
22 you - - -?---Sorry I'm still not picking it up.

23 It's the bottom?---Book B.

24 Yes Book B, p.45?---Page 45, yes.

25 You would agree that that is a generalisation that you say are
26 usually treated for repayment for past favours, in other
27 words that most cases, most appointments occur through
28 that process, that is what you are putting there isn't
29 it, to be - do you accept that?

30 MR MAXWELL: Your Honour before - I don't think the witness
31 needs to answer that. Frankly that passage doesn't seem

1 to be to assist me, and it seems to be that whatever the
2 witness answers as to that, if it was capable of carrying
3 an imputation against the witness, half the bar would be
4 disqualified every time there is an appointment. I don't
5 think it assists me.

6 MR MAXWELL: And it's not - sorry Your Honour, a matter
7 complained of.

8 HIS HONOUR: Well I don't think that once you've taken the
9 approach that you have, I don't think you can complain
10 about that.

11 MR MAXWELL: No I accept that Your Honour.

12 HIS HONOUR: When you say in context as - - -

13 MR MAXWELL: I accept that Your Honour.

14 MR LANGMEAD: Your Honour, it's the context that adds the sting
15 to what's there, but if Your Honour's not assisted by it,
16 I will move on.

17 HIS HONOUR: I don't think so. I don't think so.

18 MR LANGMEAD: Go to p.655 please Mr Hoser, of Exhibit B. The
19 second complete paragraph under the heading of, "Looking
20 after the criminals", do you see that passage? Starting
21 with the words, "The criminal is then forced"?---Yes.
22 "To front at court". Just bear with me one moment. "The
23 criminal is then forced to front court but a deal is done
24 with one or more of the clerks, the prosecution and the
25 person hearing the matter, judge or magistrate, to give
26 the person an easy ride through the system". Now that is
27 a generalisation, do you have a basis for it?---There
28 obviously is a basis for it and I would suggest if you
29 read the preceding and the following pages, the basis
30 would be there. Which would again be corroborated by the
31 sources.

1 I put to you that those pages don't assert any evidence of a
2 deal, direct evidence of a deal being done as you allege
3 in the paragraph that I've read to you?---Well.

4 Can you point to - - -?---Yes, Your Honour, as I said I wrote
5 the book a while ago. I can't remember, you know, the
6 detail, but I'm just glancing at it just now to my
7 testimony and drawn to it and on the same page, 655,
8 there's on the one, two, three, fourth paragraph and
9 basically the book speaks for itself, because I can't
10 remember what was going through my mind at the time, or
11 what - but it says, take for example, the case of
12 Kathleen Weir of West Heidelberg. She was the treasurer
13 of a major heroin syndicate. The ring trafficked at
14 least \$220,000 worth of drugs in just six months during
15 97/98. "On 27 May 1998 she plead guilty. Judge Leo Hart
16 gave Weir a suspended sentence. She walked free without
17 any tangible penalty. The police side had not opposed
18 the application", and it goes on about another case
19 involving more drug traffickers. And then there's a
20 whole paragraph. There's a section underneath that as
21 well, and it goes on. Now the basis of those cases, my
22 recall is zilch but in answer to the question, Your
23 Honour, I know it's a bit long-winded. There's been a
24 paragraph with a generalisation quoted, or an assertion
25 quoted, and it appears by reading this book that there is
26 corroboration or substantiation of that paragraph
27 immediately following. And can I elaborate a little bit
28 more, Your Honour?

29 HIS HONOUR: I think perhaps you should wait for the question,
30 yes.

31 MR LANGMEAD: Is that the most direct evidence you say that

1 appears in the book of a deal being done with the clerk,
2 the prosecution and the person hearing the matter, judge
3 or magistrate, to give the person an easy ride through
4 the system simply to quote some results as to court
5 cases?---I would suggest that there's probably several
6 other cases in that book and other books involving the
7 same sort of stuff and if you read the 1500 pages, I'm
8 sure you'll find them.

9 Do you have any direct evidence in this book - do you present
10 any direct evidence of a deal being done, other than what
11 you've just cited?---Your Honour, I think we're talking
12 about cross-purposes here. If I can help - - -

13 HIS HONOUR: Well can I assist by framing the questions I think
14 is being put - it is being put to you that the two
15 examples you've quoted are of what you're suggesting are
16 lenient sentences being given in circumstances where you
17 suggest they shouldn't have been given. Counsel is
18 putting to you expressly the proposition that the
19 statement of there being a deal done between the clerk of
20 courts, prosecution and the person hearing the matter,
21 judge or magistrate, to give the person an easy ride, the
22 question's directed expressly for the proposition do you
23 have any evidence of such a deal being done between
24 prosecution and judge or magistrate to achieve the
25 result?---Yes, I - Your Honour, if I could just help all
26 of us here. This gentleman here keeps asking me for
27 evidence. These books themselves are not evidence. They
28 are a summary of evidence. Now the evidence is the
29 sources that is sighted and the sources, as I said the
30 list of sources runs a hundred odd page, those documents,
31 be they court transcript, covertly tapes, tabloid

1 clippings, letters, whatever, they are the evidence that
2 form the basis of this book. Now Mr Langmead keeps
3 asking me for evidence and in fairness to all of us, the
4 books are a summary of the evidence, though not the
5 evidence in themselves. Does that help.

6 Do the books refer to any instance of a deal being done between
7 the prosecution, the judge and the magistrate to affect a
8 result, that's the question. Can you refer to any of
9 these issues - - -?---But I can direct - immediately
10 identify a passage?

11 Yes?---No. However, what I will refer you to is that original
12 paragraph that says, "A common scenario", is - and it
13 talks about a scenario. It doesn't talk about a specific
14 case. Now by way of example, in relation to this
15 business with deals being done with magistrates and
16 judges. In my time in the prison system, I spoke to a
17 number of prisoners who gave me information to that
18 effect, and they gave me specific case details and I was
19 even able to check the results. The only thing I wasn't
20 able to check, of course, is whether or not a deal had in
21 fact been done. So I have listed that there as a
22 scenario. I don't detail a case there, but I do refer
23 you to the section about Judge John Yeldham where the
24 police alleged that they had caught the judge having sex
25 with under aged boys, this came out in New South Wales
26 and the deal was allegedly done with the judge that he
27 would be - look after the police and their cases. Now we
28 know that Judge Yeldham committed suicide and there's
29 been various material. You know, I don't have to rehash
30 the Yeldham story. But, yes, there is evidence that that
31 practice - it is completely within the bounds of human

1 possibility that it could occur and there is evidence or
2 some form of it occurred at least in New South Wales in
3 relation to that particular judge. Now again I go back.
4 It's not an assertion that it happens all the time with
5 all judges, but it certainly is within the bounds of
6 human possibility and that is why it is labelled there as
7 a scenario.

8 MR LANGMEAD: Thank you Mr Hoser. Go to p.731 of Exhibit B
9 please. You pointed out a number of times that there are
10 passages in the book and indeed that it is your view that
11 the system is not flawed in its entirety and that indeed
12 many judges and legal officers perform their duties well.
13 But have a look at the paragraph in the middle starting
14 with the words, "All things being equal"?---Yes.

15 "All things being equal, I can assure readers that it is
16 unlikely any Australian judge or magistrate will accept
17 the word of a civilian witness (usually the accused) over
18 that of a government official, usually the prosecutor,
19 even when there are more than one witness for the
20 accused. The sooner these facts are realised, the better
21 for those caught up in the mess". Now whether we used
22 the word disgruntled, or unhappy, or that you are
23 critical of what occurred to you in the system, I put to
24 you that this is an example of a gross over-
25 generalisation about the judicial system for which you
26 have no basis and you present no basis as well?---No
27 there is a basis. It's common knowledge. Your Honour, I
28 think you would agree with me, it's common knowledge that
29 if there's one witness saying one story and a policeman
30 saying another story in relation to an alleged crime and
31 all things being equal, the police witness is usually

1 believed and lawyer, Victor Purton, said that on Radio
2 3LO not long ago. He's a member of parliament. He said
3 the same thing and my own experience with the legal
4 system, many cases, having seen many different people,
5 different scenarios, I - I hold that view that if there's
6 all things being equal, there is a policeman telling one
7 story and a person who is a civilian, for want of a
8 better word, telling another story, as I say, if things
9 are all equal, the policeman will be believed first and I
10 stand by that.

11 You have repeated the view expressed at p.731. The question is
12 directed to whether you present any evidence in Exhibit B
13 in support of what I put to you is a generalisation?

14 ---You want evidence to support that generalisation?

15 MR LANGMEAD: Is there any there?---Most certainly. The Hoser
16 Files as referred to and there is a case in front of
17 Magistrate Hore referred to in the Hoser Files and I
18 can't give you the page reference but it's in there and
19 that was a case where I was wrongly charged with over
20 charging a passenger in a taxi. It was alleged I'd
21 overcharged by \$2 and the Magistrate found against me and
22 I actually justify the Magistrate and say well look,
23 basically he believed that witness, the, the Crown
24 witness as opposed to me and all things were effectively
25 equal and then I went on to show a subsequent case
26 involving the same witness where they gave opposing
27 evidence, which if it had been matched up, would have
28 found in my favour, but of course the Magistrate in the
29 first case was never privy to that evidence. So it
30 wasn't an attack on the Magistrate it was just a
31 statement of things as they are, so there is evidence for

1 the assertion, yes and that's just one case and there any
2 many others.

3 Adopting your perception of the case you just gave evidence of,
4 you perceive that in the case you were involved in that
5 your word was rejected over that of a government
6 official, that's what you're saying in essence isn't it?
7 ---It was a Crown witness. I was charged with over
8 charging - the case is - - -

9 Listen to the question Mr Hoser. That's what you're saying
10 isn't it that - - ?---No.

11 That case?---What I said is what can happen - - -

12 Just wait please?---Sorry.

13 You're saying that your evidence was rejected and that the
14 evidence of a government witness was accepted?---In that
15 case, yes.

16 How do you get from that proposition or that perception of
17 yours, to this statement, "I can assure readers that it
18 is unlikely any Australian judge or Magistrate will
19 accept the word of a civilian witness, usually the
20 accused, over that of a government official, usually the
21 prosecutor". How do you get from your case to any
22 Australian judge or Magistrate - - -

23 MR MAXWELL: Your Honour again I (indistinct). You've
24 misquoted Your Honour, it was misquoted.

25 MR MAXWELL: The question that's been asked been answered?
26 ---He's misquoted Your Honour.

27 Mr Hoser gave a lengthy answer two or three minutes ago about
28 his view having observed many cases and been in a number
29 himself, was that, other things being equal, that was the
30 way things went and this is just retrace exactly the same
31 ground as has been comprehensively answered.

1 HIS HONOUR: I think it probably has Mr Langmead.

2 MR HOSER: Can I just assist Your Honour.

3 HIS HONOUR: No, wait thank you, I'm dealing with an objection.

4 MR LANGMEAD: I simply put it to finalise the proposition

5 because Your Honour I seek ultimately to make submissions

6 on the evidence and in fairness I have to give Mr Hoser

7 every opportunity to answer what I'm - - -

8 HIS HONOUR: I'll accept that, that's perfectly appropriate and

9 I think that you can put the proposition that you're

10 seeking to draw from that statement and give the witness

11 the opportunity to deal with it.

12 MR LANGMEAD: Your Honour the proposition that ultimately I

13 would seek to put to this court on the basis of this

14 paragraph is that you make a generalisation that it is

15 unlikely, "All things being equal, I can assure readers

16 it is unlikely any Australian judge or magistrate will

17 accept the word of a civilian witness, usually the

18 accused over that of a government official, usually the

19 prosecutor". I intend to submit to His Honour that that

20 is a gross generalisation based on your personal

21 experience in court and what you've heard about other

22 cases and maybe what you've observed from the dock, but

23 that none of that comes close to amounting to a sound or

24 reasonable basis to make the generalisation that it is

25 unlikely that any Australian judge or magistrate will

26 accept the word of a civilian witness, as you've

27 described. What do you say to that?---The paragraph read

28 in full I stand by and it starts, and I quote it in full.

29 It says, "All things being equal" which you Mr Langmead

30 didn't quote the first few times you read the paragraph

31 out. Now it is a generalisation, and it is quite clear

1 it is a generalisation. It says, "All things being
2 equal, I can assure readers that it is unlikely",
3 unlikely being the operative word and bearing in mind I'm
4 being asked to recall this some time after having written
5 it. "Any Australian judge or magistrate will accept the
6 word of a civilian witness, usually the accused, over
7 that of a government official, usually the prosecutor",
8 et cetera. Now I do stand by that. The court records
9 stand by that. My understand is the conviction rate in
10 contested hearings is overwhelming in favour of
11 prosecution side and you know, having said that, there
12 are also other statements in this very same book, which
13 again as I said made it clear that most of the time the
14 Crown do prosecute criminals. They're not prosecuting
15 innocent people most of the time. Most of the time they
16 do prosecute criminals and most of the people behind bars
17 do in fact deserve to be there and I actually make the
18 following comment in that section, that a lot of them
19 deserve to be there longer than they are. So I think
20 you're trying to put an unbalanced perspective on a book
21 that, bearing in mind it is about corruption, is a lot
22 more balanced than you Mr Prosecutor make out.

23 MR LANGMEAD: Could you go to p.679 please Mr Hoser. Under the
24 heading "Protection of Paedophiles?" you pose another
25 question, "How is this done", then in the fourth
26 paragraph starting with the words, "Then there is the
27 effective protection by the judiciary. This can be in
28 the form of improper acquittals or prevention of matters
29 going to full trial. Another common means is when the
30 judges and magistrates impose minimal or no penalties for
31 the most heinous of offences, again as a result of

1 corrupt deals or other form of protection. There is no
2 shortage of cases". Now in the context of that
3 generalisation you, asserting that there is no shortage
4 of other cases, you don't present even a sample of those
5 cases, do you?---Same page, under the heading, "An
6 Example", under the next heading, "No long term affects
7 of rape, judge". If I can just contradict you
8 Mr Langmead, I present many examples in the pages of the
9 book, bearing in mind I'm constrained by space and there
10 are further examples in the references cited and it is
11 not so much a criticism of corruption in terms of
12 magistrates, I think it is a valid public criticism of
13 leniency of sentencing for serious offences which I'm not
14 the only person to have ever made that criticism.

15 As in earlier example that we went through, from leniency of
16 sentencing you move to the proposition, as a
17 generalisation that the judiciary effectively protects
18 paedophiles, is that correct?---I don't, I don't, take
19 that jump the way you do, no. I think the book speaks
20 for itself.

21 I'm putting to you that you take that jump Mr Hoser, do you
22 understand that question?---I would reject the jump in
23 your words.

24 If that's answer, yes. Is it the case that everything that
25 appears in Exhibit A and B is published on an Internet
26 site managed by you?---No. We sell the books on the
27 Internet, yes. The material is not published on an
28 Internet site and the books have been published on CD Rom
29 and that sums it up I think.

30 Is there a device on the Internet site that permits a person at
31 that site to search the content of these books, albeit

1 not to read it, to find out if the particular topic or
2 person - - -?---Yes, you can use what they call a - I
3 don't know what your knowledge of Internet is Your
4 Honour, but you use a thing called a CDI script which
5 actually searches the contents of the books but the books
6 themselves are hidden from the Internet browser and the
7 only information given is which book that particular word
8 or name is in, that's correct.

9 So for example if you fed in the word "Paedophile" it would say
10 - the search would reveal that this appears in what is
11 Exhibit B?---Yes.

12 But no further details?---That's correct.

13 MR MAXWELL: Your Honour before the witness gives the obvious
14 answer which is that the general applies to the
15 particular, I object to this on the grounds of relevance.
16 How is this put as being relevant to the tendency of the
17 particular words to have the requisite affect.

18 HIS HONOUR: The scope of publication must be relevant. It was
19 one of the arguments that you advanced to me that - - -

20 MR MAXWELL: With respect yes.

21 HIS HONOUR: It seems to me that if the publication is more
22 broad then simply by sales of the books, it has some
23 relevance.

24 MR MAXWELL: I accept that Your Honour. Your Honour will have
25 noticed that the affidavit itself deals with the scope of
26 publication expressly and indeed with book two, which the
27 prosecution witness at evidence, failed to deal with.

28 HIS HONOUR: I appreciate that.

29 MR LANGMEAD: So the books are both advertised on this site
30 that you control and it's possible to perform a search
31 that you described of them, but indeed it is not possible

1 to see the entire text there or indeed any of the text?
2 ---Yes, the only sections of either book that are on the
3 Internet are chapter ten of book one and the final
4 chapter of book two. There is no other on the web and
5 those searches are as a marketing tool. I think that it
6 quite obvious. People will pick up the name they like
7 and think "I want to read about that person".

8 And Exhibit B, are you able to provide any more accurate
9 information than is already before the court, any more
10 accurate evidence as to how many CD forms of Exhibit B
11 are in circulation, public circulation?---No, I will say
12 Your Honour a problem that does occur and I know it has
13 occurred in relation to the books at one of the major
14 newspapers is one person buys the book and then they
15 bootleg - buys the books on CD and they bootleg it, but
16 we have no control over that. But having said that I
17 don't think it's a huge problem because quite frankly, if
18 people want the books they will buy the books because
19 it's just the way it works, you know it's like lending
20 out a book, the, the flow on is not that great as first
21 off sales.

22 Is the purchase of a book using your Internet site, does a hard
23 copy turn up in the mail or is an electronic copy
24 delivered?---Well it's quite explicit on the site, you
25 are posted a copy.

26 HIS HONOUR: I might have misunderstood you, you are saying
27 that there is also CD's for sale?---We sell them on CD.
28 The CD's Your Honour are very expensive, and we generally
29 only target them towards academics and institutions and
30 people like that.

31 How many of those have been sold of the two books?---On the

1 CD's?

2 Yes?---The CD actually has all my books on them, all my
3 corruption books, and we superseded that with a later
4 version that has all my books on it, and we're in the
5 hundreds but whatever I have put in the affidavit is
6 close to the mark.

7 MR LANGMEAD: So where you say in the affidavit the previous
8 (indistinct) proceeding which is at Exhibit A, Your
9 Honour in the affidavit, "The book is also sold in CD
10 version, CD's have been on sale since July 99 and about
11 300 of those have been put in circulation by Northern
12 Publisher and the defendant's had no effective control
13 over the copying and distribution of the book in its CD
14 version". That's, you are referring there to Exhibit A,
15 is it the case that Exhibit B has been similarly
16 distributed in CD form?---The CD has both books on them
17 yes.

18 I see, so when you refer there to the 300 that has Exhibits A
19 and B on it?---It has Exhibits A and B and the sources,
20 the list of the sources I should say. The reason being
21 Your Honour is it runs another one hundred and something
22 pages and the cost of printing that would up the book by
23 another \$10 a copy and we found that other than people
24 that might want to sue me or investigate or students or
25 academics, it wasn't viable to put it in a book and we
26 actually - sorry I should also qualify it, we also put
27 the list of sources on the Internet so people can down
28 load them in the event they want to do research as well.

29 Do you ever publish extracts from Exhibits A or B on the

30 Internet?---I have already said that. I answered that.

31 We published the last chapter of book two on the Internet

1 because the questions in terms of covert taping and
2 trying to find the truth and so forth, when I'm asked all
3 the time, and we found that if I kept on saying people to
4 read the book, they thought I was just mad keen to sell
5 the book, so we put that chapter on the Internet, and
6 chapter 10 of Victoria Police Corruption 1 is also on the
7 Internet like I said, and that is all.

8 HIS HONOUR: I'm not quite sure what is the last chapter, where
9 does it start?---At - it's titled, "Blowing the Lid on
10 Corruption", p.79 Your Honour.

11 I see yes.

12 MR LANGMEAD: Mr Hoser, in paragraph 6 of your affidavit you
13 have swoon today, you say, "Approximately seven and a
14 half thousand copies of book one were printed and
15 approximately five and a half thousand of book two, as at
16 the date of this my affidavit I estimate that 500 copies
17 of each remain under my control. To your knowledge were
18 any of the seven and a half thousand copies of book one
19 or the approximately five and a half thousand copies of
20 book two, were they destroyed by Kotabi or by any other
21 source as not being sellable or being wasted or are they
22 all in circulation to your knowledge?---My understanding
23 is they are all in circulation.

24 Does that mean they were either sold or given to interested
25 parties?---Most were sold, yes.

26 Of the 500 copies of each book, is it safe for the court to
27 conclude that in the hands of the public, there is in the
28 order of 5,000 copies of book two and 7,000 copies of
29 book one?---They are probably fair estimations, there is
30 variables I could go into, but they are reasonable
31 estimates.

1 Do you have any personal knowledge of steps taken by the
2 Attorney General to restrict sale of your books in book
3 shops in Melbourne?---Yes.

4 Do you agree that the steps were taken with book sellers to
5 prevent, to stop selling your book under threat of legal
6 action being taken if they didn't cooperate. Do you have
7 knowledge of that?---Yes, yes. But they were very
8 limited and when we approached the Attorney General on
9 that, they said there is no ban on the book and we are
10 free to sell them and that was reported in the Yarra
11 Leader Newspaper in about October last year in a front
12 page story that there is no ban on the book and that was
13 from Hulls's spokesman. And when we approached Hulls to
14 discuss the earlier letters that went out we couldn't get
15 near him. And that was a year after publication.

16 To your knowledge, apart from the CD's, the hard copies of the
17 book and the evidence that you have given of extracts
18 appearing on the Internet and the search function on the
19 site that you have given evidence of, are Exhibits A and
20 B published in any other form to your knowledge?---Yes.

21 What other form is that?---They were tabled in the NSW
22 Parliament on 2 July in their entirety, the only
23 difference being if the pages that actually had the
24 Hansard reproduced in each book, otherwise they are
25 identical.

26 HIS HONOUR: That's 2001 is it?---No 1999. They were tabled in
27 parliament and printed the next day basically Your
28 Honour. Or effectively in those terms. And obviously
29 people will have photocopied - students may have
30 photocopied them, I haven't - once - what you have got to
31 understand, once the book is sold, although we've got the

1 copyright logo in the front of the book, it is basically
2 out of our control. I have no doubt that people have
3 photocopied bits and pieces they found useful, the CD rom
4 as I said has been bootlegged, but notwithstanding all
5 that, I don't think a huge quantity - I think your
6 numbers are pretty well to the mark because for every
7 copy that gets thrown in the rubbish bin, by mistake one
8 might have been bootlegged or something, so I think it
9 balances out.

10 MR LANGMEAD: And as you say the books reveal that you assert
11 copyright 1999 in respect of both books, but have you
12 taken any steps to enforce the copyright that you claim
13 in these publications?

14 MR MAXWELL: With respect how is that put.

15 MR LANGMEAD: All right I will put it another way.

16 MR MAXWELL: Is it going to be submitted that there is some
17 duty on a copyright owner to intercept to perceive - it's
18 a right but as far as I'm aware, there is no duty known
19 to the law.

20 HIS HONOUR: How is it put, it is not clear to me what it's
21 relevance is.

22 MR LANGMEAD: Straw man, it's not put that there is a duty and
23 it's not about to be put. What's about to be put is
24 this, if I can put the question Your Honour, then just
25 see any objections.

26 HIS HONOUR: All right, put the question and I will see.

27 MR LANGMEAD: Have you taken any active steps to encourage
28 people to copy your publications, either electronically
29 or in printed form?---We have actually taken the reverse.

30 HIS HONOUR: Is the answer to that no?---To actually encourage
31 - we have encouraged people to read it but we have

1 discouraged them to copy it and if I can explain how we
2 have done that.

3 HIS HONOUR: That's all you were asked and you have answered
4 the question.

5 MR LANGMEAD: Is it fair to say that you have taken really all
6 steps that you can reasonably conceive of to sell this
7 book, you have gone to great lengths to sell it?---All
8 legal means yes.

9 Indeed, there is no suggestion that it's other than legal means
10 to sell your books. And indeed have you even engaged in
11 the step of door knocking personally to sell the book?
12 ---Yes I have.

13 And is it your view that the more copies of the books that get
14 sold, and the more that the issues in it are raised, that
15 the better it is?---I believe that the issues raised in
16 the book such as the fair administration of justice, the
17 smooth running of the court system, tape recording of
18 courts in all jurisdictions, and those sorts of issues,
19 corruption issues across the board, I think are addressed
20 in the books reasonably well, they are matters of public
21 interest and I believe that they are matters that should
22 be discussed and addressed with the ultimate view as
23 stated in the books to improving the system and I make no
24 bones about that at all.

25 I want to ask you a geographical question Mr Hoser, in relation
26 to any feedback that you have had from readers of your
27 book. As an author of these two publications, have you
28 had feedback from your readership?

29 MR MAXWELL: I object on the grounds of relevance.

30 MR LANGMEAD: The relevance Your Honour is I have tried to flag
31 fro my friend's benefit is as to geography, that the

1 extent to which this book has been distributed
2 geographically is relevant to the practical reality, the
3 real risk test, as indeed is the number and the form
4 which is disseminated.

5 HIS HONOUR: It seems to me it could be asked in those direct
6 terms, he may well have the ability to answer the
7 question precisely without the detail required. How
8 widely has it been sold?---We well them wherever people
9 live.

10 By that I meant how widely geographically has it gone,
11 travelled?---All round the world, all round the country,
12 all round the state, everywhere.

13 MR LANGMEAD: There are two aspects to it Mr Hoser - - -?---If
14 I can qualify that, obviously the interest outside
15 Victoria is diminished. I have addressed conferences
16 interstate and sold books but as a rule of thumb you will
17 find that the further you go away from Victoria the
18 lesser number of books we have sold but they have gone
19 everywhere.

20 In which cities have you addressed conferences where you have
21 made reference to and sold Exhibits A and B?---Inverell,
22 NSW, Melbourne, Sydney and they are the ones that spring
23 to mind, I've obviously addressed other groups of people
24 in conferences and things but those ones spring to mind.

25 Mr Hoser in relation to Exhibits A and B, Kotabi Pty Ltd has
26 been the publisher of those, and that's your company,
27 look I'll withdraw that and put it more specifically?
28 ---Yes.

29 You are a director of Kotabi Pty Ltd?---The director I think.

30 The sole director aren't you?---I think so, yes.

31 It's fair to say that Kotabi Pty Ltd is in full effective

1 control of you?---One way or the other yes.

2 There was no one else who determines what Kotabi Pty Ltd does
3 is there?---When my accountant says to me don't do this
4 or do that or my lawyer says don't do this or do that,
5 yes well before these books were published they were sent
6 to the Attorney General and we asked him specifically is
7 there anything we shouldn't put in and other than names
8 of juries which were blacked out, we were in the clear.

9 In relation to these two books, it could be said fairly that
10 you caused Kotabi Pty Ltd to publish and distribute
11 them?---It's a fair summation yes.

12 Thank you Your Honour.

13 HIS HONOUR: Yes. Just before re-examine, could I ask you to
14 clarify something for me? The references to Mr Adams,
15 which you've referred to, you say go back to the Hoser
16 Files and you've told me where those passages appear,
17 that's on p.70?---I don't have the book in front of me
18 Your Honour.

19 Do we have a copy of the Hoser Files there?---Thank you.

20 I understand, and correct me if I'm wrong. If I understand
21 correctly what you put as to these proceedings, this was
22 a hearing in which the Police Office Bingley was - was he
23 a prosecution witness, or a prosecutor in the case?---He
24 was the police informant. The history of the events.

25 Well just - that's all I wanted to know. He was the informant
26 rather than?---And a witness. He was also and a witness.
27 And a witness, all right. And your contention is that he and
28 another witness, Bowen, was it? Had together
29 been - - -?---No, no. No Bowman was not a witness in
30 that case.

31 Was Bowman involved in the case in some way?---Yes, intimately.

1 Yes, so he attended the court, did he?---He was present in the
2 court. But Your Honour, this is the problem that I face
3 trying to defend this. Passages have been quoted. Now
4 this particular case is dealt with in about three or four
5 chapters of the book and in all honesty, in terms of this
6 particular case, I really do believe it's - - -

7 Yes, well don't assume I haven't read them?---No but it's just
8 a question - the question implied that.

9 Yes, well could you just listen to the proposition I'm putting
10 to you? What I'm just wanting to establish is that
11 Mr Bowman and Mr Bingley were both present at the hearing
12 at which you got convicted on that occasion, is that
13 right?---Yes.

14 Did Bowman himself give evidence in the case?---No.

15 Right. But he was present and you regard him as having been
16 someone who had an interest in making sure that you got
17 convicted?---Most certainly. Your Honour, there's about
18 three chapters that deal with that whole section and it
19 is definitely - - -

20 I know it is. Mr Hoser. Mr Hoser, you will have every
21 opportunity in re-examination?---Sorry, Your Honour.

22 That's with any matters you want to put. I'm just putting some
23 matters to you because I want to get your explanation for
24 them. What is asserted as to the conversation which took
25 place between yourself and Bingley was that it was a
26 conversation which occurred outside the court after
27 Bingley had, in your view, achieved his intended result,
28 that is to get you convicted, and had achieved a sentence
29 of imprisonment against you - - -?---Your Honour.

30 And you had then been released on bail, is that right?---Your
31 Honour - Your Honour, I can't read people's minds, I was

1 convicted of the offence - - -
2 I'm not asking you that. I'm just asking you is that the fact
3 that the conversation which took place occurred after the
4 hearing, after the conviction had been obtained, you say
5 wrongly, by Bingley?---That's correct. That part of the
6 question is right, yes.
7 You then had a conversation with him in which, amongst others,
8 and I'm looking at the top of p.71, well actually take it
9 at the bottom of the page, that Bingley says, "Oh well,
10 it's a pity you don't know mate. Hoser, You've done
11 badly, didn't you. You're probably going to be up for
12 perjury now. Bingley, Who's doing a month's
13 imprisonment. Hoser, But you did get done for lying in
14 court. Bingley, "Month's imprisonment. Am I going to
15 prison? Am I going to prison?" And it goes on, "And
16 later, after a 60 second break, Hoser, Did you know I
17 would get found guilty from the word go? Bingley, Well I
18 paid him off, didn't I, so of course I did. Hoser, The
19 penalty was a bit severe. Bingley, We worked it out
20 before, three months, six months, no a bit too much. We
21 settled for one", and then you say Bingley repeatedly
22 asserted he'd paid off the magistrate. Then it goes on,
23 "The whole aim of the case was summed up succinctly in
24 the final lines of our conversation, Hoser, Well I think
25 you've certainly done a good job in finishing off my cab-
26 driving career. Bingley, Oh well, that's where we set
27 out to do that. Hoser, Well you've certainly succeeded,
28 I can't see me driving cabs for much longer. Bingley, No
29 mate". Now the question I was wanting to ask you was
30 this, At p.52, where you talk about the assault case
31 prior to it occurring you say, "During the previous case

1 Alan Brigle and I recorded the entire proceedings with
2 our micro-cassettes. Nothing was said about, although we
3 kept our machines concealed, there was little doubt that
4 Bowman, at least, who had told the court he'd seen me
5 several times, would've had a strong suspicion we were
6 recording. For more than six months Brigle had been
7 shoving his tape recorder under the noses of RTA
8 officials and telling they were being taped", and you go
9 on, "No RTA men had apparently suffered as a result,
10 they're still busily pursuing the charges against us that
11 had been laid before we armed ourselves with tape
12 recorders", et cetera. Now, as I read that, you are
13 saying that at the time of this court case, prior to a
14 conversation taking place, you say, outside the court,
15 Mr Bowman was aware of the fact that you and Mr Brigle
16 were in the habit of tape recording conversations?

17 ---Your Honour, you've got your wires crossed. That's
18 talking about a separate case.

19 Well is it not talking about a case prior to - - -?---No there
20 was two Bingley, O'Shannessy cases.

21 Is the passage on p.52 referring to the conviction which
22 appears on p.70?---No.

23 When was that?---There was one case - the date I don't recall.
24 It's probably in the book, it would be mid year,
25 involving the same police witness against me, name
26 O'Shannessy. Then there was another case in December of
27 the same year and in the first instance I was convicted
28 on both.

29 The conviction which is referred to at p.70, what was the date
30 of that?---About 21 December 98, the date could be wrong
31 by a day or two, and the other one - the other case was

1 16 August 1988, and that's accurate because it's out of
2 the book.

3 So what's being referred to at p.52 is an instant which
4 occurred prior to - - -?---Yes, on 16 August.

5 So what you're putting is that prior to the occasion on which
6 you were convicted and this conversation occurred,
7 Bowman, at least, was aware of the fact that you and
8 Mr Brigle were in the habit of tape recording people?
9 ---Yes.

10 Did it every occur to you that the conversation which I've just
11 read to you, from Mr Bingley, might have been him pulling
12 your leg?---They've made that assertion since, however,
13 that is a possibility and it's not discounted. But, if
14 you let - let me finish Your Honour, if you play the
15 whole tape and you know the circumstances, bearing in
16 mind the comments weren't solicited and bearing in mind
17 subsequent tape recordings made of Bingley refer to in
18 the book in September the following year, where Bingley
19 was admitted - tape recorder saying various things, which
20 are quoted in the Hoser Files, one would form the
21 impression that Bingley did not know he was being tape
22 recorded, because in the later conversation, in
23 September, he admitted to his knowledge of police - well
24 I didn't know it was police up until - I suspected it was
25 police, but he stated point blank that the police had
26 taken tape recording gear from me, which was a matter
27 totally unconnected - well you have to read the whole
28 book in its context Your Honour and listen to the tape
29 recordings, if necessary, and you will see how it's come
30 about.

31 But you've got the tape recordings of this conversation, have

1 you?---Yes.

2 Did I understand you to say that it did occur to you that you
3 were having your leg pulled?---That did occur to me at
4 the time, but it was just like - it was just a passing
5 thought and bearing in mind Your Honour, this book was
6 written some years after the event, but in the light of
7 the later tape recordings of Bingley in September 1989,
8 which are referred to and transcribed in part in this
9 book, it is quite clear that Bingley was not aware that I
10 was tape recording him. And you've also got to reconcile
11 it also with Bingley's earlier comments. I was
12 interviewed - record of interview by Bingley in - on
13 March 7, 1988, and that was covertly taped by myself as
14 well and when you reconcile at least three differently
15 covertly taped recorded conversations with Bingley and
16 the one that is subject here in this book, the one that
17 you've been quoting, is the middle conversation, not the
18 first or the last, it becomes quite clear that that
19 possibility is unlikely. Now I have canvassed all
20 various possibilities with a number of other people who
21 have also listened to the tapes and they also have formed
22 the view that it is unlikely that Bingley was in fact
23 pulling my leg and it was just a bold admission, because
24 he was just - he was just cocky and stupid for want of a
25 better word.

26 But you accept that it's still a possibility, even now?---It is
27 a possibility, albeit remote, yes.

28 Did you consider putting that in the book, in which you
29 referred to Mr Adams?---My understanding is there might
30 be something to that effect in the Hoser Files, but as
31 I've made - - -

1 Could you listen to my question please Mr Hoser?---Sorry.
2 Did you consider putting that in the book under the photographs
3 of Mr Adams where they appear in which it's referred to a
4 policeman admitted to paying a bribe to Adams? Did you
5 consider putting in that, "Possibly, I was having my leg
6 pulled"?---No. Because there's the statement of fact,
7 Your Honour, is the policeman did admit paying him the
8 bribe, so there was no consideration of what you've just
9 put to me, no.

10 Yes, all right. We'll adjourn until 2.15.

11 <(THE WITNESS WITHDREW)

12 LUNCHEON ADJOURNMENT

13