

Magistrate Jonathan Klesdad +

10-Sept 1991

HIS WORSHIP: Yes?

RAYMOND TERRENCE HOSER
VERSUS
DERRY ASHTON (ROADS CORPORATION OF VICTORIA AKA VICROADS)
TRANSCRIPT
AT TUESDAY, 10 SEPTEMBER 1991, AND TUESDAY, 28 JANUARY 1992 (from page 104).
MR HOSER was not represented by counsel.
MR MARK LAPIROW appeared on behalf of the Roads Corporation.

MR HOSER: Just organising myself, your Worship. A couple of things I will mention before I call my first witness, your Worship.

HIS WORSHIP: You are the victim of the alleged assault, are you?

MR HOSER: Yes.

HIS WORSHIP: Will you be giving evidence?

MR HOSER: Yes. (Indistinct) other witnesses.

HIS WORSHIP: You will be the first witness in this, is that right?

MR HOSER: No. I will be calling some other witnesses before - - -

HIS WORSHIP: Why not?

MR HOSER: I think it is appropriate that I am last witness for my case.

HIS WORSHIP: (Indistinct).

MR HOSER: A couple of things I just want to mention. One is, it may come out during the course of these proceedings, the alleged - well, as far as I am aware, it occurred - threat to kill by the defendant, I just want to make it quite clear that that threat to kill is in no way connected with the charge and any references to it are not to be used as a basis to convict him of assault.

HIS WORSHIP: Are you suggesting that another - - -

MR HOSER: Yes, I am stating quite unequivocally that I believe that the man also threatened to kill me at the same time. At this stage I have not taken action in relation to that particular threat.

MR LAPIROW: In view of that, maybe your Worship, it would

appear that the matter should not proceed any further and I make application for costs.

HIS WORSHIP: Just a minute Mr Lapirow, Mr Hoser do you intend to take any action in relation to this alleged other - this other alleged incident?

MR HOSER: At this stage, no.

HIS WORSHIP: When you say "At this stage no" what does that mean?

MR HOSER: Well, he threatened to kill but I was advised at this stage not to proceed with that matter.

HIS WORSHIP: Well, Mr Hoser, all I can say is this, that it may very well be that if this matter proceeds today and you later try and make any other allegation about behaviour at this place and this time and this offence is alleged to have occurred, that you may be stopped from doing that.

MR HOSER: Okay, I will run today and bear in mind what you have said.

HIS WORSHIP: Yes.

MR HOSER: Now, the next thing, firstly could I please have the court cleared of witnesses?

HIS WORSHIP: Yes, it might be appropriate - - -

MR LAPIROW: There is a difficulty with that, the prosecutor has subpoenaed my instructing solicitor with what apparently - a subpoena that has absolutely no substance. I would like my instructor present. It is very difficult in those circumstances to deal with an order for witnesses out of court until it is first determined whether or not there is any valid reason for a subpoena to be served upon my instructing solicitor.

HIS WORSHIP: Who is your instructing solicitor?

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MR LAPIROW: John Connell.

MR HOSER: Right, your Worship, in relation to Mr Connell, I had in fact subpoenaed Mr Connell to give evidence in relation to a prior assault where he was found guilty in this court - - -

HIS WORSHIP: Who?

MR HOSER: The defendant was found guilty of assault and Mr Connell was the instructing solicitor - - -

HIS WORSHIP: Mr Hoser, I will stop you right there. Look, I do not know what legal basis or legal training you have - - -

MR HOSER: Well, I am not a qualified lawyer, no.

HIS WORSHIP: It is a basic principle of any proceeding of a criminal nature in any court, that a person is innocent until proven guilty and as part of that presumption, the court is not entitled to know nor should it be told of any prior history, either not relating - either between the protagonists involved in this particular case that does not relate directly to it, certainly it should not be told that the defendant has been found guilty of any proceedings or of any charges in the past.

MR HOSER: Okay, having said that - - -

HIS WORSHIP: No, just a minute. Having said that, you just told me that he has been convicted.

MR HOSER: No, I did not say convicted, I said found guilty, there is a difference.

HIS WORSHIP: That is the same thing, for the purpose of the discussion that we are having now. So I am now in a position where I may have to disqualify myself from hearing this matter because it could be said and as one who is clearly very aware of the fact that justice must be seen to

be done. it could be said that I have been prejudiced against the defendant now by being told by you that he has been found guilty of assaulting you in the past. What do you say about that Mr Lapirow?

MR LAPIROW: That is the problem that I had anticipated your Worship.

MR HOSER: Well, having said that, if you wish to disqualify yourself and get another Magistrate, so be it, but I am in your hands as far as that is concerned. All I can say is on that basis I withdraw my witness summons on Mr Connell but retain the others, and still ask that the remaining witnesses be asked to leave the room.

HIS WORSHIP: Yes well - - -

MR LAPIROW: Your Worship, it may well be that in the giving of evidence Mr Hoser, if and when he does give evidence, that his character will be put in question.

HIS WORSHIP: Whose character?

MR LAPIROW: Mr Hoser's.

HIS WORSHIP: He will put his own character in - - -

MR LAPIROW: That may end up being in question one way or the other, in circumstances where s.399 of the Crimes Act may then apply.

HIS WORSHIP: Does s.399 apply down here in a summary matter?

MR LAPIROW: I am not the best person to ask questions about the Crimes Act, your Worship as you may that my area is in fact

- - -

HIS WORSHIP: I do not have a copy before me but - - -

MR LAPIROW: I could not see any reason why it would not.

HIS WORSHIP: In any event, yes?

MR LAPIROW: And in those circumstances it may well be that

evidence of character will be put in issue as the case runs. The difficulty with the defence of this particular action is that we have no particulars at all of the offence, other than what is on the information, and until such time as we really know the case that we are expected to answer it is difficult to anticipate exactly what evidence may be relevant or may be necessary. For that reason I had not anticipated necessarily opening character as an issue at all. However, if it had become necessary it could well be one of those matters the court will be looking at in due course.

HIS WORSHIP: Yes, thank you Mr Lapirow.

MR HOSER: Two things raised by my learned friend. Surely it would be reasonable that if my character is going to be put under the proverbial microscope, the character of those others, in particular the defendant, should also be put under the microscope.

HIS WORSHIP: Mr Hoser, as a matter of law, the character of a witness or the character of - indeed the defendant, is not strictly relevant unless it is made relevant by the way in which the case is run. So in all the circumstances I think we had better proceed with this case, but Mr Hoser I think you are going to have to be a little bit careful and you are also going to have to listen to any directions that I give in relation to the law because it is important in these proceedings that the matter does not get out of hand and that extraneous matters are not introduced and that other agendas are not addressed at the cost of time.

MR HOSER: I understand that. One final thing, just before I call my first witness and - - -

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HIS WORSHIP: Bearing in mind what you have said the subpoena as
against - - -

MR HOSER: Mr Connell?

HIS WORSHIP: Against the witness, John Connell, which is on the
court file and dated 13 June is vacated by consent. Would
you make the normal order in relation to witnesses?

MR HOSER: I think they have just walked out actually.

HIS WORSHIP: I will have the order made.

ALL WITNESSES ORDERED OUT OF COURT

MR HOSER: Des - I want him as the first witness, is that all
right? So, could he come back?

HIS WORSHIP: Just before you do - just wait outside for a
moment please. Mr Hoser, in the normal course of events
the appropriate first witness in any case of this
particular type is the alleged victim of the assault. I
cannot direct you in the way in which you run your case, I
merely say to you that that is the normal course of events
because it is seen often as unfair to the defence if they
do not know the case which they are going to have to meet
if they are called upon to cross-examine or otherwise deal
with witnesses who - without knowing what the basis of the
allegation made is.

MR HOSER: That is fine. I am quite happy to go as first
witness then.

HIS WORSHIP: Very well.

MR HOSER: I call myself.

RAYMOND TERRENCE HOSER, sworn:

HIS WORSHIP: Could you tell us your full name please?---Raymond
Terrence Hoser, H-o-s-e-r. I am also known as Phillip
Jacob Hoser. You wanted the address, did you not?

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Yes?---41 Village Avenue, Doncaster, Victoria 3108.

Your occupation?---Author and taxi driver and insurance agent.

I am not a lawyer. Right, basically, my recollection of events is as follows. The date in question was on or around 1 November last year and what had happened - I have to be careful with what I say obviously - I had at the time alleged I had been - if I could just go back a fraction. I alleged I had been assaulted by a number of VicRoads officers including the defendant at Flemington race track on 7 November 1989.

Just a moment, I am having to take this down longhand because I do not have the opportunity of reading any transcript before I have to make my decision. At Flemington on the - - -?---7 November 1989 which was Melbourne Cup Day.

Yes?---I had alleged I had been assaulted by a number of VicRoads officers including the defendant. I complained to the various authorities. An inquiry was in fact initiated and they decided that although - well, there was some conflict but certainly the man who was organising the inquiry, David O'Sullivan, freely admitted I had been assaulted on the day, but he took no action. I subsequently issued a summons on the defendant, and the summons was to appear at this court on 1 November 1990.

That was a summons for assault?---Yes.

(Indistinct)?---Yes. That day was the first day, what I am led to believe is called mention day.

1 November?---1989.

So - hang on?---Sorry, 1 November 1990.

Just under a year after the event?---Yes, six days short of a year. Anyway, what happened was myself and a man by the

name of Mr Alan Anthony Brygel and another man by the name of Desmond Burke, I can't recall his middle name, we came to the court on this day with a view to either proceed if he was going to plead guilty or set down a date for hearing should he plead not guilty. We arrived at the court building - now the time is as accurate as I can recall, if I am a few minutes plus or minus I will accept that - about a quarter to 10 we arrived at the court building and we immediately looked out for Mr Ashton or someone else from VicRoads who we recognised.

Mr Ashton?---Who is the defendant, that is the man seated behind Mr Lapirow.

Can I just ask you this, was the original charge and summons directed only to the defendant in this case, or to others as well?---No, only the defendant in this case. Now, what happened was we looked around for either Ashton or one of the VicRoads lawyers who are known to us, and in the corridor - this is about quarter to 10, we checked the board and we saw that the Ashton matter was set down for a particular court - in the corridor Mr Olsen approached me.

Which corridor, can you be a bit more specific?---Yes, downstairs between the two - - -

Between the two (Indistinct)?---Yes, between the two entrances, in that corridor, Mr Olsen approached me and said something like - the exact words I cannot recall but I did have a tape recorder going so it was recorded and since transcribed - something to the effect of "How are you Mr Hoser, here's a letter for you" and I said to Mr Olsen something like "Oh is this another one" as in terms of is this a summons for me or something and he - I can't recall

what his response was, it was either "Yes" or "Have a nice day" or something to that effect. Olsen then walked off and I had a blue envelope in my hand. In my other hand I was carrying not as many files as that, I had one or two or a few files like something similar to what is sitting on the table there just under - as in that pile there - under one of my arms. So I then had the envelope in one hand and the - - -

Are you indicating you had that in your left hand?---Envelope in this hand, left, yes, I think envelope left, files right. I think that is how I had them, I can't be positive of that. Anyway, what happened was I then - Mr Brygel wanted to move his car so - because he had parked in a five minute zone or something at a meter, I don't know, he'd parked and had to move his car.

Can I ask you, how do you spell Brygel?---B-r-y-g-e-l. So we then walked outside of the court building just up towards Lygon Street where his car was to move it, and it was at that point that I turned around - it happened very quick, but I turned around and Mr Ashton came at me and he - can I show you how he came at me?

Yes?---He came at me - I can show you how he came at me, arms like that, one arm like held on to me here and then with the other hand went (Indistinct) about here. He punched me three times in succession.

Came at you with both arms outstretched at shoulder level?---
Yes.

Grabbed you - - -?---More or less (Indistinct) one hand which I think he had car keys or something in it and went bang, bang, bang with his left fist.

Right hand grabbed you on the shoulder, did he?---Yes. Resting on the shoulder, he didn't really hold onto it hard, just like resting, and with the other arm punched me three times and then - - -

Left hand punched - - -?---Three times and they were good hard punches, as hard as he in the circumstances could have done.

To where?---Midsection. I say it was the top of the stomach or the bottom of the rib cage, that sort of area. Anyway, when he did that he also said words to the effect of "I'll kill you" or something on those lines and then I turned to him and said "I suppose you want another assault charge" or something to that effect, something along those lines I said "You're going to" - - -

MR LAPIROW: Could I ask the witness to slow down, your Worship?

HIS WORSHIP: Yes. So, whilst with his left fist you say that he said words like "I'll kill you" or something like that?--Something to that effect, yes and then I retorted something like "Oh, another assault" or something like - something along those lines. The exact words I don't recall, I had the transcript and I can research it of course, if there is any problem there. The tape recorder I used to make the recording was this, this particular unit, and basically whenever I'm in an area where I think - having been attacked once, and not really trusting these people, I was obviously walking around with the tape recorder running. It's what is best termed pre-emptive taping, you know you run through tapes and if nothing of substance happens you just ignore it, but for this particular day something did happen, so it was just as well

I was taping. Then Mr Ashton - after I'd been punched I backed off and Mr Ashton then walked about a car space up towards Lygon Street, on the same side of the street, and got into his parked car.

He walked past you?---Sorry?

Past you?---Yes, I backed off and he walked and then got into the car. Now the car was illegally parked of course, but you know, I suppose he thinks he's above the law.

Mr Hoser, I appreciate that this matter has some importance for you and there is a personal element to it as far as you are concerned?---No, there's nothing personal.

Please try and contain yourself as remarks like that do not - they neither assist nor impress me?---Sorry, I thought that as soon as it came out of my mouth.

Contain yourself in the future please?---Okay, so he went about a car space - walked about a car space forward, got into the car which as I said was illegally parked and then he drove off. While this happened, Brygel and Burke - well, I didn't actually take a huge notice as to where everyone was standing but I have - I do recall them standing a bit further - they had walked ahead of me slightly, so they were probably 15 feet or 10 feet or something to that effect, further up the street towards Lygon Street to myself. Brygel and Burke were standing up there. Also - -

That is at the time when the assault - the alleged assault occurred?---Yes. And I do recall Brygel - Brygel also had a camera and I think he was taking photos at the time. Another thing, when all this occurred Olsen and Schofield had apparently walked out of the front door - - -

Did you see them?---Brygel, or Olsen and Schofield?

Olsen and Schofield?---Yes, I saw them. You have got to understand, I was out that side door but this assault occurred outside that side door there, right outside - this side door that is closed off now. Olsen and Schofield had obviously come out of the front door - or I should say presumably had come out of the front door and were walking up the street in that direction. When Ashton attacked me, Olsen was probably standing as far as that man is from myself, walking along.

That is about 10 or 12 feet?---Yes, my estimation. Schofield was probably a similar distance behind Olsen again and both of them were walking towards us, I say us, two of us, walking towards us, facing us and the whole attack occurred in full view of both men. Subsequent to the attack - sorry?

Just wait. Yes?---Subsequent to the attack and Ashton driving off, Olsen and Schofield then ran down towards Latrobe Street and then ran around the corner, I think that's a northeast direction, in other words they turned left, and jumped into a car and drove off.

Ran around the corner?---Around that corner there.

The main - I will call the main entrance on the corner, turned left down Latrobe Street?---No, left as in that way.

Towards Spring Street?---Yes.

East?---Yes, and drove off. And they ran. I think - - -

When you say they ran around the corner, what they ran across the road?---Yes, ran across the road and round the corner, that's right. And that was that. I think they were worried about - - -

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Do not tell me what you think they thought or did?---So - - -

Just a moment. Yes?---The other points of note, I think I was wearing the same clothes and the weather was fine on the day in question. That is really a summary of what occurred. I should state there was absolutely no provocation whatsoever. I was standing there and the next minute Ashton was on top of me and that's exactly what happened.

Yes?---And that's it.

I will just ask you this question, have these particular allegations, that is what you have just told me, has that ever been put to the defendant?---Yes.

So that he has had an opportunity to comment on it?---Yes, a number of letters were written to VicRoads and to the defendant. The defendant has had innumerable opportunities to comment, an early letter which I could dig out of the files if necessary - - -

That is a matter for you?---An earlier letter did - - -

Has he ever responded to any correspondence?---Yes, two letters from VicRoads, one from John Connell, one from the chief executive Reg Patterson, have described my allegations as, and I quote here "Without foundation" and a subsequent letter said "A complete fabrication".

So it would be fair to describe any contact that you have had from the defendant as just a denial?---Yes, which was in many ways predictable.

I do not - - -?---But I had done the right thing in terms of that. Further I should state I had a dispute with some RTA officers in terms that they had withheld my taxi licence for two years and an independent arbitrator by the name - -

No, I am sorry Mr - - -?---It relates to this case in that an arbitrator by the name of Fay Miles had hearings to decide whether I was fit and proper to have a taxi licence. During the course of her hearings she did decide she wanted to speak to Mr Ashton and put some of these allegations to him.

When did all this take place?---A month ago. And Mr Ashton refused to speak to Mrs Miles at all, on the basis that she was tape recording her hearings. At the conclusion of her hearings she decided I had been a victim of injustice and returned me my taxi licence, but Mr Ashton again refused to speak or deny or give his version of events or anything.

You do not deny that that is his right, you understand that as a matter of law?---Yes, I understand that is his right.

And as a court, I am not entitled in the absence of certain very specific facts, circumstances, to draw any inference from that, so you need not - - -?---That's your prerogative, that's right.

No, it is not my prerogative Mr Hoser, it is the law as it stands which I have to administer?---Sorry, that's fine. So, yes, but I must state though that he was - did have the allegations put to him.

Yes?---And he refuted them.

Yes. Is there anything you wish to say at this stage about - - -?---Well, there's a lot of things I could say but you'd probably say they are extraneous, so I'm probably better off not bothering.

Yes. Yes, Mr Lapirow?

MR LAPIROW: I put it to you that at no time before you got into

the witness box today, have you ever made any allegation against the defendant of him punching you three times in the chest, punching you at all or striking you at all?--- Well, you're wrong there, it's in writing, the letters - there's innumerable letters to VicRoads which could be produced and will show you quite clearly that the allegations have been put to him on numerous occasions and your own files a letter from Mr Connell describes it as "Without foundation".

You are - your real name is what?---My name is Raymond Terrence Hoser, I'm also known as Phillip Jacob Hoser, that's - - - Phillip Jacob Hoser in fact is another human being, is he not?-- -My brother in England is known as Phillip Hoser.

Could you identify these birth certificates relating to yourself and your brother?---Could I please have them, I had my birth certificate stolen actually?

HIS WORSHIP: Mr Hoser, in this court that is an exhibit held by the defendant's counsel. You can look at it, if it is tendered to me I will look at it and I will hold it and then you will return it?---This is - yes, very interesting, yes I had mine stolen.

MR LAPIROW: (Indistinct) extract of the records relating to your birth and relating to the birth of your brother?--- 20 - I'm just - there's an error here actually I think. No, there's meant to be the birth on here somewhere, I'm just trying to find where the birth is.

HIS WORSHIP: Place of birth, you mean?---When born, sorry. Yes, I've looked, it is - there's two separate categories here and I was confused. Yes, I've read them both and they both look true and correct.

MR LAPIROW: I tender those birth certificates.

EXHIBIT 1 ... Birth Certificates.

MR LAPIROW: Why - - -

HIS WORSHIP: Just a moment please Mr Lapirow. Yes, Mr Lapirow?

MR LAPIROW: Your brother Phillip is a member of the bar in
England?---So I understand, yes.

Well, do you know or not?---Well, I don't speak to him probably
as often as you, but from - that is, yes I am aware he is a
barrister. My last correspondence with him which was
probably six months ago or so, he was as far as I was
aware, a barrister, I haven't heard anything different.

Why would you be using his name and not your own?---That ground
has been covered many a time.

HIS WORSHIP: Not in front of me it has not, Mr Hoser?---Okay,
first I must state that whether I call myself Pope John
Paul doesn't have anything to do with the fact that Ashton
still assaulted me.

That is a matter for me to determine, Mr Hoser. If you could
just answer the questions simply and as clearly as you
can?---Fine. In 1985 after exposing a (Indistinct) money
racket in New South Wales, with the consent of VicRoads I
was allowed to adopt my brother's name, and that was
actually put in writing in a letter, the following - early
86 and I was given a licence under the name of Phillip
Jacob Hoser and I continued to drive under that name
without any problems until late 1989, September - I think
it was September 28, VicRoads turned around and said "We
cancel your licence under the name of Phillip Hoser as it
is null and void". Subsequent to that - - -

MR LAPIROW: Let me put this to you sir. You had - - -?---You

haven't let me finish yet, I haven't finished answering the question. Subsequent - - -

Your Worship, it is not really all that responsive and we are going to take a great deal of time if I cannot control the witness.

HIS WORSHIP: Well, Mr - - -?---I think it is - - -

Just a moment. Mr Hoser, I think the answer that you have given me, the answer to the question is that you wanted to change it in some time in 1985 because of exposing some illegal smuggling racket - - -?---Yes, it's the fear of being chased by people in New South Wales and the authorities consented to me using that name.

Whether they consented or not, that is the reason behind it, is it?---Yes, and there's never been any hiding the fact.

Thank you.

MR LAPIROW: You were a taxi driver in New South Wales?---I've driven taxis in a number of States including New South Wales, yes.

From 27 February 1979 to 5 October 1988 you were before the New South Wales courts on 44 different occasions?---No, that's certainly not true. I was before the New South Wales courts probably about nine occasions, your 44 is just way over the top, I don't know where you got that figure from.

I should say the 44 - I will tender these in a moment your Worship, relate to the various charges - and the end result was that you had your driver's licence - - -

HIS WORSHIP: Just a moment. How many separate occasions were there upon which - - -

MR LAPIROW: I counted the dates, your Worship. There is 27 February 1979 - - -

HIS WORSHIP: I do not want you to go through each one before me, but is it the case that there were a number of charges heard on each date?

MR LAPIROW: On some occasions sir.

HIS WORSHIP: I think it is only fair that the number of actual appearances be put to the witness.

MR LAPIROW: There are 33 on these three pages, your Worship.

HIS WORSHIP: 33 different dates of - - -

MR LAPIROW: Different dates.

HIS WORSHIP: Of appearances?

MR LAPIROW: Yes.

HIS WORSHIP: Between which dates? Between 27.7.79 is it?

MR LAPIROW: The first date is one, the provisional class 1 drivers licence was issued which is not really an appearance before the court by way of (Indistinct) but the rest of them are prosecutions, your Worship and the last one on this summary is 5 October 1988.

HIS WORSHIP: Yes. What do you say about that Mr Hoser?---Mr Lapirow has deliberately contorted the - - -

Just answer the question please Mr Hoser?---No, I didn't appear before court that many - on the number of occasions he has indicated, no way.

You say about nine?---About nine. What I can tell you though which Mr Lapirow might raise is my licence was suspended in New South Wales for four years. That was a result of an ex parte hearing where I received no summons, I had no information on any charges and it occurred when I was living in Victoria. Now, I was given right of appeal by the subsequent attorney general in 1990, that was John Dowd as a result of my application to him because in my view

there had been - I'd been denied natural justice. And he did give me the right of a re-hearing.

Has that re-hearing been pursued?---No, because the licence suspension expired within about a month or so of me getting the permission to re-apply and it wasn't worthwhile.

MR LAPIROW: I put it to you that at the Redfern Magistrates Court on 11 November 1985 you were convicted of fraudulently using a licence and you were fined \$400 and you were disqualified until 9 May 1990?---Well, you hit the nail on the head, I've - exactly what I've just told the Magistrate, that - if you check your own records and when I was issued my licences in Victoria, I was living in Victoria from October 85. I had no knowledge whatever of those allegations or charges, obviously if I had no chance to defend myself on these charges it goes to follow I'd be convicted.

On 5 September 1985 at the Castlereagh Street Magistrates Court you were convicted of driving whilst disqualified on 6 June 1985, you were fined \$400 and disqualified until 9 May 1986?---Not that I recall, no. What was the alleged charge on that, driving whilst disqualified?

HIS WORSHIP: On 6 June, was the date?

MR LAPIROW: On 17 November - - -?---No, it couldn't have, that doesn't add up and I can explain why. The licence suspension - that can't be true because the licence suspension from 85 went to May - you said May 90, now what happened was is there was a subsequent six month suspension because I was driving around - I didn't know anything about these charges until 1988, that was the first I heard. When I was on holiday in Sydney and the police did a licence

check on me and they found that there were four warrants for my arrest and that I was driving whilst disqualified. Now the four warrants turned out to have been - they were all null and void but they were still on the computer so all those four charges were chucked out, and they then - it was after that that they subsequently charged me with driving whilst disqualified and - it was because of the 1985 conviction which I didn't know about, that was the first I found out was in fact in the week of October 88, that was the week. That was the first I heard of the 85 charges and convictions, as I said, even then - actually a six month suspension wasn't a problem, but later on a year later when the VicRoads took my licence off me, they used the reason - because I had been suspended in New South Wales, the suspension would also carry on in Victoria and it was only as a result of that that I then made application to the attorney general of New South Wales who was John Dowd, who gave me permission to have a re-hearing. On 17 November 1986 you lodged an appeal against a conviction that you had earned on 22 June 1985 for driving in a manner dangerous?---Sorry, what - - -

That was dismissed?---Sorry, what date did you say?

17 November 1986?---No, that's not possible. I wasn't in Sydney at the time, I was in Melbourne.

The conviction, the penalty, the costs and the period of disqualification were confirmed by the Sydney District Court?---No, that's not true. I was in Melbourne in 1986 and if you check - I don't know where those records come from but they are not true and correct, I think you forged them, certain parts or something because I certainly didn't

appear in court in 1986 in any way shape or form, either here in Victoria or in New South Wales.

On the same date you appealed against a conviction on the same date, being 22 July 1985 for failing to stop after an accident, it was dismissed. Your conviction, penalty, court costs and period of disqualification were confirmed again by the Sydney District Court?---No, that's not true. (Indistinct)?---No, that's not true.

On 5 October 1988 at Redfern Magistrates Court, you were convicted of driving whilst disqualified on 17 May 1988, you were fined \$400 and disqualified for six months, there is a bracket saying "Automatic" until 9 November 1990?---That's correct, that one is correct and that's the one I was telling you about where it followed - the driving licence disqualified was because I didn't know I had been disqualified in 1985 because I'd been living in Victoria at the time and it - quite clearly if one is convicted in one's absence and one is not informed of any conviction it goes to follow that one cannot know one is convicted. You will find that when I was - it would show on the record that I had a valid driving licence when I was pulled up by the police, it was only in May and that was when they arrested me on these four warrants that turned out to be null and void. When the warrant cases were due to be heard, which was in October, they withdrew them and threw on me the driving whilst disqualified to which I pleaded guilty on the basis of what you've read out, that I was convicted in November 85 and I said to the Magistrate, I can't recall his name, I said "Well, if that's what you have, I can't argue with it, I was in Victoria at the time,

sure it could have happened, I plead guilty" and he gave me the minimum penalty which was six months, you've obviously got "Automatic" there - minimum - the Magistrate has discretion, he can rule but obviously if I didn't know, it's okay, ignorance is not justification for breaking the law but in that case - what is one meant to do, one hasn't been told one is not allowed to drive, quite clearly we keep driving.

On 22 October 1985 you were convicted on a charge of supplying false information at the Redfern Magistrates Court and fined \$100 with \$19 costs?---No.

(Indistinct)?---You said 85, didn't you, October 85?

Yes?---No.

What was that about?---I don't know, you have the information there. As far as I'm aware nothing - I don't even know what you're talking about, to be honest.

All of these charges and all of this traffic record which bears the seal your Worship, and the signature - although it appears to be a photocopy I will endeavour to - I think the original is here.

HIS WORSHIP: Mr Lapirow, that would be admissible on the charge under the Road Safety Act, how is it admissible in this charge, to the extent that it has been denied?---I can assist you your Worship.

Just a minute, Mr Hoser, I am not asking you.

MR LAPIROW: Well, there is no charge against this witness, your Worship.

HIS WORSHIP: Of course, he is not the defendant, I beg your pardon. It merely goes to credit.

MR LAPIROW: Yes.

HIS WORSHIP: If I accept it.

MR LAPIROW: Yes.

HIS WORSHIP: Yes, I beg your pardon, you are perfectly right.

MR LAPIROW: I wonder if you would like to look at these three sheets sir.

HIS WORSHIP: Mr Lapirow, I note the time is now a quarter past one, I am going to sit as long as I possibly can because I am informed by my clerk that we cannot - if this matter does not conclude today it will not go through until tomorrow, it will have to be adjourned until the next available date.

MR LAPIROW: Yes, I will do my best to get through this matter and a couple of other matters, but it is not intended to be a wide ranging cross-examination sir?---Well, this is nothing to do with me being assaulted. What I can say is if you have a look at this, I'll deny most of it for starters, I've just got here - I'm reading one off the sheet, it says "Incivility on 14.5.85 Redfern 60 and \$19" I know nothing of that for example. The next one has got "Drive whilst disqualified 22.10.85" I know nothing of that. I can tell the November 85 one which gave me the four year licence disqualification and the - five year licence disqualification, sorry about that - five year licence disqualification and you will note that none of these, other than the drive whilst disqualified at Redfern 5.10.88 which I explained to you, resulted from the - as I said I didn't know I'd been disqualified - other than that one particular charge, you will note that none of the others - all of them pre-date 1985 and that was one of the reasons I actually left New South Wales. And if I can

comment - - -

Thank you very much for the moment sir?---My book - - -

HIS WORSHIP: That will do thanks, Mr Hoser?---Actually details
some of this - - -

This will do.

MR LAPIROW: I tender four certificates of conviction from the
local court at Redfern?---I don't think this - - -

(Indistinct) of the court and dated 15 June 1989 in all four
cases dealing with convictions and extracts from the
records of that court. These in my submission, are
tenderable absolutely under the provisions of the Evidence
Act, your Worship.

HIS WORSHIP: What do you say about them, Mr - - -?---Well, I
object to them because this one here is simply not true.

You say they are not true Mr Hoser, but they are tenderable,
whether they are true or not is a matter for me?---Okay,
well I'll just - what do I do with this?

Give those copies back to - - -

MR LAPIROW: They are different documents, one is a summary of a
charge sheet and the other are the certificates of actual
convictions.

HIS WORSHIP: What I can tell you is I - - -

Just a moment, I will have those - give those documents back to
Mr Lapirow and those will be tendered and they will be
exhibit 2.

EXHIBIT 2 ... Four certificates of conviction.

MR LAPIROW: Now, it was solely because you were under licence
disqualification in New South Wales that you adopted your
brother's name in order to obtain a licence in Victoria?---
No, because I also obtained a licence under the name of

Raymond Hoser at the same time.

So you had two licences?---Yes.

How many false declarations did you swear in order to obtain those licences?---None. It was done completely with VicRoads consent. It was put in writing from both sides and I have never - VicRoads charged me with 10 counts of false declaration 1989 and they were dismissed for lack of evidence.

Since you have been in Victoria, you have come under notice of the RTA from time to time with various offences?---No. I object to that. I have not committed any offences - I should say I haven't - the offences alleged, no, I have not committed. I have been a victim of harassment which has been acknowledged innumerable times by VicRoads and if I - can I - I suppose I have to wait to - - -

I put it to you that at the Camberwell Magistrates Court on 12 August 1987 under the name of Phillip Jacob Hoser you were convicted of an unauthorised multiple hiring and fined \$25 and you were convicted of overcharging on multiple hired and fined \$25, what do you say to that?---Those convictions I was convicted of. They were wrong convictions, they were wrongfully - - -

On 1 March 1988 at the Broadmeadows Magistrates Court, you were found guilty of moving laterally when unsafe to do so and fined \$100 or one day in prison?---No. I've seen that on the record and that never occurred and I've never paid any fine, nothing. I don't know how that got on the record.

On 16 August - - -

HIS WORSHIP: Under which name, Mr Lapirow?

MR LAPIROW: These are all in the name of Phillip Jacob Hoser,

your Worship. On 16 August 1988 at this court, the Melbourne Magistrates court, you were convicted of overcharging when multiple hired, fined \$100. You lodged an appeal against that and you were granted permission to drive pending appeal. What do you say about that?---Sorry? I was granted permission - - -

On 16 August 1988 at the Melbourne Magistrates Court, you were convicted of overcharging when multiple hired, you were fined \$100, you lodged an appeal and you were granted permission to drive pending appeal, on that date?---No, you're wrong there because multiple hiring has nothing to do with driving, so this granting permission to drive, I don't know where you pulled that out of.

HIS WORSHIP: Were you convicted of that offence?---I was convicted of multiple hiring.

Did you lodge an appeal?---Yes.

Thank you.

MR LAPIROW: On 31 August 1989 at the Melbourne County Court, you abandoned your appeal and the conviction and the sentence were affirmed?---No. That is not true. I did never abandon that appeal. That was an error, either made by the solicitor I had acting for me, Martin Smith, or the court and subsequent to that being abandoned I withdrew his services because that particular case was a blatant fare evasion and I had proof. I had tape recordings and VicRoads own statement was to show her to be a self-confessed fare evader and I wanted to pursue that matter and it was a stuff-up where it was abandoned and - let me finish - that particular girl jumped and ran on me twice.

HIS WORSHIP: Just a minute?---She jumped and ran - - -

Just a minute Mr Hoser, we are now interested in the appeal, did the appeal go ahead?---No, it was abandoned.

Thank you?---But not by me.

MR LAPIROW: On 5 October 1988, you were convicted at the Heidelberg Magistrates Court for unauthorised multiple hiring?---5 October 1988?

Yes?---You just read out a Sydney conviction on 5 October 1988. You were fined \$50, you were convicted of overcharging when multiple hired and fined \$125. You lodged an appeal against those two convictions and you were granted permission to drive pending the appeal on that date. What do you say to that?

HIS WORSHIP: Forget about whether or not you were granted permission to drive or otherwise?---Yes, because that doesn't come into it - - -

That is why I have asked you to forget about that?---Yes. What happened on that particular day was, I was in Sydney at the time, I had arranged for an adjournment and VicRoads, as in David Robbie, had spoken to me some days prior, and that had been tape recorded with Robbie's knowledge, that conversation, and we had arranged for an adjournment through the court and for reasons best known to myself I was convicted when I returned and I found it out when I got the paper from the court that says you have been convicted. You lodged a notice of appeal, in any event, is that right?---On that particular one I cannot recall.

MR LAPIROW: At the Melbourne County Court on 31 August 1989 your appeal was abandoned and the conviction and sentence were affirmed?---Was this on the Heidelberg one?

Yes?---Right, yes, that's where the stuff-up I think occurred.

That one - - -

HIS WORSHIP: Did you abandon the appeal?---Martin Smith
abandoned it for me.

I am sorry, you have just given evidence that that was on 31
August, the appeal - - -

MR LAPIROW: They are both the same date sir.

HIS WORSHIP: Against the Melbourne conviction was abandoned?---
That is the same date, that's where the problem was. The
Melbourne Magistrates conviction was appealed and the
particular witness concerned has been shown to be a liar.
What I object to your Worship, is this man reading off a
computer printout to try and incriminate my character when
I can provide tapes, transcripts and other forms of
evidence to show that I was telling the truth in these
cases. I should not have been convicted.

Mr Hoser, the issue before me is as - at this stage - is as to
your character. This is not a forum for you to re-litigate
those matters?---No, but he's reading that - - -

Listen to me please. If the appeals were abandoned or the
convictions were recorded and nothing is done about it, if
you wish to seek - if you seek to vitiate the effect of
those appeals or convictions or what have you, now is not
the time to do it. It should have been done a long time
ago, there are plenty of ways in which it could have been
done. If you tell me it has been done then you can explain
that to me?---I will.

But now is not the time to re-litigate those matters?---I don't
intend to re-litigate them but I will give you some
material when I get a chance to re-examine myself, or words
to that effect.

MR LAPIROW: On 20 February 1990 you were convicted at the Moonee Ponds Magistrates Court for driver touting or touted, you were fined \$150?---I recall that conviction and I recall the appeal being knocked back but again I must state here I was innocent of those charges and - one of the RTA officers present, Mr - he actually stated there on the day that I was not touting, so work that one out.

In relation to the Prahran Magistrates Court on 8 November 1990, you were convicted of driving on a footpath, was that conviction the result of an RTA prosecution?---Excuse me Mr Lapirow, you are bending things here, one does not drive on footpaths, I was not convicted of driving on the footpath. What is written in front of you please?

Prahran Magistrates Court, 8 November 1990, conviction driving on footpath, fined - - -?---Could I please have a copy, could I have a look at that?

HIS WORSHIP: What do you say happened Mr Hoser?---You can't drive on footpaths, I was not driving on the - I had my car parked on the footpath and that's what I was convicted of and there was never any objection to that. It was parked on the footpath, I was parked on the footpath going in the bank, nothing to do with driving on the footpath. I don't know where he's got all this stuff from but he bends and convolutes the things quite (Indistinct).

MR LAPIROW: Was it an RTA prosecution?---RTA initiated, yes. In all of those prosecutions which I have read out to you from 1987 in Victoria, through to this last one, were they all RTA prosecutions?---RTA initiated, every one of them. RTA were present - on that particular case the RTA officers, George Olsen and Peter Schofield, were at Prahran Court

when I was bailed to appear on that particular charge.

You have a bit of an axe to grind with the RTA, do you not?---

That could be argued but this charge has not been laid as a result of any axe to grind. If he'd been the Pope I would have charged him.

I put it to you that what occurred on the day was this. Your charges against Mr Ashton were listed on a mention date, is that correct? It was a mention date on 1 November 1990?---
Yes. Could I just interrupt?

And because it was a mention date - - -

HIS WORSHIP: You will (Indistinct) in a moment?---Could I just make notes while he's asking me questions because I'll forget some of the points I want to raise.

Yes. I will allow you to make brief notes Mr Hoser?---Yes, that's all I want, thank you your Worship. Just bear with me.

MR LAPIROW: And you went to the mention room off the front porch area, entrance area of this court?---No, we didn't actually. I wasn't aware that that was the procedure at the time. I saw a lot of people standing there but I didn't realise what they were doing.

You were told by some court official at some time prior to 10 o'clock that because there was a not guilty plea to the four charges that you had laid against Mr Ashton, that the matter would be dealt with the following year, in May or March?---No, that - in March, sorry, can you repeat that?

The date for the four charges that you had got against Mr Ashton on that occasion was adjourned till a date the following year which - 4 March 91?---And I was told by a court official?

By someone, yes. How else would you know the date?---After the assault occurred I was told that, yes.

After the assault. All this took place before 10 o'clock?---
Yes.

And you were told the date before 10 o'clock?---I may have been - the assault occurred about 10 to 10, we found out the date after the assault occurred. Now, the time frame involved - obviously if I was played a tape we could find out exactly, but the time frame involved - obviously by the time the RTA had run off and we worked out what was going on and we had to stand in line in a queue and find out what was happening, it may have been just after 10 o'clock, but around about 10 o'clock I was informed that Mr Ashton had without any hint of dialogue with myself, set down without my consent, 4 March as the hearing date and the court officials refused to change that or whatever, even though myself and Brygel wanted it a different date.

So you accept - - -?---No hint of dialogue by Mr Ashton at any stage with me, which is against formal procedure.

So you accept that some time prior to 10 o'clock, Mr Ashton had obtained a date for 4 March 1991?---Prior to his attack of me, which was about 10 to 10, yes, Mr Ashton had obtained - had set down a date without any - and I must stress this - without any hint of dialogue with the court for 4 March.

And you and your mate Brygel saw Mr Ashton leave the court, walking down the passage between the main entrance and that small side entrance off Russell Street?---No.

And you followed him?---No. Neither myself nor Brygel nor Burke saw Ashton in the court building. I saw Olsen in the court building and only Olsen in the court building. I then saw

Ashton as he walked out the building. At no stage did I follow Ashton.

And you and Brygel followed Ashton out of the door on the Russell Street entrance and north along Russell Street?---

No. I was standing there - - -

I put it to you that you then ran in front of Mr Ashton, stopped in front of him to block his path?---That's not true.

Mr Ashton walked around you and went directly to his car?---

That's not true.

Mr Brygel was screaming at Mr Ashton saying "I'll get you for what you did to me"?---Is that a quote?

HIS WORSHIP: It is a question.

MR LAPIROW: I am putting that to you, that is what Mr Brygel was saying?---Well, I don't mean to disappoint you Mr Lapirow, but you have been instructed wrong. The tape recording of the incident has no such words from Mr Brygel and Brygel never ever said anything of the sort on that date.

And Mr Brygel then proceeded to take photographs of Mr Ashton driving away in his car?---Brygel did. Brygel took three photos to my knowledge on that date. He may have taken more but I am only aware of three.

At the time that you ran in front of Mr Ashton and then turned around to face him, you were facing south down Russell Street?---In other words, I'm standing on the footpath - just bear with me - this is the side of the building and I am standing with my - - -

HIS WORSHIP: Facing the museum?---Facing the museum, on the footpath facing the museum?

MR LAPIROW: Yes?---Right, now is that what you're alleging to me?

Yes?---No.

And it was at that point that you saw Olsen and the other RTA officer coming up the street?---No. Ashton attacked me and as he attacked me I backed off and it all happened very quick, on the left side of my view I saw Olsen and Schofield walking towards us.

You said you were punched very hard, three times?---Yes.

Did it leave any bruises?---Yes.

Did you go and seek medical attention?---No. There's not much a doctor can do for bruising.

Was it something that was really upsetting you on 1 November that you had been punched viciously three times?---I've been assaulted by Ashton twice, I've been assaulted by Olsen three times.

Did it upset you?---Yes.

Was it a matter that really concerned your welfare and your view as to injustice in the world?---Nothing to do with injustice in the world, I believe that every person, man woman and child, has right to protection by the law, particularly those who are supposedly in power to enforce law, never (Indistinct) expect to be attacking you. But as I said, regardless of who or what Ashton is I would have charged him with assault on the basis of what he did, it was totally uncalled for.

You did not charge him with assault that day?---Sorry?

You did not charge him with assault that day?---No, I put the allegations to VicRoads, gave him a chance to refute it and when they refuted it then I proceeded. I did everything the right way so that - - -

Did you charge - - -?---I always had the high moral ground.

When did you charge him? The summons should show that your
Worship, but I do not have it in front of me?---The summons
I think, was issued - - -

HIS WORSHIP: The date of the summons is 7 May 1991.

MR LAPIROW: Why did you leave it until 7 May 1991?---Because I
wanted to be seen to be - as I said, to have the high moral
ground and I gave the RTA as in Reg Patterson and Derry
Ashton, plenty of time to refute the allegations, which
they did, they described them as a complete fabrication and
without foundation, them being quotes.

Do you accept that you have written numerous letters to the
RTA?---Yes.

HIS WORSHIP: Between what, between the day of the assault and -
- -

MR LAPIROW: Before then and since then - - -?---In relation to
the assault, no, there's not that many letters, you've
probably got about three or four in relation to this
particular assault and that's it.

On 2 November 1990, the following day, you wrote a letter to the
RTA and you were complaining about RTA conduct?---Which -
as you say I have written many letters in complaint - I
think - - -

HIS WORSHIP: If you just turn your mind to the letter that you
are now being referred to Mr Hoser?---No, I would not be
able to recall it, I've sent that many letters, unless I
started going through my files or he showed me the letter,
I wouldn't recall it.

I presume that is what you are going to do, is it Mr Lapirow?

MR LAPIROW: Yes?---If you pass it to me I'll tell you if it
looks like my letter.

HIS WORSHIP: I think we will stop now Mr Lapirow and we will start again at two o'clock. It seems very clear that there is very little chance of finishing this matter today. I cannot sit much beyond four o'clock and in any event I would only do that if there was a chance of finishing it before four o'clock so - - -

MR LAPIROW: I do not anticipate being terribly much longer with Mr Hoser but - - -

HIS WORSHIP: I have got no doubt that there will be at least another two witnesses?---Two RTAs, two non - there's four altogether. (Indistinct) doing wrong, I think it's an open and shut case here your Worship, I think this case is just running around the bush - - -

Well, Mr Hoser I do not invite you to make any submissions or any comments at this stage?---Okay.

It seems to me quite clear that the matter is not going to finish today so Mr Lapirow and Mr Hoser if you would perhaps attend at the co-ordinator's office just before two o'clock and they might be able to give you some dates?--- But we will be back here at two, is that correct?

Yes, or very shortly thereafter if you are caught up at the co-ordinator's office, I will speak to them first.

ADJOURNED AT 1.35 PM

RESUMED AT 2.10 PM

HIS WORSHIP: Yes, come back into the witness box please, Mr Hoser?

RAYMOND TERRENCE HOSER:

HIS WORSHIP: Yes?---I've got my piece of paper so I can write notes.

Mr Hoser, you have been sworn and you are still on oath, do you understand that? Yes, thank you, yes Mr Lapirow?

MR LAPIROW: Prior to lunch I put to you a number of convictions in respect of your driving in New South Wales under the name of Raymond Terrence Hoser?---Yes, I recall you putting - I recall what you said before lunch, yes.

I have a number of further convictions on a certificate issued under s.84 of the Road Safety Act, I wonder if you would like to have a look at them.

HIS WORSHIP: They relate to convictions in Victoria, is that correct?

MR LAPIROW: They are in New South Wales.

HIS WORSHIP: In New South Wales as well?

MR LAPIROW: Yes.

HIS WORSHIP: Yes, thank you?---Are these more, over and above the last lot?

MR LAPIROW: I am uncertain your Worship, whether they are incorporated in the questions that I put, I suspect they would be.

HIS WORSHIP: Yes, well I will have a look at that?---It's very hard, you throw this at me and there's so much - I've got to like, decipher it in three seconds flat, it becomes very difficult.

You can have a look at them Mr Hoser?---It says "5.9.83" - no

some of this isn't true. It's got a lot of court appearances but I never appeared and again one of the ones that does show up is - you've got some here which were when I was in Melbourne so it's pretty hard to be in two places at once, especially when they're a thousand kilometres apart, but you can tender it for all I care, because it's got nothing to do with whether or not he attacked me.

MR LAPIROW: And also a certificate - a further certificate issued under the Road Safety Act s.84 with respect to convictions in Victoria under the name Phillip Hoser?--- There's six charges here, they're all VicRoads initiated and these particular ones, I'll tell you the status of them as well.

Thank you, I tender those certificates?---This particular Victorian one, I can say that all the so called convictions listed on them did occur. I will vouch that they were wrongly obtained and I will produce evidence to that effect when I have my opportunity in a minute.

Previously, before the break for lunch, I put to you that you wrote a number of letters to VicRoads?---I can actually be more specific there, over the past 18 months alone I have written in excess of 100 letters to VicRoads and the State Ombudsman.

And you have no difficulty at all about expressing your grievance with them?---No, I put it to you I had no difficulty in stating the truth, if that implies grievance, perhaps, yes, but I have no hesitation to state the truth and to put allegations in writing because I have been informed innumerable times if you put things in writing, it's a lot more credible.

Would you have a look at this letter please? Did you write that letter?---Yes.

What is the date of the letter?---November 2, 1990.

The day after the assault, the alleged assault?---Yes, it is actually, but I say - - -

I tender the letter your Worship?---But on the basis that I'd probably be sending - I'd average well over - - -

Thank you witness.

HIS WORSHIP: It is all right Mr Hoser, you will have an opportunity. Sorry I should have marked the certificates under s.84 of the Road Safety Act dated 15 October and 14 February will be exhibits 3, two certificates and the letter dated 2 November will be exhibit number 4.

EXHIBIT 3 ... Certificates under s.84 of Road Safety Act dated 15 October and 14 February.

EXHIBIT 4 ... Letter dated 2 November.

HIS WORSHIP: Yes, thank you, I have read that.

MR LAPIROW: Now, on 1 November, court was in session?---Sorry?

On 1 November 1990 court was in session?---How do you mean court was in session?

There were people here at the Magistrates Court?---Yes.

Numbers of people who were general members of the public?---

Inside the building was very busy at the time, it's just before 10 o'clock, there's presumably the usual - your Worship probably knows what usual is, but it is busy.

HIS WORSHIP: Yes, it was a usual day.

MR LAPIROW: And dozens perhaps, of police officers in the immediate vicinity of Russell Street?---You don't have to use that line because unfortunately - - -

HIS WORSHIP: Mr Hoser, please just answer the question, otherwise we will be here forever?---Sorry, inside the

building there were, outside no. Outside the street was essentially quiet.

And you made no complaint to anyone about the alleged assault on that date?---Well, historically when I have approached - I have made innumerable complaints to police about RTA and they - - -

Answer the question witness?---On the day, no, I made it in writing shortly thereafter.

And according to your evidence you, a solicit man, viciously assaulted in the street, turns around at some stage, walks back into the court and says "What was that date that I was being assigned again" is that what you are asking the court to believe?---No. You convoluted things. At the time I was assaulted I had not approached any person and asked them about the date, because as far as I was aware, I had checked the board, seen that the case was listed for a particular court room, I had no idea that there was a procedure where you line up in a queue and find out from the clerk or whatever, a date. That I was totally unaware of at the time. At no stage prior to the assault and including the assault was I aware that the case was set down for 4 March. It was after Ashton got into his car and drove off and Olsen and Schofield ran off and drove off, then Brygel, Burke and myself marched back into the building and we found out what was going on.

HIS WORSHIP: I am sorry, Mr Hoser, what was put to you albeit in a somewhat florid style, was that you did return back into the court after the assault?---Definitely, yes.

But merely enquired or made enquiries as to the date rather than making any reference to any person to the assault, is that

what happened?---Yes. The only - Burke and Brygel saw the assault but no one inside the court but it would have been a pointless exercise. Ashton was gone, he would have denied it, I've been down that road so many times.

Yes, Mr Lapirow?

MR LAPIROW: And when you wrote to the RTA the following day you never mentioned it either?---I'm sorry to disappoint you Mr Lapirow. If you will go through your file you will almost certainly find another letter to the RTA probably addressed to either Rex Patterson, David O'Sullivan or someone else very senior within the VicRoads, complaining. That letter is about a different matter and that letter which you have noted on 2 November, was in response to an earlier letter from Mr Connell which it refers to. The amount of correspondence to the RTA averages well in excess of one letter a week over the past 18 months and it's been to a variety of officers including - well, innumerable officers, mainly senior officers, O'Sullivan and Patterson, they're the chief executive - but certainly within a short period after the complaint was put in writing, but I can tell you I would have no doubt transcribed the tape and so forth and gone through all the other evidence, what photos Brygel took so that my allegations and my recollections were as accurate as was possible.

HIS WORSHIP: Yes, Mr Lapirow?

MR LAPIROW: There is a letter I am endeavouring to locate your Worship?---While he is locating that, I can tell your Worship, I have two four drawer filing cabinets - - -

HIS WORSHIP: Mr Hoser, I am not interested in the volume of correspondence, we are just dealing with the particular

reference to any correspondence in relation to this assault?---I might be able to - - -

You will have an opportunity to in due course.

MR LAPIROW: On 22 April 1991 you wrote to Mr Reg Patterson of - who you have addressed as the chief executive of VicRoads?--That's what he is, isn't he?

Do you agree that you did that?---Show me the letter and I'll see.

And what you requested then was that in consideration of you stopping prosecution of RTA officers you required the reinstatement of your driver's licence, you required the reinstatement of the driver's licence of Brygel?---No, you're wrong there, we both had driving licences, we don't need them reinstated.

The immediate reinstatement of Alan Brygel's taxi licence?---That sounds a bit clearer, why didn't you say that the first time?

And that is what this is all about, is it not?---No, if you can just pass me the letter you will - - -

I put it to you witness that despite the number of assertions that you have made against people in this letter - - -?---What - - -

HIS WORSHIP: Just a moment, Mr Lapirow finish your question first.

MR LAPIROW: None of them set out any of the material alleged against my client by you in the witness box today?---You're wrong. You're wrong, wrong and wrong. Maybe not in that letter, but certainly in other letters which I will produce - - -

Will you identify this letter?---Of course. What you're being

is selective with the letters but there's a number - - -
HIS WORSHIP: Mr Hoser, you will have an opportunity to refer
the court to other letters?---No worries, that I will
definitely do. Right, I will just read out a section, it
says "Instances springing to mind include A, assault of
myself by George Olsen on 7.4.89, Olsen's involvement in
illegal assault and arrest of myself on 21.5.89 and
subsequent charges" those charges of which I beat "C,
assault and attempted theft of my equipment by Ashton on
7.11.89, D, the illegal entry into my house by Perry and
another officer Brentnall 30.11.89, you and your officers
have (Indistinct) attacked me and my interests at every
opportunity" and then goes on.

There was no reference to any of that on 1 November, in that
letter?---Yes. Might be able - I haven't got that far yet.
"Now I request the following, a signed letter of apology
from Mr Ashton, again viciously assaulted me unlawfully in
contravention of his good behaviour bond, delivered by
courier to my private above address and slipped under my
front door within 48 hours with a duplicate copy
simultaneously faxed to my work address". So here we have
reference to Mr Ashton's assaulting me. Well there is,
there's one reference to Ashton assaulting me again but
there are innumerable, and that's on the second page number
1, it refers to Ashton attacking me. There we go, if he
wants to take that as evidence.

Do you tender that?

MR LAPIROW: I tender that your Worship.

EXHIBIT 5 ... Letter.

MR LAPIROW: On 4 March 1991 at the Melbourne Magistrates Court

you prosecuted four charges against Mr Ashton?---I am
sorry, what date, the 4th?

4 March 1991?---Yes, and?

The charges were common assault, do you agree?---Well - - -

Did you prosecute with that charge or not?---I charged him - - -

Yes or no?---I can't tell you the exact, I can tell you this, I
charged him - and this will probably answer your question -
two counts of assault, one under the Crimes Act, one under
the Summary Offences Act - - -

Witness, I put to you that you charged him with four charges?---
Yes.

Common assault?---That I did.

Assault with intent to rob, theft and malicious damage?---Yes, I
think they were the charges, yes.

The indictable offences were all dismissed, were they not?---

They were and I think that was a wrong decision.

And in evidence, my client admitted that he laid his hands on
you, is that right?---That isn't all he did to me, he
certainly did a lot more than that and if you - - -

Will you answer the question witness?---I have answered the
question. I can provide you with a tape recording of that
particular case and I can also provide you with transcripts
and it shows quite emphatically perjury was committed by a
number of officers which can be verified by checking with
the tape recording of the incident in question that gave
rise to those four charges.

And on 4 March my client was given a good behaviour bond?---

Well, if I had done what Mr Ashton done I'd be in jail and
so would anyone else, but he was given a good behaviour
bond, that is correct.

After the court case you were upset and you complained about the verdict that was given and wanted to appeal against the sentence?---I didn't lodge an appeal and I didn't want to appeal. As far as I was concerned that was it, he was found guilty, I had proved my point. That as far as I was concerned, was the end of it.

It was only after that time that on 7 May 1991 you raised these allegations against my client?---No, I raised the allegations on innumerable occasions both before - - -

Witness, would you look at this letter?

HIS WORSHIP: What is the date of that letter?

MR LAPIROW: 7 May 1991?---It's good to see that someone has been reading my letters.

HIS WORSHIP: Mr Hoser please - - -?---Sorry, your Worship.

Restrain yourself from making any comments?---Right "I have yet to decide whether or not I will charge you with assault and" I had better not say the next bit, you can read that if you wish. "I have also reviewed material from 1.11.90 where you also threatened to kill me and assaulted me and have been told that it would be negligent for me not to charge you accordingly. With this letter you will also receive a summons"

I put it to you that was the first occasion when this was raised against my client?---No, not so and May 7 is certainly - - -

And I put it to you further that there was no allegation in that letter or in any other letter that there was any punching of you?---You're wrong there. You're certainly wrong there.

HIS WORSHIP: Are you tendering that letter?

MR LAPIROW: I tender that letter, your Worship.

HIS WORSHIP: That will be exhibit 6.

EXHIBIT 6 ... Letter.

MR LAPIROW: Mr Brygel is one of your witnesses?---Yes.

Mr Brygel is currently on remand at Pentridge?---Yes.

He is on remand at Pentridge for threatening to kill government
ministers and threatening to kill police - - -

HIS WORSHIP: Mr Lapirow, if you wish to attack the character of
this witness - the next witness - - -

MR LAPIROW: Yes, your Worship.

HIS WORSHIP: Another witness, it cannot be attacked through
this witness?---I'm quite happy to - - -

No, Mr Hoser, do not bother, thank you?---Okay.

Just excuse me while I read this letter which is exhibit 5.

Yes, I have read that, thank you.

MR LAPIROW: At the time of the assault that you allege occurred
on 1 November 1990, Mr Brygel had a camera with him?---Yes,
so I believe, yes.

Well, you would know, would you not?---Yes, I saw him with a
camera, fine.

And he took photographs?---Yes.

Where are they?---I've got them.

Where are they?---I've got them.

HIS WORSHIP: That is the answer to the question, yes Mr
Lapirow?

MR LAPIROW: I put it to you that no assault took place between
my client and yourself on 1 November 1990?---You're doing
your job but you're wrong.

I put it to you that it was invented by you many months after
the event?---I wish it had been, but it wasn't. It

occurred, I was punched, Ashton raised his arms like this, one arm he grabbed me and the other he punched me three times in quick succession, probably quicker than I just did it then, and I backed off and that is exactly what occurred. I suppose just a pattern of behaviour that really shouldn't be allowed.

And the truth of the matter is the last answer you gave to a question is totally false because you do not wish anything not to have happened, you live for this confrontation with the Roads Corporation and - - -?---I certainly don't, if you read all my letters I repeatedly ask for a cessation of hostilities etcetera, etcetera. I'd say that - particularly in the case of Ashton, I've had virtually nothing to do with the man. Him and Brygel have had long hostility, nothing to do with me, now I just happened to be there and he happens to go me. What am I meant to do? Merely because I was associated with Brygel Ashton attacks me, I think that's a bit rough, and that is exactly what happened. I certainly don't - I would rather - if you can see that green book on the table that's my first book, I've written others and I would much rather be sitting in my office writing books, driving taxis and earning money and none of this business. I've got better things to do than be in this court.

HIS WORSHIP: Yes, Mr Lapirow?

MR LAPIROW: No further cross-examination.

HIS WORSHIP: Yes, thank you Mr Hoser. Now, I appreciate re-examination may be a bit difficult but - - -?---I'll do my best. Okay, in terms of points Mr Lapirow has raised "my past record" I can answer some of that. Can I just go to

the table and - - -

HIS WORSHIP: Yes?---Thank you, your worship.

You will have to come back to the witness box?---Okay. That

should cover me for the moment. Okay, terms of my past New South Wales record, what they say on the back cover flap describes what happened, I exposed - of this book, there's sections on this book on page 204 and 205 which give some background information into some New South Wales material. I tender this as evidence for you to read, including the back cover.

MR LAPIROW: I object to that, your worship.

HIS WORSHIP: Yes, on what grounds can I - I mean its - - -?---

Well, it shows official harassment in New South Wales which was one of the reasons I actually moved to Victoria.

It is an allegation made by you of official harassment?---Yes,

documented and it's there. It's been documented in

(Indistinct). Furthermore, in terms of the VicRoads - - -

I do not see how I can accept that as evidence in this court, Mr

- - -?---Fine, that's fine. Okay, the next, if you have a look at - could I please have that exhibit on the multiple hiring one please?

Which, what are - - -?---The Victorian Road something Act they

produced on my unauthorised multiple hiring convictions.

Yes?---Okay, if you could just have that back and just refer to

that for a moment. You'll see that's basically what I've done wrong in Victoria.

I am sorry, there is another - - -?---Well, could you please

bring the other one out as well.

I am sorry, you could be quite correct?---Okay, now if I can

just run back over here momentarily - actually I won't have

to - this is Bob Bottom's Insight magazine which some of you may or may not be aware of and I'm just going to quote from a transcript between myself, David O'Sullivan and Reg Patterson.

Well just a moment, what do you - what are you going to quote?--
-I am quoting the exact conversation that we had which will explain that record.

On what basis do you say it is an exact - - -?---It was tape recorded and the tapes have been transcribed.

Who tape recorded it?---I tape recorded it.

When?---I'm going to find it for you and I will tell you, your Worship.

MR LAPIROW: Your Worship, it would be hearsay in any event?---I am quite happy to produce the tapes for you in this court now. O'Sullivan - - -

HIS WORSHIP: Just a moment. When is this conversation alleged to have occurred?---This conversation occurred - bear with me - he's quoted a lot of transcript here - it saves me going to the file, that's all. 19 June 1991 David O'Sullivan of VicRoads office in Carlton this particular conversation.

Well, what has he got to do with it?---He is the chief of licensing and registration and he was up until recently, the superior officer of Mr Ashton and his - the ones who basically cause the trouble.

On what basis do you say it is admissible as against this defendant?---Well, no, it's admissible in terms of restoring my credibility in light of what you have in front of you there.

No, Mr Hoser, I am sorry but I do not believe it is?---Well,

unless I read it to you, you can't really decide, can you
your Worship.

Mr Hoser, I do not see how it can be. I do not know what it
says but I do not see how anything that it allegedly says
can be admissible unless you can explain some basis of law
in which it is admissible, I do not see how I can give any
regard to it?---You know I am at a disadvantage there your
Worship, because I'm not a lawyer. Certainly - - -

I appreciate - - -?---If I was a lawyer I'm sure I would be able
to get some self-serving Acts, that would help me get this
in as evidence, for want of a better word. Basically what
I want to do is quote - I could say to you quite
emphatically that yes, those charges were all vexatiously
laid and not based on fact. I can do that quite easily.
However, if it comes from the VicRoads side I think that
would have more credibility in your mind if they themselves
have admitted that yes, they should not have laid the
charges.

Well - - -?---Because basically what they are trying to do is
imply that I am a man of dubious character, which is
something I resent very strongly. This occasion today is
not the first time I've been subject to this sort of smear
from these people.

Mr Hoser, as I see it the convictions here do not of themselves
go directly to show that you are of bad character as such.
The circumstances which obviously surround them indicate
that there is a battle between you and the RTA - - -?---By
the RTA to me, not - - -

Mr Hoser, if you would please not interrupt me. And as far as I
am concerned, that is about as far as they do take it, just

because someone indulges in unauthorised multiple hiring, does not mean that they are not necessarily to be believed in the witness box?---Fine.

Accordingly, the value which they are, and the value which any alleged or supposed refutation of them is, it just is of so little rate in my view at this stage, that I am not going to turn somersaults to get in - to allow you to put in some dubious conversation between somebody who I do not know, who is not here to be cross-examined and who - in any event I do not know what they really say anyway, and I do not care because it is not relevant?---Okay, well I will give you some evidence which is also backed up by the RTA and that is from October 1987 I armed myself with this, which in the words of Police Constable Craig Sharkey of the Kew Police, he has one to protect himself from baseless allegations.

Yes?---Now, like him - - -

Mr Hoser - - -?---I have - - -

Mr Hoser?---Sorry.

Please I am not interested in what anybody else does, I am not interested in why you do things, I am interested in what you in fact did and what you intend to produce to me. You say you have a tape recorder, fine, then what?---Now, since me obtaining that tape recording, the RTA have not been able to convict me of any multiple hiring charge.

Mr Hoser, in relation to this charge, what is the relevance of that tape recorder?---It shows that they were unable to charge me.

I am not interested in whether they were unable to charge you or able to charge you or anything, what do you say the

relevance of that tape recorder is to these proceedings?---

On the day in question, the 1.11.90 I was wearing this, it went on before I walked into the court, it was on for the entire duration and after I left the court. It wasn't just on when I was attacked, it was on from walking into the building until I walked out an hour or so later. By virtue of the fact that the tape recorder was running, I was able to obtain an exact transcript of what was actually said on the day by the various parties. Now, this is - I will read it out - - -

MR LAPIROW: I object to this, your Worship?---I tender it as an exhibit.

HIS WORSHIP: Just a moment, Mr Hoser.

MR LAPIROW: The objection is that if this material was available it should have been dealt with in evidence-in-chief and it has not been?---It was.

HIS WORSHIP: Just a moment?---It was dealt with in evidence.

Mr Hoser, would you please not interrupt me, my job is difficult enough. Mr Lapirow, why do you say it is not admissible at this stage?

MR LAPIROW: There has been no cross-examination concerning the tape recording, there has been no cross-examination concerning any transcript of any tape recording. I do not know what the gentleman says has been transcribed or by whom or what, but it was not dealt with in evidence-in-chief nor in cross-examination.

HIS WORSHIP: Bearing in mind that the defendant - I am sorry, that the witness is not a legal practitioner and is subject to rights of examination or objection to the (Indistinct) of the actual evidence itself, I do not see that as a

ground of objection which would render this material inadmissible Mr Lapirow.

MR LAPIROW: Bearing in mind what your Worship has indicated about the future procedure that might follow from that, I understand, thank you.

HIS WORSHIP: Yes. You say you had a transcript, is the tape recording itself?---Yes, I have it sitting in the bag there.

Bearing in mind what I have said about the way in which these proceedings are being recorded I think it is appropriate the tape be played rather than a transcript be merely read to the court?---Fine. I will tender you a transcript so you can read the transcript as the tape goes so that you can see it is true and accurate.

Yes?

MR LAPIROW: The reservation that the defence would have regarding the tape recording is that there are many ways in which tape recordings can be manufactured.

HIS WORSHIP: I appreciate that Mr Lapirow.

MR LAPIROW: Other than that your Worship, there is nothing that I can say.

HIS WORSHIP: It is in exactly the same situation as oral testimony or other exhibits.

MR LAPIROW: Yes, your Worship.

HIS WORSHIP: How long does the tape go for Mr Hoser?---The relevant section, probably five minutes.

Can you find it simply?---I will do my best. Can I tender the transcript as well?

I will look at the transcript whilst the tape is being played, you can hand it to me now while you try and find it?---I

have an embellished and an unembellished version.

I do not want to see any embellishment, all I want to see is - -

-?---The unembellished version, fine.

An alleged transcript of the actual tape.

MR LAPIROW: Your Worship, would the defence be entitled to see that as well?---Yes, I can give you a copy.

HIS WORSHIP: Yes, if you show that to Mr - - -?---There you go, I've got another copy from - you can keep that as a present from me.

Mr Lapirow, I understand that the co-ordinators were loathe to give you a date until the matter was completed today.

MR LAPIROW: Until closer to four o'clock, yes your Worship.

HIS WORSHIP: I indicate that I will adjourn at a quarter to, five to, or ten to, at a convenient stopping point, but it would appear that we are not going to get - we are certainly not going to finish Mr Brygel I would have thought?---I intended called Olsen and Schofield first actually, because I thought it would be quicker.

I am just concerned that Mr Brygel has been brought here from Pentridge and if there is any possibility of him being dealt with today.

MR LAPIROW: (Indistinct) your Worship.

HIS WORSHIP: Very well?---This particular recording goes well over 60 minutes - - -

MR LAPIROW: Your Worship, it is apparent that cannot be the tape.

HIS WORSHIP: Sorry?

MR LAPIROW: It is apparent that cannot be the tape?---Why.

The tape recorder that it was taken on appears to be a mini cassette and that's a full size cassette?---That's right,

this recorder tapes, it does not play. I can produce the micro cassette if necessary but it - this is the only way you'll actually hear it.

Your Worship, the difficulty that I have is that if is intended to be a tape and not a dubbed and mixed version of the tape - - -?---Well - - -

HIS WORSHIP: Just a moment, Mr Hoser.

MR LAPIROW: The recorder which I had thought that I saw in the witness box was one which took the smaller cassettes. That appears to be a standard cassette. Now, I could be wrong on that, my eyesight might be faulty.

HIS WORSHIP: No. Mr Hoser, you are not entitled to ask questions of other counsel. This is my court and you will direct any questions to me. What is that tape that you are intending to put into the big machine?---That is an accurate tape recording taken from the micro cassette because this - - -

By whom?---By myself, I have - now, I resent - - -

I do not care if you resent it or not Mr Hoser, when was it made?---From the small tape to the large tape, the same day probably. That afternoon. I resent allegation or implication by my learned colleague here that I have been mixing and dubbing tapes.

Yes - - -?---I resent that in the strongest possible terms and I ask you to direct him to either retract it or to put it in writing.

Mr Hoser, you are in the hurly burly of court, now you are entitled to resent but that is part of the way in which these courts are operated. If you seek to represent yourself then you have to do it as best you can. I will

allow the large tape to be played, it is a question of (Indistinct). There must be another power point somewhere?---I will just pass this over to you and you can plug it in. As soon as you have plugged it in I will try and find it.

I will leave the bench while you do that?---It will only take a minute.

ADJOURNED AT 2.46 PM

RESUMED AT 2.50 PM

HIS WORSHIP: Yes.

TAPE PLAYED

HIS WORSHIP: Yes?---The tape keeps going for about another hour but I think that's the end of the relevant section.

Just tell me about that tape, Mr Hoser. That is a - you say what you have just played is entirely edited?---Yes.

Transposing of the micro cassette?---Yes, onto the large tape.

It's a standard practice because the micro - - -

Recorded?---On 1.11.90.

And there are no - nothing is added or left out?---No, no.

There was another case tape on that - - -

I am only talking about that bit - that portion which you have just played to me?---Yes.

There has been no deletions?---Nothing.

No telescoping, no silences - - -?---No, nothing, no.

Would you play that again please? I would like to hear that again?---Fine. On my embellished version I actually had - - -

I am not interested in your embellished version Mr Hoser.

TAPE PLAYED

HIS WORSHIP: Yes, thank you. Now, I intend giving Mr Lapirow

the opportunity to ask you some questions about that tape, if he wishes but before doing that, is there anything else that you wanted to put to me in re-examination?---Yes, quite a lot. That particular - the letter he gave me - the letter that was given to me by George Olsen on that day, in the blue envelope was in fact a thing that says "Request for further and better particulars" and it was a letter requesting full details of my allegations in relation to my allegation of assault on 7 November 89. Now, that letter - I have got a copy there if you wish to look at it, but basically it just - it was in a format of request for further and better particulars and if anyone wishes to see it I will just put out the letter. That particular letter was served on me on that date. Now, one of Mr Lapirow's arguments has been this time that today is the first he has known of the allegations, which is complete and utter crap, and on the assumption - - -

Mr Hoser, I know that this is a matter which is very dear to your heart and your - - -?---(Indistinct).

Getting carried away, but please, I ask you again, please calm down and just remember where you are?---Fine, okay, well, what he stated was not true and had it been true I have no doubt at all that I would have been served in due course in relation to this matter another one of those letters which says "Request for further and better particulars". Now, in relation to these charges before this court on this day, Mr Ashton gave me no such letter and I should also mention that in response to Mr Ashton's request for further and better particulars, he was of course provided with a set of the allegations which had in fact been provided to him some

time earlier anyway. As far as - so the main thing - if I can just - another particular point that is very important is Fay Miles, the independent arbitrator in relation to this situation with reinstatement of my taxi licence and my whole position with the VicRoads, Derry Ashton was unique among VicRoads officers she approached in that he refused to speak with her.

As I have indicated before I am not - I can place no weight on his - - -?---That's fine.

His refusal or anything like that, he has the right to silence?--

--That's correct, I understand that. However, one thing that must be borne in mind is that although he has the right to silence he cannot now turn around and say that he doesn't know of the allegations. That is what I submit. Basically what happened was, Ashton came out, I approached him - - -

Mr Hoser, I am perfectly aware of the - - -?---Scenario.

Sequence of events as you have described it?---Fine.

Is there anything else you wish to put before me or tell me, or any other documents that you want to show me?---Well, there's innumerable but you would probably regard them as being extraneous to the event itself.

Mr - I will be perfectly - I will make it perfectly clear the opportunity that I am giving you. It has been put that the first time - and it has been put on the basis of exhibits 4, 5 and 6, that the first reference to this assault, this alleged assault, was made on the letter dated the same day as the summons. You have referred in answer to questions that it has been mentioned innumerable times and that is your word, are you able to produce to me any documents

which you say pre date 7 May which refer to this assault?--

-Yes.

Directly and unequivocally?---Yes, not a problem. There will almost certainly be one either the same day or within one or two days subsequent to the assault.

You say - - -?---Yes, just bear with me.

Well go ahead and produce it?---I have already told you I had two four drawer filing cabinets chock a block full of files. When I come to court quite often I lug suitcases, but this is a problem I had with Fay Miles, I was unable to bring everything at once and when I saw her I had to go back and see her three or four times with the documents she was asking for. Now, I can quite easily produce for you the letters but I will have to go to my filing cabinets and whip them out.

Are you telling me that you do not have them at court?---They are not at court, but they are at home and there'd be duplicate sets elsewhere as well. What I would ask you to do is allow the case to continue and I will produce them at the subsequent hearing and you can see them then.

Why are they not here today?---Because I didn't really think - I didn't know he was going to raise that, that was the last thing I expected him to raise. I expected Mr Lapirow to - - -

Very well, I do not want to know what you expected him to do.

Yes, very well. Is there anything else you want to say?---
Yes, if you have any dispute as to that particular point, I will bring them in at the next case, regardless I will bring them in.

It is entirely a matter for you what you do Mr Hoser?---I will

bring them in in the next case. I seek your indulgence to allow me to tender them as an exhibit if I am not being examined at the time. Is that fair enough, your Worship? It is a matter for you, you make the application when you want to do it. I note that you foreshadow the application though?---Thank you, your Worship.

I will hand back the copy of the transcript to, at this stage - no, perhaps - do you want to cross-examine on it?

MR LAPIROW: Your Worship, I would ask that the tape be taken in evidence.

HIS WORSHIP: I certainly take the tape, but - I am sorry - are you going to want to cross-examine on it?

MR LAPIROW: No, other than put the material in because the material is quite important in my submission?---Yes, fine, that's all right.

HIS WORSHIP: Yes?---The only other major point of importance I can - I want to refer - just bear with me, I will go and get it. I tender here the request - this is a copy of the request for further and better particulars tendered by Ashton in relation to the first case, previous case in which he was given a summons and then he - - -

What is the relevance of that to this case?---Basically just, he's had ample opportunity to ask more about the allegations prior to today. Also in that particular case I have here a file compiled by Peter Bell who coincidentally is in the court room now, who did an investigation in relation to that assault.

What is the relevance of any material in relation to any previous assault, to this alleged assault?---Basically it shows that on that occasion and this occasion Ashton has

had ample opportunity to ask for more information in relation to the assault, which he has not availed himself to. All I have received from him on my recollection, is some letters threatening to damage me financially and so on, should I pursue the matter which is what I've got in relation to that one as well.

What do you say about any of that Mr Lapirow?---I can produce those letters - - -

MR LAPIROW: I do not know the relevance of any of this, your Worship. I have got reservations obviously acting as counsel for the defendant, in a criminal prosecution to the prosecution not having what he now says is essential evidence in court, and there is just too much opportunity for fabrication between now and the next time?---That's a - - -

HIS WORSHIP: Just a moment, Mr Hoser. Mr Lapirow, in relation to the - the point that is being made is that - I think there are two points being made, one is that on the face of it, you are making the point that the specifics of the allegation have not been raised before today and seeking to have me draw some inferences from that, and the witness is tendering the first document to indicate that in the past clearly the defendant has had no compunction or difficulty or problems with seeking such particulars. I think the point is - the point that the witness is making is well made and properly made, that the inference that you would have me draw really is not really necessarily to be drawn given the fact that no request was made and - - -

MR LAPIROW: The obvious - - -

HIS WORSHIP: I appreciate that ultimately it all rests with me

but I think that I intend to allow the first document,
namely the request for further and better particulars - - -
MR LAPIROW: There is no difficulty with that, your Worship.
HIS WORSHIP: To be tendered. As to the other documents, they
do not advance the proposition any further.
MR LAPIROW: Your Worship, there is no difficulty with the
request, what has not been dealt with by this witness is
his response to it because on my instructions no response
was given anyway?---No, that's not true, that - - -
HIS WORSHIP: Mr Hoser, I will warn you one more time, do not
address counsel - do not address anybody in this court
except me?---I'm sorry.
Now, that is matter which was not taken up in cross-examination.
I intend to let that letter past. It seems to me in any
case to be of little weight.
MR LAPIROW: Yes, your Worship.
HIS WORSHIP: So I will allow that first document which is the
request for further and better particulars - have you got a
copy which has not been scribbled over, Mr - - -?---A new
one at home but that's the only one in the file there, I
could check the file, there's about half a dozen files
there with all sorts of bits and pieces, I could check,
there probably is an unscribbled copy. Just bear with me
and I'll - - -
No, it is all right, I will allow this to stand. 29 October
1990 is the date of the document, that will be exhibit C?--
-I don't want to sound like I am making gratuitous
remarks - - -
Well then, do not make any remarks, Mr Hoser?---This one that I
don't think should be allowed to pass, I know you just

asked me not to but perhaps you could let the other side have a look at it just to check that it - well, it isn't fabricated.

EXHIBIT C ... Request for further and better particulars.

HIS WORSHIP: (Indistinct) Mr Hoser, ultimately?---I'll just - -

Are there any other matters that you wish to raise?---Two brief ones.

Yes?

MR LAPROW: In the meantime, could that tape perhaps be marked as an exhibit?

HIS WORSHIP: Yes?---Your Worship, I can be of assistance, that first one you requested, here I have an unembellished version with photostats of the envelope as well, of the letter tendered by Ashton.

Yes, well I will hand that back then?---What was the date on that?

29 October apparently?---Fine, on November 2 I gave Mr Ashton this letter which I will tender to you.

You gave to Mr Ashton?---I sent it either - it was not only given to him it was posted or faxed to him, presumably both, I usually fax and post and get a fax return sheet which acknowledges receipt, which I would have got. That's the copy of the letter anyway.

MR LAPROW: May I see that before it goes in evidence?

HIS WORSHIP: Yes?---And subsequently I got another reply from Ashton which was very hostile, basically said he was acting for himself or he was not going to tell me who he was acting for and on November 13, 1990 again Mr Ashton was faxed and post, along with his superiors in VicRoads, this

three page letter detailing further and better particulars.
You can't really complain that I wasn't forthcoming with
the information.

MR LAPIROW: Before those go in, I have no objection to that
one, your Worship. May I see the other two?---Yes. And on
that basis - - -

HIS WORSHIP: Just a moment. This one will be - this is a
letter to the defendant dated 2 November 1990, this will be
exhibit D.

EXHIBIT D ... Letter to defendant dated 2 November 1990.

MR LAPIROW: There was mention of a letter from my client, your
Worship, I have not been handed that yet.

HIS WORSHIP: The letter served upon myself yesterday, I think -
is that the letter dated 29 October?---Yes.

The further and better particulars?---Yes, it was served on me
on the first by George Olsen, as per the tape, as per that
letter.

MR LAPIROW: I am sorry, your Worship, as I understood the
witnesses last evidence, he said that he wrote a letter, I
asked to see that letter, he then said he received a reply
from Mr Ashton, I have not seen that yet and I have asked
for it?---If you could just look at those two, the first
letter I asked Ashton for whom his acting solicitor was. I
haven't got a copy here, I could re-check but in that
particular file there wasn't a copy of his reply which
basically said words to the effect of - - -

No, excuse me, I thought the evidence was your Worship, that
there was a letter from my client and I thought that
would - alleged to be from my client - and I thought that
was being put in evidence and I ask - - -

HIS WORSHIP: It has.

MR LAPIROW: I have not seen that letter.

HIS WORSHIP: Yes, thank you, that is dated 29 October, that is exhibit C at this stage. Part of exhibit C?---The second of those letters I think it refers to an intervening letter
- - -

Just a moment?---If you will read those two letters you will see
- - -

MR LAPIROW: Your worship, I understood that the letter the witness referred was after that date in reply to a letter from Mr Hoser.

HIS WORSHIP: What I have at the moment is a letter dated 29 October which was allegedly served on the defendant by - on the witness by Mr Olsen on the 1st, then I have a letter dated the 2nd which acknowledges receipt of that and asks for a referral of the lawyer?---Yes.

And after that I do not have anything?---There's a three page letter, do you have the three page one there?

MR LAPIROW: No, I have still got that your Worship, I am having a look at it.

HIS WORSHIP: Yes?---What I can help you with, after I served that letter - - -

Just a moment, let us let Mr Lapirow have a look at that rather than having to look at it and listen to evidence at the same time.

MR LAPIROW: Your Worship, there is no objection to that being admitted.

HIS WORSHIP: Yes. It is a letter to defendant dated 13 November 1990 and being exhibit E. I will just look at that.

EXHIBIT E ... Letter to defendant dated 13.11.90.

HIS WORSHIP: Yes, we have read that?---I was looking for a copy but I couldn't find one. That second letter, the three page one, probably on the first few lines it probably refers to another letter from Mr Ashton, does it? I don't have the letter in front of me, I can't see.

Yes, there it is, pointed out?---Thanks. Mr Ashton did actually post me a subsequent letter to the further and better particulars merely informing me that it was none of my business as to who would be acting for him on the day.

Do you have a copy of that letter?---I don't have it here but there is a copy at home in the files. Just if that wishes to be raised I - - -

Yes?---Another thing, in relation just to this independent arbitrator Fay Miles, some of the things, some of the points she makes in her report - - -

No, Mr Hoser, I am not prepared to admit anything in relation to any determination by any court. There is a very well established rule of law which - - -?---She wasn't actually a court, sorry.

There is a very well established rule of law which states that - basically that any conclusion reached by any other body is not only not binding on this court, but it is irrelevant to a consideration of any matters under - it is irrelevant to the proof or otherwise of any matters under consideration of this court?---I understand that your Worship.

So I am not interested in any conclusions reached by anybody else on any other material?---I understand that your Worship, I'm sorry for trying - for introducing it.

That is all right?---Okay. That is all I want to actually admit

at this stage - - -

Mr Hoser, I caution you that it will only be in exceptional circumstances and with the consent of the other side that you will be able to get to lead any more evidence yourself in relation to these matters?---Okay, well - - -

Now I appreciate you have already foreshadowed an issue in relation to correspondence which I will deal with when and if it arises but think?---Once again, one other thing though, in relation to the photos that Mr Brygel took, they will want to come before the court at some stage. I had presumed it would be most prudent for him to - for them to be produced when he is called as a witness on the basis that he took the photos.

That is correct?---Is that a reasonable assumption from my side or shall I produce them now? Or perhaps the (Indistinct) have him produce them.

That would probably be strictly the appropriate way to deal with them, however with the consent of Mr Lapirow they might properly be tendered through you if only for identification. Mr Lapirow, what do you say?

MR LAPIROW: I would have preferred Mr Brygel to have given the evidence.

HIS WORSHIP: Yes, in that case I will not over-ride that?---
Okay, nothing further.

Thank you, resume your - Mr Lapirow, did you want to ask any questions or cross-examine the witness at all about the tape recording?

MR LAPIROW: No, I am happy with the tape recording, your Worship.

HIS WORSHIP: Yes, you can take a seat Mr Hoser.

WITNESS WITHDREW

HIS WORSHIP: Who is your next witness?

MR HOSER: I now call - just bear with me - George Martin Olsen.

GEORGE LEONARD OLSEN, sworn:

HIS WORSHIP: Yes, Mr Hoser, I will just make it quite clear at this stage that you are not permitted to ask leading questions of this witness. What is and is not a leading question can be stated fairly simply but it is not always that simple in practice. You should not ask him any question which suggests the answer or put any proposition to him and ask him to agree with or disagree with it. Put simply your questions should really be sort of along the "What happened next" line, do you understand that?

MR HOSER: Yes, I understand that. One thing I may mention your Worship, at this point, is I have been advised that if Mr Olsen tells something that is demonstrably false and can be proven so I can invoke hostile witness provisions of - I have the Act written in front of me - some Act and then cross-examine him and I just thought I would mention that at this point just in case - - -

HIS WORSHIP: You can take it that I know something about the rules in relation to hostiling witnesses, Mr Hoser and they are fairly complex so I hope it is not a case of a little knowledge being a dangerous thing, but we will see. First of all Mr Olsen, would you tell me your full name, your address and your occupation?---My full name your Worship is George Leonard Olsen, I'm an officer of the Roads Corporation and my work address your Worship, is Princes and Lygon Street in Carlton.

Yes, Mr Hoser?

MR HOSER: Mr Olsen, I will put you back to November 1, 1990, do you remember that day?---Not for any specific date, no.

I will try and refresh your memory a bit. Do you recall at some stage about that time, coming to court along with your friend Mr Ashton and Peter Schofield to - where Mr Ashton was summonsed to appear on some charges?---Yes, if that's the particular date in question, I was present at Melbourne Court on that day.

Do you recall the weather that day?

HIS WORSHIP: Is that really relevant?

MR HOSER: I was just (Indistinct)

HIS WORSHIP: And it is not suggested that it was raining cats and dogs and everyone was ducking into doorways or anything?

MR HOSER: I would be putting it was sunny but I just thought I would ask him if he remembered?---It was a very nice day as I remember your Worship.

Did you see - basically do you remember - can you just tell me your version of events from the time you entered the building until the time you left?---On entering the inside of the court building, shortly after entering the building I came in contact with you and I believe another person who I know was with you. In his presence and in front of officers Schofield and Ashton I gave you a letter and you opened the letter and asked me what it was about. I think you gave me a general question "What was it about" and I said to you "If you read the letter it is self-explanatory" and I then turned and left the court building with officers Ashton and Schofield.

Now you say I opened the letter, are you sure of that?---Yes.

100 per cent sure?---Well, as best as I can remember, I thought you opened the letter because you had asked me what it meant.

MR LAPIROW: Your Worship, I object to this cross-examination of the witness.

MR HOSER: Sorry, okay yes.

HIS WORSHIP: Mr Lapirow, if I could just say this, if you are fair dinkum about the objection the time to do it is before the answer is given, but I appreciate what you are saying. I will be more on my guard too but I think the evil that can be done by a leading question needs to be prevented as quickly as possible.

MR HOSER: I will try my best to avoid leading questions. Mr Olsen, tell me, is that the conversation you had with myself on the day?---As far as I know that's all that was said, that's all I can recall anyway.

You definitely did not (Indistinct) the letter and ask me what -
- -

HIS WORSHIP: Mr Hoser no, see this is the problem.

MR HOSER: No, it was okay.

HIS WORSHIP: If you do not get the answer you like, that - if you do not get the answer you want, that is too bad. It is your witness.

MR HOSER: No worries. When you walked out - did you walk out of the court - when you walked out of the court building, can you tell me where you handed me the letter, where I was when you handed me the letter?---It was I believe, in the main hall downstairs.

What, between - when you say main hall, which particular part of the main hall?---Between the main entrance on the corner

and the middle door which I think is closed today.

Somewhere in that area.

Which door did you leave the building from?---The middle door, which is closed.

You left through the middle door, and then where did you go when you left?---Well, we turned slightly to the left offices - Ashton's car was parked on the, well virtually opposite Russell Street opposite the court and we walked slightly - - -

HIS WORSHIP: Just a moment. Turned slightly left?---Out of that door, your Worship.

This is the door down here at the end of the courtyard?---Well, the middle door as you come out, we turned left there.

Into Russell Street?---Yes, your Worship.

Your turned slightly left. So Mr Ashton's car was parked where?---Further ahead along from that entrance in Russell Street.

So it was further north, further towards Victoria Street?--- That's right, yes.

MR HOSER: What distance from the door, towards Victoria Street?---I would say 10 metres perhaps.

So about - what is that, about two car spaces, something like that?---I think it would be a bit longer than that.

Three car spaces?---Whatever, yes. So, it is somewhere in that area.

Just correct me if I am wrong, tell if I am leading questions, you basically saw Mr Ashton get into his car, and then what happened?

MR LAPIROW: No, I object to that.

HIS WORSHIP: That is not the evidence of the witness. You

indicated that you turned left because that is where Mr Ashton's car was?---That's correct, your Worship.

What happened then, what did you do then?---Well, perhaps if I took it this way your Worship, Officer Ashton was about five to six feet in front of officer Schofield and myself, officer Schofield was to my left as we walked out of that entrance on to the footpath in the direction of officer Ashton's car and that was the situation approaching his car.

MR HOSER: So, what, Mr Ashton was walking along, you were five feet behind him and you walked out of the same door?---That's correct.

Where was Mr Schofield?---He was to my left on my left side. He was definitely on your left side?---Yes.

So you were like walking down as a pair?---That's right, as I remember, that's right.

Then what happened? Okay, you have walked out as a pair, like side by side, out that door, this is your evidence, that's right? Is that your evidence?---That's what I said.

And then - Mr Ashton was in front, and then what happened from that point onwards?---From that point on I believe you came around on the further left side, you walked past us - well walked or ran past us very quickly and you ran directly in front of officer Ashton and stopped.

So you are saying I had actually followed Mr Ashton out of the building?---That's correct.

Right, okay, so you are saying I followed Mr Ashton out of the building?---You came from behind us, that's all, I'm not saying you followed him, you came from behind us and you stopped in front of him, you put yourself in a position

directly in the path that he was walking.

What did Mr Ashton do at that point, assuming (Indistinct)?---

Okay, well, he - as I remember you stopped directly in front of his body, he stopped immediately and walked to the left round you.

So Mr Ashton is walking along, I will accept my position, walking along like this, I am where this chair is say, and he then walks around like that, is that correct?---He stopped, you stopped directly in front of him, he then stopped for the moment because he didn't want to walk over you, he then went directly around you to your right, his left.

Did Mr Ashton here do anything that could be construed as violent, at any stage?---I didn't see him do anything violent other than walk around you.

We will assume walking around a person is not violent. Tell me, did he ever raise his hands up like that at me?

MR LAPIROW: That is a leading question, your Worship.

MR HOSER: Sorry, did you ever see Mr Ashton do anything with his hands?---No, I didn't.

You never saw him raise hands?---I didn't.

You never saw him punching?---No.

You were following Mr Ashton so presumably you would have seen everything he did?---Well, yes I was five feet behind and slightly to the right, I had a reasonable view of what he did.

You certainly saw - your story here is that I stood in front of you?---No.

Sorry, I stood in front of Ashton and Ashton then walked around me, you certainly saw all that, did you not?---Yes.

And then you saw Mr Ashton get into the car?---Yes.

Assuming - if Mr Ashton had hit me, you would have seen that?---
Yes.

And you never saw him hit me?---No.

If Mr Ashton had raised his hands like that, you would have seen
it?---I think so, yes.

And he never - - -

MR LAPIROW: This is cross-examination.

HIS WORSHIP: Mr Hoser, this is cross-examination.

MR HOSER: Sorry. But you never saw him - you did never see him
do anything of the sort, did you?---No.

Your Worship, can I invoke hostile witness material here, if I
can show that Mr Olsen is telling blatant lies?

HIS WORSHIP: Leave the witness box please Mr Olsen and just go
outside the court.

WITNESS STOOD DOWN

HIS WORSHIP: What do you say - what material do you say shows
that this witness is not telling the truth?

MR HOSER: He says he never saw Ashton raise his hands, he says
he never saw him punch - - -

HIS WORSHIP: I have heard the evidence of the witness. What
material do you intend to use to demonstrate that what he
has said is not true?

MR HOSER: Mr Brygel's photos quite clearly show Mr Olsen was
one, in full view looking at it happen and two, Mr Ashton
was grabbing me and then punched me.

HIS WORSHIP: I have not got these.

MR HOSER: No, I know that, but basically it does show - - -

HIS WORSHIP: Mr Hoser, until those photographs are properly in
evidence they cannot be used for any purpose.

MR. HOSER: They cannot be used to invoke hostile witness provisions?

HIS WORSHIP: Not at this stage.

MR. HOSER: Right, what also can be shown as hostile witness, that tape recording that has already been tendered as evidence and the transcript, shows quite clearly there was none of that conversation that Mr. Olsen and I had that he said. Olsen made out we had quite a lengthy - you know, he stated what we supposedly had in conversation and me asking him about the letter and so on, that was clearly not on the tape recording.

HIS WORSHIP: Mr. Hoser, merely because material exists which is in conflict with the evidence of the witness, does not mean that the witness is lying, because the material is subject to - all the material is subject to scrutiny and I as the ultimate arbiter in this case can accept it or reject it. The only way in which you could - or it seems to me, the only way in which you could successfully seek to have this witness declared hostile, would be to prove to him that he - or prove to the satisfaction of the court, that he had made a prior inconsistent statement, in other words that at some time prior he had said "Yes, of course Mr. Ashton snotted you but I am not going to say that" or that he made a statement which agrees with what you say. Or, if you can produce admissible evidence which clearly demonstrates - and incontrovertibly demonstrates that what he has said is not true. For example, a video tape or for example, a passport application and visa from him which indicates that he was in Timbuktu at the time, you could then put that to him and if he agreed with it, then you would then - - -

MR HOSER: So he has to agree with something before he can - - -

HIS WORSHIP: It has to be incontrovertible, or I have to accept that it is incontrovertible before it is capable of rendering the witness hostile. I told you it is a complex area of law.

MR HOSER: Having said that, my learned friend next to me, he has accepted the tape recording, he - - -

HIS WORSHIP: He has not accepted it, he has let it go into evidence.

MR HOSER: Well, at what stage - you say incontrovertible evidence, even a passport, Mr Lapirow here would turn around and say it is a forgery probably. So on that basis, at what point in time do you turn around and say "Right, there is evidence that is incontrovertible"?

HIS WORSHIP: When you show me something which is admissible. If you like you can play him the tape and if he agrees that that is a tape of him then maybe - and then you ask him what he says about it. If he agrees that "Yes, that is a correct of what I said, yes I must have been mistaken" well then that is it, that tape recording is corroborated, but it does not give you the right to cross-examine him.

MR HOSER: Okay, can I please do that then, play the tape recording and see how we go from there and keep going I suppose, on that?

HIS WORSHIP: What do you say Mr Lapirow?

MR LAPIROW: Your Worship, the witness has given his evidence, it does not support the prosecution case. All my learned friend - I will withdraw that - all the prosecutor seeks to do is to cross-examine his own witness by whatever means he can.

HIS WORSHIP: I have another difficulty with this Mr Lapirow, and it seems that the witness - that the informant is calling witnesses that he does not believe - that he is not putting forward as witnesses of truth.

MR LAPIROW: That certainly comes into the question of beyond reasonable doubt, does it not your Worship?

MR HOSER: Yes, that is a fair assumption, I did not expect those witnesses to tell the truth.

HIS WORSHIP: In that case Mr Hoser, with respect, I am sure Mr Lapirow would love you - he is quite happy for you to call them, but I have a difficulty, a great difficulty with the proposition that you are calling witnesses who you do not believe are telling the truth because as witnesses for the prosecution you are putting them forward as witnesses which support your case and you are not doing that.

MR HOSER: Well, they were there, they saw what happened. My submission is when they go in that box and they go under oath they should tell the truth. That is my understanding of the law, you go into the box, you tell the truth. Mr Olsen on this occasion has not done so.

HIS WORSHIP: You say he has not done so.

MR HOSER; Okay, I say at this stage he has not done so, that is fine. But this - he is under oath, I expect when I put someone there in the box, to say "Right, you're under oath" I expect the truth. Mr Olsen obviously does not take it very seriously.

HIS WORSHIP: Mr Hoser, you see this is - there is a very old saying that people who act for themselves have a fool for a client. I do not mean that personally but you are now experiencing the difficulties which arise when you appear

on your own behalf - - -

MR HOSER: I understand that, your Worship.

HIS WORSHIP: Because you are somewhat - your objectivity must be compromised.

MR HOSER: I understand what you are saying, I agree with it too.

HIS WORSHIP: This is - at this stage in my view, you have not come within a bull's roar effectively, of hostiling your witness. It seems to me merely that the witnesses have not given a version of the evidence which is one that you would subscribe to. I suppose in one sense that is the difficulty and the inherent flaw with any system like this, is that people get in the witness box and swear to tell the truth, they must be assessed on what they say and if as I have constantly said, both in this job and in a previous job, if people get in the witness box and are telling lies, that they are reasonably good at, there is no defence against that. So at this stage it seems to me that any application to hostile the witness is entirely premature. Yes, would you call Mr Olsen back. Unless there is something else you want to put to me before he comes back in.

MR HOSER: No, not at this stage, your Worship, thanks for your help.

HIS WORSHIP: Yes, Mr Olsen, please?

GEORGE LEONARD OLSEN:

HIS WORSHIP: Mr Olsen, you have been sworn and you are still on oath, do you understand that?---Yes, your Worship.

MR HOSER: Mr Olsen, just to refresh your memory, I want to play a tape recording of what occurred on the time, there is no

objection to that, is there? Just to tell if that is true and - as your recollection of the conversation?

HIS WORSHIP: What do you say Mr Lapirow?

MR LAPIROW: Your Worship, there is a fair bit of theatrics involved in introducing the preamble to the question. There is perhaps no point in objecting to that if the prosecution wants to play a tape and ask a question of the witness regarding that tape, he is entitled to.

HIS WORSHIP: Yes, I think that is right. Mr Hoser, would you get the tape to the appropriate spot?

MR HOSER: I will just be playing a tape recording - - -

HIS WORSHIP: Just listen to the tape recording Mr - - -?---Yes, your Worship.

TAPE PLAYED

HIS WORSHIP: All right, turn the tape off.

MR HOSER: The early part of that - - -

MR LAPIROW: I ask that the question not be couched in any leading fashion.

HIS WORSHIP: It might be best if I ask the question. Mr Olsen, do you recognise any of the voices or any of the words said on that tape as belonging to you?---I couldn't understand any of it except the last bit your Worship that said the words "Assault".

I think that is about it Mr Hoser.

MR HOSER: So I cannot ask any more questions on that?

HIS WORSHIP: You can ask him more questions but - - -

MR HOSER: Do you recall having a conversation to me to the effect of - - -

HIS WORSHIP: No, Mr Hoser that has got to be a leading question. It has got to be a leading question.

MR HOSER: What happened after you - I am sorry (Indistinct) I am a bit confused and some of you might be as well, upon walking out of the court you and Mr Schofield were walking together as a pair, is that correct?---I said that before. Mr Ashton got into his car by himself, is that correct?---That's correct.

And then tell me what happened from that point onwards in relation to yourself and Mr Schofield and Mr Ashton?--- Well, as far as I can remember, Mr Ashton simply drove off, officer Schofield and myself were walking together then crossed Russell Street and went to our car and then we left.

Where was your car parked?---It was parked down near the old ambulance station in Latrobe Street.

Is that that way or that way, towards Spring Street or towards Swanston Street?---Towards Spring it would be, going that way.

Which side of the road was it on?---On the left hand side of the road, I believe it was on the left hand side of the road.

On the left hand, going down?---You always have to be on the left hand side of the road your Worship, we drive on the left in Australia.

HIS WORSHIP: Shall we say the north side of the road?---Yes, that would be correct, your Worship.

MR HOSER: So although you had full view of Mr Ashton, you at no stage saw him raise his arms at me or hit me, or anything like that, did you?---I didn't think I used the words "Full view". I was behind him slightly to the right and I did not see him raise his arms to you, no, or punch you or anything else.

You do understand the meaning of being under oath, you have got to tell the truth?---Yes.

You are aware that perjury is an offence?---Yes.

You said I was with someone, who?---Alan Brygel.

Was I with anyone else?---Not to my knowledge, there was certainly no one else present there in that immediate area when we left the court.

What was Mr Brygel doing all this time when I supposedly jumped in front of Mr Ashton?---I think he was taking photographs from behind you.

Behind me?---That's correct.

Do you know what he was taking photos of?---That immediate vicinity that we were in, he was shooting from over your back.

So my back would have been to him?---That's correct.

Did I do anything to provoke an attack by Mr Ashton?

HIS WORSHIP: No, I will not allow that question because there is no evidence - unfortunately Mr Hoser, it is the answers which are the evidence, not the questions. Thus far this witness has not agreed that there was any attack.

MR HOSER: Fine. Was there a particular reason why you served that letter on me as opposed to Mr Ashton?---Yes, I think Mr Ashton had some concern about you, or being in your presence alone so he particularly asked for witnesses to accompany him that day because he is aware of some of your past performances.

What past performances?

HIS WORSHIP: No, I think this would have been dubious if it came out in cross-examination but - - -

MR LAPIROW: I thought that too your Worship, but I did not ask

the question.

HIS WORSHIP: Yes.

MR HOSER: Can I please - there is one of those exhibits, a letter dated 2 November, could I please have that for a moment?

HIS WORSHIP: Whose letter?

MR HOSER: It was from me, tendered by my learned gentleman next to me.

MR LAPIROW: I suspect that what the prosecutor is referring to is the letter addressed to John Connell dated 2 November.

MR HOSER: That is the one. Could I please have that for a moment? I want to tender you a letter and I refer you to the - - -

MR LAPIROW: I object to this your Worship, it would only be by way of cross-examination, there is no evidence the letter goes to anyone except the person to whom it was addressed.

MR HOSER: Except his name is in the letter and it mentions assaults and so on.

HIS WORSHIP: So what?

MR HOSER: Okay, well I cannot tender it - - -

HIS WORSHIP: What is the point of - - -

MR HOSER: I was just going to ask him, how do you demonstrate hostility to myself in the past including assaults, on no fewer than three occasions.

HIS WORSHIP: Have you ever assaulted this man?---No, your Worship.

MR HOSER: Have you ever threatened to assault this man, as in myself?---No, your Worship.

Never? If that is the case, you can sue (Indistinct) - there you go.

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HIS WORSHIP: Thank you.

MR HOSER: I am just flabbergasted your Worship - - -

HIS WORSHIP: Mr Hoser, it is one of the difficulties with - - -

MR HOSER: Did Brygel say anything to Mr Ashton or myself when -
at any stage, that you can recall, or - - -?

HIS WORSHIP: I am sorry - Mr Brygel, did he say anything to - -
-

MR HOSER: Anyone at the time that you can recall?---Yes, he
said something to officer Ashton "We're going to get you
for what you did to us".

Are you sure he said it on this particular day or he said it on
some other day?---I'm pretty sure it was that day, the day
he was taking the photographs.

Can you explain why it is not on any tape recording?---I don't
know. I didn't make any tape recording.

Did Brygel say anything else?---Not that I heard.

Did he do anything else?---He was only taking photographs, as
far as I could see.

What clothes was I wearing on the day, do you remember that?---
Wouldn't have a clue.

Do you remember whether I had anything in my hands at all,
either hand or one hand or both hands, or whether I was
carrying anything at the time?---No, I don't.

HIS WORSHIP: We are now talking about outside?

MR HOSER: Yes, outside. Do you remember me carrying anything
at the time like files in one arm or anything like that?---
I don't really no.

Do you remember me having things in both hands, by my side - if
you can just look at me for a moment - something like that?

MR LAPIROW: Your Worship, this is cross-examination.

MR HOSER: Sorry, okay, you do not recall me carrying anything?-

--No, not at all.

Was Ashton's car illegally parked?---I've - - -

HIS WORSHIP: What is the relevance of that?

MR HOSER: None your Worship. No further questions.

HIS WORSHIP: Mr Lapirow, do you wish to cross-examine?

MR LAPIROW: No, I do not your Worship.

HIS WORSHIP: Yes, thank you, you can leave the witness box. Is there any reason why the witness cannot be excused any further attendance under the subpoena.

MR HOSER: Yes, he is excused.

HIS WORSHIP: Yes, thank you (Indistinct) you are excused subject to any witness expenses.

MR LAPIROW: That would probably be a matter between the witness and the prosecution.

WITNESS WITHDREW

MR HOSER: The next witness I call - George - - -

HIS WORSHIP: It is seven minutes to four.

MR HOSER: It will only be 10 minutes, it is probably easier to just get rid of him now.

HIS WORSHIP: That is Mr - - -

MR HOSER: Schofield. I cannot see him being half as long as Mr Olsen.

HIS WORSHIP: Yes, very well. We will deal with him at great inconvenience.

PETER SCHOFIELD, sworn:

HIS WORSHIP: Just tell the court your full name please?---Peter Schofield.

And your occupation?---Transport Safety Officer stationed at Whitehorse Road, Nunawading.

MR HOSER: Right, Peter, I will refer you to the 1.11.1990, do you recall the day at all?---I recall the day, yes.

Can you tell me what happened - is it not funny, once you have excused a witness you think of questions you should have asked him - could you please tell me what happened on the day in question from the moment you walked into the court building till the moment you walked out of the court building?---I think I recall it was a Monday your Worship, and officer Olsen and myself were asked to deliver a letter personally to Mr Hoser at Melbourne Magistrates Court. On that particular day officer Olsen met Mr Ashton at court. Mr Ashton was in the mention room of the court that day your Worship, seeking a further adjournment date. Mr Hoser I think, I believe was in the outside of that room and officer Olsen served the letter on him.

Just stop there, sorry. Where did Olsen serve the letter on me?---I believe, from memory, it was just outside the mention office.

So that is like - is that between the two front doors, is that right, in that corridor there somewhere?---It would be in the corridor, just in from the front door.

Then what happened from there, sorry about that?---I believe at that time Inspector - officer Ashton had completed his business with the clerk and we then escorted - - -

Stop there, sorry. Had he completed the business with the clerk

before Olsen served the letter on me or after he served the letter on me?---He was in the clerk's office when officer Olsen served the letter on yourself.

So Ashton was in the clerk's office?---That's right.

When Olsen served the letter on myself, is that right?---That's what I believe.

Was there a lot of people going into that office at the time?---

Yes, that's correct.

(Indistinct) like 20 or 30 people or more or less?---I can't remember exactly how long the line was but it was a Monday morning your Worship.

Carry on?---Inspector officer Ashton left the - completed his business with the clerk and proceeded out the mention office. We then proceeded to escort Mr Ashton to his car. We exited the court by the middle door of the court. Officer Ashton was probably five or six steps ahead of officer Olsen and myself. I believe officer Olsen was to my right virtually shoulder to shoulder and we were proceeding up Russell Street towards his car which was parked in Russell Street. I then observed yourself in front of officer Ashton, I can't exactly tell where you came from, you stopped in front of officer Ashton forcing him to stop abruptly. Officer Ashton then stepped back and to the left trying to avoid you and get around you. I think from memory, you asked what the letter was about and I believe to the best of my knowledge that officer Olsen spoke to you then and said that you should read the letter and that it was self-explanatory.

HIS WORSHIP: Who said this?---I believe officer Olsen did, your Worship, to the best of my ability.

So that happened outside?---That was outside on the footpath
your Worship.

MR HOSER: Are you sure that it was a Monday and not a
Thursday?---Well, I can't exactly recall what day it was,
whether it was a Monday or a Thursday, I thought it was a
Monday, wasn't it the day before cup day.

No, well whatever day it was - - -

HIS WORSHIP: Does it matter Mr Hoser?

MR HOSER: No, it is not a major point. Are you sure I opened
the envelope - sorry, did I open the envelope and read the
letter or not?---I can't recall whether you opened the
envelope or not.

Walking out of the court, sorry - you walked out of the court,
you escorted Mr Ashton to the car, Mr Ashton got in the car
and drove off, is that right?---You intercepted him halfway
from where we'd left the court towards his car.

You are saying I intercepted Mr Ashton, he then walked around
me, got into the car, is that right?---That's right.

He then drove off?---That's right.

And then what happened?---Then we proceeded across Russell
Street, our car was parked outside the old ambulance
station and officer Olsen and I proceeded towards our car
pursued by yourself and Mr Brygel.

Was Mr Brygel doing anything at the time?---I think he was
trying to take some photographs.

You have certainly had your photo taken by him before that, have
you not?---Numerous occasions.

Mr Olsen has too, has he not?---I believe so.

Mr Ashton has too?---I've never been in company with officer
Ashton when you've photographed him.

Am I allowed to tender a photo for identification purposes?

HIS WORSHIP: Of this witness?

MR HOSER: Of other people, yes.

MR LAPIROW: May I see it before it goes in?

HIS WORSHIP: You can certainly show it to the witness and ask him if he has any comments about it.

MR HOSER: There is three men in a cluster there, can you please tell me who they are, from right to left?---That's officer Douglas, officer Ashton and officer Olsen. Sorry, right to left?

Okay, reverse it. So you know the three of them?---Yes.

HIS WORSHIP: Officer Douglas, Ashton and Olsen?---That's right.

MR HOSER: What is Ashton doing in the picture, or what is his posture?

HIS WORSHIP: Well, the document speaks for itself. I assume - it can be tendered for identification at this stage, having been identified by the witness.

MR HOSER: I tender that as an exhibit.

HIS WORSHIP: That will be exhibit F.

EXHIBIT F ... (For identification) Photograph.

MR LAPIROW: Your Worship, before Mr Hoser asks the next question, I object to it because obviously it is going to be a leading one.

HIS WORSHIP: What is the relevance of it, it certainly is not taken outside the court.

MR HOSER: That was going to be my question.

HIS WORSHIP: What is the relevance of it Mr Hoser?

MR HOSER: Shows he can identify people from photos, that will be useful for when Mr Brygel's - can I tender - I cannot tender Brygel's pictures now?

HIS WORSHIP: This photograph will not be an exhibit, it is absolutely totally irrelevant.

MR HOSER: Fine. Okay. You stated Mr Ashton was in the clerk's office setting the date, is that right?

MR LAPIROW: I object to the cross-examination, your Worship.

HIS WORSHIP: Yes, that is again cross-examination.

MR HOSER: Do you recall any inter dialogue between myself and Mr Ashton before he went into the clerk's office?---No.

Does that mean there was, or there was not, or you do not recall?---I don't believe officer Ashton was approached by you prior to his entry into the mention office.

I will keep going, just a few more quick questions. You tend to work with Mr Olsen quite a lot, do you not, is that right, up until recently as an enforcement officer with VicRoads?--That's correct.

You certainly - both yourself and Mr Olsen certainly have encounters with me re multiple hiring at Tullamarine airport, have you not?---That's correct.

On 26 February 1989 do you recall sticking your head in car windows and telling passengers not to share cabs?

HIS WORSHIP: What is the relevance of this Mr Hoser?

MR HOSER: It was just - fine - it was just the general attitude of these men.

HIS WORSHIP: They are your witnesses, Mr Hoser, and you are not entitled to impugn the character of the witnesses unless and until they have been declared hostile.

MR HOSER: No. Did you see Mr Ashton at any stage hit me or punch me in any way or - - -?---In what location?

Outside the court?---No.

Did he ever raise his arms at me in any way?

MR LAPIROW: The question has been answered your Worship, has it not?

HIS WORSHIP: I do not think that one has.

MR HOSER: No, I did not think it had either. Did you see him raise his arms at me in any way?---No, to the best of my ability, officer Ashton took all evasive steps to get around being blocked by yourself.

So you reckon I was blocking him?---The way you tried to intercept him would not be the normal way to approach somebody.

What is all this, did I have raised arms or anything, to stop him or - how did I intercept him?---No, you just - like I said, I can't remember where you came from, all I know is was coming from the side, whether you came from behind or out of the door, all I know was that you - - -

Somehow got in front of him?---Got in front of Mr Ashton and virtually stopped him in his tracks. He took approximately one step back and to his left to avoid you and it was at about that stage yourself asked what the letter was all about.

So he never raised his arms at me, nothing like that?---No.

As far as you are concerned - now, where all this occurred, when you walked out of the building with Olsen were you walking - what was your position with him, were you next to him, in front of him, behind him or - where were you?---I previously said to you that I was about five to six steps behind Mr Ashton, alongside Mr Olsen.

So you and Mr Olsen were definitely walking along as a pair?

MR LAPIROW: Your Worship, I object to these questions - - -

HIS WORSHIP: Mr Hoser, this is clearly cross-examination.

MR HOSER: Sorry, which door did you all walk out of the building at?

MR LAPIROW: Your Worship, that is again - - -

HIS WORSHIP: Repetition does nothing to strengthen the case, or
- - -

MR HOSER: No. At any time did either you or Mr Olsen walk out of the front door and along Russell Street towards myself and Ashton or anything like that?---No.

Do you recall where Brygel was standing at the time when this was going on?---He'd secreted himself in a doorway, I believe.

He had what in a doorway?---Put himself in a doorway, trying to obtain photographs.

So Brygel was standing in a - which doorway?---One further up along from the middle door.

So back towards - - -?---No, up towards Victoria Street.

Up towards Victoria Street, so he was like, in a doorway up towards Victoria Street taking pictures. Do you know what he was taking pictures of?---I don't know that he was taking pictures at that time.

Did you see him with a camera at all?---I saw him with a camera in his hands but I couldn't recall if he was actually taking a photograph at the time, or was just playing with it.

Did you see another man, Mr Burke?---No.

You know Mr Burke though, do you not?---Yes, I know Mr Burke.

So you never saw any provocation for an assault, you never saw any assault?---Sorry, could you repeat the question?

You never saw any provocation of an assault and you never saw an assault, is that correct?

MR LAPIROW: I object to the question, your Worship.

HIS WORSHIP: I think that the question has already been answered.

MR HOSER: Okay. At no stage - you did not walk out the front door and walk up the street did you? You definitely walked out the side door?---I've already answered that question.

When I supposedly jumped in front of Mr Ashton from somewhere, where you are not quite sure, did you have an uninterrupted view of Mr Ashton and myself?---When you initially stopped him, when I noticed you in front of him from that point onwards, yes.

If Mr Ashton had attacked me, you would have seen it?---Yes.

I cannot turn around and say I put it you are lying, but I would love to. No further questions.

MR LAPIROW: No cross-examination.

HIS WORSHIP: Mr Schofield, just take a seat in the court for the moment.

WITNESS WITHDREW

HIS WORSHIP: Mr Hoser, you say you have some photographs taken by Mr Brygel.

MR HOSER: Yes.

HIS WORSHIP: Is it your intention to tender those photographs in due course through Mr Brygel?

MR HOSER: Yes.

HIS WORSHIP: Subject to anything that either of you might wish to say, I think I should look at those photographs now to prevent any unfairness to either of the previous two witnesses, because if they purport to show something which is in conflict with what these witnesses say, I think they should have an opportunity to comment on it. I appreciate

Mr Lapirow, that they should have been put in properly prior to Mr Hoser calling these two witnesses, but I think as a question of fairness, it should not be left hanging as it were if they are tendered at a later date without these witnesses having an opportunity to comment on them.

Subject of course, to the proper proof of the photographs.

MR LAPIROW: The difficulty with all of this of course, is that those rules apply for the defence witnesses, not the prosecution witnesses and the court must be careful in not stepping into the arena in assisting someone with the prosecution.

HIS WORSHIP: I appreciate that Mr - - -

MR LAPIROW: Other than that I understand exactly what your Worship said.

HIS WORSHIP: Mr Hoser, you heard what I said. Are you prepared to show the photographs to me now?

MR HOSER: Yes, you can have these as exhibits.

HIS WORSHIP: No, I do not want to have them as exhibits, I just want you to show them to me at this stage.

MR LAPIROW: May I see them, your Worship.

HIS WORSHIP: I think I should see them first.

MR HOSER: There you go.

HIS WORSHIP: And you say that these are photographs taken by Mr Brygel on the day?

MR HOSER: Yes, he gave them to me, before he got put in clink.

HIS WORSHIP: Would you like to have a look at those Mr Lapirow?

MR LAPIROW: Thank you, your Worship. I have seen them your Worship.

HIS WORSHIP: Yes, I think it would be remiss of me at this stage not to enter (Indistinct) to some extent.

MR. LAPIROW: Yes, your Worship.

HIS WORSHIP: Mr Schofield, would you go outside please, just for a moment. Would you come back into the witness box please Mr Olsen? Perhaps you could just hand those photographs to my clerk.

GEORGE LEONARD OLSEN:

MR HOSER: I can ask him more questions now?

HIS WORSHIP: No, I am going to ask the questions, I think Mr Hoser. Mr Olsen, would you just look at the first two photographs please? What do you say the first one shows?--
-It shows Mr Ashton with his arms outstretched and Mr Hoser to his right, he seems to be coming from around him, your Worship.

Can you see yourself in the photograph?---Just to the back, I would say maybe 15 feet at a guess.

What do you say about your previous evidence that Mr Ashton did not raise his arms at any stage?---I think I said your Worship, I didn't see him raise his arms and I still don't have a recollection of that, that was in November last year. The photo obviously shows that with his arms out. I think if you had the snap or two before this photo, you would see that Mr Hoser was directly in front of him at that stage.

What about the other photograph, do you see anything there?---
Yes, Mr Ashton is in his car and is appearing to drive away.

Yes, thank you. Yes?---Or preparing to drive away and the third one he is driving away.

Mr Hoser, is there anything else you wanted to ask directly of this witness in relation to those matters?

MR. HOSER: Yes. Mr Olsen, in the first picture, you are certainly facing and looking directly at - sorry, this picture here, this is the one - - -?---Yes.

The one with Mr Ashton with raised arms. You are certainly facing directly towards the two of us, are you not, looking straight at us?---Yes.

You certainly - is there anything wrong with your eyes?---No.

You are a work colleague of Mr Ashton's certainly, are you not?--

--Well, we work for the same organisation, yes that's correct.

If you have a look at the envelope in the photo, is it sealed or not?---I've got no way of knowing.

Certainly there is no - you could see the light blue envelope in one hand, can you?---In your right hand, is it? Is that the one you're referring to, the one in your right hand?

Yes. And you can see the file in the other hand, can you not?--
-Yes.

Tell me, can you see a loose letter or open letter at all?---

Well, I can't tell. I believe you opened that letter in the foyer of the court when I gave it to you and you asked for the explanation there, what it was, and I said "If you read it you will find it is self-explanatory".

I will put it to you that you said that on a separate occasion, a year earlier when you gave me a letter, but certainly not on this occasion?

HIS WORSHIP: Mr Hoser, you are cross-examining the witness.

MR. HOSER: Okay, we will go to the - can I please just walk over to Mr Olsen and grab one of the photos so I know which one I am talking about?

HIS WORSHIP: He has to be able to look at it too.

MR HOSER: Yes. This one.

MR LAPIROW: Well, that doesn't help me, your Worship.

MR HOSER: I am sorry, it is the second in the series. Where is Mr Schofield standing in relation to you?---At that stage he's probably 10 feet behind me, I would say.

And if you go back to the first photo, certainly Mr Schofield is not present in that photo, is he?---I think Mr Ashton may actually - might be obscuring him, because we were certainly side by side when we came out of that door. That door is behind is, I suppose another 20 feet, at a guess.

I put it to you that Mr Ashton came out - - -

HIS WORSHIP: No, Mr Hoser you are not entitled to put.

MR HOSER: So you are trying to tell this court that this side door is actually behind yourself in that first photo?---
Yes, I believe it is.

Well, we can check that outside but I am sure it is not?---If not - - -

HIS WORSHIP: No, Mr Olsen, do not make any comment.

MR HOSER: Is there anything else? Certainly my arms are not raised in any way shape or form, are they?---No.

Certainly I am not standing that close to Mr Ashton as to block his path, am I?---Yes, in the previous - - -

In the first photo?---Yes, if we had previous photos that were taken you would see that you had been directly in front of him.

But if I had been directly in front of - had Mr Ashton or I jumped back, or how on earth - - -?---He stepped - - -

Stop there, we will wait for - - -

HIS WORSHIP: Yes?---He - - -

MR HOSER: Stop, just stop there, I just want to re-ask the

question - so you stated that if the snap had been taken before this?---Yes.

I would have been standing a lot closer to Mr Ashton?---You had stepped directly in front of him when you came from behind us and you blocked his path and he is clearly walking around you.

If that is the case - there is a reasonable distance between myself and Mr Ashton in this photo, the first photo. Can you explain how we got further apart again when from the view in that picture - - -

HIS WORSHIP: No, Mr Hoser, you are cross-examining the witness, I have not given you leave to cross-examine the witness.

MR HOSER: I suppose - you know how truthful he is - - -

HIS WORSHIP: Mr Hoser, it is late in the day and I am trying extremely hard not to lose my temper with you.

MR HOSER: Sorry, your Worship. Could I just please have a quick look at those photos?

HIS WORSHIP: Do you have any further questions Mr Hoser?

MR HOSER: Yes, I do. Would you have a look at this photo, we are looking at the second one now. You will see a young man in a yellow t-shirt at the back, can you see him?---I can see a person, I don't know how young he is.

A man in a yellow shirt. Now tell me, where is the side door in relation to him? Is it between him and the car, or is it the other way?---I'd have to go out and have a look, I'm really not certain.

I know where it is. I will tender them as exhibits at this stage, I suppose.

HIS WORSHIP: They will be marked for identification at this stage.

0714

EXHIBIT F ... (For identification) Three photographs.

HIS WORSHIP: Mr Lapirow, do you have any questions?

MR LAPIROW: No, your Worship.

HIS WORSHIP: Yes, you can leave the witness box and you are now again, finally I hope this time, Mr Olsen, excused. Would you call Mr Schofield back in please.

WITNESS WITHDREW

PETER SCHOFIELD:

HIS WORSHIP: Yes, Mr Schofield, you have been sworn and you are still on oath. Would you have a look at these three photographs please? Earlier you gave evidence that you did not see any raised arms at any stage by Mr Ashton, what do you say about that, having seen that photograph?---Well, I still believe they are not raised, your Worship, however, I can't recall that position either. I think I mentioned in my previous evidence that officer Ashton stepped back and to the left to get around him, whether that was in that process or not, I'm not sure, but I can't recall him lifting his arms to that position. He certainly didn't raise them as Mr Hoser was intimating to me before.

Can you see yourself in any of those photographs?---No, your Worship.

There are three photographs there, Mr Schofield?---This is the first one is it? Yes, your Worship, I can see myself now. I'm at the - next to the tree at the rear of officer Olsen. That is officer Ashton driving off.

You are clearly not side by side with Mr Olsen, at that stage?--
-He's obscured by - I said I was to officer Olsen's -
officer Olsen was on my right, I can't see behind this
whether it is - - -

In the first photograph, but in the second photograph you are clearly not together?---That's correct, your Worship, I said at the time that Mr Hoser first intercepted Mr Ashton that that was previous midway between us exiting the door and his vehicle. I still maintain that your Worship.

Do you wish to ask any questions Mr Hoser, of this witness?

MR HOSER: I will just have another quick - actually, if you go

to the second photo?---Which was the second one?

The second in the series, there is the first one of Ashton

before he attacked, the one of him getting into the car to drive off and the one of him driving off. In the middle of the photo you will see a young man with a yellow top, or a man with a yellow top, you can see that?---That's the one with officer Ashton and yourself, is it? This front one here.

No, just go to the next one. The middle photo. Number 2 in the series. You can see where he is standing, he is leaning against a pillar or something?---Yes.

Is the side door to this court between him and the car or beyond him?---The side door is, as I believe, further down.

You are 100 per cent sure of that or you are not sure?---I'm not sure, looking at this picture. I am not familiar with that setup coming from that side of the - towards the court.

Going back to the first photo, the first one of Ashton with raised arms, you will see Mr Olsen walking towards the two of us?---That's correct.

He seems to be looking towards the two of us too, does he not?--
-That's correct.

Do you have any sight impediment or motor neurone disorders?

MR LAPIROW: I object to the question, your Worship.

HIS WORSHIP: It is too wide, Mr Hoser.

MR HOSER: Do you know of any disorders that would prevent him from seeing something like that?

MR LAPIROW: I still object to it, your Worship.

HIS WORSHIP: Yes, why? What is the basis of your objection?

MR LAPIROW: The prosecution has asked the witness concerned A, B and C. He is now seeking to impeach the credit of his

own witness through another witness.

HIS WORSHIP: Yes, I think that is right.

MR HOSER: I was going to submit to you, your Worship, that if Mr Schofield gave evidence that Mr Olsen does have sight impediments that perhaps his previous evidence may not have been so askew after all.

HIS WORSHIP: Be that as it may Mr Hoser, he is not entitled to impugn the credit or attack the credit of one witness through another witness.

MR HOSER: Fine, I understand that, and I understood earlier when - the same in my case. If you look at picture 1, you will see George Olsen?---Facing us?

Facing us. If you look towards one of his legs, the leg closest to the court side, you will see what appears to be a part of another person, can you see what I am looking at? I will pass up to you your Worship, so you can see as well what I am referring to, because it is only a small part of the picture.

HIS WORSHIP: Say it again, what are you talking about?

MR HOSER: If you look at Olsen's legs, on one of his legs going down on the trousers you will see - coming up from the side, what appears to be the foot or something of someone else behind him?

HIS WORSHIP: Yes.

MR HOSER: Can you see that Mr Schofield?---I think you might be better than what I am.

That leg, that trouser, you see that? It is certainly not a part of Mr Olsen's clothing, is it?---It's hard to tell what it is from - if that's what I think I'm looking at, I don't know what it is.

But it is certainly not a bit of footpath.

MR LAPIROW: I would ask that the witness not be approached,
your Worship.

HIS WORSHIP: Yes.

MR HOSER: I was just trying to assist the court. You see
that?---Well, I still don't know what it is, but I grant
something is there.

Could I please approach the witness just to look at the next two
photos?

HIS WORSHIP: Yes.

MR HOSER: You can see the number 2 in the series, what colour
are the pants and shoes you are wearing?---Mine?

Yes?---I can't tell. I mean, it's dark, they look dark.

Fine, that is the answer I was looking for. If you go back to
the first one the colour of that appears - - -

MR LAPIROW: Your Worship, I object to this line of cross-
examination, it is just not allowable.

HIS WORSHIP: Mr Hoser, you have had a great - - -

MR HOSER: I was just going to use that to show that - sorry?

HIS WORSHIP: You have had a great amount of latitude, I will
not allow you to ask any further questions in that vein.

MR HOSER: I think you know where I was coming to. No problems,
no further questions.

HIS WORSHIP: Mr Lapirow?

MR LAPIROW: Yes, during the examination-in-chief on the
previous occasion you were asked a leading question as to
whether a certain person by a certain name was there. I
cannot recall who that other person was, do you recall
that?---The other associate of Mr Hoser's?

Yes?---Mr Brygel?

No, there was another name that was put to you towards the end of your examination-in-chief.

HIS WORSHIP: Des somebody?---Des Burke?

MR LAPIROW: Yes, is Des Burke in those photos?---No, not that I can see.

Thank you.

HIS WORSHIP: Yes, I will hand back that copy of the first - - -

MR HOSER: I am not allowed to ask any more questions?

HIS WORSHIP: Why?

MR HOSER: I was just going to ask him if Mr Brygel was in the pictures.

HIS WORSHIP: No. Can I have those three photographs back please. They are marked for identification, they will be exhibit F for identification.

EXHIBIT ... (For identification) Three photographs.

HIS WORSHIP: That is the close of play today. You are now excused again Mr Schofield - hopefully for the final time.

WITNESS WITHDREW

HIS WORSHIP: Yes?

MR HOSER: Do we (Indistinct) set down a date your Worship, or - - -

HIS WORSHIP: Just so that there is no dispute, I am as you might guess, fairly familiar with the court and I can tell you that the gentleman in the yellow shirt is leaning on the northern edge of the centre doorway.

MR LAPIROW: I do not have the photos so I do not know what is being seen.

HIS WORSHIP: You will have an opportunity to have a look at it (Indistinct). Gentlemen, I am in no way, shape or form, confident that this matter will be able to be finished in

half a day, I think it will take a full day. On that basis I am told that we can pick any day we like in January, after the 9th. I am not exactly sure of my whereabouts at this stage, however I would suggest the appropriate day would be Tuesday the 28th which is the day after the long weekend.

MR HOSER: The day after the long weekend?

HIS WORSHIP: Yes, the Tuesday after the long weekend, Tuesday, 28 January 1992. Subject to any strenuous objections, that would be the date that I propose returning to it.

MR HOSER: No objection from my side.

HIS WORSHIP: Mr Lapirow?

MR LAPIROW: At the worst it will save me from having to go to a European holiday with my wife, so I am all in favour of it, your Worship.

HIS WORSHIP: Yes, can I have the tape back please?

MR HOSER: You can keep that.

HIS WORSHIP: Yes, this matter is adjourned to 28 January 1992.

AT 4.33 PM THE MATTER WAS ADJOURNED
UNTIL TUESDAY 28, JANUARY 1992

HIS WORSHIP: Yes.

MR LAPIROW: Your Worship, in that matter I have an application to make. Your Worship may recall that this matter was last before the court on 10 September.

HIS WORSHIP: Yes.

MR LAPIROW: And this matter was adjourned for some considerable number of weeks until today. One of the factors that was relevant in the adjournment date was the fact that a transcript had been sought by the prosecution and was to be made available, as I understood it from the discussion that led to the first adjournment, when the transcription service was brought in.

HIS WORSHIP: Yes, the matter was called early in the morning. We did not start until after lunch because the transcript had to be organised.

MR LAPIROW: Yes, I think that the prosecutor had in his possession one or two tape recorders and there was discussion as to whether the proceedings should be tape-recorded. The prosecutor wished to use his own equipment.

HIS WORSHIP: Yes, I recall that now, Mr Lapirow, the circumstances under which I made the order.

MR LAPIROW: I am now appearing, sir, for the defendant and it is some four months down the track, a bit over four months, and the transcription has not been authorised by the prosecution through the transcript service, nor has it been made available to the defence. Now in those circumstances there are two possible matters which the court, in my submission, could take into account. The first is that because of the length of the adjournment and the basis that such a great length of time was allowed because there would

be a transcription available, that not to provide the defendant with such a transcription would be unfair.

The second interpretation, sir, is that because of the duty that is cast on a prosecution in a criminal matter, and this is a criminal matter, the conduct of the prosecution is such that it would impeach all of the evidence that has been given to date and would impeach any further evidence which the prosecution would give, to the extent that a court would be unable to find any of the allegations made by the prosecution to be proven to the necessary standard.

HIS WORSHIP: Well, that is not a submission that is relevant at this stage of the proceedings, Mr Lapirow, I would have thought.

MR LAPIROW: Yes, maybe not at this stage, but, your Worship, the fact situation is relevant to both and that is the only reason why I raised it.

HIS WORSHIP: Mr Lapirow, has any request been made or have you taken any steps to obtain a transcript?

MR LAPIROW: Yes, many requests have been made by my instructing solicitor's office and enquiries have been made with the relevant court reporting service. The person who is responsible to make that decision is here in court. Apparently when the tape-recordings are made there are duplicates made. The prosecution has been given one set of tapes, but unless the prosecution would permit the court reporting service to transcribe those tapes, the tapes belong to the prosecution as the prosecution's property.

HIS WORSHIP: You have someone in court who is in a position to give that evidence, do you?

MR LAPIROW: Yes.

HIS WORSHIP: Can you give me any dates, Mr Lapirow, in relation to the request or the information as to when the requests were made and what responses were received, if any?

MR LAPIROW: I am able to say, sir, that my instructing solicitor in the first instance, the man who was responsible for the conduct of this file until his holidays, was John Connell. John Connell is not presently in Melbourne. My present instructing solicitor took the file over during Mr Connell's absence about a fortnight ago.

HIS WORSHIP: I am not seeking evidence at this stage, Mr Lapirow, I am just asking if you can give me some dates and if your instructor can refer to his file and give me some dates or - - -

MR LAPIROW: I will have to seek instruction on specific dates, but I am able to say, sir, from the discussions I have had that the tapes were acquired by the prosecution some time after the hearing.

HIS WORSHIP: Well, that would appear to be blindingly obvious, Mr Lapirow.

MR LAPIROW: Yes, but until such time as - I would have to seek instructions on dates, sir.

HIS WORSHIP: Well, would you do that, please.

MR HOSER: I can be of assistance, your Worship, on dates.

HIS WORSHIP: I will hear from you in a moment, Mr Hoser. You will have an opportunity. Yes, Mr Lapirow,

MR LAPIROW: My instructions are that enquiries were first made two months ago, but no specific notation was made regarding that.

HIS WORSHIP: Well, is that November you say?

MR LAPIROW: Yes, there was a reason for the enquiries being made at that stage that correlates to a request being made from counsel. But the first formal request, as far as anyone can give evidence in court from my instructor's office, is 25 January. But I should say, sir, that it does not really make that much difference because the court reporting service has not been authorised to transcribe and my instructor cannot give that authorisation.

HIS WORSHIP: Yes, Mr Hoser, what did you want to say? Just before you do - are you basically, Mr Lapirow, submitting that there should be an adjournment so that this could be done, so that the defence would not be prejudiced?

MR LAPIROW: I am saying, as I said, your Worship, that the conduct of the prosecution is extremely unfair, bearing in mind the time - - -

HIS WORSHIP: I am asking you what you want. What is your application? Your initial application now?

MR LAPIROW: My application now is to dismiss the prosecution by reason of the prosecution's conduct. The alternative application is to have an adjournment for the purposes of the transcript being provided.

HIS WORSHIP: Yes, thank you. Yes, Mr Hoser, what do you want to say about the issue?

MR HOSER: I will go through all of them in sequence, but before I do I will start by saying most of what, a lot of what Mr Lapirow has said is unmitigated lies - - -

HIS WORSHIP: Well, I do not want to hear what you believe it to be. I want to know what you say as to the application in relation to the provision of the transcript.

MR. HOSER: Firstly, the arrangement was, and it was made in this court and that was tape-recorded in this court, the arrangement was that I was allowed to tape-record it through an official tape-recorder as long as I paid the cost. There was no arrangements to transcribe the tape. I was allowed to tape-record it and that was where it ended. There was no arrangement made to provide anyone with transcript and that is borne out on the tape-recordings. I have the tape-recordings in this bag and I am quite happy to play them and show you that what Mr Lapirow said is an unmitigated lie. The tapes are there.

The situation is that I did pay costs. I obtained the tapes almost immediately after the case. No transcript was made because there was no obligation on me to make transcripts. As far as requests being made for the tape-recording, there was no request made in November, that is an unmitigated lie. I was in Sydney last week, I returned on the weekend, and I had a telephone message on my answering machine on Friday from a lady by the name of Bev from the transcribing company. She left two messages on my answering machine and I returned the call last night.

She stated she had received a request from David Robbie, which is the man sitting with his back to you, from the Roads Corporation, wanting permission to have them transcribe the tapes on the basis that they paid some or all of the costs - that is the Roads Corporation. That was the arrangement they wanted to make. And Bev said she could not authorise - she told me that she told Mr Robbie that she could not authorise that request without my permission, and obviously she tried to get in touch with me

on the Friday without success, because I have been in Sydney.

When I spoke to her last night she said "Well, it's not an issue now because it's too late" and I said "Well, as far as I'm concerned, Robbie can go jump in the lake", because, you know, they did not want the tape-recordings in the first place and I saw it merely as a trick, that they could try and gain maximum advantage at my expense. But getting back to the original statements from Lapirow, had there been an approach made to the transcribing company in November, I would have certainly been informed. I cannot believe for a moment, and I am sure no-one could believe for a moment, that the transcribing company would let such a request go un-noted, or that I would not be contacted, and it is quite clear from the phone conversations last night, the second of which was recorded by myself on the tape-recorded, which was not on the telephone line but adjacent to it, which I am quite happy to play in court, and the first dealings she had with the Roads Corporation in relation to it was on the Friday. So - - -

HIS WORSHIP: What do you say the arrangement, if any, was as at September of last year when these tapes were authorised by myself? To produce them at any later stage or to have them transcribed?

MR HOSER: There was no arrangement made. I certainly only indicated I wanted the tape-recording. I did not have the funds to transcribe it, that was never an issue, and the Roads Corporation, knowing full well that I am basically strapped for cash, they turned around and said "Well, you can tape-record it as long as it's an official tape-

recorder and you pay the costs". Now, if you remember, the way the case ran, the Vic Roads officers in question denied any assault, etcetera, etcetera - - -

HIS WORSHIP: I am not interested now in the - - -

MR HOSER: The case itself, right.

HIS WORSHIP: In the case itself. I am dealing at this stage with the application.

MR HOSER: Right, well, Lapirow's application is based on falsehoods and if you have any inclination to accept his version of events, I ask you to play the tape-recordings, the relevant tape-recording, and I have a machine - - -

HIS WORSHIP: Where do you say it appears in the tape? Any material in relation to the production of a transcript - I am just asking you simply, is it the beginning or the end or where?

MR HOSER: It would be at the beginning presumably. I have not listened to that particular section, but I recall it being said and it was tape-recorded. I could quite easily play it back.

HIS WORSHIP: Yes, Mr Lapirow, what do you say? I am not interested now in the issue of when any requests were made, I am interested now in the issue of what you say the arrangement was for the production of tapes or a transcript.

MR LAPIROW: My recollection, your Worship, was that the discussion concerning the recording of the transcript took place before the transcript writers were engaged. Immediately on the court opening or shortly after the case opening, it became apparent that there were tape-recorders in the possession of the prosecutor. The prosecutor sought

your permission to use those tape-recorders. I objected. I was asked for reasons as to the objection and I replied by raising questions of accuracy of the tape-recording as well as access of the parties to the transcript and it being a true transcript, and that is why a recognised court recording service should be engaged.

Those points, I believe, were accepted by your Worship and the matter was adjourned for the purpose of the transcription being arranged. I do not recall any further discussions concerning the transcription from that point onwards until the time of the adjournment being decided, the date of the adjournment being decided, and that was after some two or two and half hours of hearing.

At that time your Worship consulted his calendar and indicated that the next available date would be - - -

HIS WORSHIP: Well, I would have consulted the clerk rather than a calendar, I would have thought.

MR LAPIROW: Well, I am not privy to that, your Worship. And the first available date was this date in January. I recall that there were two comments made by me in relation to that. The first was that I think I said, well, that ruled out an overseas holiday and the second one was that the prejudice of such a long adjournment as far as the defendant was concerned would be minimised by the availability of a transcript.

Now initially, your Worship, the question of a transcript was not something which the defendant considered to be at all relevant or likely to be of importance and it only became of importance once the matter was adjourned for four months.

HIS WORSHIP: What I will do, Mr Lapirow, is - - -

MR HOSER: I object, your Worship, to what he said.

HIS WORSHIP: Just a moment, Mr Hoser. I am concerned about the length of time that this matter has already taken, but I have no recollection myself of exactly - or no accurate recollection of exactly what transpired at the close of the hearing, when that date was recorded. Mr Hoser, are you prepared to give me the tapes, so that I can listen to what happened at the end?

MR HOSER: I am quite prepared to give you all of the tapes.

HIS WORSHIP: If you do that, I will now go and see if I can locate that conversation in relation to the length of the adjournment and what was said then.

MR HOSER: Your Worship, in order to be of assistance to you, as far as two things, just briefly - the long adjournment, I was the one who objected to it, not the defence.

HIS WORSHIP: We all objected to it, Mr Hoser.

MR HOSER: Okay. Secondly, in relation to the tape-recordings, there is two sets of tape-recordings, one that was made by people in the room - - -

HIS WORSHIP: I am only interested in the authorised tape-recordings, Mr Hoser.

MR HOSER: The authorised tape-recording - I am trying to help you, your Worship, in terms of what occurred before the authorised tape-recording commenced, because that is what Mr Lapirow was attempting to give his version of events, which is completely wrong. There is, what we will say, unauthorised version as well, which took place before the authorised people came in, and it is quite clear from that, that there was no undertaking - - -

HIS WORSHIP: Are you saying there was tape-recording conducted in the court before the official - - -?

MR HOSER: Before the official people, yes.

HIS WORSHIP: Contrary to my ruling.

MR HOSER: No, you had not made a ruling at that stage and it was - - -

HIS WORSHIP: Yes, well, I will not listen to those tapes. I am not - - -

MR HOSER: Fine, I was just trying to help you in terms of - but here is the official recordings. These are duplicate tapes and you can listen - you will not find anything to be of assistance on them.

HIS WORSHIP: You have listened to them have you?

MR HOSER: Yes, I have listened to these.

HIS WORSHIP: Well, what do you say it says? You say there is nothing at all - - -?

MR HOSER: There is nothing of substance in relation to what he says, no.

HIS WORSHIP: Yes, very well.

MR HOSER: They have been partially transcribed by myself.

HIS WORSHIP: Well, I am not interested in the transcription, I am interested in the tapes themselves. If you would pass them up to my clerk, I will adjourn temporarily while I listen to them.

ADJOURNED AT 10.40 AM

RESUMED

HIS WORSHIP: Yes, do either of you wish to say anything further at this stage?

MR HOSER: Yes, in relation to - - -

HIS WORSHIP: This is now talking about this application?

MR. HOSER: Yes, in relation to what Mr Lapirow said about obtaining transcripts and so on. Probably the easiest way to show up what he said to be false is to replay the phone conversation I had last night from Legal Transcripts.

HIS WORSHIP: I am not concerned with that.

MR HOSER: Fine.

HIS WORSHIP: Yes, well, the tape that has been supplied to me I have played. There is no reference on the tape-recording to the provision of transcript, nor to any concern that I suppose is implicit, and which may have surfaced later. However, as I have said, there is nothing on the tape with relation to the provision of transcript, nor to the concerns that I accept may have been felt in relation to the length of the adjournment.

The application before me is that in some way the prosecution be either compelled to provide tapes or transcript, or that I take some sort of step at this stage in relation to the proceedings, based on the failure of the prosecution to provide transcript or tapes of the previous hearing, the suggestion being that the failure in some way demonstrates either mala fides on behalf of the prosecution or so seriously prejudices the defence that to proceed further without a transcript is unfair.

In my view there is no manifest unfairness. The case which, as it went on the previous occasions, was not of great length, although it did obviously contain evidence of great weight, and in my view there is nothing so unusual about either the case or the length of time of the adjournment that would justify me at this stage in either interfering with this case or compelling the prosecution to

provide material to the defence. Accordingly, the application - the only application which is, as I understand it, properly put at this stage is that there be some sort of compulsion to comply or to provide material. That application is refused.

MR LAPIROW: Your Worship, with the greatest of respect, you may have misunderstood my opening remarks regarding the inability of my instructor to obtain the tape, or to obtain a transcription. We were not seeking that the prosecution provide us with a transcription.

HIS WORSHIP: I beg your pardon, you are right, Mr Lapirow - that the prosecution authorise the production or the - - -

MR LAPIROW: Yes.

HIS WORSHIP: In my view there is nothing so compelling about that behaviour which would justify me in taking the steps that you have referred to, at this stage of these proceedings.

MR LAPIROW: Thank you, your Worship.

HIS WORSHIP: Now, we had dealt with the prosecution case and two witnesses for the defence - Mr Schofield and Mr Olsen.

MR LAPIROW: That is not correct, sir. Those witnesses were not called by the defence. The defence has called no witnesses.

HIS WORSHIP: I beg your pardon, they were called by the prosecution.

MR LAPIROW: Yes, sir.

HIS WORSHIP: And certain documents had been tendered to me. Yes, Mr Hoser.

MR HOSER: I relation to the previous case and before I call my next witness, there are two questions I would like to raise

with you now, your Worship, to prevent any misunderstandings or whatever, because I am not experienced with the procedure. One is, in terms of past record of the man in question, the defendant, I would like the opportunity to address questions of penalty and so on if and when it arises - - -

HIS WORSHIP: Mr Hoser, if and when is the appropriate time.

MR HOSER: Yes, will I be allowed that?

HIS WORSHIP: Well, you may be allowed, subject to my discretion.

MR LAPIROW: I apply that the case be dismissed on the grounds of the question that has just been asked.

HIS WORSHIP: Thank you, Mr Lapirow. I note your application. At this stage it is refused.

MR HOSER: The next thing is a matter I want to raise with you, and again I am not sure whether it should be raised - I would seek your guidance in relation to that. That is the question of perjury. Should I raise that matter now?

HIS WORSHIP: No, it has got nothing to do with this case at this stage, unless you intend to make some sort of allegation that it has occurred in some other cases and if you wish to do that, that is a matter for you, but - - -

MR HOSER: I was going to allege it in this case.

HIS WORSHIP: Well, you can do that at a later stage, if you wish. It has nothing to do with this case - at this stage of this case it is entirely a matter for me.

MR HOSER: I appreciate your guidance, your Worship. I call my next witness, then, Mr Des Burke.

DESMOND JOHN BURKE, sworn:

HIS WORSHIP: Just before you continue, how many more witnesses do you intend calling, Mr Hoser?---Mr Brygel - two, him and one other.

MR HOSER: Would you state your full name, address and occupation?---Desmond John Burke, 506 Heidelberg Road, Fairfield. At the moment I'm retired - I am in between jobs.

I will take you back to 1 November 1990. Do you recall what happened on the day?---I recall an incident outside the court here.

Can you please tell the court what happened and what you saw?---

I suppose it would have been about 9.30 or something like that, out the front of the court. I had come out of the court here with yourself, Alan Brygel. Myself and Alan Brygel were walking up the street. Alan Brygel - - -

HIS WORSHIP: Just a moment. I am trying to take a note of this, Mr Burke, so if you would just try to keep it to a pace that I can make the note. You have come out of the court with Mr Hoser and Mr Brygel?---Correct.

Yes?---I was proceeding north up the street outside this building.

In Russell Street?---In Russell Street. I was on the kerbside of Russell Street, Alan Brygel was on my left and Phillip Hoser was somewhere behind us, so I hadn't notice of him at that stage. After we proceeded for a little while, Alan Brygel said something to the effect of "Oh, look at this" - I do not want to know what he said. I want to know what you did?---He drew my attention to something happening behind me and I turned around to see Mr Ashton and Mr Hoser in a

confronted position - well, Mr Ashton was - had both his hands raised, appeared to hit Mr Hoser two or three times in quick succession and sort of pushed him back off balance.

Yes?---And after Mr Ashton hit Hoser, Hoser was sort of pushed back off balance. Then I noticed Alan had taken a photograph. Alan raced over to - - -

Alan? That is Mr Brygel is it?---Mr Brygel went over to Phillip. In between times Mr Ashton left Phillip and went straight into a car which was parked at the kerb and that was basically what I saw.

MR HOSER: Do you recall seeing any other - before I go any further, is Mr Ashton in the room now?---Yes.

HIS WORSHIP: I do not think identity is an issue, is it, Mr Lapirow?

MR LAPIROW: I do not know about this witness, sir.

HIS WORSHIP: Yes, very well.

MR HOSER: Can you identify Mr Ashton?---That man there with the glasses on, with the beard.

HIS WORSHIP: Let the transcript show that the witness has identified the defendant.

MR HOSER: Was there any other Vic Roads officers around at the time?---Yes, I do remember seeing Mr Schofield and Mr Olsen, and probably others - I can't recall. It's a while ago, but I do remember those two. I remember seeing George Olsen.

Were they present when the attack occurred?---I saw them outside, yes. They - I remember seeing Mr Olsen, I remember seeing Mr Olsen after the incident. I can't remember his exact position or anything while I was there,

but, yes, I do recall seeing Mr Olsen.

Did you see myself in any way provoke an attack?---No.

In relation to Ashton's car, where do you recall - - -

MR LAPIROW: Objection.

HIS WORSHIP: What is the objection?

MR LAPIROW: He is now leading on to a question that the evidence does not clearly support.

HIS WORSHIP: What do you mean, Mr Lapirow?

MR LAPIROW: There has been nothing indicated so far as to Ashton's car.

MR HOSER: So what? He said he got into a car - - -

HIS WORSHIP: Just a moment, Mr Hoser.

MR LAPIROW: I must have missed that part of the evidence.

HIS WORSHIP: I think you may have missed it, Mr Lapirow. The evidence of the witness was that after this alleged assault, Mr Ashton got into his car.

MR LAPIROW: Sorry, your Worship.

HIS WORSHIP: Straight into a car on the kerb, yes.

The question that you were asked, Mr Burke, was - or that you began to be asked referred to the car. Would you ask the question again, Mr Hoser.

MR HOSER: The car, do you recall anything about the legality of the parking of the car or not?

HIS WORSHIP: Well, what is the relevance of that, Mr Hoser?

MR HOSER: The relevance basically shows the contempt that the defendant treats the law.

HIS WORSHIP: Yes, well, we all park, Mr Hoser, in places where we are not supposed to from time to time - even I do it. You are not suggesting that I hold the law in contempt, I take it?

MR. HOSER: No, but Mr Ashton - - -

HIS WORSHIP: Thank you. I rule that question is - that any answer to that question is not probative in any way in relation to this particular case.

MR HOSER: It is a matter of frequency, your Worship, that is all I was trying to - - -

HIS WORSHIP: I have made a ruling, Mr Hoser.

MR HOSER: No worries.

Do you recall any conversation during the course of the attack or not?---I didn't hear the conversation, any conversation that I can recall.

And did I retaliate in any way?---No, you didn't. As I recall it, you had stuff in your hands and you were back-pedalling to avoid him.

I am going to show you a photo, we will call this number one. I tender you a photo.

Your Worship, in order to be of assistance I have photostatted these photos and I could pass them to the various people, so they know what - - -

MR LAPIROW: Your Worship - - -

HIS WORSHIP: Are these the same photographs which are currently exhibit F, for identification?

MR HOSER: I assume so.

HIS WORSHIP: Well, I will hand those to you and - - -

MR HOSER: I have got duplicates here.

HIS WORSHIP: You have a look at those three photographs, which are exhibit F, for identification at this stage, and tell me if you are referring now to - or seeking that the witness look at the same photographs.

MR LAPIROW: Your Worship, there is a matter - - -

HIS WORSHIP: Just a moment, Mr Lapirow. I want an answer to that one question first. Are they the same photographs that you are seeking to have the witness refer to?

MR HOSER: Yes.

HIS WORSHIP: All right, well, I do not want you to use duplicates, I want you to use those same photographs, which are currently exhibit F, for identification - now, before you look at it, yes, Mr Lapirow?

MR LAPIROW: Your Worship, it is clear that - the photographs are clearly visible from the bar table. The witness's evidence concerning positioning of the persons, everything like that, has been really of the skimpiest sort. I really do object to the way in which the prosecution is conducting the case because instead of obtaining detailed and proper evidence from what this person says that he recollects, in effect by showing the photographs, as he is doing quite openly now, he is leading the witness in the evidence that he wants the witness to give.

HIS WORSHIP: Yes, well I hear what you say Mr Lapirow, but at this stage I intend to allow the witness to be shown the photographs. Yes, Mr Hoser, you can show those photographs to the witness. Just have a look at the photographs first, please, and I caution you, Mr Hoser, not to ask any leading questions in relation to those photographs, but to confine your questions to questions which are legitimate.

MR HOSER: Do you wish to ask him some questions, your Worship, or not? No?

The first photograph, can you tell the court what it shows?

HIS WORSHIP: Well, I do not want to know what it shows. It is quite clear what it shows on its face.

MR. HOSER: Okay.

HIS WORSHIP: I do not want to know what he thinks it shows.

MR. HOSER: Okay. You can identify the people in the
photograph?---No, I can't identify all the people in the
photograph.

The ones you can identify, which ones are - who are they and
where - - -

HIS WORSHIP: If you just hold them up and indicate - hold them
up so that I can see them and so that Mr Lapirow can see
them. Hold them up against your chest like this.

MR. HOSER: Your Worship, I can get photostats.

HIS WORSHIP: Mr Burke, if you would just hold them up
like - - - ?---That appears to be Mr Hoser. That appears
to be Mr Ashton, and that appears to be George Olsen at the
back, but I'm not sure because it's a bit obscure.

Yes, thank you.

MR. HOSER: The bloke in the yellow shirt, can you see him?---I
don't know him.

Was that photo taken before or after the punches?---I don't
know.

The next photo. What is this?

HIS WORSHIP: Just a moment.

MR. HOSER: The next photo, what does it show? Do you want me to
hold it up and show - - -

HIS WORSHIP: Which one is that?

MR. HOSER: That one there.

HIS WORSHIP: Yes, well that - - -

MR. LAPIROW: I cannot see that, your Worship.

HIS WORSHIP: It appears to be Mr Ashton getting into his car,
does it not, Mr Hoser?

MR. HOSER: Yes.

HIS WORSHIP: Yes, well there is nothing magic about that, is there?

MR. HOSER: No. I will not even bother with the third photo. It shows him driving off.

HIS WORSHIP: Driving off, yes. Yes, very well.

MR. HOSER: No further questions.

HIS WORSHIP: Do you wish to cross-examine on the photographs?

MR. LAPIROW: I have not really had a good look at them, your Worship.

MR. HOSER: I can tender three copies if you want - show they are copies.

HIS WORSHIP: Mr. Lapirow, you could assist me by having a look at those copies, then I can keep a copy and you can use a copy.

MR. LAPIROW: Yes, I am happy with those.

HIS WORSHIP: Yes, thank you. Could I have those back, please?

MR LAPIROW: Now, it is Mr Burke, is it?---That's correct, yes.

You are a former taxi driver?---Yes.

How long ago were you last a taxi driver?---About a week ago.

For how long were you a taxi driver?---How long have I driven taxis? About 14 years.

Are you familiar with Mr Hoser's campaign concerning - - -

MR HOSER: Objection, your Worship.

HIS WORSHIP: What is the basis of your objection?

MR HOSER: The wording of the question - campaign. Any campaign I may or may not have has no relevance to the charges, and secondly I haven't had any campaign against the RTA, which is what he is about to say, so I object to the question.

HIS WORSHIP: Yes, well cross-examination is wide-ranging. I am not sure of the exact point that is being sought to be made. I see nothing objectionable. You can ask the question, Mr Lapirow.

MR LAPIROW: Are you familiar with Mr Hoser's campaign concerning the Roads Corporation and his holding of a driver's certificate?---That's a wide-ranging question. First of all, I'm aware he held a driver's certificate - if that is one of your questions. I am aware that the Roads Corporation have, at various times, been involved in obtaining information on Mr Hoser, from the FAC. That is one thing that I have noticed over the period

HIS WORSHIP: What is the FAC?

MR LAPIROW: I have no idea, your Worship.

WITNESS: Federal Aircraft - Airports Corporation, sir - your Worship. You are asking me about his campaigns - - -

MR LAPIROW: Well, you would be a confidant of Mr Hoser?---I wouldn't say I'm a confidant of Mr Hoser.

Why would you have gone to court with him if you were not?---

Because Mr Hoser was frightened that he may have been belted up by some people. He rang me and asked me if I would just come to the court.

But why you? Why not Hulk Hogan, or who not - you know, someone perhaps of greater physical stature than yourself?---Well, I'm not of great physical stature. Maybe I'm showing my age, but however, the fact is that I drove a cab and I used to work the airport a lot, as did Mr Hoser, and I have known him over a period of time as a taxi driver, and he's known my phone number. I've also known him through his pursuits in his interest in wildlife, and his books that he has written on wildlife.

You are a fancier of snakes and reptiles yourself, are you?---

I'm a fancier of nature; reptiles and snakes being one part of nature, yes.

Mr Burke, in the one month prior to the date when this incident occurred, how often had you spoken to Mr Hoser?---I don't understand.

How often had you spoken to him in the month leading up to this incident?---In the month leading up to this incident?

Yes?---Possibly once, maybe twice.

Since the incident took place, how often have you spoken to him?---That would be 14 months ago. I don't know - about a dozen times.

Before you came to court today, did you hear the transcript - did you hear the taperecording of what went on in the court the first day?---Before I came today - - -

Did you hear the taperecordings that were made in court the first day?---Which court?

This court?---On this case?

Yes?---No, I have not.

Before you have come to court today have you seen Mr Hoser's self-prepared transcripts of what went on in court the first day?---No, I have not seen any transcripts of what went on in court the first day.

In relation to telephone calls. Have you seen any transcripts in relation to telephone calls?---This is a trick question. I have seen plenty of transcripts in relation to telephone calls but not related to this case.

In relation to transcriptions of other tapes of conversations, have you seen any of those?---Which tapes of which conversations?

Anything relevant to this case?---I haven't seen any tapes of any phonecalls that I am aware of that are relevant to this case.

Yes, well you were aware, were you not, that Mr Hoser had a taperecorder on him at the time of this alleged incident?--
-I know that Phillip Hoser quite often carries taperecorders, yes - I am aware of that.

So is the answer to that, sir, yes or no?---Is the answer to what?

The question that I asked you, that you were aware that he had a taperecorder on him at the time of this alleged incident?--
-I was not specifically aware that he had a particular taperecorder on him, but I was aware that he does carry a taperecorder.

Yes?---Because he has told me, and I have seen him carrying personal taperecorders.

After this alleged incident took place, did you listen to the

tape that was supposedly taken at the time?---Not that I'm aware of.

You see, one of the questions that was asked of you in evidence-in-chief, was whether or not you heard the conversation, and your answer was that you did not hear the conversation, and that suggests, does it not, that you were aware that there is an allegation of a conversation having taken place?---No, it suggests that I saw that there was a conversation of some sort take place at the time of the incident, but I do not recall, and I do not believe that I heard what the conversation was. I could presume from expressions or something.

You were there for the sole purpose of being there to give physical protection to Mr Hoser?---No, no, no.

You were there for the sole purpose of being an observer on behalf of Mr Hoser?---No.

What other reason would you be there?---As I said, he rang me and asked me to come in because he was frightened that something may occur to him and he didn't want to get belted up. I mean, if someone else is there, obviously he felt he would be protected from that.

So you did not view your role as either being an observer or a protector?---No.

You are asking the court that you believed that Mr Hoser was telling the truth?---Well, I believe he is telling the truth. He had reasons for concern. He has been belted up before.

You do not consider that Mr Hoser might be slightly paranoid?---I am not concerned that he is slightly paranoid.

In order to discharge your duty - - -?---I didn't have a

duty - - -

As a friend of Mr Hoser?---I'm not a friend of Mr Hoser. I'd call him an acquaintance more than a friend.

A man who would nevertheless was in employment at the time?---I'm sorry?

You were in employment at the time. You took time off work to come to the Melbourne Magistrate's Court because an acquaintance of yours said "I'm in fear of assault, and please come along"?---Yes.

So your duty there was to observe or to protect?---No, I didn't see myself as having a duty to observe. If you are calling me an observer, I would have thought that an observer is someone that comes to specifically look at something and observe it.

Why were you there?---I was there so that if someone had any ideas of grabbing him and bashing him up, that there would be a witness to such a thing occurring.

And a witness even if it did not occur?---I don't understand that implication.

I am putting it to you, sir, that your evidence regarding the punching is a lie?---Well, I put it to you, sir, that not only is it the truth and that it happened, that you must be desperate if you are saying that I'm lying, because I have one thing in my religion that I believe that if I make an oath that it is a serious thing. I'm a Catholic, sir, and I don't take oaths lightly, and I certainly don't tell lies, especially under oath.

You are saying that you did not come to court to observe; you are saying that you did not come to court to protect, and you are saying that you didn't come to court in order to

bear false witness. That is correct, is it?---I don't know how to answer you. You are very good with words and I am not a person great with words, but the fact is, I came to court, as I said to you, with Mr Hoser on his invitation because he wanted someone to come with him. I came with him. I have said to you that I wasn't coming as an observer because as I understand, an observer would be one who would come along to observe something that was known to be happening. I said I didn't come as a protector because my physical abilities aren't there to be able to protect anybody really because if a thug come up and punched me, I'd probably get pushed 50 metres. I am not that type of person, but I came along, as I was invited by Mr Hoser, as he has, on other occasions prior to that, felt he was in a position where he could be vulnerable either coming to court or going to other places - he has asked me, and I have gone, and not because I'm a great friend of his but because I truly believe that on occasions he appears to have been hard done by.

Victimised?---I didn't say that word, sir.

Well, what does "hard done by" mean?---"Hard done by" means hard done by. I think that's self-explanatory.

Would you agree that in your understanding of the term, "hard done by" is another word for victimised? Treated unfairly - persecuted?---Well, you've said it, yes.

HIS WORSHIP: Do you agree or not?---Well, "hard done by" is treated unfairly, yes.

MR LAPIROW: That is unfairly by the Roads Corporation?---On what occasion?

Well, that was your belief, was it not?---No, no, I'm not - I'm

not saying that I feel that he's hard done by by the Roads Corporation in general or anything, but can I give you an example of why I said he was hard done by?

Just in relation to the question of "hard done by", you are saying that he is victimised?---No, I have not said he is victimised.

Okay, persecuted?---No, I didn't say persecuted.

HIS WORSHIP: Treated unfairly is as far as the witness is prepared to go?---I said "treated unfairly".

MR LAPIROW: And treated unfairly by officers of the Roads Corporation?---I didn't say that but - - -

Well, who else then, sir?---I said that I believed he had been treated unfairly in general. Can I give you the example?

Now, sir, in relation to "treated unfairly" in general, if he was treated unfairly as being a Collingwood supporter, that would not cause you to come to the Melbourne Magistrate's Court, would it?---Sir, I'm trying to give you - can I give you an example that I can explicitly say?

Sir, are you saying that he is treated unfairly by the Roads Corporation, or officers of the Roads Corporation?---
Sir - - -

HIS WORSHIP: Can you answer that question yes or no, Mr Burke, please?---Now I am confused as to which question I am to be - - -

Well, is it your belief that in the past Mr Hoser has been treated unfairly by officers of the Roads Corporation?---
Correct, yes.

Or the Roads Corporation itself?---Yes.

Both. Thank you.

MR LAPIROW: And your purpose there to not observe and to not

protect, was based on your pre-existing belief that the Roads Corporation treated Mr Hoser unfairly?---I didn't know the Roads Corporation were involved, sir. I was asked

- - -

And you were intending to redress that balance, as you are now?--

--No, sir.

Is that not the case?---That is untrue. That is a fairy tale.

You have been a taxi driver you said for 14 years?---

Approximately.

I suppose that would make you street-wise, as is often said in the American television dramas. You have seen incidents on the street of people being assaulted. You may have been the subject of an assault by a passenger yourself. Has any of that ever occurred?---That I have seen someone assaulted in the street?

Yes?---If I had, I would have gone to court for them.

Yes, but how would you have gone to court? Would you not have gone to the police?---Why would I go to the police?

If you saw someone being assaulted, would you not have gone to the police?---But maybe the person being assaulted - maybe the person being assaulted wasn't someone who wanted me to go to the police. I wouldn't tell people what to do.

No, but you are an experienced driver of taxis in the metropolitan area?---Sir, I'm 42 years of age. That makes me no more street-wise than whether I'm a taxi driver or an accountant, surely.

So you are saying that in your understanding, that if you would see a criminal activity going on - a person being victimised or assaulted, you would not consider going to the police?---That is not what I said, sir. If I saw a

criminal activity occur, of course I would consider going to the police, but whether I went to the police or not would depend on a lot of things.

Well, you would did not go to the police this time?---I didn't have to go to the police this time.

Despite the fact that you say that you saw an assault against Mr Hoser - - - ?---Well, look, I - - -

You did not walk the 10 feet of 20 feet - - - ?---That's correct.

To go into the court room?---Because, sir - do you want to hear the answer to that? The reason was, it happened very fast, and secondly, I am not a physical person. I am not going to get involved with that type of thing. What am I surprised to do? Run over and get involved and put a third person into a fracas?

No, what I suggested to you, sir, was that if you saw a criminal activity occurring, what the ordinary person would do is to immediately seek the assistance of the police to either bring the matter to an end, or to seek that the perpetrator be dealt with according to law?---Well, obviously, sir, I am not an ordinary person.

And of course, had you sought police assistance at that time, you would not have had the opportunity to concoct this story with Mr Hoser?---Well, sir, as I understand it, I was aware that Mr Hoser approached the police. I am not sure of the details, but the fact is, it was - - -

If you are not sure, sir, you cannot say?---Well, it was him that was involved, not me, and I don't tell other people what to do.

Now, in relation to the alleged striking?---Yes, sir.

Was it Mr Hoser's right hand that struck - was it Mr Ashton's right hand that struck Mr Hoser, or was it his left hand, or was it not a hand at all? How was it done?---It was his left hand.

Yes?---Because he had his right hand up also, as I recall.

Perhaps you can demonstrate?---Yes. Right hand there like that, and bang, bang, bang - something like that.

Where was Mr Hoser struck?

MR HOSER: For the purposes of the tape - for the purposes of the tape - - -

HIS WORSHIP: Just a moment, Mr Hoser. I am just making a note.

Yes, for the purposes of the transcript, the witness held his right hand up with the right arm up, horizontal at shoulder level, with the palm open and facing down. The left hand - three rapid blows at shoulder level, with the arm horizontal, and clenched fist.

MR LAPIROW: Where did Mr Hoser receive these blows?---At the top of his fist, or between his - it certainly never landed on his chin, so it was under his chin but above his naval.

How tall is Mr Hoser?---I don't know, sir.

Is he taller than you?---I don't know, sir.

Taller than Mr Ashton?---Look, I'm - you know as well as I do.

I can't tell from where I am. If you want me to compare him - - -

If you have a look at the photograph that you identified. That shows a difference in height, does it not? Would you like to see the photograph again?

HIS WORSHIP: Do you want to see the photograph again, Mr Burke?---Fine. I can compare that with the height. Where he's got his arms there would seem to be about the - about

where he hit Hoser.

MR LAPIROW: The question that I asked you was if Mr Ashton is a different height than Mr Hoser?---I can't comment, as you can see. He is standing in a different position than Mr Hoser. He has got his feet apart. I can't comment on the height because he could be closer to the camera.

Speaking of the shoulders, can you indicate - assuming that Mr Hoser was in a position where he is now seated. You can turn the photograph over now - you do not have to look at the photograph?---I'm sorry. I thought you were talking about the photograph.

Looking at Mr Hoser now. How were Mr Ashton's shoulders with Mr Hoser? Was he square-on? Was he side-on? How was he?---I don't understand what you're saying. Do you want me to work out the number of degrees that he was facing away from him or something?

Sir, the question - square-on, intending to mean that if Mr Hoser were my - - - ?---Mr Ashton was moving at the time.

At the time that the blows were struck, Mr Ashton was moving?---

Yes, towards - - -

How was he moving?---He was moving towards Mr Hoser who was moving backwards.

He was moving towards Mr Hoser with his hands outstretched, like this?---He had one hand up like that and went bang, bang, bang, like that. As that occurred, Mr Hoser went backwards, so he was moving, yes, and then he moved straight to the car.

After he struck Mr Hoser, on your account, what were his exact moves?---It's 14 months ago, sir. I don't remember a lot of things in 14 months but I do remember the actual assault

occurring because they are the type of things that do sit in my mind.

What were his exact movements, sir? I am not asking you for opinions about other matters. Either you know or you don't know. Now, which is it?---I don't know what his exact movements are, if you are asking me for his exact movements, other than he moved away from there and hopped into the car.

Other witnesses called by the prosecution in this case have said that Mr Hoser was walking in front of Mr Ashton as they left the court. What do you say about that?---I didn't see Mr Hoser walk in front of Mr Ashton when he left the court, because he was behind me.

Fine. The answer is, you are unable to comment?---True.

Other witnesses have said, and again I do not have the benefit of the transcript for this, your Worship, but they have said at least to the degree that Mr Brygel was standing in a doorway further up the street - further to the north, than was Mr - - - ?---I can't comment on what other people have said. I can only say that I was - - -

Yes, where was Mr Brygel?---He was beside me at the time because - - -

And where were you?---I was on the footpath, north of where Mr Hoser and - - -

And is there a doorway in that location?---I don't know if there's a doorway in that exact location. I didn't stop to have a look. I wasn't looking at a door. There could have been a doorway in that location, but not on the middle of the footpath I wouldn't have thought.

No, I am not suggesting there is a doorway in the middle of the

footpath, sir, I am suggesting that there is a doorway leading into the court?---It's possible.

Do you recall?---I know there is a doorway down here. I wouldn't have - I don't recall whether I was right beside it or not but it's possible.

Do you recall if you were in front of, to the left of, to the right of or behind Mr Brygel?---I was between Mr Brygel and the footpath kerb.

Does that mean that you were beside him?---It depends on which angle you are looking at, yes. Basically I was - as I say, he was on the court side of me and I was between him and the Russell Street police station.

How close to the court was he?---Sorry.

How close to the court was he?---To this court here?

To what you have just described as a court?---Well, within a few feet of the court, I don't know.

And how close in respect to the doorway of the court?---I don't know. As I said before, I am not sure how close to the doorway we were.

Now, you say that you were between Mr Brygel and the street?---Correct.

And if one were to assume that Mr Brygel were looking directly south?---Yes.

Can you make that assumption? Were you directly to his east or were you slightly in front of him or were you slightly behind him?---I would have been slightly to his north.

That means that you were slightly behind him?---No. It depends on your definition. I was slightly, maybe, to his north by a few inches.

Which is the reason why there is no evidence of you in these

photographs.

HIS WORSHIP: That is a comment, I think, probably, Mr Lapirow.

WITNESS: Look, I cannot comment. I didn't have the camera.

MR LAPIROW: But that would be a possible explanation as to why you are not in the picture?---Well, I'd say that would be a fair assumption.

Now, following the incident that you have just described, you do not recall Mr Ashton's exact movements but you do recall that he went to his car?---Yes, I remember him going to his car.

And did you hear a conversation that took place at that time?---No, I didn't hear a conversation that took place - what I'm aware of.

Well if I understand your evidence correctly, in order for Mr Ashton to proceed to his car, he would have to have walked past where you were?---No, that's incorrect.

So you are saying that Mr Ashton's car was located somewhere between the point where you say this incident took place and the point you were standing?---After the incident occurred, Mr Ashton went to his car and hopped in it. The car was parked outside the court here.

Now, I have asked you a specific question?---Yes.

And I do not want you to return to a script you might be working from - - -?---I'm not working from any script, sir.

But what I am asking you is whether or not Mr Ashton passed the position where you say you observed this incident or whether he was somewhere between the point of the incident and the point that you were standing?---As he had moved, and I had moved probably a little bit, I would say that when he got into his car, his car line would have been

behind where we were.

So you are saying that in order for Mr Ashton to proceed to his car, he would have had to have walked past the place where you were standing - - -?---No. I'm not saying that at all. I am saying that - I'm not saying that at all.

Well, witness, what I will ask you to do - - --?---The car is not - - -

Witness, I will ask you to do this on a plain piece of paper. I would like you to sketch in - do you have a pen?---Sure, I have.

I would like you to sketch in a kerb line showing the kerb between the footpath and Russell Street, I would like you to sketch in the inner section of Russell and Latrobe Streets so that we know the commencing point. I would like you to indicate on that plan, the location of any of the doors of the court that you recall. If you do not recall them, it does not matter but if you do recall them - - -?--
-I don't recall the position of the doors, apart from the main entrance which has steps somewhere like that.

I would like you to indicate Mr Hoser's position and Mr Ashton's position at the time of the alleged assault?---How do you want me to indicate that. By an X for each of them - - -
Well, two Xs or circles, whatever you are comfortable with?---
Okay.

HIS WORSHIP: And would you indicate by putting a letter which is Ashton and which is Hoser?---Yes, right.

Just use an A and an H, please?---Yes.

MR LAPIROW: I would like you to indicate where Mr Brygel was?--
-Yes.

Where you were?---And as I remember, the position of the car was

somewhere like that.

Okay, may I see that?---Yes.

Could you explain what the square is, is that meant to be the car?---That was the car as far as - it may not be in proportion, I am not a very good artist.

HIS WORSHIP: Well, I think this should be tendered as an exhibit.

EXHIBIT 7 ... Diagram of relative positions of various persons at the moment of the assault.

MR LAPIROW: Now, after the assault, describe your movements between the time of the alleged assault and the time that Mr Ashton gained the sanctuary of his car?---Well, Alan Brygel went over to Phillip and I basically moved forward but stayed where I was, I was just there.

Now, if there was any conversation or words passing between any of the parties and Mr Ashton at the time that he was near his car, you would have heard those words, would you not?--
-No. Not necessarily, no. I don't believe I did because I never went over to Hoser at all. I saw George Olsen who walked past me and that was about it. I did not partake of conversation at that stage with Hoser or Brygel. They were together, I was further - - -

Well, if there were words that were said by Ashton or words that were said by Brygel or words that were said by Hoser at the time of Mr Ashton getting into his car, you would have heard those?---Right.

Well, how far away were you, sir. It could not have been further than from you to me, could it?---About that or a little further.

HIS WORSHIP: Well, what do you say that distance is, Mr

Lapirow, about 10, 12 feet.

WITNESS: 10 to 15 feet.

MR LAPIROW: 10 feet perhaps, sir. I am sorry. I cannot do metrics.

Now, after Mr Ashton got into his car and drove off, what did you do?---In regards what?

In regards to your movements?---What did I do?

Yes?---I went over to Phillip, he said to me something along the lines of "Did you see that?"

I did not ask you about what he said, I have asked you what you have done - - -?---Well, I walked over - - -

Now (Indistinct) understand the question?---I walked over - I walked over to Phillip Hoser basically.

And where was Phillip Hoser at that stage?---Probably near to the kerb. I didn't take particular notice.

Again in the general vicinity of the area of the footpath that you have drawn?---Somewhere there. Look, I didn't take much notice - - -

Now, you walked in that area. Then what did you do?---Then?

Yes?---I walked off with Alan Brygel north from here and then I left.

How far north did you walk?---Well, I ended up walking up the back of MacKenzie Street, that's how far I walked.

And you do not recall Mr Hoser and Mr Brygel running after Mr Olsen and the other gentleman who was there, seeking to take photographs of them along Lonsdale Street? Is that Lonsdale - Latrobe Street, sorry?---I didn't go down to Latrobe Street.

Well, I did not ask you whether you went down, I asked you whether you recalled Mr Hoser and Mr Brygel chasing Mr

Olsen and the other man who was with him down Latrobe Street, seeking to take photographs?---I said I went up - I went up through McKenzie Street, how could I be in Latrobe Street, sir.

Sir, I did not ask you whether you went there, I asked you whether you recall that?---No, I don't recall that because Latrobe Street is down there and MacKenzie Street is up there.

HIS WORSHIP: So your evidence is you did not go anywhere near Latrobe Street? After the assault, you did not return towards Latrobe Street?---After the assault, I went home. Would you just listen to my question. After the alleged assault had occurred, you did not approach any nearer to Latrobe Street, you went back the other way - - -?---Correct. Yes, your Worship, sorry.

Thank you.

MR LAPIROW: Now, insofar as there was any discussion between you and Hoser and Brygel, you say that you were not a party to it but you heard a discussion between Hoser and Brygel?--I'm sorry. You have lost me. When did I hear the discussion between - - -

If we can return to the point immediately after Mr Ashton got into his car?---Yes.

Do you recall that?---I remember him - yes - - -

And do you recall which way Mr Ashton drove?---No. I remember that the car went that way. Whether it did a U-turn and went that way, I don't know.

So you were not looking?---Absolutely.

And you were directing your attention elsewhere?---Well, it's 14 months ago and you are asking me very specific questions.

Were you directing your attention elsewhere, or not directing your attention anywhere?---Well, how am I supposed to answer that, my attention would have been somewhere - - -

HIS WORSHIP: I do not think it will assist me, Mr Lapirow.

MR LAPIROW: Yes, sir.

HIS WORSHIP: Thank you, Mr Burke.

MR LAPIROW: Now, you gave in evidence a few moments ago that there was a discussion or a conversation between Brygel and Hoser, do you recall saying that?---I don't recall saying that at all.

And then from the point when Mr Ashton drove off in his car, you then turned north and walked away from the court?---I said that I approached Phillip Hoser after it occurred, he said to me "Did you see - - -

I am not asking you what he said - - -

HIS WORSHIP: Yes, well you had a conversation with - - -?---

Well, I went and had a conversation with Hoser, Brygel was there and I said something to the effect "Well, I've got to go - - -

MR LAPIROW: No, you cannot say that. Just say what you said?--

-Gee - - -

HIS WORSHIP: Yes, that is all right, Mr Lapirow, let it run - -

-

MR LAPIROW: Right?---Okay, well, what happened was - and I won't say that I said anything, was I went from where I was to where Mr Hoser was, somewhere still on the footpath. Alan Brygel was there somewhere. There was a conversation. I won't say the contents of the conversation but I then had to say a conversation that explained why I was leaving which I did and I left.

And when you left, you turned to the north and walked up Russell Street?---I walked up Russell Street, crossed over where MacKenzie Street is.

Were you walking by yourself or were you walking with Brygel and Hoser or either one of them?---No, I was walking by myself when I left.

Now, when was the first time that you made a statement concerning your observations?

HIS WORSHIP: Well, that is one question too soon.

At any stage, did you make a statement about your observations?--

--No, I have made no statement about my observations.

Thank you.

MR LAPIROW: Previously, in your cross-examination - - -?---I am sorry?

Previously in your cross-examination - - -

HIS WORSHIP: That is whilst Mr Lapirow has been asking you questions.

MR LAPIROW: Yes, while I have been asking you questions?---Yes.

My instructing solicitor has been taking notes and he has noted a response to a question which said that earlier when you left you said you walked off with Mr Brygel to the north?--
-Mr Brygel came with me for a part of the way and then I departed, after I had been to - - -

So both answers are consistent, you say, sir?---Well, sir, I tried to explain to you before, when the assault took place, I was away from where Mr Hoser was, with Mr Brygel. Mr Brygel raced down to Mr Hoser, obviously having taken a photograph. I then went over to Hoser. I then walked back a little bit with Brygel who was talking to me as he always does and then I left completely and he walked back with

Hoser, as far as I am aware.

So you would have no idea as to the movements of Mr Brygel or Mr Hoser from the time that you turned your back on them and walked north up Russell Street?---I didn't observe them after I left the scene of the alleged assault - - -

Now, in your experience as a member of the community, a man aged 42 years and having no particular difficulty with the police, you are saying that if you had witnessed an assault and there are dozens, if not hundreds of policemen standing by in very close proximity, you would not turn to one of those policemen and say "That man should be arrested for assault"?---Sir, I am amazed that you bring that up and the reason I am amazed at that is - - -

Would you care to answer the question, sir?---Yes, well, can I please answer the question. The question that you bring up is an important one but as Mr Hoser had been assaulted or there was - had been the brunt of alleged assaults before, it wasn't something that was something that I felt that I should do anything about because I felt that Mr Hoser was quite able to take the necessary action. My reason for being at the court was on the invitation of Phillip to be there to make sure that he was not hassled or assaulted because he felt that my presence would allay that. When I got to the court and Alan Brygel was there, my need to be at the court was not as important because there was someone else there with Phillip, as I understood it.

With a camera?---I am sorry?

With a camera?---I didn't have a camera, sir.

No, Mr Brygel had?---Obviously. No, I am saying that so long as someone was with Phil, the chances of him getting assaulted

were remote because he had a witness, that is all I am saying. To me, I wasn't needed and I didn't go and approach the police because I would have thought that Phillip would take any necessary action that was required.

You are saying that, in your experience as a member of the community and as a taxi driver, that if you see someone - -

HIS WORSHIP: Mr Lapirow, unless there is another point to be raised, I do not think that assists me.

MR LAPIROW: No, your Worship. There is not.

When were you approached by Mr Hoser for the purposes of giving evidence at this hearing?---That's a very hard question because the fact is that, on the next occasion after the assault took place that I saw - - -

Would you just answer the question, sir?---Can I please answer it because - - -

Sir, answer the question directly. When were you first approached by Mr Hoser for the purposes of giving evidence at this hearing.

HIS WORSHIP: It is a fairly straightforward question, Mr Burke. Do you have some difficulty in answering?---Yes, I do, your Worship. Can I explain why?

Yes, tell me why?---Because from every occasion that I saw Mr Hoser after that date, at some stage he may have said to me "You will have to come to court - - -

On every occasion this was discussed - - -?---No, I am saying to you - I am saying to you that I discussed it a few times with him that what's happening about what happened to him - - -

Well, where was the first time that you had such a conversation

after the event itself?---Would have been about a week later but I can't be specific.

MR LAPIROW: And at the time of that conversation, did Mr Hoser tell you what happened to him, those bits that you could not hear from your point of vantage?---He probably did but I haven't - I probably didn't take much notice. The only thing that I - - -

Did he play the tape-recording that he said that he took at the time to you?---I think I did at one stage hear a tape-recording at that time, yes, but I'm not sure - I'm not sure when that was.

I thought that I had asked you earlier whether or not you had heard any tape-recordings or any transcripts and your answer was no?---No, you asked me if I heard any tape-recordings or transcripts of the first day of the case, as far as I'm aware.

And I think that I also asked you a question, and again this - it is hard when one is on one's feet, but I believe that I asked you a question, any other conversations as well?---I've heard tape recordings of many conversations, I'm sorry, I've tried to get that clear with you when you asked it. I thought you were being explicit about the first day of the case.

How often have you heard Mr Hoser's tape recording of what went on?---If I heard it, I've only heard it once as far as I'm aware, maybe I've heard it bits and pieces of it on one occasion and that would have been all.

When?---On the first or second time I saw him after the alleged assault, about a week after the alleged assault.

It must have been at that time, which is 18 months or so ago?---

Well, that's the assault took 14 months ago, I don't see how it could be 18 months ago.

These dates, I am just clearing my mind?---So you're not specific either.

HIS WORSHIP: Mr Hoser, it is not impressing me, these little asides, these little gestures and remarks. If there was a jury here any judge would be making it quite clear to you that that sort of behaviour does not cut any ice, so it will just be quicker for all of us concerned if you would refrain from doing it.

MR HOSER: Sorry.

MR LAPIROW: Pardon me, the date of the assault, perhaps I should clarify that, your Worship.

HIS WORSHIP: On 1 November 1990.

MR LAPIROW: 1990, thank you.

HIS WORSHIP: So it is 13 months ago - that is right, 14 months ago. Yes.

MR LAPIROW: At that time you say that you spoke to Mr Hoser and he played you the tape shortly after then?---I would say he played me a bit of the tape but that wouldn't have been the only tape he played to me at the time.

The tape itself only goes for about 22 seconds or thereabouts?--
-Is that all it goes, well there you go.

HIS WORSHIP: Of the alleged incident which occurred outside, you are talking about, the tape itself is much longer.

MR LAPIROW: I would think so but it was played several times in court your Worship, and I tried to make a recording of the length of the time without a stopwatch?---I didn't hear it played in court.

You did not hear it played at all?

HIS WORSHIP: No, in court?---In court.

MR LAPIROW: Well, it was being played to you to fill you in on those things that you were not previously aware of?---No, no, I don't think.

What other reason would it be played to you sir?---What other reason would it be played to me? It would have been played to me because he wanted me to hear what was on the tape.

In order to fill you in?---That's your words.

And then subsequent to that time, on how many occasions between the first incident and the time that you have come in court today, have you spoken to Mr Hoser about what went on?---I cannot honestly answer that question, that's - on a number of occasions.

HIS WORSHIP: I am sorry, would you ask that question again please?

MR LAPIROW: How many other conversations have you had with Mr Hoser concerning the incident on that day since the conversation that occurred shortly after the incident, and today?---How many conversations have I had to Mr Hoser in relation to the assault that took place outside this court, is that what you're asking?

Between those two times?---Between - - -

HIS WORSHIP: Between now and the first occasion?---Probably half a dozen times.

MR LAPIROW: During that time have you told Mr Hoser what you saw?---He knows what I saw, he was there.

Have you told Mr Hoser what you saw?---I don't think I've specifically told Mr Hoser what I saw, obviously I've said I saw what happened.

And that is all you have said?---If I have a conversation with

someone, I have a conversation with them, I can't say that's all I've said. I can't recall every word I've said. Did Mr Hoser tell you what went on?---He didn't have to, I saw what went on.

I am not asking whether he had to sir, and you are evading the answer to the question?---Which was?

Which was did Mr Hoser tell you what he said went on?---I don't understand the question. You're asking me if Mr Hoser told me what he said went on?

Yes?---Do you mean that he has told me that what happened out the front happened differently to what I saw?

HIS WORSHIP: Has Mr - - -?---I don't understand.

Mr Hoser said to you "When he came up to me he hit me three times and grabbed me on the shoulder" has he explained to you - - -?---No, he hasn't.

Explained to you what his version of the events was?---Basically his version of events and my version of events are exactly the same.

How do you know that, he must have explained then to you what he says occurred, otherwise how would you know?---I can see, yes, obviously, yes. Sorry.

MR LAPIROW: So that has occurred?---What's that?

What his Worship has just put to you?---Yes.

How many times?---It would have happened the first time I saw him after the event obviously.

And then?---And then what?

How many times since then?---How many times since then what?

Does your Worship believe that the question needs greater clarification?

HIS WORSHIP: It is not worth persevering Mr - - -

MR. LAPIROW: To seem fair to the witness your Worship?

HIS WORSHIP: Be fair to the witness, yes ask the question again in full.

MR LAPIROW: On how many times from the date that you first spoke to Mr Hoser about the incident until today, have you again spoken to Mr Hoser about the incident?---As I said I've spoken about half a dozen times to him about the incident.

Have those conversations taken a similar turn each time?---As I said before, for him to explain what happened to him, for me to explain what happened to me, having seen what I saw, I would have explained that to him on the first occasion and it was on the first occasion - there wasn't anything different, we both agreed on what happened.

HIS WORSHIP: I am sorry. So you say on the first occasion you probably did explain to him what you saw?---Yes, that's what I'm trying to say, the gentleman here is trying to say that Mr Hoser saw something different to what I did, well if that's the case - - -

Mr Burke, do not try and work out what Mr Lapirow is trying to do. Sometimes I do not think he knows, just try and answer the questions as simply as you can. That is no disrespect to you Mr Lapirow, when I was at the bar I often asked questions I was not quite sure where they were leading.

MR LAPIROW: As I understand your evidence, and I put this to you, that you have spoken to Mr Hoser on five or six occasions over the past 14 months?---Yes.

During which time the conversations have all been similar in content?---No.

Insofar as they relate to what happened in Russell Street?---No

two conversations are the same when I talk with Phillip and enclosed in what we say, we may have discussed what happened in Russell Street six or seven times, is what I said.

And insofar as the conversation related to Russell Street, none of the conversations were inconsistent with anything that had been previously said on earlier occasions?---From what I saw happened and what happened to him, there was no dissension as far as I know.

And nothing had been added to your recollection over the period of 14 months?---No.

Nothing had faded from your memory during that period?---A lot's faded from my memory sir. I don't have a photographic memory, if that's what you're implying.

When was the last occasion when you spoke to Mr Hoser about the evidence that you have given today?---The last occasion that I spoke to him concerning the evidence that I give today, would have been before the first case, the first hearing.

Which was when?---About a couple of months ago.

Since then you have had no conversation with him?---Concerning this case.

None at all? You have had no conversation with him concerning this case or your evidence since September?---The only time I've only spoken - when was the case, September?

September?---The only - I may have spoken to him a couple of times in person since then and I don't think the case has come up. I've spoken to him three or four times on the phone and that's about it.

It might a question which I cannot understand, maybe you can

explain to the court how come you knew to be here today if you did not discuss the case since September?---You're talking about the content of the case. I was aware that I had to come here on 3 February.

What is 3 February sir?---Today. I'm sorry, that is another case I have to appear at, I'm sorry.

How did you get here today?---I got here by public transport.

Did you come with Mr Hoser?---I came by public transport.

Did you come with Mr Hoser?---No, I came by public transport.

MR HOSER: I hitchhiked, by the way?---(Indistinct)

MR LAPIROW: When did you meet Mr Hoser outside the court?---At about one minute to 10.

During the whole of this period of time, have you ever recorded your recollections in writing?---No. I haven't. That is, relating to this case.

During the course of my questioning you, my instructing solicitor has noted down a question and the question was, did you listen to the tape that was supposedly taken, and that is how he has written it, and I presume that it meant taken at the time of the incident?---I presumed obviously it meant taken at the time of the first - - -

Well the transcript will perhaps clarify that?---All right.

HIS WORSHIP: The note that I have is that in the early part of the cross-examination you were asked about the practice of Mr Hoser of carrying a tape recorder and your answer that I have is "I was not specifically aware of his carrying a tape on this occasion, although I know he often does"?---Yes.

You were then asked if you had heard any tape that was made of the incident and the answer that you gave early on in your

evidence was "I am not aware of hearing a tape of the incident".

Do you recall saying that earlier on?---Yes, I do.

Thank you?---Can I make an explanation - - -

No, you will have the opportunity to answer any questions by Mr Hoser. Yes, is that your cross-examination?

MR LAPIROW: Yes, it is.

HIS WORSHIP: Yes, Mr Hoser?

MR HOSER: I will be a bit quicker with any luck.

HIS WORSHIP: I will just refresh your memory Mr Hoser, you are only entitled to ask questions on matters which were raised in cross-examination, you are not entitled to explore any new issues nor are you entitled, even at this stage, to ask him any leading questions.

MR HOSER: Sure, I understand that. If I step out of line I am sure Mr Lapirow will be on his feet. Have I at any stage - in relation to you accompanying me to court and my previous journey to the VicRoads, had I at any stage made you aware of the fact that I felt I had been a victim of baseless allegations?---Yes.

Was one of the reasons I had asked you to accompany me to court was because I was - - -

MR LAPIROW: I have to - - -

HIS WORSHIP: Yes, that is a leading question, Mr Hoser. I know you had not finished it but by its nature it must be.

MR HOSER: Not a problem. Did you or Alan Brygel in any way provoke the attack by Mr Ashton?

MR LAPIROW: Objection, your Worship.

HIS WORSHIP: It is not particularly relevant Mr Hoser.

MR HOSER: I thought it was.

HIS WORSHIP: Why do you think it is relevant?

MR HOSER: Well, Mr Lapirow was trying to make out that Brygel had come with the camera to provoke an attack or something, I do not know what the story was.

HIS WORSHIP: If that is what Mr Lapirow was trying to suggest, it is lost on me.

MR HOSER: Had I any time informed you of a previous - - -

MR LAPIROW: Objection.

HIS WORSHIP: Yes. Again it is patently a leading question.

MR HOSER: Have you been called as a witness in a previous case against Mr Ashton?

MR LAPIROW: Objection, does not arise out of cross-examination.

MR HOSER: Well it does in that you were talking about him being witnesses and concocted stories and all these other terrible things and I thought it would be relevant on the basis of a previous case, whether or not he was there concocting stories in that case.

HIS WORSHIP: How can that affect me, Mr - - -

MR HOSER: Well, he was not a witness and there was something like a dozen people witnessed that attack.

MR LAPIROW: Your Worship, I again - - -

MR HOSER: There is a hell of a lot of - - -

MR LAPIROW: Same application is made.

HIS WORSHIP: Yes, the application is noted and refused.

MR HOSER: What I am trying to impress is there is a hell of a lot of people concocting stories, if that is the line of his attack. You did not attend Flemington Racetrack - I cannot ask that question, can I?

HIS WORSHIP: It is a leading question, I do not think it has any relationship to this matter.

MR. HOSER: If you saw an illegally parked car would you go to the police and tell them?---No.

Surely every normal citizen does, do they not?---Possibly.

You are aware of Ashton previously being charged for assault?

MR LAPIROW: Your Worship, I - - -

HIS WORSHIP: Yes. Mr Hoser, I am giving you a great deal of latitude but I think I ought to make it clear at this stage that it is not proper to refer to any previous court appearances or convictions or anything else in relation to the defendant unless a certain application is made. Now, if and when that happens, very well, but you are not entitled to do it now. In front of a jury this case would have been thrown out on a number of occasions in the past, because as far as that part of my brain which is the jury, is concerned, Mr Ashton comes before me at this stage as a - - -

MR HOSER: Clean man, I understand that, your Worship.

HIS WORSHIP: An unconvicted citizen. I am just giving you a lesson in the law at this stage, I do not ask you to address me about it.

MR HOSER: Sorry, your Worship. So basically, between this hearing and the last hearing of this case in September, the only thing that you and myself discussed was the date?

MR LAPIROW: Objection.

MR HOSER: What did you discuss between now and the last hearing, between me in relation to this case?

MR LAPIROW: Your Worship, damage has already been done by nature of the question that has been asked.

HIS WORSHIP: Mr Lapirow, I am sure these are all going to look very impressive on the transcript but you and I know that,

as I say, it is that part of my cerebellum which is the jury, is capable of being insulated by that peculiar facility that Magistrates are deemed to have.

MR LAPIROW: Yes, your Worship.

MR HOSER: I have got no further questions then, but what I would like is if I could have leave for about one minute to go to the toilet because I am hanging out for a leak.

HIS WORSHIP: I want to ask a couple of questions of Mr Burke, so I will ask those first and then we will take a very short adjournment.

Mr Burke, in the demonstration that you gave of the actual assault, your right arm was sort of hung out to dry, can you be a bit more specific about what the right arm was doing, was he holding on to Mr Hoser or was he shaping up or trying to hit him with that arm or - - -?---I can't say that he was holding on, all that I remember was both arms were up and I saw the left hand actually come in contact with the body but - - -

You do not know what the right arm was doing, the right hand was doing?---Not specifically, no.

Your also said in your evidence-in-chief that Mr Hoser was pushed back off balance by the attack, is that right?---Well, he was back pedalling as it occurred, yes.

Are you able to say anything about the force with which these blows appeared to connect, or any effect which the blows themselves appeared to have on Mr Hoser?---The force of blows I suppose, were not heavy in that they weren't - it was more a shoving action I suppose, than - there was some force that was making him go back but it wasn't enough to sort of break his collarbone type of thing.

Looking at the diagram, you say the assault occurred in this particular position with Mr Hoser and the defendant approximately at the rear of the defendant's car, is that right? Ashton's car?---Or back from it, yes.

The diagram that you have drawn shows them very close to the rear?---Well, it's somewhere there, I can't be that precise.

After the assault Mr Ashton went to his car?---Yes.

Did Mr Hoser approach any nearer to the car or to Mr Ashton after the assault?---No, I thought he was trying to get away from Mr Ashton.

Anything arising out of that, Mr Lapirow, first?

MR LAPIROW: No, your Worship.

HIS WORSHIP: Mr Hoser, any questions arising out of my questions or the answers?

MR HOSER: No, your Worship.

HIS WORSHIP: Is there any reason why Mr Burke cannot now be excused from any further attendance?

MR HOSER: I have none sir.

HIS WORSHIP: Thank you Mr Burke, you are excused, you can stay and await the outcome if you wish or you are free to go if you want to go too. Yes, we will adjourn very briefly, 10 minutes, we will be starting again at a quarter past.

WITNESS WITHDREW

ADJOURNED AT 12.08 PM

RESUMED AT 12.15 PM

HIS WORSHIP: Yes, Mr Hoser?

MR HOSER: I now call Alan Anthony Brygel please.

ALAN ANTHONY BRYGEL, sworn:

HIS WORSHIP: Put those documents down please, Mr Brygel?---

Thank you.

Yes?

MR HOSER: I have just lost my pen. Could you state your full name, address and occupation please?---Alan Anthony Brygel, I live at 447 Flemington Road, North Melbourne, I am unemployed.

HIS WORSHIP: Is that Furniture Road?---Flemington, 447 Flemington Road, North Melbourne.

MR HOSER: You are aware that this case was - I will make that question later. You know what this case is about, do you not?---Yes, I'm a witness and I'm also the person that took the photograph.

Can you tell this court what happened on 1 November 1990, from the start to finish, from when the subject of this case occurred?---I'd come with Phillip, my friend here, to a court case he had to come to - - -

Do you recall what that particular case was over?---It was concerned with the RTA and our sort of fight against the RTA.

Do you recall what that appearance in court was for?---I think it was - - -

MR LAPIROW: I object to that, he is cross-examining the witness, your Worship.

HIS WORSHIP: No, I do not think he is, your objection is overruled. Yes?---I think it was to do with a previous

assault case that Mr Ashton had against Phillip Hoser.

MR HOSER: You were not a witness to that case though, were you?---No.

Was Mr Burke a witness to that case?---No.

Can you actually tell what occurred from the time you got to the court, including an alleged incident and what happened after the incident?

HIS WORSHIP: Why is it relevant what happened before we get back out onto Russell Street, Mr Hoser? Why do we have to go through that? Is that relevant?

MR HOSER: I think it is relevant because it shows contempt of the law by the defendant, but if you wanted to make it irrelevant, it would only take only second - - -

HIS WORSHIP: Do you believe it has any relevance Mr Lapirow?

MR LAPIROW: I do not see how it does on the basis of the previous evidence that was given.

HIS WORSHIP: In the very briefest terms Mr Brygel, you can tell us what happened before you went outside?---Your Worship, I came into the precincts of the court, I was sitting outside. At some - I'm not sure if it was when I actually came in, or as we were going out, but I remember Mr Olsen, inspector Olsen giving Phil a letter and Phil took it and he said something "Oh, what's this, another one?" and Mr Olsen said "Yes, have a good day" or something and off he sort of walked.

Just a moment, I am having to make a note of all this. Yes, so Mr Olsen walked off?---And Phil had it in his hand, and then we walked off. I can't remember exactly because it's 1990, exactly when that happened, whether it was before or after, but I definitely saw, I remember seeing that,

because I thought "Oh gees, he's got another summons or something".

Cannot recall if it was before or after what?---Whether inside - whether the court case had finished or whether it was just before it, I distinctly remember George - I know the inspectors because I drove taxis a long time myself in the past and George came up to - because I knew George Olsen really well too, and we were always watching each other just to make sure that you know, they didn't do anything. I was myself, I don't know about my friend Phillip, but I was worried, the RTA - you know, they'd done other things to me. So anyway, I remember going outside of the front entrance, it was that other entrance that is locked now, you know how you have got the one right at the front, and you've got the one opposite the - - -

You are referring to the one on the corner of Latrobe Street and - - -?---Well, we didn't go out of that one, we went out of the other one.

The Russell Street entrance?---Yes, it's locked in the morning.

The entrance which leads directly into the courtyard?---Yes, and our other friend Des Burke was with us and we walked out onto the footpath and I was aware that the other inspectors were around and I was just keeping a lookout. I had my camera and I sort of had my hand over it and I had my camera round - you know, once I got outside, I had it there and we walked out just further up - - -

Was your camera on a strap, you say?---Yes.

Around your neck?---Yes.

And in front of you?---Yes. I haven't got it here because I couldn't get access to it. It's sort of - someone owns

it - - -

It does not matter?---And walked north up on the footpath and I walked a little bit further ahead with Des Burke, you know we were walking together and every now and again I was walking over just to see where Phil was and then Des and I, we sort of stopped and we were sort of looking at Phil - because what had happened, we'd noticed a white - I think it was white - yes, it was white Ford, it had come up to the kerb and - not sure in what order - I remember Peter Schofield was standing way back, I saw George Olsen, he was walking up behind and Derry Ashton, he walked towards Phil and Phillip was standing there and he had in his hand the envelope that was given to him.

Mr Ashton was walking up behind Phillip?---He was sort of walking - it's a long time ago, but yes, he was walking towards him. It would have been sort of side on behind, that's from my recollection. What happened then? He - I couldn't believe it, Derry Ashton, he went up to Phil and he went bang, bang, bang, several times hit him on his chest and he said something which - well, I heard what he said but I won't mention it, but anyway then he pushed him as well, so he's hit him about - you know, because I had my camera. I just couldn't believe it, and I realised I had my camera and by then - - -

Just a moment, I am sorry, Mr Brygel, you will have to slow down because this is rather important?---Sorry.

So he hit him several times on the chest and you indicated with your left - - -?---Yes, he went bang, bang, bang. Closed fist, yes, he hit him.

And you say he pushed him?---What happened then, he hadn't

finished with him after doing that and I had my camera and I just raised my camera to my eye because it's an automatic focus camera, it's got an automatic focus lens on it, and I in my mind I just hoped that - - -

Do not tell us what you hope, tell us what you did?---Yes, I brought the camera up to my face and I just put it right up to my eye and I could see it as it was happening, he just pushed him and - - -

Both hands?---Yes, both hands, he just went whack and he actually got him up here - I have actually seen the photo because I took the photo and - - -

You say he pushed him with both open hands like - - -?---Yes.

Directly in front of him?---Yes, you know, he'd gone bang, bang, bang and then he - you know I was bringing up my camera as he's going bang, bang, bang and I thought "Shit, I hope I can get this" and he's just gone bang like that and hit him at the same time, you know hit him, you know, like with his arms like that and so he made contact - - -

What you are saying, is that it was half a hit and half a push?--Well, he's gone like that.

For the purpose of the transcript, the witness is holding both arms out at shoulder level with the hands spread open and at right angles to his wrists?---Your Worship, I did Chinese martial arts for a long time - - -

MR LAPIROW: (Indistinct).

HIS WORSHIP: The witness is explaining that he did Chinese martial arts?---And that is actually - if you hit someone like that you can actually do more damage than a closed fist.

So hit him with the ball of the hand?---Yes.

The heel of the hand?---Yes. He's gone boom, hit him really bang, you know, with over like that.

So he is hit with the heel of both hands at the chest?---And made contact, and Phil's gone off balance a bit and then Ashton's just walked off. I think he walked over to his car and I've walked up to Phil and I've said to Phil - - - Just a moment. For the purpose of these proceedings, Mr Brygel, you are not entitled to tell the court what passed between you and any other witness unless it was said in the hearing of the defendant. You said before - you stopped yourself from saying something before which you say you heard the defendant say to Mr Hoser, you are allowed to give that evidence, but you are not entitled to recount any conversations which occurred in the absence of the defendant, do you understand that?---Thank you. Okay, I can't say it, but I did walk up to Phillip straight after it, but you just told me I can't say.

You cannot tell us what you said to Mr Hoser, no?---No. But it is on a tape recording.

I am not interested in that. Yes?---That's really about it, Phillip was really upset. I knew the problems he was having in court against the RTA, I knew about the previous assault case because he'd told me about it and I knew about the problems I had with the RTA when I got assaulted - happened, by the same person years ago.

Mr Brygel, again would you confine yourself to telling us what happened on this occasion, what you saw and what you did?--
-Well, that's what I saw, what I did, which you told me I can't say, I did actually sort of let Phillip know that I'd taken the photo. What I realise now is that he was so

shaken up that I don't think it really registered.

Again Mr Brygel, I will ask you to confine yourself to your observations, what you saw and what you heard, not what you think someone was feeling?---What more can I say - - -

Just a minute. Mr Hoser, he is your witness, you ask him the questions, it is not appropriate to just let him go.

MR HOSER: Sorry your Worship.

HIS WORSHIP: It is your duty to direct the witness to relevant parts.

MR HOSER: We have got as far as the attack. After Ashton attacked me, what happened then?---I've gone up to you - your Worship - - -

HIS WORSHIP: You had a conversation?---Yes, I had a conversation with you.

MR HOSER: And what did Ashton do?---He's just gone off.

So he attacked me, then what happened? Between the time he attacked me and he disappeared, what did he do?---He's gone into his car, that was a white Falcon parked in the gutter and he's gone in it and he's driven off.

Do you remember anything about the legality of his parking?

HIS WORSHIP: I have already indicated Mr Hoser, that it is not relevant.

MR HOSER: Where was I standing as he drove off?---You were standing on the kerb next to me and next to Des, we were all standing together.

Were we standing edge to edge or in the same general vicinity?---
-Couple of metres away.

When I was getting attacked, did I retaliate in any way?---No, not at all. Phil was holding in his hand the letter that had been given to him before by George Olsen, Inspector

George Olsen of the RTA, and his other hand was down, just below his stomach level.

Did I provoke an attack in any way, shape or form?---In no way known did you provoke any attack, you hadn't said anything, you were just standing there.

Do you recall us two walking into the court after the attack?

MR LAPIROW: It is terribly leading, your Worship.

HIS WORSHIP: Yes, I appreciate that. No, go ahead. Do you recall going back into the court after?---We might have, because I - - -

If you do not recall - - -?---I really don't recall that.

MR HOSER: Do you recall on a particular occasion, not necessarily this date, because I know there has been a lot of cases that we have been in court on - - -

MR LAPIROW: I would ask that the question not be asked in a way that is obviously quite illegal.

MR HOSER: Have you and I appeared in court on numerous occasions together for one another's cases?---Yes, your Worship.

Would you put an estimate as to the number of occasions over the last five years?---Your Worship, I don't know, there's been so many, it was war for five years, with me personally against the RTA

Would it be more than 30?---I would tend to think so, your Worship.

Do you recall one particular occasion where I - - -

MR LAPIROW: Objection, your Worship, this obviously cannot be relevant to any of the matters that are before the court.

MR HOSER: It has, it is relevant to - - -

HIS WORSHIP: It has got to be a leading question for a start,

Mr Hoser, but how do you say anything that has gone before in relation to any previous cases is relevant to this case?

MR HOSER: Well, the situation is this, it was raised in earlier evidence with Mr Olsen - - -

HIS WORSHIP: Just a moment. Would you go outside please Mr Brygel?

WITNESS STOOD DOWN

HIS WORSHIP: Yes?

MR HOSER: In earlier evidence, Mr Olsen indicated that there was no inter dialogue between myself and Ashton when they set a date for a previous hearing, which was like a hen's convention. Mr Brygel was with me when we went into the clerk's office and they refused to alter a date that Ashton had set some months down the track for the trial, which he had done without any inter dialogue, which was - - -

HIS WORSHIP: How is that relevant to what occurred outside, allegedly?

MR HOSER: It just demonstrates his blatant hostility. He has used and abused this system and you can see it here in this room now, he has got - - -

HIS WORSHIP: Mr Hoser, you are not impressing me with this type of - - -

MR HOSER: I am sorry, what I am trying to establish is that he is using and abusing the system, hiding behind his badge and his department, to literally get away with murder.

HIS WORSHIP: I disagree with you, Mr Hoser, I do not see that that is relevant.

MR HOSER: I thought it was relevant and you have told me that you do not see it as relevant, I cannot go any further than that. I will not ask Brygel those questions, fine.

HIS WORSHIP: For example, it may be relevant if some threat was offered to you - - -

MR HOSER: He said he was going to kill me but - - -

HIS WORSHIP: No, I am talking about something else that is alleged to have occurred inside.

MR HOSER: No, nothing occurred inside.

HIS WORSHIP: Therefore it does not seem to me to be germane to the issues as to what happened outside.

MR HOSER: I understand what you are saying.

HIS WORSHIP: It is quite clear from the thrust of the evidence that you and Mr Ashton do not get on.

MR HOSER: I get on fine with him, I get on fine with everyone, I have had nothing to do with the guy virtually.

HIS WORSHIP: Yes, would you ask Mr Brygel to come back in please?

ALAN ANTHONY BRYGEL:

HIS WORSHIP: Yes, you have been sworn and you are still on oath, Mr Brygel, you understand that?---Yes, I understand that.

Yes, Mr Hoser?

MR HOSER: Can I pre-empt questions that Mr Lapirow is going to ask or do I have to wait for him to ask them before I can re-examine on them?

HIS WORSHIP: If the questions and their answers would be relevant to the proceedings and as long as they are asked in the proper way, you can ask any questions you wish.

MR HOSER: I tender these three photographs.

HIS WORSHIP: Use these please, for the exhibits.

MR HOSER: They should be - I hope they are in order of sequence.

HIS WORSHIP: There are three photographs there, Mr Brygel, would you have a look at them?

MR HOSER: Would you look at the first photo of the sequence, I know which is the first, are they three photos that you took?---Yes, your Worship.

HIS WORSHIP: Those photographs which are exhibit F will be now tendered - they will now be exhibit F absolutely.

EXHIBIT F ... (Absolutely) Three photographs.

MR HOSER: If you look at myself in photo - put them in sequence?---I have.

Can you just hold them up to the Magistrate so he knows what you call the sequence.

HIS WORSHIP: If you hold them up like this Mr Brygel and then we can all see them, one at a time?---Thank you.

Yes, that one?---That's one.

I am sorry, I thought you were going to ask a question about it.

MR HOSER: If you will just indicate which is the order and then I will work out which one to - - -

HIS WORSHIP: I think the order is quite plain, I have marked them F1, F2 and F3.

MR HOSER: Looking at the first photograph you can see myself and Ashton, if you can identify which is which?---Yes, your Worship.

In relation to myself, what is in each hand?

HIS WORSHIP: The photographs speak for themselves Mr Hoser, do they not?

MR HOSER: What was it - Schofield, if I can recall from the transcript, turned around and said that Ashton's arms were not raised, so I thought I had better - to me it is pretty obvious but Schofield decided otherwise, so I thought I had

better ask - - -

HIS WORSHIP: The photographs speak for themselves Mr Hoser.

MR HOSER: Okay, who is the man behind myself and Ashton?---That is Inspector George Olsen.

Do you know the guy in the yellow shirt?---No, that was just a young guy standing around.

HIS WORSHIP: Is his name ever going to be disclosed, is he some sort of mystery man or is he just a bystander, is he?--- Your Worship, he was a young guy, I had actually told him to skedaddle, myself, I said "Just go, you don't want to be a witness to this stuff". That's what I actually said to him.

MR HOSER: If you say the photos speak for themselves, there is really not much more I can - if you look at the third photo, at myself standing there looking - - -

HIS WORSHIP: Well, do not - - -

MR HOSER: You see myself in the third photo. Is there something in both hands?---Yes. A folder in your left hand, a manilla folder and that envelope that Mr Olsen gave.

In terms of seconds, or minutes or hours or days, how long did the attack occur, take place, the actual hitting and so on?---The actual striking?

Yes?---That was very quick, your Worship, as I said, it was very quick and I think I was very lucky to have got the photo I got, very very lucky. I do consider myself a good photographer and I've actually got other photographs I've taken if you'd care to look at them.

HIS WORSHIP: No.

MR HOSER: Just bear with me your Worship, please. Were Olsen

and Schofield walking up the street as a pair or not?

HIS WORSHIP: Again, are you asking the witness to - - -

MR HOSER: I will rephrase the question, you can look at the
photos - - -

MR LAPIROW: Your Worship, the nature of this questioning is
effectively a prosecutor seeking to impeach the credit of
his own witnesses and I have to object to that.

MR HOSER: I have already done that.

HIS WORSHIP: I do not see that it is getting us anywhere, Mr
Hoser, at this stage.

MR HOSER: Am I allowed to ask him the positions of those men,
or not?

HIS WORSHIP: Do they appear in the photographs?

MR HOSER: Yes.

HIS WORSHIP: Well, what is the purpose then? They appear in
the photographs, they appear in the photographs. The
photographs speak for themselves, the fact that the
photographs are described to your witness does not render
anything in them more or less valuable or probative or
relevant.

MR HOSER: It was at variance - well, the photos are at variance
to any evidence that we heard in this court and I was
just - - -

HIS WORSHIP: Well they are your witnesses Mr Hoser, so - - -

MR HOSER: I summonsed them on the basis they were going to tell
the truth and they did not. I am not - - -

HIS WORSHIP: Yes, thank you. Yes?

MR HOSER: So I can ask them?

HIS WORSHIP: No.

MR HOSER: No further questions.

HIS WORSHIP: Can I have the photographs back? Yes, Mr Lapirow.

MR LAPIROW: You have had a war with the RTA?---Yes, your
Worship - - -

HIS WORSHIP: Just simply yes or no until you are asked another
question, Mr Brygel.

MR LAPIROW: And it has involved 30 appearances in court in five
years or less?---It would be close to 30, I would tend to
think so, your Worship, it's documented so - - -

This is a result of what you consider to be unfair treatment or
victimisation of both yourself and Mr Hoser by the
enforcement officers of the Roads Corporation?---Yes, your
Worship, it's actually common knowledge with a lot of
people.

What role did Mr Burke have in relation to this war?---Pardon?

What role did Mr Burke have in relation to this war?---Des
Burke?

Yes?---He's a taxi driver, your Worship, or he was, I believe
his car that he was driving got smashed up on the weekend,
and he was just a friend of ours and he came along
occasionally just to make sure that we were okay.

How many times?---About five, maybe.

Was he there because he was an expert like yourself in martial
arts - - -

HIS WORSHIP: Yes, I propose to disallow any further questions
in relation to Mr Burke, what you are attempting to do is
affect the credit of one witness by the answers of another
witness which you are not permitted to do, Mr Lapirow.

MR LAPIROW: Yes, your Worship.

HIS WORSHIP: That is the clear - can be the only intent in
relation to these sort of questions.

MR LAPIROW: Yes, but there certainly was some direct inquiry of the last witness and the answers were given.

HIS WORSHIP: I know. Yes, you are stuck with the answers, whether or not they are accepted ultimately by the tribunal is another thing, but you are not entitled as I understand the law, to ask this witness questions, the only effect of which would be to damage the credit of another witness.

MR LAPIROW: Yes, your Worship. You were at the court with your camera. Would you describe the camera?---It's an F4 Nikon with a 35 to 105 millimetre telephoto automatic lens.

HIS WORSHIP: 35 to 125?---35 to 105 millimetre. It's got a UV filter plus also a polarising filter on it.

You can take it that I am familiar with photographic equipment, so - - -?---You are, your Worship?

Yes?---Fine, thank you.

MR LAPIROW: Is it your practice to normally carry - it was a Nikon was it?---F4 Nikon.

Is it your practice to carry that camera without a lens cover and without a - - -?---I had a lens cover, of course.

You did?---Yes, but I - the lens covers are easy to take off, you just put your finger on and they snap off.

Like his Worship, I have seen them too?---Your Worship, I have actually got the - I got a copy negative and I've got the actual negative that - - -

HIS WORSHIP: I do not think there is any doubt about the quality of the picture, Mr Brygel.

MR LAPIROW: May I see the negatives?---Your Worship.

HIS WORSHIP: Why, Mr Lapirow?

MR LAPIROW: Sequence, your Worship, whether or not we have had - - -

HIS WORSHIP: Yes, do you have the negatives with you, Mr Brygel?---I've only got the negatives of actually the picture I've taken.

They are cut, are they?---Yes, I had to have it cut to make - I've got a blow-up there, but I can actually, if I had to, go and get the whole - you know, all the negatives. I've got probably - - -

You only have one negative in court?---No, I've got two. I've got a duplicate negative that was made and the actual original negative. It had to be cut - - -

Two negatives of the one shot, is that - - -?---Yes.

Is that what you have, two negatives of the one exposure?---I got a copy negative made of the original negative and they had to cut it.

But you only have one exposure?---Yes, I only took one phot. I only managed to get one photo. You see, I had the camera - - -

MR LAPIROW: May I see the negative please?---Yes. I didn't have the camera set on continuous, I had it on single - this type of camera you can have - - -

HIS WORSHIP: I understand what you are saying, Mr Brygel.

MR LAPIROW: Will you also happen to have the documentation from the original developer of the roll of film?---Yes, that's what I'm getting now. Actually I have got the three in sequence, I think, yes.

May I see the negatives that you have from that roll of film and the original documentation relating to its development?

MR HOSER: May I interrupt, your Worship. I just do not want this man sticking fingerprints all over the negatives.

HIS WORSHIP: Mr Lapirow, you will be careful with them?

MR LAPIROW: I would not want to put my fingerprints anywhere they do not belong, your Worship.

When you have located those original negatives and the documentation relating to their original development, would you please tell me?---Okay. Your Worship, I might - this might be the original. I'm not too sure, Phillip might have a copy of the neg - - -

I call for their production?---Hang on - - -

That incidentally, requires you to produce them if you have them?

MR HOSER: I do not have them, I gave them back to him after he got out of jail.

HIS WORSHIP: Would you hand those negatives to Mr Lapirow? Just give those to Mr Lapirow?---There's the actual thing when I got the - there's the documentation as well which was - - -

Yes?---Here we go. This is the actual - now, they are the original negs and this is you know, the one that they made for me.

We are only interested in - I assume, only interested in the original negatives?---Yes well, that's the original there and that's what you call an interneg that's been made up.

MR LAPIROW: This is not original?---Pardon?

This is not an original?---No, that's the duplicate, that's where the - I took it to APD photo lab up in - - -

The one that is in the envelope, is this the original negative or are the ones on the piece of paper the original negatives?---That would be the - what do you call it - a copy, that's a copy.

This is a copy, fine thank you?---Yes, that would be the copy.

And that's the receipt for - you know, that I was getting it copied from this crowd.

Do you have with you the - your Nikon works on 35 millimetre film, that is obvious, is it not?---Yes.

And you had how many shots on that particular roll?---Usually I buy 36 and it's 200 ASA and I think that was an Agfa.

And what you do is that after you have taken your shots, or maybe part way through the film, whatever might suit your fancy, you would wind the film back on to the roll and you would take the roll, stick it into an envelope and have the developer produce it for you?---No, you go right through.

HIS WORSHIP: Listen to the question again please, Mr Brygel?---

Your Worship - - -

Listen to the question please, Mr Brygel.

MR LAPIROW: I am just trying to get to the point where you have taken your photographs?---Yes.

Now, you may choose to take all 36 or you may choose to take a smaller number?---I took all 36, I went right through.

That means that you then wind the film back into the little film cassette and you take it somewhere to get it developed?---Yes.

Where did you take it? This film?---Yes, I can tell you. That film I actually had - the actual film I had developed on the corner of - let me think - - -

HIS WORSHIP: Commercial developer anyway, you did not do it yourself?---Opposite Daimaru, there's a - Mr Genius, I think they're called.

MR LAPIROW: It might not have been Daimaru at that stage?---No, but it was Mr Genius photographic shop because - - -

Did you get any documentation back with your original wallet of

photos, all of your negatives, cover sheet with your name on it, and saying what had to be developed, did you get anything like that? See the yellow (Indistinct) in front you?---Yes, I got a receipt for paying for it.

When you went in to collect your photographs afterwards, did you not get a bag with your name on it and a wallet of developed photographs and all the negatives in strips a little - - -?---Yes, I've got them at home because as you can see, on the negatives I've got there, I took pictures of my old house that I was fixing up and I've got a guy - a bricklayer actually laying bricks, if you have a look at that carefully you'll see an old gentleman in there laying bricks.

Yes?---So, you know, I just used the one roll. Because my camera says how many films I've got left.

The relevant photograph on this one appears to be photograph 11, it would appear, but I am uncertain about what photograph 10 is, can you assist the court?---That's probably building as well. Nine and 10 - - -

HIS WORSHIP: Well, they are not related to this case, are they?

MR LAPIROW: I believe that one of them is, your Worship?---

Well, nine is the house, I think they are both house actually, or the whole three of them are.

What is 11?---Your Worship, I've never really been good at looking - you look at it like that and there's somewhere there and he's laying bricks.

May I see that again?---Your Worship, when I got these back they were in strips of three, from memory.

HIS WORSHIP: Strips of three?---I think three, yes, they cut them because what they do these days they cut them and put

them in little plastic - - -

Yes.

MR LAPIROW: You then took photograph number 12, which appears to be the negative of the first of the exhibits F, your Worship?---Yes, I actually have the others but I wasn't asked to bring these in. If you want an adjournment I can actually go and get the rest of them. I can get everything.

You took a number of photographs from that point forward, did you not?---From 12?

Yes?---Yes, of the house. See what happened, your Worship, that's what I was trying to explain, I didn't want to overload Phil with any more problems because he was trying to get back his driver's certificate to drive a taxi because he was about to lose his house, he couldn't pay the mortgage so I thought I'd keep my mouth shut and let him concentrate on that and when it looked like he was starting to win and that they were going to have a special hearing, whether he could get back his driver's certificate or not, I rang him up one morning and said "I've got something" because what happened, I had the - I keep the rolls of film, I don't develop them straight away, I either take them home and put them in the fridge or just put them in my car, you know where it's cool, just you know, no hurry.

From the time, it may assist you, from the time that you took that first photograph, number 1 we will call it?---Yes.

How many more photographs did you take on that roll of film that day in the vicinity of Russell Street?---I've taken these other ones, you know, the - - -

HIS WORSHIP: How many, quite a simple question, Mr Brygel?---I

think I only took another two, your Worship.

Are you saying that those three photographs which are exhibit F, are the only three exposures that you made at that time?---

I would have to check, I might have taken four.

MR LAPIROW: What would the fourth one - that was when you were photographing Mr Olsen walking away, was it?---No, there's three there, they were taken in sequence. I haven't got, I wasn't asked to bring the other stuff in.

But the next one would have been of Mr Olsen and Mr Schofield?--
-Yes.

You took photographs of them?---Yes.

That was when they were walking away on Lonsdale Street, was it, or Latrobe Street, at that point? It is Latrobe Street?---
No, just out here, Russell Street.

Yes?---Russell Street.

What way were they walking?---The car was standing there and they got in the car and they - Derry Ashton drove off and they were there, the photos - you've seen the photos, it's on the photos.

My recollection of Mr Olsen and Mr Schofield's evidence was that they crossed Russell Street and went back to the corner at Latrobe Street and then walked down Latrobe Street, I believe, on the side opposite where the court is, which is to the east?---That was after Derry Ashton went.

Yes, and that you and Mr Hoser followed him and you had your camera in your hands?---Well, try and remember - I think I might have done that, I'm not - you know, it's a long time ago, but if they've said I've done that, yes well - - -

You might have done that?---Yes, I don't recall taking any more photographs. I would have to check - - -

You said you may have taken four?---I was only asked to bring in what was - the main photo and these - I wasn't even asked to bring in the negatives to these other two - - -

But you have not brought in the negatives to the other two?---

No, I wasn't asked, I was subpoenaed and I was told to bring in the negative for the main photo, the negative that sort of runs in sequence, you know nine, 10, 11, 12, how it was cut, the receipt that I went to another photographic place to have another negative made up so that we had two negatives.

Mr Brygel, where was Olsen's car?

HIS WORSHIP: If you do not know, that is the answer "I don't know"?---I don't know.

MR LAPIROW: How far did you follow him and Schofield down Latrobe Street?---I don't recall, that's getting a bit hazy, a lot of that.

Did you go to the corner of Russell and Latrobe?---I would have to look at my whole photographic thing to see if there are any more photographs, I can't remember getting any more photographs.

Yes, but I am not asking you about photographs. I am asking did you go to the corner of Russell and Latrobe?---I might have.

You definitely did not walk off with Burke?---Pardon?

You definitely did not walk away with Burke, did you? Or did Burke remain with you?---That I cannot remember, I cannot remember.

You do not recall a conversation with Burke immediately after the alleged incident took place?---I know we - I said something but I walked - see I went up to Phillip.

That meant that you were walking south down Russell Street?---

Yes, I - well, Des was standing next to me and I walked back to Phillip.

Did you then have a conversation with Phillip?---Yes, and that's on the tape.

At that point, from that point onwards, where was Burke?---He didn't go away because - - -

He did not go away?---No, well he was around later on.

How long a span of time would later on be?---I cannot recall.

Sir, you say - you must have had something in mind when you used the terms "Later on"?---I can't recall because - - -

What did you mean by the term sir?---See, what had happened - I knew I'd got the photograph, I wasn't sure how good the photograph was - - -

Sir, I am not asking you that, I am asking you what you meant by the use of the term "Later on"?

HIS WORSHIP: What sort of time frame are you talking about, the next 10 seconds, or 10 minutes later or half an hour later or what?---Well, your Worship - - -

If you do not know, the simple answer is you do not know?---I don't know.

MR LAPIROW: You do not know, you are asking the court to believe that you do not know what you mean when you use the term "He was there later on"?---Your Worship, he's sort of twisted it.

HIS WORSHIP: A quite simple concept, Mr Brygel, should not be very difficult to answer?---Your Worship, Des Burke wasn't - how do I explain it?

Perhaps you can think about it over the adjournment break and you can tell me what you mean by it after lunch. Two

o'clock.

ADJOURNED AT 1.00 PM

RESUMED AT 2.05 PM

ALAN ANTHONY BRYGEL:

HIS WORSHIP: Mr Brygel, you have previously been sworn and you are still under oath, do you understand that?---Yes, your Worship.

Yes, Mr Lapirow?

MR LAPIROW: Just before lunch time there was a question asked of you relating to the phrase that you had used "He was there" I am sorry your Worship, I forget the actual phrase "Later on", have you been able to recall what you meant by the use of the word "Later on"?

HIS WORSHIP: In what context? You will have to - - -

MR LAPIROW: In the context of the position of Mr Burke?

HIS WORSHIP: The answer was that you cannot recall if you walked away from the incident after speaking with Mr Hoser with Mr Burke, you said "I can't recall if I walked away with Burke but Burke was around later on" that was your evidence. You were then asked what you meant by "Later on" what sort of time frame and you appeared to be having some difficulty with that question, do you recall now where we are?---Yes. Your Worship, like I said Des and I, we turned around and we saw Mr Hoser and I saw Derry Ashton coming up, and then the incident happened and I took the photo, then I approached Phillip, Mr Hoser and I didn't take much notice of what Des was doing - - -

MR LAPIROW: Could the witness - - -

HIS WORSHIP: Just a minute, Mr Lapirow?---Because it is a long time ago. The incident I remember very distinctly, but

some of the other stuff, because since then I've been through a lot of trauma myself and it didn't appear to my mind that I had to memorise every detail of the day. So, I know Des was with me, when it happened, Mr Burke was with me, and then I've been asked other questions, did I go across the road and that and I think I ended up going across the road to that corner, but then a lot of it is hazy. You know, it's a long time and I had other - I had my own problems and I was worried about the whole scene too, you know, the whole thing frightened me.

Yes?

MR LAPIROW: Your Worship, I just do not believe I am getting an answer to the question?---I'm trying to - - -

HIS WORSHIP: I appreciate Mr Brygel, that what you are saying but you used the term yourself that Mr Burke - or Des, I think you said - was around later on. You are being asked now what you meant by later on?---You know, that's - he was still there for a couple of minutes or so, or five, 10 minutes, but then I don't recall him being round there - - -

That is an appropriate answer.

MR LAPIROW: Thank you, your Worship. Before you came to court after lunch, you and Mr Hoser were involved in a loud argument at the end of the hallway, were you not?---Before? Before you came up the hallway to resume the hearing now, you were involved in a long argument, a loud argument, with Mr Hoser, at the beginning the hallway?---Phil and I - sometimes we - - -

HIS WORSHIP: Just answer the question, yes or no, is that right or is that not right?---Yes, well (Indistinct).

MR LAPIROW: And the words - - -?---Not a loud argument,
discussion.

And the words that were used by Mr Hoser to you were "I told you
not to do it that way, but you wouldn't listen to me" were
they not?

HIS WORSHIP: Is that right or is that not right?---Something to
that effect, like I thought that's - I'm you know - how do
I explain it - - -

MR LAPIROW: (Indistinct)?---(Indistinct) as I remember it,
right, I remember things as I remember it, other people
remember things a slightly different way and - what
happened - - -

"I told you not to do it that way but you wouldn't listen to me"
were those words used?---Well - - -

By Mr Hoser to you in the court outside this courtroom?---You've
heard it so - Mr Lapirow and - - -

HIS WORSHIP: It is a simple question, were they the words used
to you?---Yes.

MR LAPIROW: And that was in respect of the evidence that you
are giving in this case, was it not?---Well, that happens
with you people.

HIS WORSHIP: Just answer the questions please?---Your Worship -
- -

Yes or no, no comments?---Well, I remember the incident the way
I remember it, I brought in what I was told to bring in, I
was briefed, well it would be called briefed because I'm
the witness, and everyone has their own opinions and - - -

Do you say you were briefed by Mr Hoser?---Well, the truth - I
saw the incident, I took the photograph of the incident,
it's the truth of what happened and in this case it's all

coming out as it happened, the damn bloody truth that this happened. It happened, and one other thing too that did come up, there's no vendetta, it happened. You know, I haven't seen Mr Ashton for ages and it's very unfortunate what's happened in the last several years but it's happened and the evidence is there, there is no pre-meditation. I couldn't believe - - -

Mr Brygel, just please confine yourself to answering counsel's question. In due course Mr Hoser will have the opportunity to re-examine you. Mr Lapirow, if you would make your questions as succinct as possible.

MR LAPIROW: Mr Hoser was telling you what evidence to give when you were having conversation, was he not?---No, we were actually arguing about some other things too. We sort of argue, we have discussion - we're not the same people, you know.

And the term you mean by "Briefed" is Mr Hoser was telling you what to say?---That would be the term - I used that term because it's easier for everyone to understand.

But that is the meaning, is it not sir, that is how you intended it to be understood?---It makes it easier for the English language. He has the right to do that.

So it is okay if he tells you what to say?---As long as it's the truth, but you know, he mightn't want me to say something and he might want me to say something else. He might want me to stress something, he might want me not to stress something else.

And you do what you were told, obediently?---I don't like living in a communistic totalitarian society which this has become. I believe I'm a free person and it's a democracy

and I tell the truth and I've got up and told the truth and I've told the truth about when I've been assaulted before by Mr Ashton and nothing ever happened, and I also had it taped, nothing ever happened, so there's you know - I don't - it just didn't happen, just got worse and worse. If I had have been doing exactly as I was told to do - well, I can guarantee I wouldn't have - be a free man to an extent today, because I stood my ground and I've stayed firm and I've told the truth and I've also decided that I'll keep fighting until I get justice done to me.

By any means?---No. I did not - I couldn't believe it that Mr Ashton was so stupid and could go and assault Phil in front of me, in front of Des, and they must have seen I had a camera on me. I just couldn't believe that - we'd just come out of court - - -

Look sir, I've asked you a question regarding the coaching of your evidence by Mr Hoser. I've put to you a conversation where the clear implication is that you have done something you were not told to do, what was it?---Your Worship, do I have to - - -

HIS WORSHIP: Yes, as long - the basis upon which you are entitled to refuse to answer questions is if the answer may expose you to a prosecution for an indictable offence, a serious offence. That is the only basis upon which you can decline to answer that question?---Your Worship, it doesn't make sense because - - -

It has made sense for about 100 years, Mr Brygel?---Your Worship, you've already - there's a small photo of what I took and it was about the enlargement I got made out of a negative and it's here, if you want to have a look at it.

Are you answering the question of Mr Lapirow now?---Yes, this is what we - - -

What were you supposed to do?---Not even bring it into court.

MR LOSER: I can help you with - - -

HIS WORSHIP: No, Mr Loser, you may not?---Your Worship, the photo is there if you want to look.

Yes, Mr Lapirow?

MR LAPROW: In the course of your war with the RTA and in the course of your 30 court appearances, have you been familiar with orders made that witnesses be out of court?---Your Worship, I object to him using the word "War".

It was a term you used.

HIS WORSHIP: It was your word Mr Brygel?---Well, I still object to him using it back to me, that was a simple way that I used.

Mr Lapirow, can you accommodate Mr Brygel?

MR LAPROW: Yes. In the course of your ongoing dispute with the RTA and Roads Corporation, have you become familiar with orders made in court for witnesses to be out of court?---Yes.

You understand the purpose of that is to keep the evidence of one witness independent from the evidence of another?---Yes.

In speaking to Mr Loser over lunchtime, you were speaking about the conduct of the case and the evidence you gave, were you not?---He is - like you - how do you explain it, your Worship?

Were you not speaking about the conduct of the case with Mr Loser?---We were speaking about generalities, of RTA and he

- - -

I put it to you that that is absurd if the comment that is made to you is "I told you not to do it that way but you wouldn't listen to me"?---No.

That is only a generality, is it sir?---No, that was over me having the enlargement of that photo, and there was a reason for it.

And that is a generality, is it? Even on your evidence, you must concede that was specific?---Well, that's how Phillip and I sometimes we have discussions with each other. We are different people, we disagree, we disagree.

HIS WORSHIP: Go on to your next point Mr Lapirow.

MR LAPIROW: The question - a couple of points, no particular order your Worship, I just want to clarify these. You mentioned the man in the yellow shirt, a boy, or whoever he was in the photograph. Is the man unknown to you?---
Unknown, he was a young guy - - -

A man who was a witness, a direct witness to the event that took place?---He may have been.

Yes, he may have been?---I can't recall where he was in the photograph, your Worship.

HIS WORSHIP: Do you have your copies down there, might as well use those?

MR LAPIROW: He is a man who is clearly looking at the same incident that you are photographing?---I don't - shows that much.

And you had occasion to go and speak to him?---The young guy actually, I think from memory approached me.

You must have known by reason of your ongoing dispute over a period of five years with the Roads Corporation, that anything that you would say may be taken with a grain of

salt. By the Roads Corporation? They may feel you have an axe to grind?---You're talking about a vendetta.

No, I am saying that they - you were known to them, they were known to you, you had a dispute and that your evidence as an independent witness, would not be as strong as a person who had nothing whatever to do with that war - with that conflict?---Your Worship, can I answer that?

HIS WORSHIP: Well, I wish you would, Mr Brygel. Is that right or is that not right?---Your Worship, the RTA - - -

I am not asking you Mr Brygel - the question is not based on what - is not calling for your definition of the relationship between yourself and the RTA, you are merely being asked if you acknowledge that because of that relationship, whatever it is, your view or version of any events which happen, may be seen as being coloured. Now, do you accept that or not?---No, your Worship, not at all.

MR LAPIROW: But you would have to accept that a person who neither knew you nor Mr Hoser nor Mr Burke, if Mr Burke was there, or Mr Olsen or Mr Schofield or Mr Ashton, would not have their recollections coloured by any of the previous knowledge, you would have to accept that, would you not?---Your Worship, he asked me what it was about and I said it was - - -

Sir, I am not asking you to answer that question, I am asking you to answer another question?---Well, I'm trying to answer the question - - -

HIS WORSHIP: The question that are asked is a variation on the last question. Do you accept that because of the relationship that you, Mr Burke and Mr Hoser have with the RTA, perhaps Mr Burke to a lesser extent - that it is

possible that your version of events or your recollection of events might be seen as being coloured by that relationship, do you accept that?---No, not with what actually happened around the incident time.

MR LAPIROW: Mr Brygel, you went to court with a camera around your neck?---I had it with me, yes.

The man in the yellow shirt did not go to court with a camera around his neck, that is painfully obvious, is it not?---Yes.

He was not there to be a witness to anything, he was just there, is not that right?---He happened to be there, sitting there on the side of - - -

Or standing there as he appears to be?---Yes, leaning.

In all probability, if you did not know him and he was not involved in any discussions with any other party, he would be a totally independent witness who was closer to the scene of the incident than you were? Is not that right?---If a policeman had have seen the incident - - -

HIS WORSHIP: Mr Brygel if you would just answer the question please. Do you accept that the man in the yellow shirt would have been a totally independent witness?---At the time, yes.

MR LAPIROW: Is there anything that has caused you to change your mind about this man?---Pardon?

You said "At the time", does that mean that you thought that he was independent witness at the time and now you believe that he is not, or what?---He came up to me and I just said "Look, you don't want to be involved with this, it's RTA and just go, you're too young, you don't want to be dragged through courts and all the problems, you don't know what

can happen in the future". He was like, an innocent bystander and he was just curious what had happened, because he probably saw - I didn't even ask him how much he seen.

Have a look at your photograph?---Because he must have seen something.

Have a look at your photograph?

HIS WORSHIP: No, get to the point.

MR LAPIROW: The point is that you gave evidence you were walking down the street, facing north, is not that correct?---And every now and again I was turning around to see where Phil was - - -

Yes, but you were primarily walking down the street facing north?---And then - - -

And you - - -?---Phil would stop - - -

Let me just take the rest of your evidence. You gave evidence that Hoser was behind you?---Yes.

You gave evidence that you came out of the middle Russell Street door of the court?---Yes.

Is it your evidence that Mr Hoser also came out of the middle Russell Street door of the court?---We came out together.

You came out together?---The whole three of us, but we walked - you know, people don't walk at the same speed and - - -

You were running away from the man you are there to protect?---Well, we'd come out and the court thing was over and - you know, you don't - well, I didn't - in those days I wasn't as wary as I am now to be - how to - as you said, to have someone to protect me or to protect someone else, to be with them all the time or nearly all the time.

It is clear from the photograph that the man in the yellow shirt

is lounging against the wall of the building near the door of the court, that is how he appears?---Yes.

Was he there when you walked out of the door to begin with?---I can't remember that.

There would not have been much time from the time that you walked out of the door till the time that you stopped, turned around, picked up your camera and took your photograph?---You're trying to twist it. The camera was on me.

Yes, but it was not against your face, was it? You were not walking around with the camera plastered against your face, were you?---Your Worship, it would have been - - -

HIS WORSHIP: Just answer the question?---Two or three minutes to walk up there, I suppose, I don't know, I didn't time it.

MR LAPIROW: Two or three minutes? The only reason why you told the man in the yellow shirt to go away, is that you knew that his evidence would be there was no assault?---No. No, I didn't want - it's bad enough what's happened in the past your Worship, sometimes people are brought in and they don't want to be witnesses and they're put through a gruelling thing and I felt it was very unfair on me to bring in a total stranger to something like this because of what I've seen happen in the past, in courts here. Courts are not the nicest of places.

You said that as you were walking up the street, a white Falcon pulled into the kerb, do you recall that?

HIS WORSHIP: Do you recall saying that or not Mr Brygel?---No, if I've said that before lunch, I've said it - try and think back.

MR LAPIROW: I can say sir that my notes - your worship, my notes show that he used that term.

HIS WORSHIP: I seem to recall - I have a similar recollection, I will check my notes. Yes "White Ford had come" - - -

MR LAPIROW: Had come up to the kerb.

HIS WORSHIP; Burke and I stopped, looking back at Phil, a white Ford had come up to the kerb, Mr Schofield was way back and Mr Olsen was walking back some distance behind" that is the note that I have.

MR LAPIROW: My note your Worship is a white Ford had come up to the kerb and my instructor has written the same words.

HIS WORSHIP: Yes, they are the words as (Indistinct). Yes, do you accept now that that is what you said this morning?--- Your Worship, I must have, you know, I - - -

Mr Lapirow?

MR LAPIROW: What was the white Ford?---What was the white Ford, that's the car in the photo.

That had just come up to the kerb?

HIS WORSHIP: Which car in which photos? Is that the car that Mr Ashton got into?---Yes.

Yes?

MR LAPIROW: May I see the copy of that photograph please? The one with the white Ford sir.

HIS WORSHIP: We are talking of photograph 2 of the sequence.

MR LAPIROW: Your Worship, there are two photographs, one shows a driver's door being opened and there is another one showing Mr Ashton apparently in the car, looking over his shoulder and driving.

HIS WORSHIP: It is the one with the door open that you are wanting?

MR LAPIROW: Yes.

HIS WORSHIP: That is number 2 in the sequence.

MR LAPIROW: Now if you look at that sir, is that the car that came up to the kerb?---Yes.

How did it get there, automatic control?---Your Worship, like I said before, there's some things I can't remember. I just can't remember.

HIS WORSHIP: Yes?---I've been racking my brains over lunchtime trying to remember.

MR LAPIROW: That was not one of the things that Mr Hoser spoke to you about over lunchtime?---No.

You said you were racking your brains over lunchtime, and you were with him continually over lunchtime?---Over - I was asked before for that time span by your Worship and you know, I've gone away and had something to eat and I've been just trying to remember and remember. I cannot remember.

But you did not go away, you stayed with Mr Hoser the whole time?---No, went down to have lunch.

With Mr Hoser?---Yes, so we went away from here and we walked down the street and we went to the Daimaru complex and got lunch.

So all the time that you are racking your brains about what you said this morning, you were racking them in silence in Mr Hoser's company?---If - your Worship, if Mr Hoser has got a better recall than me on certain events on the day, and he has spoken to me at lunchtime, trying to get me to remember what I remember of the incident, and I still can't remember. You know, I honestly can't remember. I do remember the actual incident.

When you gave evidence about the actual incident you held both

of your arms in front of you in this manner, and that is showing that the elbows are bent and the hands are upheld, do you remember giving your evidence along those lines?--- Before when I demonstrated what happened?

No, before then, when you described the punches, the alleged punches?---Oh, he punched him, he sort of - - -

Exactly the way that you are showing with your elbows bent, both hands up. Look at yourself. You agree that that is what you showed before?---Yes, (Indistinct) and then he's pushed.

And you being an expert in Chinese martial arts - - -?---No, I never said that, I said I did do it years ago and all I said was that you can actually - you can call it a punch and when you push it can be used as a punch and the way he hit him, it was a push like that. Some people don't even know that that's a way of hitting someone.

There have been five witnesses who have given evidence in this case about the striking and none of them agree with the evidence you have given, and you are the expert, how do you explain that?---Well, I haven't heard what the other people have said.

Well, are you not familiar, have you not heard the transcripts, have you not heard the tapes?---I do not know how - I only remember what I remember - the version I remember - - -

I asked you a question sir, have you not heard the tapes?---I've heard a tape of the incident, part of it.

Did you hear a tape of Olsen's evidence and Schofield's evidence?---No. I wasn't here.

I did not ask you if you were here sir, I asked you if you heard the tape, is there any difficulty in your understanding

that?---I don't believe it's been transcribed yet, you'd have to ask the - I don't believe it's been transcribed, I don't believe Mr Hoser's got a copy yet of what - - -
What tape?---That's what you're talking about.

How do you know that I am talking about the tape of evidence in the court sir?---Because it's quite obvious, the way you're talking. You're talking about tapes, so it must be the tapes that have been done at the previous case.

You know as well as I do and the court does, do you not Mr Brygel, that Mr Hoser carries tape recordings with him the whole time?---He doesn't carry a tape recorder with him all the time.

He does not?---No.

Does he often?---You will have to ask Mr Hoser.

No, I am asking you?---Well, I don't know what you consider to be often, I don't know what you consider to be - your time span, I don't know it.

How long, if you go through the motions and put yourself into the position you were as you were walking down Russell Street to the north, with Mr Hoser behind you?---We came out together and I just walked on with Des.

I want you to go to the point where you stopped walking north and describe to the court exactly what you did when you stopped?---I was wondering where Phil was - - -

I am not asking you where you wondering sir, just say what your movements were?---I turned around and checked on him a few times - - -

When you turned around and checked - - -

HIS WORSHIP: Just a moment, Mr Lapirow, let the witness finish the question, finish his answer.

MR LAPIROW; Could I ask the witness to describe what he means by "Turned around" do you mean rotate?---No, you walk on and just look around to see where the person is.

When you turned around, did you stop walking to the north each time you did that or did you continue moving to the north each time you did that?---Your Worship, that's ridiculous, I - - -

HIS WORSHIP: Just answer the question, yes or - - -?---I can't remember that, it's one and a half years ago, I can't remember if I was walking and I turned around and kept walking as I was looking or if I just stopped for a second to have a look if he was there and then started walking again.

MR LAPIROW: Yes, did you come to a stop at any time?---Yes, I stopped.

From the time you stopped - - -?---And I turned around.

Did you stop more than once?---I'd stopped because Derry Ashton was on the scene. He was there.

I am not asking you why, I am just asking you what your movements are. You stopped, did you stop by the doorway to the court, the further doorway, further up to the north?---I can remember the exact location, you could judge by that photo where I stopped probably.

Do you have any recollection?---I can't remember if I was south of that - there's a little doorway there, isn't there? I can't remember if I was north of that or south of that, your Worship. You'd have to try to work that out from the photograph, exactly where I was standing.

The evidence in court says that you were hiding in the doorway?--What?

You were partly concealed in the doorway?---Your Worship, that's absurd.

When you stopped, how close to the building were you?---Well, I've taken the photograph so you'll have to judge it, I - -

No, I am asking your recollection sir?---Four or five feet from the edge of the building.

When you stopped, what did you do then? What were your movements?---Well, I'd stopped. I was talking to Des, I'd seen Ashton - - -

How could you see Ashton if you were walking north?---I said before Ashton had appeared.

Okay, so you stopped - - -?---I was - - -

When you stopped, which way were you facing?---I was facing looking at the scene.

So that means that your evidence is that you were walking north, you saw something, you turned around and you stopped?---No, no, I'd been walking and I'd been looking back over my shoulder to see where Phil was because I was just wondering where he was, and I'm not exactly sure your Worship at which stage of time Derry Ashton has turned up, Inspector Ashton has turned up, but whenever it happened, I'd been talking to Des, I stopped and I - you know, I looked, I just stood there and looked and I had my camera there, I was aware I had my camera - - -

Just take it bit by bit, you saw Ashton as you looked over your shoulder, you stopped and you turned around so you were facing Ashton, is that what you are saying?---Your Worship, I never made a statement afterwards, like I suppose policemen would get off you, so that it was you know - - -

HIS WORSHIP: If you were asked, that you cannot recall, is that the answer?---Yes, I can't recall exactly.

MR LAPIROW: But in the time that this incident took place and you first saw Ashton and you stopped, you turned around, you took your lens cap off the camera, you held your camera up to your face and since it was an auto focus you did not have to muck around with any of the controls, and you took your photograph, is that what you are saying happened?---Would you like to repeat it again?

That everything happened, you looked over your shoulder, you saw Ashton?---I turned around, I'd seen Ashton coming up from sort of behind side on to Phillip, and he just went up, and it happened very fast, you know, must have been, I don't know, not even 15 seconds, it was so fast, it happened so fast. He just went bang, bang, bang, hit him and then he pushed him.

But was not Ashton coming up from behind Hoser?---To the side.

But was he not coming from behind?---To the side as well.

Yes, but from behind and to the side?---Well, the - your Worship, I've said that, I've said he's come from - you know, like if there's two people walking abreast your Worship and one of them drops back and you've got the other person there and then the other person comes around like that, do you know what I mean?

HIS WORSHIP: In other words he has come from behind?---To the side, yes.

MR LAPIROW: If Hoser had not stopped, Ashton would never have been in front of him, would he?---Ashton was coming up very fast, you know, he was walking fast. I don't think - see, what - your Worship, it's what probably made me stop to

really look at it, was that I don't think Phillip had seen him.

If he had not seen him, Phillip would not have stopped?---He was looking at something else. You know, I wasn't responsible for his actions. After all, he was lagging behind us. I just - it's not as though I've got a dog collar on him and you know, follow me.

The evidence of other witnesses and the evidence which is on the tape, suggests that it was Mr Hoser who engaged Ashton in discussion. What do you say to that?---I don't believe that's the case, from what I saw.

The evidence as I recall it, your Worship, is that in the tape recording which Mr Hoser said was taken at the time, was that Mr Hoser was asking questions "What is this" or words to that effect and there was a rustling of papers or some other sound in the background.

HIS WORSHIP: Well, I think it is fair that - the transcript which is exhibit B has on it the - after Mr Olsen apparently gives some document or a letter to Mr Hoser, the transcript says - although - - -

MR LAPIROW: See, that is the difficulty your Worship, and that is - - -

HIS WORSHIP: The tape does not - - -

MR HOSER: I do produce them both.

MR LAPIROW: Your Worship, could I ask the witness be taken out of the court for the moment?

HIS WORSHIP; I am merely telling the witness what the transcript says because you are only relying on your recollection.

MR LAPIROW: Yes, your Worship.

HIS WORSHIP: I am referring to what the transcript says.

MR LAPIROW: Your Worship, could I still ask that the witness be out of court for the moment?

HIS WORSHIP: Yes, if there is some point that you wish to make.

Would you just go outside please Mr Brygel, for a moment.

WITNESS STOOD DOWN

MR LAPIROW: My recollection of the tape is that the tape was consistent with what Olsen said had occurred inside the court but Hoser's evidence was that that tape was recorded on Russell Street.

MR HOSER: Objection, your Worship.

HIS WORSHIP: Just a moment Mr Hoser, you will have your opportunity in a moment.

MR LAPIROW: Mr Hoser's evidence was that that tape was made at the time the alleged assault took place.

HIS WORSHIP: No, I do not think that is right, Mr Lapirow. There are two clear parts of the tape. What happens inside and then what happens outside.

MR LAPIROW: I heard them being played your Worship as a continuous - the tape should still be around.

HIS WORSHIP: I have got it, I played it this morning. There was no apparent gap in the tape but there is an appreciable time gap with rustles and movements and what have you, and I did not understand the evidence of the informant to be that the document was handed to him by Olsen outside. In fact I am looking now at my own notes, it was in the corridor between the two entries that Olsen approached and said something like "How are you Mr Hoser, here's a letter for you" and "Then we go outside, Mr Brygel and I walked - he wanted to move his car, we walked out the building and

up towards Lygon Street".

MR LAPIROW: And listening to the tape, your Worship, my recollection or last hearing was that - without having a stopwatch, that on counting 1001, 1002 it appeared that the whole incident on that tape took 22 seconds and within the period of that tape, the evidence of Mr Hoser was that the punching took place at that time.

HIS WORSHIP: That may very well be the case Mr Lapirow, but the question that you were asking was based on the evidence which suggests that it was Mr Hoser who approached Mr Ashton, that was the question. When you referred to the tape and on the tape it says, or shows that it was Mr Hoser saying "Excuse me, the letter" or words to that effect.

MR LAPIROW: Yes.

HIS WORSHIP: What has that got to do at this stage, with the timing, that may be your next question?

MR LAPIROW: Because on the tape it is unclear on any person's evidence - I think that Olsen and Schofield both said "Look I don't recognise this" but the words that were said by Hoser insofar as he said "Excuse me, what's this" and there is the sound of paper, those were quite clear and they occurred a few seconds before the assault is said to have taken place.

HIS WORSHIP: No, that is not right.

MR LAPIROW: Yes, well it is difficult your Worship, after four months, but that was my recollection.

HIS WORSHIP: Well, I do not believe that is correct. My listening to the tape this morning, as I understand it, the words which are supposed to be said by Mr Ashton occur immediately, the "Excuse me, this letter" then there is

"I'll kill you" and then a "Hey that's assault" straight,
one, two, three.

MR LAPIROW: I never did hear the "I'll kill you".

HIS WORSHIP: Well, that is a matter for me whether it is there
or not.

MR LAPIROW: I wonder if I could hear the tape again, would that
be too much of an indulgence?

HIS WORSHIP: Why do you want to - what is the purpose - from
the point of view of cross-examination of this witness at
this point of time, what is the purpose of playing the
tape?

MR LAPIROW: Your Worship, it was only with respect to the
movements of Hoser where it appears that two witnesses have
said that Hoser was the one who stopped, blocked Ashton's
path.

HIS WORSHIP: If you are going to put that to the witness, that
is fine, put that to the witness. If you want to put to
him what is on the tape, then it should be put accurately
which is what I was attempting to do because you were
working from your recollection.

MR LAPIROW: Very well your Worship, I will abandon the point on
the tape and I will deal with the - - -

HIS WORSHIP: I am not seeking to influence you to abandon the
point of the tape, it is just that we seem to be now
talking about the timing and inferences which can be gained
from the timing which is not a matter on which this witness
can really comment, I would have thought.

MR LAPIROW: Your Worship, I understand where my error is and I
will not pursue it.

HIS WORSHIP: Well, it is a matter for you, the stage to which

you pursue it. Would you ask Mr Brygel to come back in please? Mr Hoser, would you retrieve the photograph.

ALAN ANTHONY BRYGEL:

HIS WORSHIP: Yes, Mr Brygel, you have been sworn and you are still on oath, do you understand that? Yes, Mr Lapirow?

MR LAPIROW: At the time that you left the court you and Burke were walking north, Hoser was behind you and walking north?---Yes.

Your evidence is that Ashton was coming from further to the south and also walking north?---That was once I'd stopped and turned around to have a look at the whole situation.

At that time Hoser was also continuing to walk north, was he?---I thought he'd stopped.

Which way - why had he stopped? Why do you think he stopped?

You said earlier you did not think he knew Ashton was coming?---I didn't take much notice of that. I was worried because Ashton was behind coming up.

So you are asking the court to believe that you were worried about this incident, that you were walking north, for no reason at all Mr Hoser stops and Ashton continues to come up from behind?---As far as I can remember, that's my recollection of it.

Two other witnesses have said that Mr Hoser had turned around and faced Ashton and blocked his path, what do you say about that?---No, no.

Two other witnesses say that Mr Ashton moved to the left, that is towards the court building - - -?---No, no, that's definitely not right, no, definitely not right.

You say it is definitely not right yet you say he was coming up from behind and beside him. What side do you place Mr

Ashton on, the left or the right?---Left.

Why do you say it is definitely not right then? Is not that consistent with what you observed?---That Phillip was in front of Mr Ashton. See, I knew about the previous case, your Worship, how - - -

I am not asking you about that sir?---I knew that Mr Hoser had been assaulted before at the Flemington races by Mr Hoser - by Mr Ashton, so I just - I became apprehensive.

The evidence is that Mr Ashton - - -

HIS WORSHIP: Just a moment. Do I understand your evidence correctly that it was your impression that Mr Hoser was taken by surprise by Mr Ashton?---Yes.

And that the assault occurred immediately thereafter?---Yes.

MR LAPIROW: And the evidence otherwise was Mr Hoser had blocked Mr Ashton's path and Mr Ashton attempted to pass him on the left, towards the building?---Sorry?

The evidence was that Mr Hoser had stopped, had turned so that he was facing to the south?---No.

And had blocked Mr Hoser's path?---Blocked Mr Ashton's path?

Yes, quite correct, blocked Mr Ashton's path and then Mr Ashton moved to the left between Hoser and the building?---No, Hoser did not block anyone's path because Mr Ashton has come in and as I said he's gone bang, bang, bang, hit him, you know it was several times, I didn't count, I didn't have time it was so fast. I couldn't believe it, and so I just grabbed my camera and just - the lens cap which went poof like that, and I didn't worry about the lens cap your Worship, because it's attached, it's got one of those little rubber - there's a rubber thing on it that's attached to a you know, rubber, and then it's attached

right round the lens, they're about \$1.80 or something and that way you don't lose your lens caps. I knew it would fall down - - -

Are you saying that sir, in order to put credence to your testimony because you - - -

HIS WORSHIP: Do not answer that question, go ahead Mr Lapirow. Do not - let us stick to the point, shall we.

MR LAPIROW: The blows that you say were struck at the time that Mr Hoser and Mr Ashton were facing each other?---Well, you can see in the photo Mr Hoser is sort of - - -

It is not a difficult question to answer, they were facing each other were they not?---Mr Ashton's moved in on him so I suppose they would be facing - not completely opposite each other but to an edge.

Even on your photographs shows that Mr Hoser is not facing to the north but he is facing towards the court building?---He's facing slightly, you know, at an angle.

How could he have been doing that if he had been walking north? Get your facts correct sir?---It's - look, here I am, and I just move like that.

Your Worship, I do not think anything further can be gained.

HIS WORSHIP: Yes, Mr Hoser?

MR HOSER: Right. This morning do you recall ringing me up at home?---Yes.

Do you recall telling me to make sure I bring in the tape recording equipment?---Yes.

Can you tell the court what my comments were?

MR LAPIROW: Your Worship, how does this arise out of cross-examination?

MR HOSER: That will come, it is quite relevant because it is in

relation to the tape recording which he has been going on about at quite length?---I remember Phillip saying to me that "I don't need it because it's being taped by the court proceedings".

At the time of the last case you were in jail, were you not?---

Yes.

What for?---Your Worship - - -

HIS WORSHIP: I am sorry, Mr Hoser, first of all, how does this arise out of cross-examination and secondly, what is its relevance?

MR HOSER: That will become apparent when he answers the question.

HIS WORSHIP: You are not doing - I cannot see how this does your case any good.

MR HOSER: Well, the situation is that he was in jail on charges which he has since beaten and it would have been very hard for me to get tapes and transcripts and all these other bits and pieces to him while he is locked away in Pentridge, which seems to shoot through what Mr Lapirow was trying to push before.

HIS WORSHIP: Yes, a rather curious way of doing it if I might make the comment.

MR HOSER: I have to apologise - - -

HIS WORSHIP: That is all right, Mr Hoser. Is that the case, that when - you have been in custody have you, for some short time?---Your Worship, it was three months, I was fitted up by the Victorian Police and it's quite obvious now - - -

When were you released?---I actually got out on bail on - I was granted bail on 21 November and then on 22nd which was the

Friday, the following morning, I was released from Pentridge Prison and then I've been preparing for my case against the Victorian Police on the charge that I was put into Pentridge on.

When is that coming up?---What happened - - -

When is it coming up, when is it being determined, or has it been?---It was determined by Mr Ian West - it was heard on the 13th and it was tape recorded on the 13th and it was also heard on the Friday which is what, the 19th.

13 of January?---Yes, just been. That was for - - -

I do not need to know what it was for, I just need to know the timing?---And I - - -

That is all right, you do not need to go into any more detail?--
-Yes, it was unreal.

MR HOSER: Was the case dismissed?---It was discharged by Mr Ian West.

Those charges, are they part of the war with the RTA you described?---Your Worship, it's quite interesting because the - - -

HIS WORSHIP: It may be interesting - - -

MR HOSER: A yes or no answer will do?---I don't know any more because it appears that the Victorian Police have been talking to the RTA your Worship, by something that one of the policemen had said to me, concerned driving taxis.

Certainly in the brief material there was reference to an RTA officer, was there not?---Yes, your Worship.

Was there a reason why you copied the negative of that picture?--
--Yes, your Worship, I was frightened that - - -

MR LAPIROW: This does not assist at all.

HIS WORSHIP: Yes.

MR HOSER: They are just points that have been raised, I did not raise them.

HIS WORSHIP: Yes, I accept your answer. I accept your answer Mr Brygel.

MR HOSER: Over the lunch break do you recall me telling you not to - and being very argumentative about you not bringing in that large photo - - -

MR LAPIROW: Objection.

MR HOSER: Photo?---Yes, your Worship.

MR LAPIROW: Because he is now leading the witness exactly on what the conversation was said to be about.

MR HOSER: Well, he has tried to - - -

HIS WORSHIP: Just a moment Mr Hoser. The topic is quite proper to be raised Mr Hoser, at this stage but it cannot be raised in a leading way.

MR LAPIROW: With respect your Worship, the discussion that this witness had proposed to is nothing to do with the large photo, it was to do with something else.

MR HOSER: I am sorry, you are wrong there.

MR LAPIROW: My recollection was it was something else, your Worship.

HIS WORSHIP: Mr Hoser, if you would address your comments to me and not to counsel. You have heard what I have said, you are entitled to raise the issue but not in any way, shape or form in a leading manner, do you understand that?

MR HOSER: I understand what you have said. But before I go any further I object strongly to the - - -

HIS WORSHIP: I know you do, Mr Hoser.

MR HOSER: And that can be shown just from the tape recording of the phone call I made to the lady from Legal Transcripts to

show that both these men are lying through their teeth.

HIS WORSHIP: Mr Hoser, I will ask you not to raise issues like that, at this stage of these proceedings. Ask your question.

MR HOSER: Can you describe what the argument was about at lunchtime and who was arguing and what and why?---Your Worship, it was about the enlarged photo that I made from the - I think it was from the original I'd made it, I made it because I wanted to have a good look at the photo because you know, from a smaller photo sometimes it might be explicit and I made a bigger photograph because it showed exactly what I saw. I - - -

HIS WORSHIP: Have you got that here?---Yes, your Worship, I have, and that was the big argument, I wasn't to produce it
- - -

Mr Hoser, do you have any objection to my looking at it?

MR HOSER: No, no objection at this stage. My objection was - -
-

HIS WORSHIP: It is not a question of an objection, you had some difficulty with Mr - - -

MR HOSER: My objection was to him bringing in the picture because it would appear that by blowing it up, these people would turn around and say we are running a vendetta which is not the case and that was my big objection with him and that was exactly the argument.

HIS WORSHIP: Yes, all right. I would just like to have opportunity to look at it, that is all?---Your Worship, would you like to look at - - -

Not particularly, no?---It is the same one, it's - - -

Yes. In the circumstances I am going to mark that as an

exhibit, blow-up of exhibit F1, will be exhibit F4, if that is not too confusing.

EXHIBIT F4 ... Blow-up of exhibit F1.

HIS WORSHIP: Yes?---Your Worship, why I got it done, if you are asking me, because - - -

I am not asking you Mr Brygel, if Mr Hoser wishes to canvas it he may.

MR HOSER: No, I do not. Did you call me at any stage asking you - - -

MR LAPIROW: Objection.

HIS WORSHIP: Yes, must be by its nature a leading question.

MR HOSER: I do not know how to get the question in, so I will have to just ignore it.

MR LAPIROW: Your Worship, I do not know whether it is appropriate for me to make comment at this stage but continually Mr Hoser refers to his ignorance of the law.

HIS WORSHIP: Mr Lapirow - - -

MR HOSER: I did apply for legal aid and I was refused.

HIS WORSHIP: Mr Lapirow, no it is not appropriate for you to make such a comment.

MR LAPIROW: Yes, your Worship.

HIS WORSHIP: Yes.

MR HOSER: You mentioned your assault of Ashton, did you at any stage provide me with a tape recording of that?

MR LAPIROW: Objection.

HIS WORSHIP: What is the relevance of that?

MR HOSER: I have got it here in my bag.

HIS WORSHIP: Well, I have got my diary in my pocket Mr - - -

MR HOSER: Sorry, your Worship.

HIS WORSHIP: But it is not really relevant.

MR HOSER: Was it on 5 May 1988 - - -

MR LAPIROW: Objection your Worship, it is clear that it is leading, irrelevant.

HIS WORSHIP: What is the relevance of it?

MR HOSER: Just to show a pattern of behaviour, that is all.

HIS WORSHIP: Might it not equally be said to give course for Mr Brygel to bear a grudge?

MR HOSER: Yes, it could be.

HIS WORSHIP: I will ignore it.

MR HOSER: I have no further questions, your Worship.

HIS WORSHIP; Mr Brygel, I wanted to ask you a question based on your recollection. If you do not recall then that is the simple answer. After the assault, the alleged assault that you witnessed, occurred and after you took the photograph, Mr Ashton went to his car, is that correct?---Yes, your Worship.

Did he have to move very far to get to his car or were they almost opposite the car when the assault occurred, or what?---The car was close by, yes, from my recollection, and he's just moved across and gone to his car and got in his car and that's when I've gone up and seen Phillip, in the - - -

I am not asking you to recount the whole - I just want you to answer my specific questions. So, you say your recollection is that after the alleged assault, Mr Ashton moved almost straight to his, did not have to walk any considerable distance?---No, he didn't have to walk any considerable distance and that's why after I spoke to Phil I - - -

Thank you?---I went across and took another picture of him in

the car.

When Mr Ashton moved to his car, did Mr Hoser follow him at all, up towards his vehicle or did he stay more or less where the assault occurred?---He stayed more or less where he was, because I moved across with my camera to get a picture of Mr Ashton in his car.

So Mr Hoser stayed more or less at the position of the alleged assault?---Yes, your Worship, I didn't really take much notice of him, I know he didn't move towards the car, but - yes.

Anything arising out of that?

MR LAPIROW: No, your Worship.

HIS WORSHIP: Is there any reason why Mr Brygel could not be excused at this stage?

MR LAPIROW: I have none, your Worship.

HIS WORSHIP: Yes?---Your Worship, there is something that - I do not know if it helps but - - -

HIS WORSHIP: Mr Brygel, it is not appropriate for you to volunteer material from the witness box?---Okay, fair enough.

If Mr Hoser thinks it is relevant then he can ask you the question but it is not a good idea for you to volunteer it?---Thank you.

Yes, thank you, you can go now Mr Brygel, you can wait in the court or outside if you wish, but you are free to leave if you wish to?---Can I sit down and - - -

Yes, you can sit down. Take your material with you.

WITNESS WITHDREW

HIS WORSHIP: Yes, Mr Hoser.

MR HOSER: I am sorry. I have called all my witnesses now.

HIS WORSHIP: That is the evidence that you wish to call.

MR HOSER: Yes.

MR LAPIROW: I have an application.

HIS WORSHIP: Yes?

MR LAPIROW: The application is that there is no case to answer.

HIS WORSHIP: I want to make this quite clear. This is a no
case submission, not a submission on the - - -

MR LAPIROW: Not a submission (Indistinct) no case to answer on
the grounds of unsafe and unsatisfactory evidence.

HIS WORSHIP: Mr Lapirow, how can you make such an application
to me in those specific terms, after the Attorney General's
reference and Doney?

MR LAPIROW: Your Worship, it was my understanding and it could
be in error, that it was available to me at this stage. I
cannot take your Worship to Andoni, I am not familiar with
it.

HIS WORSHIP: Doney, the case of the Queen against Doney is a
decision of the Full Court of the High Court, it is
reported in - I do not have the CLR but in the Australian
Law Reports volume 96 at page 5 - I think it first begins
at 540 and at 544 after a fairly rigorous exposition on the
authorities including the Attorney General's reference - I
will cite to you the second paragraph "It follows that if
there is evidence even if tenuous or inherently weak or
vague which can be taken into account by the jury in its
deliberations and that evidence is capable of supporting a
verdict of guilty, the matter must be left to the jury for
its decision. Or to put the matter in more usual terms a
verdict of not guilty may only be directed only if there is
a defect in the evidence, such that taken at its highest,

it will not sustain a verdict of guilty". In my view there is no longer any discretion in the court to exercise its discretion on the basis of unsafeness.

MR LAPIROW: Yes, your Worship. I wonder if your Worship, I could beg the court's indulgence for no more than five minutes.

HIS WORSHIP: Yes, I would - of course there are other submissions that might be made if you close the case, but it is entirely a matter for you at this stage.

MR LAPIROW: Perhaps if I could just have a moment, your Worship.

HIS WORSHIP: Do you wish me to adjourn or do you wish - - -

MR LAPIROW: I think I might be able to deal with it very shortly.

HIS WORSHIP: I will have to go down to the library because there is - how long do you think you might be, a couple of minutes?

MR LAPIROW: I would think less than five minutes, your Worship.

ADJOURNED AT 3.05 PM

RESUMED AT 3.08 PM

MR LAPIROW: Your Worship, the defence will call no evidence and the submission is that the evidence before the court is not sufficient to sustain the charges that are made.

HIS WORSHIP: Yes, it is a matter of fact for me, is it not?

MR LAPIROW: Yes, it is. Would your Worship permit me to address on the question of facts?

HIS WORSHIP: No.

MR LAPIROW: I understood your Worship, that in the case of criminal prosecutions the prohibition on facts does not apply.

HIS WORSHIP: No, it applies and perhaps more so in the case of criminal matters.

MR LAPIROW; Well, that does tie my hands to some extent, your Worship.

HIS WORSHIP: Be that as it may, you are entitled to address me on matters of law but unless leave is given it is not appropriate for addresses to be made on issues of fact and in this case I do not believe it is appropriate for leave to be given.

MR LAPIROW: I will not argue the point with you your Worship. On the question of law, now in some instances it is difficult to put a submission which is not trite and it would be obviously obvious to the court that the standards of proof required for beyond reasonable doubt, a lot of latitude may have been given to the prosecution in this case and a great number of things have been said which before a jury would be intensely prejudicial to my client but in my submission the standards that apply in any criminal prosecution, apply here regardless of the ignorance or otherwise of the prosecution of the case.

HIS WORSHIP: Yes, thank you. Mr Hoser, is there anything that you wish to say to me which amounts to a submission on a matter of law? You are not entitled to put to me matters of fact, that is it is not appropriate for you to behave as they do in LA Law and address me as a jury on what I should or should not believe. I appreciate that this is not your (Indistinct) if I can use that term but are there any matters that you wish to direct my attention to?

MR HOSER: Your Worship, yes, as far as understanding what you and the man next to me have said, I would much prefer to

have had a barrister running this whole show. However, the only question on law I can really state is, on the basis of the law that the - on the basis of the evidence - I do not know whether I am talking facts here and stop me if I am going too far.

HIS WORSHIP: I will stop you if you - - -

MR HOSER: On the basis of what the man was charged under and on the basis of the evidence, simple as that. You know, it is there. That is all I can really say.

HIS WORSHIP: This case has gone on quite long enough. I will not adjourn to make notes about my decision. It is being recorded for posterity and no doubt in due course will be looked at but I will give an extempore decision.

HIS WORSHIP: Notwithstanding the fact that the prosecution is brought and on behalf of a private citizen and has been prosecuted by him as a private citizen who has as Mr Lapirow said, been given a certain amount of latitude in the production of the case, ultimately this case must be judged on the same standards and according to the same principles as any prosecution, be it a prosecution in the Magistrates Court, the County court, the Supreme Court or even the High Court. It is a criminal prosecution and therefore the onuses and standards which apply in all courts in all criminal proceedings with some very limited exceptions, apply here notwithstanding as I have said the untutored manner in which the prosecution has been presented. When I say untutored I do not use that term in any sense to belittle or stigmatise the prosecutor but it is quite clear that the conduct of a legal case is a skill which is only learned through experience.

The onus in a criminal case, in any criminal case, rests upon the prosecution. The prosecution has to prove its case. It is not for the defence to show their innocence and the standard of proof in this, as in all criminal cases, is beyond reasonable doubt. The evidence which has been presented by the prosecution came from a total of five witnesses. Mr Hoser himself, two RTA officers, Mr Olsen and Mr Schofield, and two witnesses who were presented to me as independent, namely Mr Burke and Mr Brygel. As well as the oral testimony there have been a number of documentary exhibits including photographs. The photographs particularly have been of great assistance to me. There is also a tape recording.

It is contended by Mr Hoser that following a series of problems with the RTA he appeared at the Melbourne Magistrates Court on 1 November 1990 where inside he was handed a document by RTA officer Olsen. Outside the court he alleges that he was confronted by Mr Ashton who, I quote "Came at me" and that he then holding his right hand out at the shoulder, made three punches to his midsection saying "I'll kill you". He then moved a short distance, one car space beyond where the assault had occurred, towards Lygon Street in Russell Street, got into his car and drove off.

Tendered to me were photographs which are exhibit F, photograph 1 showing - it is not quite clear on Mr Hoser's evidence, the actual assault, or immediately after the assault, Mr Ashton the defendant getting into his car and the third photograph is Mr Ashton driving away in his car. Suggested by Mr Hoser that there was no provocation and he denied that it was he who placed himself in Mr Ashton's path. In cross-examination Mr Hoser agreed that he did have an axe to grind with the RTA but denied that this prosecution was part of that issue between them. He admitted certain prior convictions, documentary evidence of which was provided to me but in each case, virtually every case, provided some form of exculpatory reasoning in which he seemed in my view to blame his problems on everybody else but himself.

He also tendered to me the photographs and a tape recording and a transcript of that tape recording which he alleges occurred - which was made at the time of the alleged assault. The tape recording itself is exhibit A and the transcript exhibit B. That transcript reads first

of all, a conversation with Mr Olsen, the final words of which are "Have a good day" Mr Olsen and next after some time, Mr Hoser saying "Excuse me, this letter" apparently to Mr Ashton, I assume. Then Ashton is alleged to say on the tape "I'll kill you" whereafter Mr Hoser says "Hey, that's assault". There is no evidence about where the microphone was for this machine, although I assume it was somewhere in the vicinity of Mr Hoser's neck, head, mouth, face, chest, somewhere in his upper body region.

I am unable, after playing the tape five times this morning, and twice again this afternoon, to hear the words "I'll kill you" on the tape. Further there is no sound on the tape which would be consistent with blows being delivered in the vicinity of the microphone. Thirdly, the words "Hey, that's assault" and "Do you want another assault charge, do you" do not appear to be uttered in any sort of breathless way or distressed way as one might expect from someone who was assaulted and taken by surprise.

Further, on a close examination of photographs 1 and 2, it seems quite clear that Mr Ashton - that the alleged assault shown in photograph 1 occurs somewhere between the door which is the central door in Russell Street, which has been referred to from which Mr Hoser and his friends left, and the small door to the north of that main entrance, that door being an after hours access door for staff. Indeed, the steps of that door can be seen in the extreme right hand bottom corner of photograph 1. Looking then at photograph 2, it is quite clear by reference to telephone poles, trees and a yellow Falcon police car, that Mr

Ashton's vehicle was parked some 20 to 30 metres north of where photograph 1 was taken and that Mr Hoser has followed Mr Ashton up to that motor vehicle.

It is also interesting to note on photograph 1 and more clearly shown in the blow-up that in his right hand Mr Ashton is carrying what appears to be a spectacle case, grasped in his right hand. I will refer further to that in a moment. Mr Olsen was the next witness who gave evidence of his movements and although called as a witness for the prosecution denied that Mr Ashton did anything violent. Mr Olsen denied that Mr Ashton raised his arms although he is clearly mistaken in that as shown in photograph 1. Mr Olsen also gave evidence that he heard Mr Brygel say "We're going to get you for what you did to us" and he thought that that was on that particular day.

He also gave evidence that it was Mr Hoser who came past Mr Ashton and stopped in front of him, blocking his path and that Mr Ashton stopped and walked to the left around Mr Hoser. That would seem to be corroborated by the tape recording in which it is clearly Mr Hoser who speaks first at the incident site, when he says on two occasions "Excuse me" and then "Excuse me, this letter" whereupon some incident apparently occurs. So I say, it seems to me quite unusual that this evidence should be given by a prosecution witness.

Mr Schofield was the next witness who gave evidence in similar terms to Mr Olsen about the incident itself, although he too was clearly in error or mistaken, or untruthful saying that Mr Ashton did not raise his arms. He also, when recalled, said that - if I can just find the

words - that the interception by Mr Hoser of Mr Ashton was not the normal way to approach someone. Mr Burke was the next person to give evidence on behalf of the prosecution. He stated this morning that he went to court for some sort of protection or to provide a witness for anything which might happen, although quite clearly he had abandoned that intention by the time he came to leave the court because he was clearly not paying a great deal of attention to assisting Mr Hoser who was indeed walking some distance from him when the alleged assault took place.

Again, his recollection of the position of Mr Ashton and Mr Hoser viz-a-viz Mr Ashton's vehicle, is quite inconsistent with that shown in photographs 1 and 2. Further, his recollection that the defendants - that Mr Hoser had not followed Mr Ashton to his vehicle is quite inconsistent with the situation as shown in the photographs. He also gave contradictory answers to questions about the tape recording that was allegedly made at the scene, saying first of all, in answer to questions in cross-examination, that he was not aware of hearing a tape of the incident and later saying that he had heard pieces of it about a week after the incident itself, which was the first occasion that the prosecutor Mr Hoser, spoke to him about it.

Further, in cross-examination at one stage, he said that he did not think that Mr Hoser had told him the details of his, Hoser's, recollection and later on - I beg your pardon - he said "I don't think I've told him the details of what I saw" and then only a few moments later he said "On the first occasion I probably did explain to Hoser

what I saw" without explanation those two statements clearly contradictory, were made.

Mr Brygel was the final witness, who took the photographs. His evidence of Mr Hoser's movements after the alleged assault are inconsistent with his own photographs, quite demonstrably. His evidence that he had the impression that Mr Ashton took Mr Hoser by surprise in assaulting him is again, I find, inconsistent with the tape recording and his quite definite and repeated evidence about the second assault allegedly shown, that is the assault with the push, the straight armed double handed push with the heels of the hands, which he says is shown in photograph 1 is quite inconsistent, it seems to me, with the observations I have made of the photograph that Mr Ashton was carrying what, as I say, appears to a glasses case, a spectacle case in his right hand.

As I have said, it is the onus of the prosecution to prove its case beyond reasonable doubt. There are clearly numerous inconsistencies in the evidence called for the prosecution and it follows that the information must be dismissed. I will hand back the exhibits, my clerk will retrieve in due course Mr Hoser, the blow-up of the photograph 1 which I have left in the small room down the hall. There are the exhibits which can be sorted out between you at the close of play. Just excuse me for a moment Mr - yes?

MR LAPIROW: Your Worship, I make application for the payment of the defendant's costs.

HIS WORSHIP: Yes, have you made any calculation of what they are?

MR LAPIROW: Your Worship, I am aware of counsel's fees on the matter, I am also - - -

HIS WORSHIP: You get some instructions while I hear from Mr Hoser. Mr Hoser, I am sorry, I will also hand those back to you.

MR HOSER: That is quite amazing your Worship, that you did not - - -

HIS WORSHIP: Mr Hoser, I am not now going to hear anything from you about my decision. My decision is final until it is overturned or disturbed by another court. You are, it seems to me, aware of your rights in relation to those matters, but at this stage I will not enter into any discussion about my decision. Do you understand that? If you do make any further comments, or wish to make any comments, I will leave the bench. Do you understand that? I am not going to listen to them.

MR HOSER: Can I make comments in relation to perjury and the Crimes Act?

HIS WORSHIP: You may make any representations that you wish to somebody else, but not to me.

MR HOSER: This is nothing to do with your decision.

HIS WORSHIP: I am not going to make - no, you may not address me on issues of perjury relating to this particular case. You can make representations to anyone you wish. You have a tape recording of what went on and I direct that my reasons for decision be transcribed also.

MR HOSER: Will you pay the - will someone else pay the costs instead of me for all this taping if you are directing they be transcribed?

HIS WORSHIP: Yes, they will be borne - I think that is right.

If I direct that these proceedings be transcribed, that will be done at the cost of the government, is that right? Yes, well I direct that the entirety of these proceedings be transcribed and provided to both defence and prosecution.

MR HOSER: That includes cost of taping as well, does it not?

HIS WORSHIP: That includes all costs, does it not? I do not know Mr Hoser and I cannot make any orders other than those I have already made.

MR HOSER: So you have made the order and - - -

HIS WORSHIP: I have made an order for the transcription, the transcription will be carried out at the cost of the government, itself. All of the proceedings, I think, so that everybody knows what is going on should there be any further feedback. Now Mr Hoser, there has been an application by the defendant for costs against you. Following a case which was decided - I think the decision came down in January of 1991 - - -

MR HOSER: Matutis versus Casey?

HIS WORSHIP: Matutis and Casey, with which you are no doubt familiar.

MR HOSER: I am familiar with that, but I was actually refused an application for costs on a case I won in front of Judge Kim after it had cost me many thousands of dollars, and on that basis I would - considering it was an RTA initiated action, I regard any application for costs by these same people to be grossly unfair and on the basis of my previous refusal in front of Judge Kim, I ask that you refuse any application.

HIS WORSHIP: Is that the only basis for your application?

MR HOSER: Well, give me time and I will think of some more.

HIS WORSHIP: You have not got all that much time, the court is going to close at four o'clock and I am certainly not sitting after four o'clock on a matter which I have already decided unless there is something you wish to put to me.

MR HOSER: I do not know what other matters you consider relevant. The fact of the matter is there was an assault, blind Freddy can see that.

HIS WORSHIP: That is enough Mr Hoser, unless you have got something that you want to say, say it now.

MR HOSER: It is clearly inappropriate - on a previous case, I was refused legal aid. Had I been given the best legal advice money could buy, like the VicRoads, I might have even stood a better chance in front of you.

HIS WORSHIP: Equally Mr Hoser, if you have been given the best legal advice you might not have proceeded with the entire action.

MR HOSER: Well, I had been informed that it was - I know for a fact what occurred, I know I was attacked and it is not the first time I have been attacked by this man and I cannot control the conduct of the courts, but I do not what is right and what is wrong. I do know that it was wrong that I was refused legal aid and I do know that it is wrong that Mr Ashton was given the best legal advice he could - VicRoads could buy on two separate cases and I do not think I should pay for their indulgence. It is pretty clear. It is a blatant case of use and abuse of public funds which has been in the newspapers. You are no doubt aware of these super duper payouts to public servants who are not doing their work. You are no doubt aware of the case Geoff

Gordon, the recent - you know, there has been cases every day in the paper about abuse of public funds. This is clearly a case of it. There is - enormous number of officials in this room.

HIS WORSHIP: It is quite clear - - -

MR HOSER: (Indistinct) perverting the course of justice, the course of truth and if you grant any costs in their favour, which I think you are pretty set in your mind to do, if you do, and as I said I think you are set in your mind to do it, all you will be doing is perpetuating this crap that has sent Victoria bankrupt. You know that, I do not need to tell you that.

HIS WORSHIP: No, you do not Mr Hoser. Sit down please. The issue is that the Full Court of the High Court has said that a successful defendant, be he an RTA officer or a three time loser, is entitled to their costs. It is not - in the absence of some good legal reason why not. I have not had anything put to me neither can I particularly see any good reason why not, why the defendant should be put to the expense of defending himself from a charge which I have found to have been unwarranted. What do you say the costs should be, Mr Lapirow?

MR LAPIROW: Your Worship - - -

HIS WORSHIP: First of all there are two days brief fee.

MR LAPIROW: Yes, there are two days brief fee.

HIS WORSHIP: What rate?

MR LAPIROW: Your Worship, it is \$650 on a daily basis.

HIS WORSHIP: Yes, that does not seem to me excessive in the circumstances.

MR LAPIROW: Your Worship, the costs of the solicitor are more

difficult and I must inform the court that my instructor is M.A. Pollard who is the solicitor to the Roads Corporation. Both Mr Pollard, Mr John Connell who is my first instructor and Mr Robbie are salaried solicitors employed by the Roads Corporation who are engaged from time to time in litigation, in other civil disputes oftentimes in the matter of damage to traffic signals, what have you. The costs that are awarded are the proper costs of the solicitor in those circumstances, but I should say your Worship that they are salaried persons. Having said that your Worship, there has been a solicitor engaged instructing me on both days. The salary of both legal officers is in the vicinity of \$180 gross which is the cost to the Roads Corporation of having their services and there was a substantial amount of preparation, telephone calls, attempts to organise material in relation to this matter leading up the preparation of the brief and its delivery.

If these matters were private solicitors, your Worship, I would anticipate that the solicitor's costs would be an amount equivalent to or exceeding that of counsel but there are those other circumstances that perhaps the court would take into account. My instructions are that if the three solicitors, or two solicitors involved and other clerks involved in the defence of this matter, were not involved in this defence they would be attending to other business on behalf of the Roads Corporation.

MR HOSER: Excuse me.

HIS WORSHIP: Just a moment Mr Hoser, you will have an opportunity - this is one rule that we do have everywhere,

everybody gets a turn but they get it in turn, we do not have everyone speaking at once, otherwise no one will know where we are going. It is a bit like the Mad Hatter's tea party like that.

MR LAPIROW: That is the only basis on which I can put that. I understand that Mr Ashton has been off his duties for two days, the attitude of the Roads Corporation is that his salary has not been docked but to the same extent your Worship, the services for which he is engaged are not being attended to by him.

HIS WORSHIP: What is the daily rate?

MR LAPIROW: \$120 sir. That is gross, that is the cost to the Roads Corporation. There is no claim being made for the other gentlemen who are present who are involved in the administration of that department sir.

HIS WORSHIP: Yes, Mr Hoser, do you want to say something about the amounts?

MR HOSER: Yes, firstly, the VicRoads lawyers are what we call public servants, they get paid regardless of what they do and what they do not do. Had they not been here they would have either been sitting on their bums doing nothing or - -

HIS WORSHIP: Mr Hoser, I know you are disappointed but please do not be offensive.

MR HOSER: I am not being offensive, I am stating a statement of facts, it is in the papers every day. We know what is going on. Look, there is no point playing silly buggers, the situation is if they were not in here they would either be harassing another citizen or they would be doing very little that is constructive which is one of the reasons why

this State is bankrupt. On that basis the brief fee is clearly vexatious. As far as the three solicitors, Robbie, Pollard and Connell, they are all what we call salaried solicitors of VicRoads on the basis that they get paid regardless of whether they are here or not, therefore I should not have to pay the costs of VicRoads, they make enough out of me on various traffic infringements which I do have to pay if I park illegally outside of this court, which is why I am not parked illegally now, and I think it is to your disgrace that you overlooked deliberately, the fact that Mr Ashton was parked illegally and you have not even bothered to make an adverse comment in relation to that. That is on the record and it is not very good.

On the basis of the fact that they are salaried solicitors, they get paid regardless, and on the basis of their past performances of the three men in question, any costs that I should have to pay for them is completely ludicrous. As far as Mr Ashton is concerned, his business is basically running around harassing poor innocent taxi drivers and he has done a few assaults in his time.

HIS WORSHIP: Mr Hoser, you can sit down please, if that is going to be the tenor of your comments. I have warned you, you will not be offensive in my court.

MR HOSER; Well, it is a statement of truth - - -

HIS WORSHIP: You can sit down then if that is your version of the truth, you can sit down, I do not wish to hear any more from you. Sit down please. As I have indicated, counsel's fee is appropriate for a matter of this type. I will allow that, two days at \$650. The solicitor's fees, they are salaried officers and it would seem to me that in terms of

the preparation of the case that preparation should not be allowed for as it is part of their salaried job at the Roads Corporation or whatever they are being called this particular week. However, were they not here for the two days they would be out being public servants and serving the public, not just those here today. Accordingly, there will be an allowance of \$360 being twice the \$180. As for Mr Ashton, not only has he been put through the undoubted pleasure of sitting in a court for two days, but his work being it harassing innocent members of the public or otherwise, has been interrupted for those two days and I intend to allow \$120 each for those two days, a total of \$1900.

Mr Hoser, what do you want to say about a stay in relation to these matters?

MR HOSER: 100 years please.

MR LAPIROW: Your Worship, the Roads Corporation has instructed me to oppose any stay. In some regard your Worship, it may be academic, there are other outstanding costs orders against Mr Hoser and - - -

MR HOSER: That is not true - - -

HIS WORSHIP: Just a moment, Mr Hoser.

MR LAPIROW: There would be no point really in the stay of one or the other, your Worship.

HIS WORSHIP: Yes. I am sorely tempted not to give you the opportunity to say something because I do not want to have to deal with you for contempt Mr Hoser, but if you can try and keep yourself at least within the bounds of decorum, would you - - -

MR HOSER: Flattery will get you everywhere.

HIS WORSHIP: Would you please - if you wish to say something to me about the stay?

MR HOSER: Yes, yet again our friend next to me has told lies, the situation in relation to outstanding costs - there are no outstanding costs between myself and VicRoads, there are outstanding costs from VicRoads to me and they are the only costs that are outstanding, it is a substantial amount at that. Now, that is the truth of the matter, Mr Lapirow has told lies now, just like he told a lie about Mr Robbie trying to get transcripts earlier. It is just yet another of many lies which you may choose to ignore or you may choose to accept. Unfortunately I cannot make your decisions for you. As far as I am aware the normal stay is two months, or one month or something to that effect, anything else would be ludicrous.

HIS WORSHIP: Yes.

MR HOSER: Especially as it does not give me a chance to read transcripts and lodge appeals and all these other things which are highly likely.

HIS WORSHIP: There will be a stay for two months. Mr Hoser, I was going to make a comment in relation to the way in which this case has been conducted. It seems that you are hell bent on being right at the expense of everybody else - - -

MR HOSER: That is not so.

HIS WORSHIP: I would suggest that you do have a good look at the transcript and you do have a good look at my reasons and think about what I have said and what other people may have said about you in the past. We will adjourn the court.

ADJOURNED AT 3.45 PM