

XI OTHER ASPECTS OF THE INVESTIGATION

(a) MILLIGAN STREET

521. Number 27 Milligan Street was a house owned by a member of the Newell family and made available by Mr Newell to Det Sgt Thomas and Det Paget for the conduct of the investigation and more particularly the taking of statements.

522. Mr Newell said that he had offered the use of the house to Det Sgt Thomas who said that he did not trust the Taree Police as his reason for not wishing to conduct the investigation from the Taree Police Station (H.Ex 2.4; T/T p1284-6).

523. The only senior Taree police officers who were aware of the use of Milligan Street for this purpose were said to be Insp Martin and Insp Toohey. Neither was called at the trial or the section 12 hearing (H.Ex 2.6 and 2,7; T/T p1785, 1787, 1796, 1930, 2051).

524. There were unfortunate consequences in the use of the house, of lack of peer review and opportunity for supervision, and lack of readily available avenues for complaint by prospective witnesses. No fresh evidence on this issue, however, has been brought to my attention and it was ventilated before the jury.

(b) BREAKING AND ENTERING OF MR PETER BRIDGE'S HOUSE

525. The reliability of the evidence of Mr Thomas, to the effect that he regarded Taree Police Station as an insecure place from which to conduct the investigation, may be compared with evidence as to an incident which is said to have occurred after

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Ms Catt had been granted bail on 15 September 1989.

526. Ms Catt, her son Mr Peter Bridge, her sister Ms Faye Klarenbeek and Ms Kiarenbeek's husband together with Ms Catt's friend, Mr George Baird, were driving towards Mr Bridge's house at 2 Cowan Road when, according to occupants of the car, Mr Catt and one of his employees Mr Barry O'Brien were seen to be running from the house. Signs of forcible entry

were seen at the house and Mr Baird reported an alleged breaking and entering of Mr Bridge's house to the Taree Police Station.

527. On 22 August 1989, Det Sgt Thomas had entered a memorandum in the Occurrence Pad at Taree Police Station, which became available to all police officers there. It contained a direction that no action was to be taken as a result of allegations made by Ms Catt and three of the children, Christopher, Sharon and Julie. The note goes on to "strongly advise" that any future allegations made from this source be "fully and correctly recorded and thoroughly investigated" (T.Ex 12; H.Ex M).

528. Following the report by Mr Baird of the breaking and entering, Const Riley and Const Byrnes made inquiries. This resulted in a note being placed in the Occurrence Pad dated 15 September 1989 by Const Byrnes, initialled as having been seen by Det Sgt Thomas on the same date. It recites the substance of the evidence of witnesses to the alleged breaking and entering and of a subsequent interview of Mr Catt who denied taking part in the breaking and entering and provided the name of an alibi witness. The note ends: "At this stage no action has been taken due to conflicting reports".

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529. Neither Const Byrnes nor Const Riley sought to interview Mr O'Brien in relation to his alleged participation in the reported offence, according to the eyewitness accounts from a number of persons. Const Riley, by way of explanation said that this was because of the terms of the note in the Occurrence Pad by Det Sgt Thomas, T.Ex 12, he being regarded as the officer in charge of the investigation.

530. No charges were laid against Mr Catt or Mr O'Brien.

(c) MR BARRY O'BRIEN AND DET SGT THOMAS

531. Mr O'Brien was called at the trial as one of a number of Crown witnesses to whom Ms Catt is said to have expressed ill-will towards Mr Catt. Mr O'Brien's evidence was that she had said that Mr Catt had been sexually assaulting his children and "she was going to get rid of him and have him locked up for life" (H.Ex 2.5; T/T p1128).

532. Mr O'Brien also gave evidence of observing Mr Catt's erratic behaviour with no indication of being under the influence of alcohol. He gave evidence of Mr Catt consuming milk from the office refrigerator and of Ms Catt enquiring of him whether he had taken his Lithium and when he had responded that he had not, or was uncertain, she had handed him tablets and milk (H.Ex 2.5; T/T p1129).

533. He gave evidence of Ms Catt having made an implied threat to him not to get involved as he might be investigated for sexually assaulting the Catt children (H.Ex 2.5; TIT p1136-7).

534. Mr O'Brien also, as previously noted, gave evidence of Ms Catt having said that she had a Derringer.

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535. In cross-examination at the trial, Mr O'Brien said that he had never been questioned by any police officer in relation to the alleged breaking and entering of Mr Bridge's house.

536. He claimed initially never to have met Det Sgt Thomas (H.Ex 2.5; T/T p1142). Later in his evidence, however, he said he had made a statement at his own house to Det Paget with Det Sgt Thomas present. This statement is dated 20 August 1989 and he said he made another statement on 1 November 1989 at a police station.

537. He said he was also interviewed by police from the Internal Security Branch of the New South Wales police but had refused to make a statement to them.

538. Mr O'Brien denied any participation in the breaking and entering of Mr Bridge's house and said he had first heard of the allegation in 1990 when he had given evidence in support of Mr Catt at his trial on the sexual assault charges. He then went on to say, however, that he had found out about the allegations some days before he gave evidence when Det Sgt Thomas had come to his house. This he said was a couple of days after 15 September 1989. Mr O'Brien said that Det Sgt Thomas had asked him whether he had done it and he said "no" (H.Ex 2.5; T/T p1151-5).

539. Mr Thomas said in evidence at the Roseanne Catt trial that he had spoken to Mr O'Brien about the alleged breaking and

entering in a casual conversation. He said he was not then enquiring into the alleged breaking and entering offence. He denied that he had wanted to keep Mr O'Brien "on side as a witness to give evidence against Roseanne Catt". He claimed that he had told Const Byrnes and Const Riley that the

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investigation of the breaking and entering matter had nothing to do with him or Det Paget and they should speak about it to another police officer, Det Sgt Brown.

540. On 3 April 1990, Det Sgt Thomas was interviewed about the alleged breaking and entering by Det Insp Chapman of the Police Internal Security Branch (H.Ex MM). He said to Det Insp Chapman that the breaking and entering allegation was "not a matter for me in light of the parties involved" but then went on to say, "I was concerned that witnesses involved in my case against Roseanne Catt had been accused and I certainly spoke to Barry Catt and later Barry O'Brien about the allegations". He claimed that he had told Const Byrnes and/or Riley to correctly investigate the matter and when he learned that it was alleged that some \$40,000 worth of property was stolen told them to consult other Taree detectives. He agreed that in his experience, an alleged breaking, entering and stealing offence of that magnitude should have been followed up and fully investigated by detectives (H.Ex MM, Q&A 12, 13, 20, 29).

541. Although all of this evidence was either before the jury in the Roseanne Catt trial or capable of being placed before the jury and there is no fresh evidence on this matter to which my attention has been directed, nevertheless, it is available as background material against which to evaluate fresh evidence as to Mr Thomas' investigative techniques both whilst a Det Sgt of police and as an insurance investigator.

542. The inference is open that Det Sgt Thomas may have used his seniority and influence to prevent the proper investigation of an allegation of serious crime to protect Mr Catt and in order to avoid the possibility of Mr O'Brien being charged and perhaps compromised as a witness in the case against Ms Catt.

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(d) THE SEARCH WARRANTS AND SEIZURE OF PROPERTY

543. Before the search of the premises at I Cornwall Street on 24

August 1989, Det Sgt Thomas signed an application for a search warrant under Part 2 of the Search Warrants Act 1985.

544. Section 5 of that Act entitles a member of the police force to apply for a search warrant if he/she had reasonable grounds for believing there is or will be on any premises a thing connected with an indictable offence. If so, then a search warrant might be issued authorising any member of the police force to enter the premises and search for "a thing connected with a particular indictable offence".

545. Section 7 gives power to a police officer executing such a warrant to seize a thing mentioned in the warrant and "any other thing" which he/she had reasonable grounds for believing was "connected with any offence".

546. Section 11 provides that the information given in connection with the application for the warrant was to be verified on oath or affirmation and in the form prescribed in the Regulations.

547. The completed application (H.Ex F) describes the premises to be searched as I Cornwall Street, Taree which of course was the address of Ms Catt. The house number however has been altered in ink from the typewritten "2" to "1" where it appears on the first page of the document, with a similar alteration in paragraph 3 dealing with the grounds relied on for the issue of the warrant. These alterations to the application were initialled as required by the Regulations in operation as at 23 August 1989, when the application was made.

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548. Both Det Sgt Thomas and Det Paget gave in evidence at the trial that the alterations to the application form had been made before the document was presented to the learned Justice for the purpose of obtaining the warrant.

549. Both the application and the warrant (Pt H.Ex UU) are before me only in photocopy form. The copy of the warrant recites its issue on the application of Det Sgt Thomas and describes the premises to be entered. The typewritten words "Cornwall Street, Taree" and "dwelling house" clearly appear but where one would expect the street number of the premises to have been shown had it been typed in, there is an indication on the

photocopy that the document from which the copy was made has been torn so that no street number now appears.

550. Det Sgt Thomas maintained that the warrant issued contained the correct address. He said it was he who had torn the document as well as another document. He claimed to have inadvertently torn them when they were with a group of other papers. He said, however, that the warrant was not torn when he had shown it to Ms Catt upon executing it the following day.

551. Det Paget said that he had typed the number "1" in the address of the premises on the warrant and confirmed that the application form, H.Ex F, had been altered in ink before it had gone to the Justice (H.Ex 2.5; T/T p2157A-65).

552. Objection was taken by senior counsel for Ms Catt at the trial to evidence being given of materials seized in purported compliance with the warrant. Her Honour dealt with the objection on 9 May 1991 prior to empanelling the jury. A copy of her Honour's judgment of that date is not available to me.

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553. Further objection was taken later in the trial which was limited to the proposition that the evidence suggested that the alteration identifying the premises as 1 Cornwall Street had been made after the issue of the warrant. As appears from her Honour's judgment of 20 June 1991, evidence on the voir dire was taken as to this from three members of the Local Court staff. On the basis of it, her Honour was satisfied that in the circumstances, "Whilst there is a degree of suspicion about the matter, it could not be said that the defence has affirmatively proved, on the civil onus, that the alteration was made after the issue of the warrant". Her Honour therefore found no basis for revising her previous view.

554. In the 1993 Appeal, the first ground taken related to the admissibility of material taken in execution of the warrant and reference is made to interlocutory judgments of the trial judge on 9 May 1991 and 20 June 1991. Senior counsel for the appellant (not senior counsel at the trial) abandoned that ground.

(e) EXECUTION OF THE SEARCH WARRANTS

555. There was an obligation to serve an Occupier's Notice on Ms

Catt upon entering the premises or as soon as practicable thereafter (s1 5(3)(a) Search Warrants Act 1985).

556. Ms Catt said she was not handed an Occupier's Notice in respect of either 1 Cornwall Street or 2-8 Cornwall Street. She said she had never seen the warrants (H.Ex 2.9; TIT p2788).

557. Det Sgt Thomas said he showed Ms Catt two search warrants and handed her two Occupier's Notices (H.Ex 2.6; T/T p1751). Det Paget gave evidence along similar lines (H.Ex 2.5; T/T

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p2119).

558. Const Cottee said that she heard Det Sgt Thomas tell Ms Catt that he had the documents but did not see him handing them to her (H.Ex 2.3; T/T p1649-50).

559. Const Cottee said she had handcuffed Ms Catt on the instructions of Det Sgt Thomas but did not hear Det Sgt Thomas tell Ms Catt that she was under arrest nor that she was going to be charged (H.Ex 2.3; T/T p1649-50, 1659). She said she was aware of Police Instructions to the effect that handcuffing a prisoner is justified only if the prisoner has attempted to, or it is necessary to prevent, escape (H.Ex 2.3; T/T p1718-9).

(f) DISPOSITION OF PROPERTY SEIZED

560. Section 7(3) of the Search Warrants Act 1985, provides that after items seized have been produced in evidence or when not required as evidence they "shall be disposed of as a court or magistrate may direct".

561. Regulation 7 under the Act provided that if the occupier is present at the time of the seizure, he/she is to be given a receipt acknowledging the seizure.

562. Section 21 makes provision for a report to the issuing Justice setting out inter alia details of execution "including a brief description of anything seized". That report is required to be furnished within ten days of execution of the warrant and is to be in accordance with the prescribed Form 7.

563. The only items specified in the warrant for which authority to

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search was expressly sought was "an unlicensed pistol and automatic rifle" (T.Ex 11. See also H.Ex F). This, however, did not preclude the seizure, under the warrant, of other things believed on reasonable grounds to be "connected with any offence".

564. H.Ex HH, the property seized record, indicates at least a prima facie lack of any reasonable justification for the seizure of a number of items, eg. a white Glomesh purse containing solicitor's letters and unspecified papers; a quantity of pre-recorded tapes; video tapes; cassette tapes; a cassette recorder; a diamond engagement ring and a number of other rings and ladies' jewellery; books on manic depression and other mental illnesses, and a sum of money in various denominations of notes and coins.

565. Det Sgt Thomas conceded that items were seized without lawful justification. He had a statement from Mr Catt of 21 August 1989, the contents of which make it clear that it relates to 1 Cornwall Street. In anticipation of a search of the house, Mr Catt makes claim in it to a number of items enumerated in that statement. The document was not before the jury but Det Sgt Thomas was cross-examined on it although he denied he had taken possession of items other than a pistol and rifle outlined in that statement (H.Ex 2.6; TIT p1857).

566. Det Sgt Thomas returned a number of items, seized in purported exercise of powers given by the warrant, to Mr Catt without any apparent attempt at compliance with s7(3) of the Search Warrants Act 1985. He had received a letter from a firm of solicitors on behalf of Ms Catt requesting that items not of evidentiary value be returned to her but nevertheless gave them to Mr Catt. He claimed that he had no knowledge of the

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nature of any ownership dispute relating to the property. He said he could not recall whether he had received Ms Catt's letter before or after he returned the property to Mr Catt (H.Ex 2.6; TIT p2006).

567. The return of property seized under the purported exercise of the power given in the search warrant to Mr Catt was at a time when there were still in force orders of the Family Law Court excluding Mr Catt from the 1 Cornwall Street premises.

568. Ms Catt claimed there should have been returned to her a number of items (see T.Ex 20). In addition to ladies jewellery and money, Det Sgt Thomas conceded that other items had been taken which had nothing to do with the investigation, eg. a quantity of opals which had been given to Mr Catt (H.Ex 2.6; T/T p1867-8).

569. Det Paget said in evidence at the trial that there had been a briefing prior to the execution of the warrant at which those assembled had been instructed by Det Sgt Thomas to look not only for firearms and other specified items but "any documents that may assist Barry Catt who had been charged with sexual assaults" (H.Ex 2.5; T/T p2133-4).

570. Although the report required to be made pursuant to s21 of the Search Warrants Act 1985 bears the date 25 August 1989, it indicates on its face that it was not received by the authorised Justice until 15 November 1989, well out of time.

(9) CONCLUSIONS AS TO THE SEARCH WARRANTS AND SEIZURE OF PROPERTY

571. I draw no inference from the state of the warrant and the form

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of application although I share her Honour's suspicions as to the matter.

572. I draw an inference adverse to Det Sgt Thomas from the evidence relating to the seizure and disposition of some of the property in purported compliance with the warrant. Since this evidence was either before the jury or capable of being adduced it provides no more than a background or context for the evaluation of fresh evidence going to the methods of investigation of Mr Thomas.

(h) DET SGT THOMAS AND MS ROSEANNE CATT'S BAIL APPLICATIONS

573. As previously indicated, it was not until 13 September 1989 that

Ms Catt was bailed following her arrest on 24 August 1989.

574. Notwithstanding the assertion of Det Sgt Thomas that he had grounds for believing that Ms Catt had undue influence with police officers at the Taree Police Station, when she made a complaint of assault against Mr Catt arising out of the "rock" incident (as to which see paras. 689-789), the police did not initiate any prosecution following that complaint although they then had statements in support from Mr Bridge and three of the four Catt children as well as Mr Golds.

575. Ms Catt instituted the private prosecution for assault. On 3 July 1989, Mr Hook, her solicitor, towards the close of her case, sought an adjournment to enable a doctor to be called. Mr Frake, solicitor for Mr Catt, indicated that he had three witnesses to call in his case (H.Ex ZZ). The hearing was then adjourned part-heard until 22 September 1989.

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576. When, following her arrest, Ms Catt was brought before the Local Court, Det Sgt Thomas opposed bail (H.Ex S). Thereafter she made a number of applications for bail and on 13 September 1989 succeeded before Allen J in the Supreme Court. This, like other applications, was also opposed by Det Sgt Thomas (H.Ex 2.9; T/T p2732-3).

577. The terms of bail granted by Allen J on 13 September 1989 included that Ms Catt was to reside with her mother in Dapto; there was a reporting provision to the police station there on nominated dates and times; she was not to go within 10 kilometres of Taree other than for the purposes of compulsory court attendance, and there was to be an acceptable person as surety who might be Mr George Baird. There was also a condition that she was not to communicate "with any person in respect of whom she has received, or during the period of bail received, notice that person is likely to be called by the Crown at her trial".

578. In giving judgment on the bail application, Allen J said, "I must also state that I have some unease as to the objectivity of the investigating detective". This obviously referred to Det Sgt Thomas who had given evidence on oath. Allen J continued, "I express it no more strongly than that but I would indicate that perhaps it might be desirable in the interests of justice for

further investigation to be conducted by someone whose neutrality cannot be cast under suspicion, whether justified or not" (H.Ex EEEEE).

579. Mr Baird gave evidence in the bail application before Allen J, more particularly as to his asset position, and suretyship was fixed involving his agreeing to forfeit \$50,000 in the event of non-compliance with bail terms.

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580. On 22 September 1989, the day on which Ms Catt's private prosecution of Mr Catt had been listed to continue in the local Court, Det Sgt Thomas was instrumental in having Ms Catt re-arrested for alleged breach of bail conditions. This was based partly on the assertion that through Mr Baird, Ms Catt had indirectly approached a Crown witness, Ms Whalen. Her re-arrest was also sought to be justified on the basis that Mr Baird had misled Allen J in the bail application on 13 September 1989 as to his assets. Neither of these assertions was soundly based.

581. Although it may be assumed that by then Ms Whalen was intended to be a Crown witness, neither Ms Catt nor those representing her had been notified of this.

582. It seems that Ms Whalen had informed Det Sgt Thomas of a pending visit to her house by Mr Baird. Other police were sent by Det Sgt Thomas to intercept him. Mr Baird was taken to Taree Police Station but Det Sgt Thomas denied that this was done on his instructions. He said he had sent a det const and three other police officers to speak to Mr Baird.

583. He said that he had spoken to Mr Baird at the police station about his asset position, and expressed to him his belief that Mr Baird had misled the court in claiming a \$750,000 equity in the Old Bar Tavern whereas, according to Det Sgt Thomas, his equity was in jeopardy because Mr Baird was separated from his wife.

584. Det Sgt Thomas agreed that Mr Baird had claimed that he was seeking to approach Ms Whalen on behalf of Mr Jones, Ms Catt's solicitor. Det Sgt Thomas also agreed that he had not tried to get in touch with Mr Jones to ascertain whether this was

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so. He said that as at 21 September 1989, the date of Mr Baird's interception by other police, he had told no relevant person of an intention to call Ms Whalen as a Crown witness nor was her name on any list as such (H.Ex 2.6; T/T p1980-89),

585. Apparently because Ms Catt was under arrest for these alleged breaches of bail conditions, the private prosecution did not continue on 22 September 1989. The matter was, as far as can be ascertained, adjourned until 18 December 1989, with subsequent adjournments on 5 June 1990, 14 August 1990 and 4 December 1990. A communication from the Taree Local Court (H.Ex GGGGG) then notes, "On 4 December 1990 matter is adjourned from 14.08.90 do not show on list for 04.12.90 and whereabouts are unknown" (sic).

586. Whether or not Ms Catt's case had merit, it was lawfully before a Court, the authority of which was flouted.

587. The re-arrest of Ms Catt on 21 September 1989 brought forth a further application to the Supreme Court on her behalf. It again came before Allen J on 3 October 1989 as an application for variation of bail.

588. His Honour made no findings of fact as to the alleged breaches but remarked, "It must be said, however, it is far from clear on the small amount of evidence which is before me that any breach of bail conditions occurred".

589. His Honour then notes that the Crown did not oppose the application on the basis that any notice had been given to the applicant that Ms Whalen would be called by the Crown as a Crown witness. As to the alleged breach by Mr Baird in not furnishing accurate information as to his assets. This was dealt

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with by his Honour simply pointing out that the bail conditions did not require any security. All that was required was an agreement by Mr Baird that he forfeit \$50,000 if the bail conditions were breached.

590. Allen J expressed difficulty in seeing that the applicant's re-

arrest was justified, and said he found it disconcerting that the re-arrest was instigated by the member of the police force whom he had expressly indicated on 13 September 1989 lacked objectivity. His Honour then continued, "I would now indicate in quite unqualified terms that my unease has grown into something much stronger".

591. The application for variation was successful and bail was re-set.
(i) CONCLUSIONS AS TO MS ROSEANNE CATT'S BAIL APPLICATIONS

592. This material was before, or capable of being before, the jury. It is therefore not fresh but it does provide background or contextual evidence against which to assess fresh evidence which supports the conclusion that the lack of objectivity, to which Allen J (and Mathews J) referred, crossed the line into malice and unlawful abuse of power. It also tends to support Ms Catt's claim of the existence of collusive conduct on the part of persons including Det Sgt Thomas to secure her conviction irrespective of merit in the prosecution's case .

(j) DET SGT THOMAS' REACTION TO ALLEN J'S CRITICISMS

593. One result of the criticisms of Det Sgt Thomas by Allen J was that Det Sgt Thomas was, on 25 November 1989, directed not to do any further work on the Catt matters including contacting witnesses.

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594. This brought forth from Det Sgt Thomas a letter of 28 November 1989 addressed to The Commander, Regional Crimes Squad, Newcastle, describing the direction as "unlawful" and "unfair and discriminative" (see H.Ex X). Although not tendered at the trial of Roseanne Catt, it was available (see H.Ex 2.7; T/T p2085).

595. Notwithstanding this directive from a superior officer, Det Sgt Thomas continued to take an active part in the investigation. On 19 February 1990 he visited Taree and saw a number of witnesses including Mr Catt, Mr Barry O'Brien, Mr Brian Cross and Ms Marie Whalen. He took a statement from Dr Sandfield. On the following day he again spoke to Mr Catt and Mr Newell. On 21 February 1990 he spoke to other witnesses including Mr Catt, Mr Newell, Ms Whalen and Mr Lawlor and on 22 February

1990 he again saw Mr Newell.

596. Det Sgt Thomas said in evidence at the trial that he continued to be in charge of the case because he was the informant (H.Ex 2.7; T/T p2044). He claimed that the direction to take no further part in the investigation had been rescinded about a week after his letter of 28 November 1989, H.Ex X, had been received in Sydney. He agreed that he had nothing in writing to substantiate this alleged rescission. Insp Rankin from whom it seems the directive came was not called either at the trial or at the section 12 hearing (H.Ex 2.7; T/T p2084-5).

(k) CONCLUSIONS AS TO DET SGT THOMAS' CONTINUED INVOLVEMENT IN THE CATT CASE

597. In the absence of confirmatory evidence of the claimed "rescission", I regard as contrived and disingenuous Det Sgt Thomas' "justifications" for continuing to take part in the

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investigation and preparation for trial, in spite of serious judicial criticism and a directive from a senior officer.

598. This assists me to the further conclusion that it is likely that he persisted in being so involved for unprofessional and improper reasons. He claimed in re-examination that after the comments of Allen J he had never directly taken a statement from another witness and had "just overlooked and controlled" the investigation. I regard this as tending to confirm the conclusions which I have reached.

(l) ICAC REFERRAL: MS ROSEANNE CATT'S "FRIENDS IN HIGH PLACES"

599. There is a body of evidence to the effect that Ms Catt, from time to time, made false claims of friendship or acquaintanceship with influential people in positions of some authority and sometimes even suggested that these "friends in high places" might do her favours. She may be said to have had a tendency to "big-note" herself in this way.

600. H.Ex TT is a letter dated 8 May 1990 addressed by Det Sgt Thomas to Det Sgt Mathews, a police officer attached to ICAC. It makes clear that there had been earlier contact between them. In the opening paragraph there is reference to "this

woman", clearly Ms Catt, and a person named Mr Errol Taylor who had also made complaints about Det Sgt Thomas' conduct as a police officer. The letter alleges that these persons "have used/misused political influence to interfere with the conduct of criminal proceedings and to bring discredit of the police involved".

601. H.Ex TT then proceeds to itemise and describe a number of
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documents apparently enclosed with it but which are not part of the exhibit. Items 3 and 4 refer to "no bill" notifications in relation to arson charges against Ms Roseanne and Mr Douglas Annetts. There are references to persons in public office including an Attorney-General and a Shadow Attorney-General and to "Judge Allen" and a number of named members of the legal profession.

602. In a letter to The Commander, Regional Crime Squad, Newcastle (H.Ex X) dated 28 November 1989, complaining of the directive that he no longer take part in the Catt investigation, Det Sgt Thomas had used similar language as in H.Ex TT in relation to Ms Catt being "a vexatious complainant" who was "motivated by another vexatious complainant" both of whom "misused political influence to pervert the course of justice...".

603. H.Ex TT specifically refers to a photograph of the then Attorney-General with Ms Call. Perusal of this photograph, together with another photograph which together comprise H.Ex V, makes it plain that the photograph was taken during an election campaign near a polling booth. The outstanding inference from it is that it is of a parliamentary candidate with a constituent or political supporter. No adverse inference of any kind against any person depicted in the photograph may be drawn from it.

604. Nevertheless, H.Ex TT was followed by a further letter dated 21 May 1990 addressed by Det Sgt Thomas to Det Snr Sgt Mathews at ICAC (H.Ex W). It makes reference to the comments adverse to Det Sgt Thomas of "Judge Allen" in the bail proceedings of September and October 1989. It refers to an allegation of an "association" between Ms Catt, the Attorney-General and the Judge. It refers to reasonable grounds for

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suspicion that Ms Catt "manipulated" and "misused" other public officials "when orchestrating the demise of her estranged husband, Barry Catt". It encloses a further group of six documents.

605. Whilst it may be true that Ms Catt was "associated" with the Attorney-General in the sense that she may have indicated support for him in an election campaign, and he happens to have been the Attorney-General who approved recommendations made for the no billing of the arson charge in 1984, there can be no suggestion on the evidence before me of any other association and certainly no association of an improper or dubious nature.

606. Similarly it may be said that Ms Catt was "associated" with Allen J in that it was he who had dealt with the proceedings relating to her bail in 1989. He also appears to have been, as Master, involved in making orders relating to civil litigation in which Ms Catt was a party. The implied suggestion by Det Sgt Thomas to ICAC of some sort of impropriety is, on the material before me, without any foundation.

607. At the section 12 hearing, Mr Thomas denied that he had made "unfounded allegations" and said he could not recall making any allegation of impropriety on the part of either the Attorney-General or Allen J (HIT p352-5).

(m) CONCLUSIONS AS TO ICAC REFERRAL

608. The letters H.Ex TT and H.Ex W demonstrate not only a lack of objectivity by Det Sgt Thomas in his investigation of the Ms Catt matter but is a further indication of his propensity to improperly use his office to damage Ms Catt, irrespective of the risk of

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gratuitous collateral damage to others. It also indicates a lack of objectivity having descended into malice and abuse of power.

(n) PRESSURE ON POTENTIAL WITNESSES AND OTHERS

609. There was evidence at the trial which might support the conclusion that the investigative methods of Det Sgt Thomas included applying pressure to potential witnesses and others

connected with the investigation.

610. No doubt there tends to be resistance to police from potential witnesses who do not wish to get involved in investigations and subsequent litigation. The police may at times feel it necessary to use oblique methods to persuade a witness to assist, by making a statement or otherwise.

611. Where there is danger that the use of any particular method may result in an unfair or untrue version being provided the line of propriety is crossed and justice may miscarry.

612. The issues for determination here are whether evidence given at the trial and the section 12 hearing of Mr Thomas' investigative techniques as a police officer and as an insurance investigator displayed a propensity in him to employ methods which were improper, and at times illegal, and which might enable the conclusion to be drawn that in one or more respects his conduct crossed the line between acceptable and unacceptable methods, and if so to what degree.

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The Trial:

Ms Marie Whalen

613. Evidence relating to prior inconsistent statements made by Ms Whalen out of court is canvassed at paras. 165-213. They suggest improper pressure may have been applied to her by the police. Such statements, however, were not evidence of the facts asserted prior to the Evidence Act 1995.

Mr Frank Farrar

614. Reference has also been made to Mr Farrar's evidence that before he was contacted by other police about the authenticity of H.Ex 21, Det Sgt Thomas made a veiled reference of what might be interpreted as a threat which, however, Mr Farrar did not take seriously (see para. 164).

Dr Richardson

615. There was a suggestion by Dr Richardson that he was told he might be subjected to repercussions for having altered Mr Catt's patient record after having been spoken to by FAGS counsellor, Ms Cox. Although Dr Richardson did not positively identify the police officer who spoke to him, the inference which I draw is that it was likely to have been Det Sgt Thomas.

Mr Barry O'Brien

616. In this category I would also place Mr O'Brien's evidence that although a number of witnesses had indicated that he may have been party to a breaking and entering offence, no charge was laid, but before he gave evidence favourable to the prosecution in the Roseanne Catt trial, Det Sgt Thomas had informed him of the substance of that allegation and of his

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alleged involvement (paras. 538-539).

Mr Michael Jones

617. Mr Jones, solicitor, said that following Ms Catt's arrest on 24 August 1989, he went as her solicitor to the Taree Police Station. He claimed that Det Sgt Thomas had spoken to him and said words to the effect, "Look mate you're implicated in this as well" and, "We've got a statement from a witness that you said the words 'I want to get this bastard out of the business' (H.Ex 2.10; T/T p3618).

618. Mr Jones conceded in evidence that he may have used the last-mentioned words having regard to his instructions as to Mr Catt's implication in the sexual assault allegations.

619. Mr Jones went on in his evidence to relate difficulties he had from the police in further interviewing his client after a preliminary interview and Det Sgt Thomas' instructions that he should do so only in the presence of pet Paget.

620. Det Sgt Thomas said in evidence that he may have used words to the effect that Mr Jones might be implicated but denied that he was trying to intimidate Mr Jones (H.Ex 2.6; TIT p1953-4).

Mr George Baird

621. Reference has already been made to the events of 21 and 22 September 1989 in relation to the alleged breaches of bail by Ms Catt (paras. 579-584).

Mr Shane Golds and Mr James Morris

622. Mr Golds and Mr Morris also fall to be considered in the presen

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category of witnesses or potential witnesses who may have been subjected to improper influence by Det Sgt Thomas. The position in relation to them, however, is left to be dealt with in the context of the counts in the indictment to which their evidence principally relates (see as to Mr Golds, paras. 705-739 and as to Mr Morris, paras. 817-827).

SECTION 12 HEARING:

623. A number of witnesses were called at the section 12 hearing on the question whether Mr Thomas, either as a police officer or insurance investigator, had a propensity to bring improper pressure to bear on prospective witnesses and others.

624. The submission for Ms Catt is in effect that, if called at the trial, this evidence would have thrown new light favourable to Ms Catt on the evidence already before the jury as to the investigative methods of Det Sgt Thomas, particularly as to the evidence of important witnesses such as Ms Whalen, Mr Golds and Mr Morris, but also as to the finding of the revolver and the part Det Sgt Thomas played in relation to the investigation leading to the charge in Count 5.

Mr Arthur Bates

625. Mr Bates said that in the 1980s he had been the licensee of hotels at Moree and Lawrence. The Lawrence Hotel had been leased to a man named Mr Ray Coucher. In 1957 the hotel burned down and, although insured, it appears that the insurer had gone into liquidation and no claim in respect of that fire was met.

626. As a consequence of the fire, Mr Bates said that he had been

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charged by Det Sgt Thomas with arson. Twelve months later the charge was "no billed".

627. It appears that the Crown case depended, at least in part, upon Mr Coucher's claim that before the fire Mr Bates had told him that he was going to put the "red steer" through the hotel, the phrase "red steer" being a colloquialism for a fire.

628. Whatever may have been the strength or weaknesses of the Crown's case, the fact is that there was a committal for trial involving the finding of a prima facie case. No inference can be

drawn from this evidence as to any issue arising for my determination.

629. The only presently significant evidence given by Mr Bates was that he claimed that during the investigation Det Sgt Thomas "kept saying this is the same as that Catt bitch". This is of marginal relevance as some further evidence of an early exhibition of Det Sgt Thomas' continuing (and otherwise established) animosity towards Ms Catt after the collapse of the arson case against her (HIT p1615-21).

Mr Jake Sourian

630. On 12 May 1988, Mr Sourian gave in evidence that he had been arrested by Det Sgt Thomas and Det Paget on charges of fraud following a fire in business premises at Chatswood.

631. Mr Sourian said five of the six charges laid were dismissed in the Local Court. The sixth came to trial but not until 2 July 1993. He said that on 8 March 1994 he was awarded a certificate under the Costs in Criminal Cases Act 1967 following his acquittal of that charge.

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632. Mr Sourian said that prior to his arrest he had been visited by an insurance investigator named Mr Middleton (not called) who had asked him to withdraw an insurance claim. He said he had refused to do so and that by his body language, Mr Middleton made some sort of signal to Det Sgt Thomas and Det Paget who, immediately on Mr Middleton leaving, came from across the road and arrested Mr Sourian (H/T p1557-61).

633. Mr Thomas said he recalled Mr Sourian. He said he could not recall Mr Middleton nor the events relating to Mr Middleton of which Mr Sourian gave evidence (HIT p36-40).

634. This evidence of Mr Sourian is not capable of assisting me in drawing any conclusion as to an issue for my determination.

635. The only matter of relevance emerging from the evidence of Mr Sourian which requires comment is that there was admitted without objection, H.Ex 8, being two pages of the transcript of evidence given by Det Sgt Thomas at Jake Sourian's trial. They record that he had conceded that he had been under investigation by the Internal Security Branch of the police over a number of years and claimed that he had been "exonerated on

each of the matters and there were a large number of matters",

636. At the section 12 hearing Mr Thomas said he could not recall giving that evidence (HR p40) but he nevertheless believed that none of the complaints made against him has been sustained.

637. Subsequently the Crown tendered by consent, H.Ex 3, described as a flow chart of Mr Thomas' disciplinary history whilst a police officer. Mr Thomas attested to the accuracy of the document subject to his being unaware of outcomes as to

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matters pending at the time of his resignation from the police force on 19 January 1991 (HIT p138-40).

638. H.Ex 3 contains no adequate basis for drawing an adverse inference against Mr Thomas as to credit or otherwise, either alone or in conjunction with other evidence. I am not persuaded by the contrary submissions of Mr Molomby of counsel.

Mr Ramon Bracamonte / Ms Crista Van der Merwe

639. Neither Mr Bracamonte nor Ms Van der Merwe was called at the trial, the matter not coming to light until after its conclusion. Nor was either of them called at the section 12 hearing. The facts established came in documentary form.

640. In an affidavit submitted in support of the granting of the petition, Mr Harrison, Crown Prosecutor, deposed that he acted for the Crown in the trial of Mr Bracamonte and Ms Van der Merwe on a charge of damaging a building with intent to gain financial advantage (H.Ex HHHHH).

641. Other evidence establishes that the building had been a restaurant operated by the accused jointly at the time of the alleged offence. Ms Van der Merwe was then Mr Bracamonte's fiance and they subsequently married.

642. The trial was listed to commence on 27 July 1992. One of the principal issues was to be whether the accused were in their domestic premises and away from the building when the bomb exploded.

643, Mr Harrison deposed that on 13 July 1992, solicitors for each of

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the accused saw him in chambers. They produced a copy of what purports to be the transcript of an electronically recorded conversation which I am satisfied took place between Ms Van der Merwe and Det Sgt Thomas on 31 May 1989 (H.Ex L).

644. Det Sgt Thomas was one of the police officers involved in investigating the matter. He had given evidence at the committal proceedings (H.Ex K) and was due to give evidence if called at the forthcoming trial as was his colleague, Det Connolly. Mr Harrison elected not to call either of these officers.

645. There is no direct evidence as to the provenance of H.Ex L except such as may be inferred from its form (s48(1)(c) Evidence Act 1995), and from Mr Harrison's affidavit. He was informed by the solicitor acting for Ms Van der Merwe that she had a recorder concealed on her person during the course of the conversation with Det Sgt Thomas on 31 May 1989.

646. The tape was not produced to Mr Harrison on the first occasion on which the solicitors spoke to him but on, 29 July 1992, he was given access to it and satisfied himself that the transcript, H.Ex L, is a reliable representation of the recording and that among the voices recorded are those of Ms Van der Merwe and Det Sgt Thomas.

647. Notwithstanding the absence of witnesses to the issue, I am satisfied on the basis of Mr Harrison's evidence that H.Ex L is sufficiently reliable as a source of evidence from which to draw inferences and base conclusions. In citing relevant portions, emphasis has been added where indicated.

648. H.Ex L attributes the following words to Det Sat Thomas

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addressed to Ms Van der Merwe, "Ramon (Bracamonte) did it, Ramon did it. There's no risk in the world. How he did it I'm not sure. I don't know whether you were there or you weren't there but I know you knew about it. You helped him set this thing up". Further words are attributed to him including an assertion that Ms Van der Merwe was the "ringleader of it". He

states, "You know you're in heaps of big shit Crista (Van der Merwe), I'll tell you how". Ms Van der Merwe is then recorded as denying that she had done anything and Det Sgt Thomas responds that "the whole thing's been set up to defraud the insurance company and you played a major part in it".

649. Ms Van der Merwe then enquires of Det Sgt Thomas, "Well, you tell me more about the deal" to which he responds, "Well what are you going to do -- the deal is this you can walk out if you (give?) me Ramon up. That's it" (see also H/T p127).

650. Having spoken of the "deal", Det Sgt Thomas is then recorded as indicating how it might be implemented.

Det Sgt Thomas: "I will go to the court and say look....".

Ms Van der Merwe: "Could you go to the court or to my solicitor or go through him through the right channel? I mean I'm not saying Ramon has done it because I don't have any proof right?".

Det Sgt Thomas: "This is what I can do. I can apply to the Attorney-General, because you've given me information leading to the conviction of an appropriate person to have your matter squashed and you can see the report on it, i'll do it in your presence. I'll give a copy to your solicitor. Only on the condition, only on the condition you give Ramon up. I can't go any further unless you do".

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651. At page 4 of H.Ex L, Det Sgt Thomas describes Mr Bracamonte as a "grub" and a "dead set bastard". He states, "In the Iona run we will shake the life out of both of you because I can never guarantee what the court will do to you, but by the Christ there is a lot we can do to you and you come over Crista, as a painted lady Crista the ringleader". Ms Van der Merwe challenged the truth of this statement. Det Sgt Thomas proceeded, "But it looks that way. You're the one who effects the insurance increases you're the one who does the books".

652. At page 6 of H.Ex L, Det Sgt Thomas is recorded as saying, "I'm prepared to do this. You tell me exactly what you know about it and what happened and how he did it and I will type up a report to the Attorney-General now and at the time we go to court and say, I want the matter to be adjourned until the Attorney-General will make a decision and this lady's given an

undertaking to give evidence against that bloke there and I am seeking an approval to withdraw the charge". Ms Van der Merwe asks for time to think about it "because I don't have any information that can implicate Ramon".

Det Sgt Thomas: "You know how much you know about Ramon. I don't know how much you haven't told me, but you've got to cut your losses. I don't care if you were involved. Just tell me you weren't. Only Ramon did it and I don't care what even tell me this is what we did, this is what we talked about".

Ms Van der Merwe: "But I can't lie".

653. At page 7, Ms Van der Merwe: "Ramon never discussed the actual bombing with me....".

654. At page 8, Det Sgt Thomas after Ms Van der Merwe indicated

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that she would speak to her solicitor, "You can mention this Crista if you give me the evidence I'm looking for against Ramon and that's telling me everything you know about it and I'm satisfied with it, I'll make representations to change his mind and get you indemnified to defer prosecution (sic). But you've got to give me Ramon and anybody else who might be involved".

Ms Van der Merwe: "If I don't know that part?".

Det Sgt Thomas: "Just tell me the truth. Tell me how it might have been how it might have happened".

655. At page 9 of H.Ex L, Det Sgt Thomas advised Ms Van der Merwe to go to a "completely independent" solicitor and say "can the police do it".

656. It is of course not uncommon for the police to "do a deal" with an accomplice who is subsequently called as a witness in the Crown's case against the co-accused.

657. Such a witness may be given an indemnity from prosecution or at least a "use" undertaking (s19 Director of Public Prosecutions Act 1986). There is also authority for the proposition that such a witness should be either already dealt with for his/her part in the offence or a *no/le* *prosequi* entered (R v Grant (1944) 30 Cr AR 99; R v Norfolk Quarter Sessions, *ex parte* Brunson (1953) 37 Cr AR 6; *cif* R v Robert Smith (1924) Cr AR 19; but see now ss17 and 165(1)(d) Evidence Act 1995).

658. Current practice in New South Wales seems to be that an indemnity from prosecution or a "use" undertaking together with an appropriate warning under s165 of the Evidence Act 1995 is

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regarded as sufficient. Sometimes no indemnity or undertaking is given, in which case privilege against self-incrimination is raised, reliance is then placed by the Crown on the court granting a Certificate under s128 Evidence Act 1995 (this also has significance as to the calling of Mr Shane Golds as a Crown witness against Ms Catt (see paras. 705-739)).

659. The issue is whether on a reasonable interpretation the contents of H.Ex L may be regarded as an exhortation, express or implied, by Det Sgt Thomas to Ms Van der Merwe that she should provide information to the police as the basis for later evidence on oath or affirmation, regardless of its truth or whether she believed it to be true, in return for her not being prosecuted.

660. The portions of the document which tend to support that proposition are those in which she makes it clear that she had no information which could implicate Mr Bracamonte but nevertheless Det Sgt Thomas continues to press her to "give him up" and at one point said, "I don't care if you were involved, just tell me you weren't". The passage "just tell me the truth, tell me where it might have been, how it might have happened" immediately after Ms Van der Merwe had asked rhetorically what would be her position if she did not know who "might be involved" also tends to be indicative of an attitude of Det Sgt Thomas that he was not concerned about the truth of any statement Ms Van der Merwe might have made as a witness provided it did implicate Mr Bracamonte.

661. On the other hand Det Sgt Thomas is recorded a number of times as having indicated to Ms Van der Merwe that he wanted "the truth" from her and his invitation to her that she consult a "totally independent" solicitor before deciding to make a

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statement tends to militate against the position for which Mr Molomby of counsel for Ms Catt contends.

Conclusion as to Mr Ramon Bracamonte / Ms Crista Van der Merwe

662. The conversation recorded although ambiguous in places, is capable of supporting a conclusion adverse to Mr Thomas of complicity in a serious criminal offence. It supports the contention that Det Sgt Thomas had a propensity to apply pressure by way of promise as well as threat to potential witnesses in a way calculated to produce false evidence. This further supports the conclusion that he may have exhibited that propensity in the Roseanne Catt investigation and trial.

Possibility of Perjury in re Mr Ramon Bracamonte / Ms Crista Van der Merwe

663. Annexure C to Mr Harrison's affidavit, H.Ex HHHHH, is a copy of what is said to be a transcript of some of the evidence given by Det Sgt Thomas and Det Connolly at the committal proceedings relating to Mr Bracamonte and Ms Van der Merwe. At page 12, Det Sgt Thomas is asked whether he had ever spoken to Ms Van der Merwe "and suggested to her that you were aware that Bracamonte was responsible?" Det Sgt Thomas is recorded as having responded, "I've spoken to her but I didn't suggest that".

664. At page 2-3 of H.Ex L, it will be recalled, Det Sgt Thomas is recorded as saying, "Ramon did it, Ramon did it. There is no risk in the world. How he did it I'm not sure. I don't know whether you were there or you weren't there, but I know you knew about it. You helped him set this thing up". This passage cannot be reconciled with the evidence of Det Sgt Thomas

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referred to above.

665. Det Sgt Thomas is further recorded at the committal proceedings as agreeing as a paraphrase of what Ms Van der Merwe said to him, "Look we did it but what's in it for me". Again this is contradicted by what appears in H.Ex L at a number of places.

666. Det Sgt Thomas' evidence at the committal proceedings is further contradicted by his statement which is also an annexure

to Mr Harrison's affidavit of 30 March 1989. It recounts a number of conversations he claims to have had with Mr Bracamonte and Ms Van der Merwe, including (p3-4) a conversation which he asserts took place at their residence. He states that he said to the male accused in the presence of the female accused, "As a result of our inquiries I have reason to suspect that you and Crista may be responsible for this bombing". According to this statement, Mr Bracamonte is said to have responded, "Oh no". Det Sgt Thomas proceeds, addressing both accused, cautioning them in the usual way and asking whether they understood the caution. The statement indicates that Ms Van der Merwe said, "Yes, but I don't know how you could think this" and Mr Bracamonte is said to have responded, "This is shit".

667. Also appended to Mr Harrison's affidavit is another statement of Det Sgt Thomas dated 27 August 1990 (separately tendered as H.Ex K), his signature being witnessed on this occasion by Det Paget. In it he refers to a question asked of him by counsel in the committal proceedings as to a conversation he had with Ms Van der Merwe on 31 March 1989. According to this document she, in the presence of Det Connolly, asked if she might speak to the police off the record about the alleged bombing. She is

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said to have asked, "What would happen to me if I was to give evidence against Ramon". Det Sgt Thomas states he responded, "That's not a matter for me, it would depend on what evidence you could give and your own involvement. I can apply for immunity from prosecution for you". She again inquired, "What's the worse that can happen to me?" He is recorded as having responded, "It's not a matter for me. If you give evidence that assists the court, I'm certain it would be taken into consideration". She then said according to the statement, "You know you are right. We weren't home at the time of the bombing". Det Sgt Thomas states he said, "What are you saying to me, that you did it and if you give evidence against Ramon, what can we do for you". She said, "No, I'm not saying that". He said, "I've told you what I can do. If you want to talk to me about it, think about it and then come and talk to me about it officially". She said, "I will". The statement ends, "Van der Merwe never got back to me at all".

668. In cross-examination at the section 12 hearing, Mr Thomas

confirmed the conversation recorded in H.Ex K as having taken place on 31 March 1989 and said he had again spoken to Ms Van der Merwe on 31 May 1989.

669. He claimed that after he had left the police force he became aware of the existence of the tape which Ms Van der Merwe said that she had. He said that he thought it was either in 1992 or 1993 that some unidentified person in the police service had given him a copy of that tape which he had had transcribed by one of his secretaries (H/T p503). The purported transcript which Mr Thomas said he had arranged was admitted later in evidence as H.Ex 16. He claimed that he had checked it for accuracy from what he could pick up on the tape (H/T p1121).

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Conclusion as to Whether Mr Peter Thomas May Have Committed Perjury

670. A case is capable of being made that Det Sgt Thomas falsely asserted on oath or affirmation before the learned Magistrate in the BracamonteNan der Merwe committal proceedings that he had not suggested to Ms Van der Merwe that Mr Bracamonte had committed the offence.

671. Apart from being a matter of substantial probative value going to the credibility of Mr Thomas as a witness (s103 Evidence Act 1995), it is not otherwise relevant to any other issue which calls for my determination under section 12 of the Criminal Appeal Act 1912.

Ms Margaret Nagy

672. On 12 June 1999 the Royal Hotel at Monto in Queensland was burned to the ground (see evidence of Ms Margaret Nagy: H/T p1777-82).

673. After the fire Ms Nagy, a licensee jointly with her husband George, said she was contacted by Mr Thomas who was then an insurance investigator. At that time she was separated from her husband. She said in evidence at the section 12 hearing that Mr Thomas had said to her words to the effect, "If you tell me that your husband torched the pub, I will make you a very wealthy woman" (HIT p1778). She said that her husband had never "torched the pub" nor had he told her that he had and she

had told Mr Thomas so.

674. Thereafter Ms Nagy said Mr Thomas contacted her again offering bottles of wine and "comfort" which she said she refused.

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675. She claims he said again, "Why don't you convince me that your husband has done it and I will make you a wealthy woman? I will make it worth your while. Just tell me the truth. I can even give you some money to pull you through".

676. She claims that he told her that he would put her husband away for life and that she could rest assured that she would live thereafter in comfort.

677. Ms Nagy said that on the night of the fire she had been living at the hotel with Ms Gina Hart, a family friend.

Ms Gina Hart

678. Ms Hart (HIT p1782-8) said that on the night of the fire she had been living in Mitchell Street about three to four kilometres from the hotel. Having seen signs of the fire she had gone to it and had there spoken to various members of the Nagy family.

679. Ms Hart said that some months later she had been telephoned by Mr Thomas and had gone to see him in Brisbane. He had said that he was certain that Mr Nagy had started the fire. Ms Hart said that she had expressed doubts about this and had referred to the financial costs from the loss of trade which would have ensued to the Nagy family if he had. Mr Thomas had then referred to income protection insurance cover which Mr Nagy had.

680. Ms Nagy claimed that Mr Thomas had asked whether she had ever had a sexual relationship with Mr Nagy. She denied having done so and he said words to the effect that he, Thomas, had come prepared to offer her \$10,000 on the off-chance that during a wild moment of passion in "pillow

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conversation" Mr Nagy admitted to her that he had lit the fire. She said that again she denied that she had ever slept with Mr Nagy.

681. In cross-examination, Ms Hart was referred to notes which she agreed that she had initialled during the conversation which she had with Mr Thomas in Brisbane. She claimed, however, that she had not been able to read through the notes although she had initialled each page of them. She claimed that he had told her not to bother reading them as his secretary would send her a copy. She said she had never received a copy.

Mr Peter Thomas

682. At the section 12 hearing Mr Thomas said that he had investigated the fire. He agreed that he had interviewed Ms Nagy but denied that he had offered, or was in a position to offer, anyone money for evidence as to the fire. He said that he had asked Ms Nagy questions about her sexual life because he claimed that was what she wanted to talk about (H/T p176-7).

683. Mr Thomas also said that he had spoken to Ms Hart but denied he had told her that he had suspected that Mr Nagy had an income protection policy. He denied any discussion with her about that. He claimed to have obtained from her a "signed statement" and said he could not recall saying that he would send her a transcript of the recorded interview. He denied having said words or words to the effect that she might be paid \$10,000 if she was prepared to say that Mr Nagy had admitted "in a moment of passion" having started the fire (HIT p190-2; 386-8).

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Conclusions as to Ms Margaret Nagy

684. Ms Nagy and Ms Hart are credible witnesses whose evidence is capable of being accepted. The question arises whether their evidence is relevant to the determination of any factual issue arising in the section 12 hearing. As indicated, it is put before me as going beyond credit and tending to establish a propensity in Mr Thomas to act in a particular way, namely to improperly influence potential witnesses into giving information and obtaining evidence regardless of its truth. The submission is based on the terms of s97 of the Evidence Act 1995.

685. As to the giving of reasonable notice as provided in that section, this question does not arise and in any event I would dispense with notice pursuant to s100 of the Evidence Act

1995. As to whether it is of "significant probative value" it should be considered in light of evidence relating to witnesses such as Ms Marie Whalen, Mr Shane Golds, Mr James Morris, Dr Richardson, Mr Barry O'Brien and Mr Farrar. It may also be relevant to the question of the alleged finding of the pistol in the en suite bathroom of Ms Catt on 24 August 1989 in light of the evidence of Mr Caesar, as indicating a propensity in Mr Thomas to act dishonestly in the gathering of evidence.

686. In no instance in the trial of Roseanne Catt, however, was any allegation made of Det Sgt Thomas having held out a financial inducement to a witness to give false evidence. Nevertheless, there were substantial issues before the jury in the trial as to whether Det Sgt Thomas' methods of investigation may have tended to induce the giving of false or at least questionable evidence.

687. Notwithstanding the difference in methods involved in the

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allegations contained in the evidence of Ms Nagy and Ms Hart as compared with the methods suggested on behalf of Ms Catt at her trial, the evidence of Ms Nagy and Ms Hart does have "significant probative value", as does that relating to the BracamonteNan Der Merwe matter (para. 662).

688. In addition, adopting the analogy of evidence of conduct of police officers at the New South Wales Police Royal Commission and applying the more stringent test propounded by Meagher JA in R v Vastag NSWCCA unreported 12 May 1997, the evidence, like that as to the BracamonteNan der Merwe matter, is relevant and cogent as going to whether Det Sgt Thomas may have used improper and dishonest methods of gathering evidence in the investigation of charges laid against Ms Catt.

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