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From: Mr G. H. Schorel-Hlavka O.W.B.

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THE MORALS OF A SOCIETY CAN BE MEASURED AS TO HOW IT LOOKS AFTER THE DISABLED

Please note: WARNING *The opinion(s) expressed in this letter by the writer, are stated considering the limited information available to him and may not be the same where further information were made available to him, is not intended and neither must be perceived to be legal advice!*

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WITHOUT PREJUDICE

Margaret McMurdo, AC **Royal Commissioner** 18-2-2019
Victorian Royal Commission into Management of Police Informants
PO Box 18028, Melbourne VIC 3001.

Ref: 20190218-G. H. Schorel-Hlavka O.W.B. to Royal Commissioner Margaret McMurdo, AC
Re -SUBMISSION

THIS SUBMISSION IS PROVIDED FOR PUBLICATION AS IDENTITIES RELATING TO CONFIDENTIAL MATTERS HAVE NOT BEEN REVEALED.

Commissioner,

this submission is extensive as it related to Lawyer X and a lot more that I view is relevant. I do view however that from my experiences of nearly 4 decades at the bar table Lawyer X case cannot be considered in isolation but must be considered in the overall as the courts (administration of justice) as well as law enforcement authorities operate.
This submission is also in part to set out the extend of the misuse and abuse of the administration of justice by the judges themselves which I view is must responsible for the misuse and abuse of lawyers to be involved as informers contrary to their positions as an Officer of the Court.

From onset I may state I am pleased that the commissioner, so I understand from reports in the media made clear that the Royal commission is not to set aside any convictions. After all the Royal Commission is as I view it a political tool by the government limited to the terms of references provided for in the Letters Patent and as such cannot even investigate other relevant matters albeit can consider them.

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For example it much goes to the issue of the CREDIBILITY OF THE WITNESS if a witness appearing before the Royal Commission or providing any kind of evidence otherwise is a credible witness.

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The following is a clear warning that using the accused as to provide details against himself, via an informant Officer of the Court who represents the accused clearly violated accusatorial system of justice. The prosecutor/police deliberate conduct persisted with over decades cannot be excused, and all those involved should be prosecutor for this.

QUOTE FROM AUTHORITY BELOW

> **This is because the fairness of a trial can be tested by its conformity with those principles underlying the accusatorial system of justice ..A fair trial is a public hearing in which the Crown makes a specific allegation, for which the accused has never before been convicted or acquitted, that the accused has violated a pre-existing rule of law, during which trial the Crown bears the burden of establishing that allegation with evidence before an independent and neutral trier of law and fact, without compelling the accused in any way to participate in establishing the allegation against him until a case to meet has been established, and in which the**

accused is provided with a reasonable opportunity to make full answer and defence. It is only where the conduct of those responsible for the prosecution of an offence has jeopardized one or more of these accusatorial principles that the power to act to ensure a fair trial should arise."

[redacted]

[redacted]

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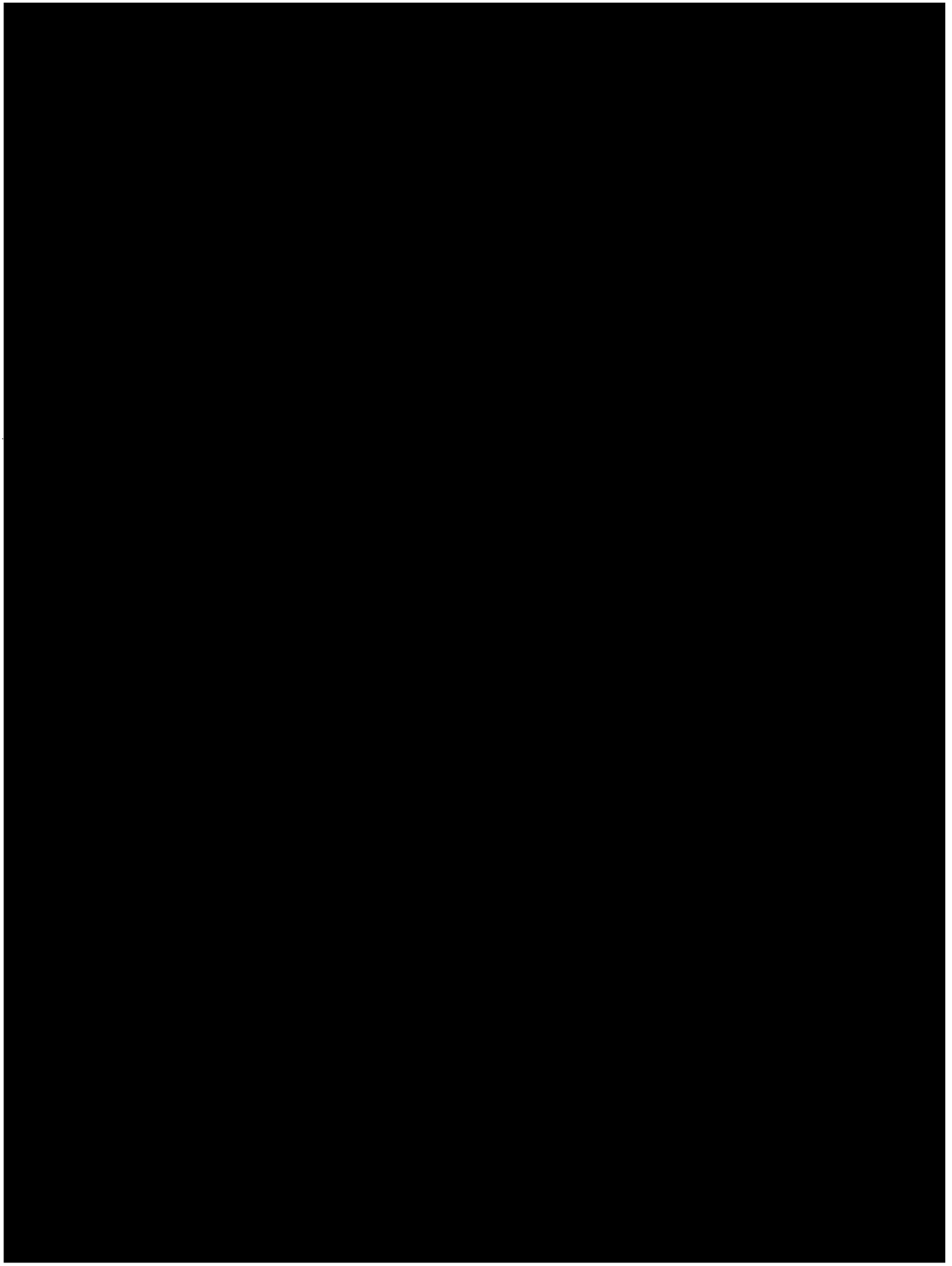


Whereas the High Court of Australia as I understand it specifically stated that EF/Informer 3838/Lawyer X refused to use police protection and indicated that the authorities may have to consider the safety of the children then on that basis it is reasonable to assume that EF/Informer 3838/Lawyer X is not the same person as Ms Gobbo, this even so both might have been involved as informers. Indeed, the Victorian Police by now seemingly admitted that there were more lawyers as informers then

http://www.heraldsun.com.au/news/victoria/gobbo/news-story/9d63460ed55cf8acfde68098f4b821ee?sv=5e8da4fdd596834a973dca785827058d

QUOTE

Lawyer Nicola Gobbo settles legal action against police, government

Kate Jones and Padraic Murphy, HeraldSun
September 25, 2010 12:00am

HIGH-profile barrister Nicola Gobbo has settled her court case against Victoria Police and the State of Victoria.

Ms Gobbo's claim for damages was formally dismissed in the Supreme Court yesterday after the matter was settled out of court.

Ms Gobbo, 38, said yesterday she could not comment because of a confidentiality agreement and health concerns.

"I'm unable to comment on the terms of settlement due to confidentiality provisions," she said. "However I look forward to commenting in so far as I am able to once my health is restored."

Ms Gobbo was a key witness against former detective Paul Dale, who was charged with murdering police informer Terence Hodson.

Mr Hodson and his wife Christine were shot dead in their Kew East home in 2004.

Charges against Mr Dale and another man, who cannot be named, were dropped by the Office of Public Prosecutions in June due to insufficient evidence.

Ms Gobbo was a prosecution witness against Mr Dale and wore a recording device to tape a conversation she had with him in December 2008.

In a writ lodged in the Supreme Court in April, she said the stress of being a key witness in the case had caused her to fear for her life and exacerbated health problems stemming from a stroke she suffered in 2004.

Ms Gobbo claims she travelled around Australia under an assumed name and was moved to 14 locations.

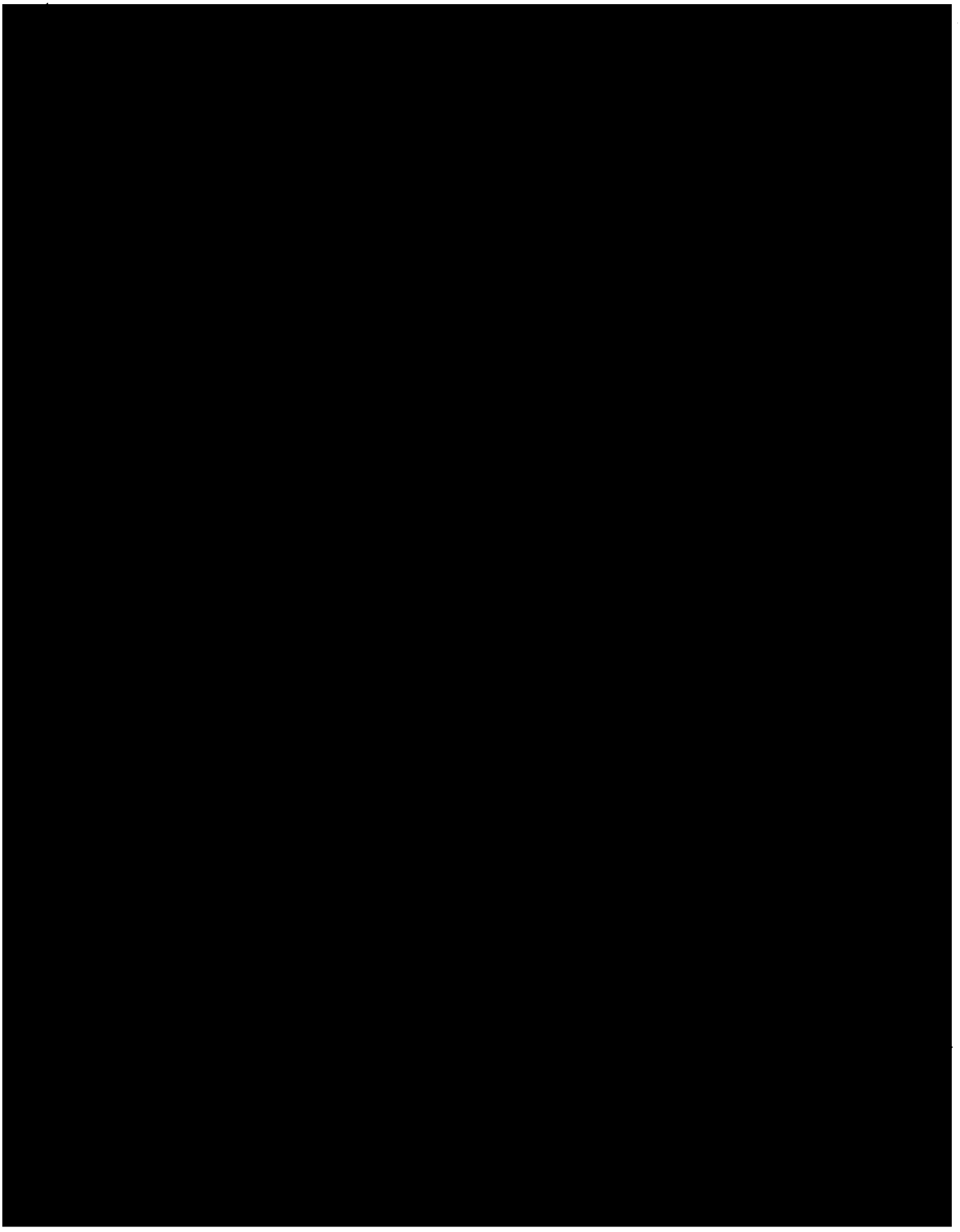
She alleged police had breached their agreement and had not provided appropriate support.

Reports suggested Ms Gobbo had sought millions in compensation.

A spokeswoman for Victoria Police said the terms of the settlement would remain confidential.

"Victoria Police can confirm it has settled matters in relation to Ms Gobbo," she said. "Victoria Police will be making no further comment."

Originally published as Gobbo settles case against police



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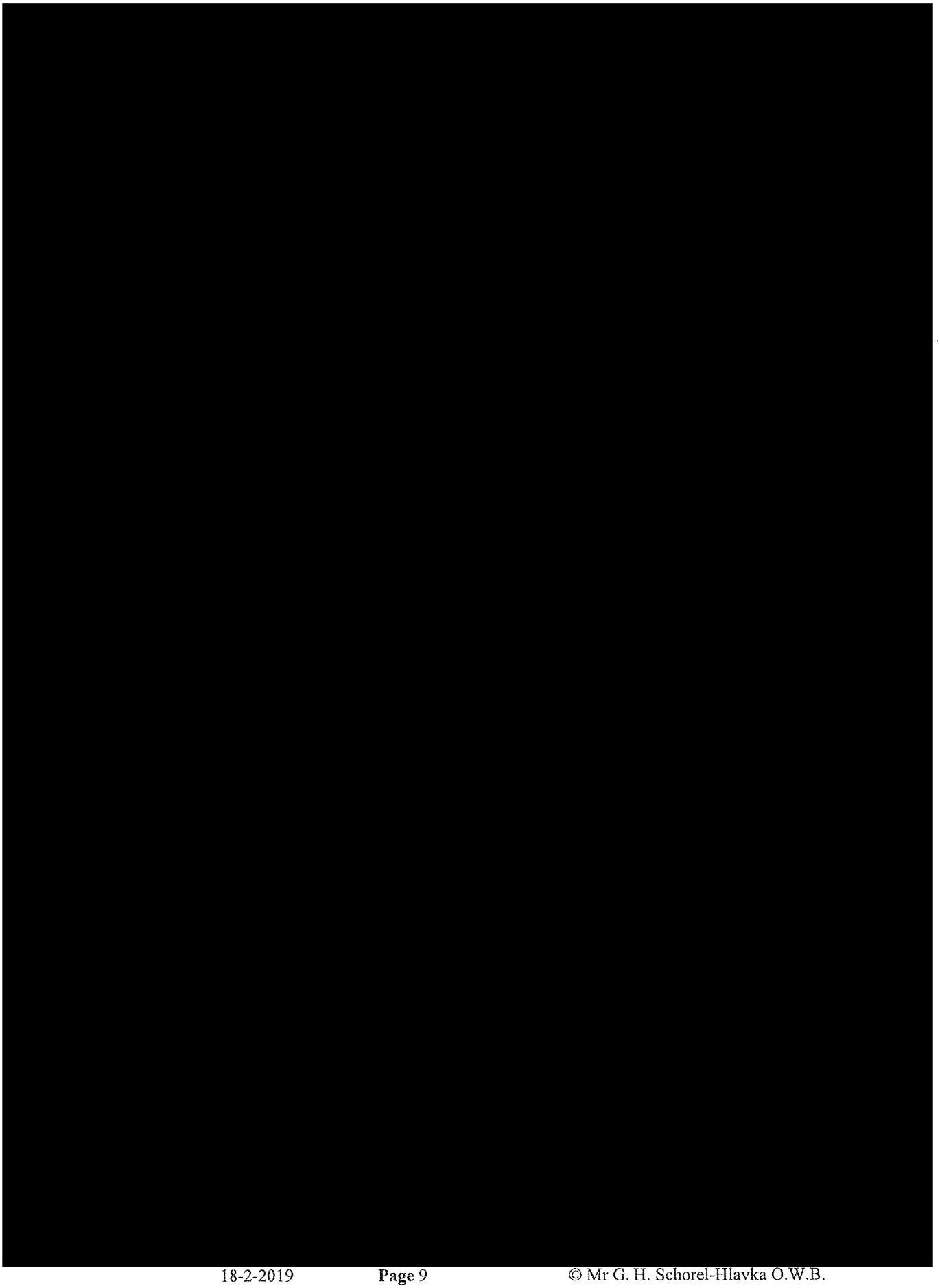

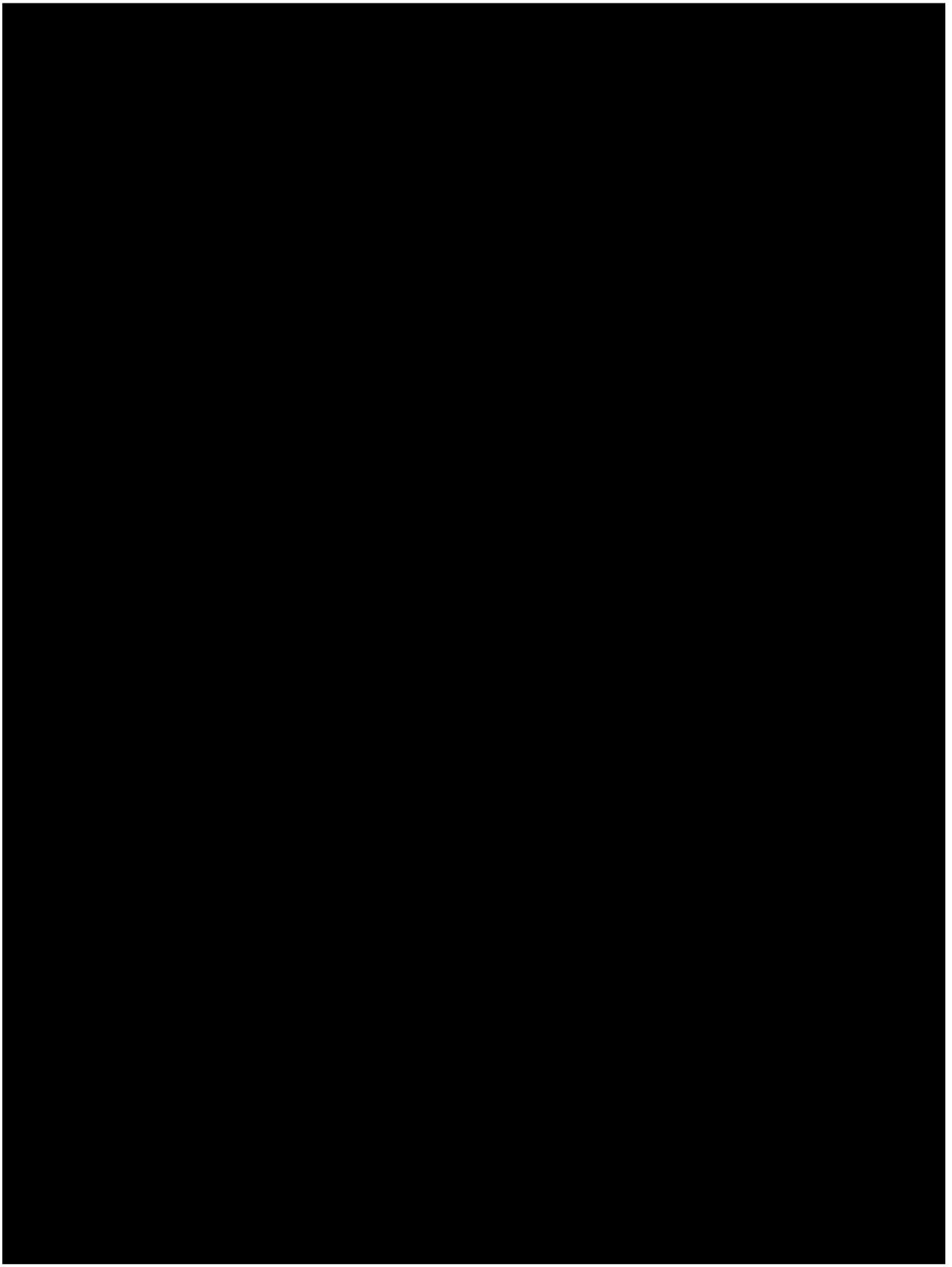

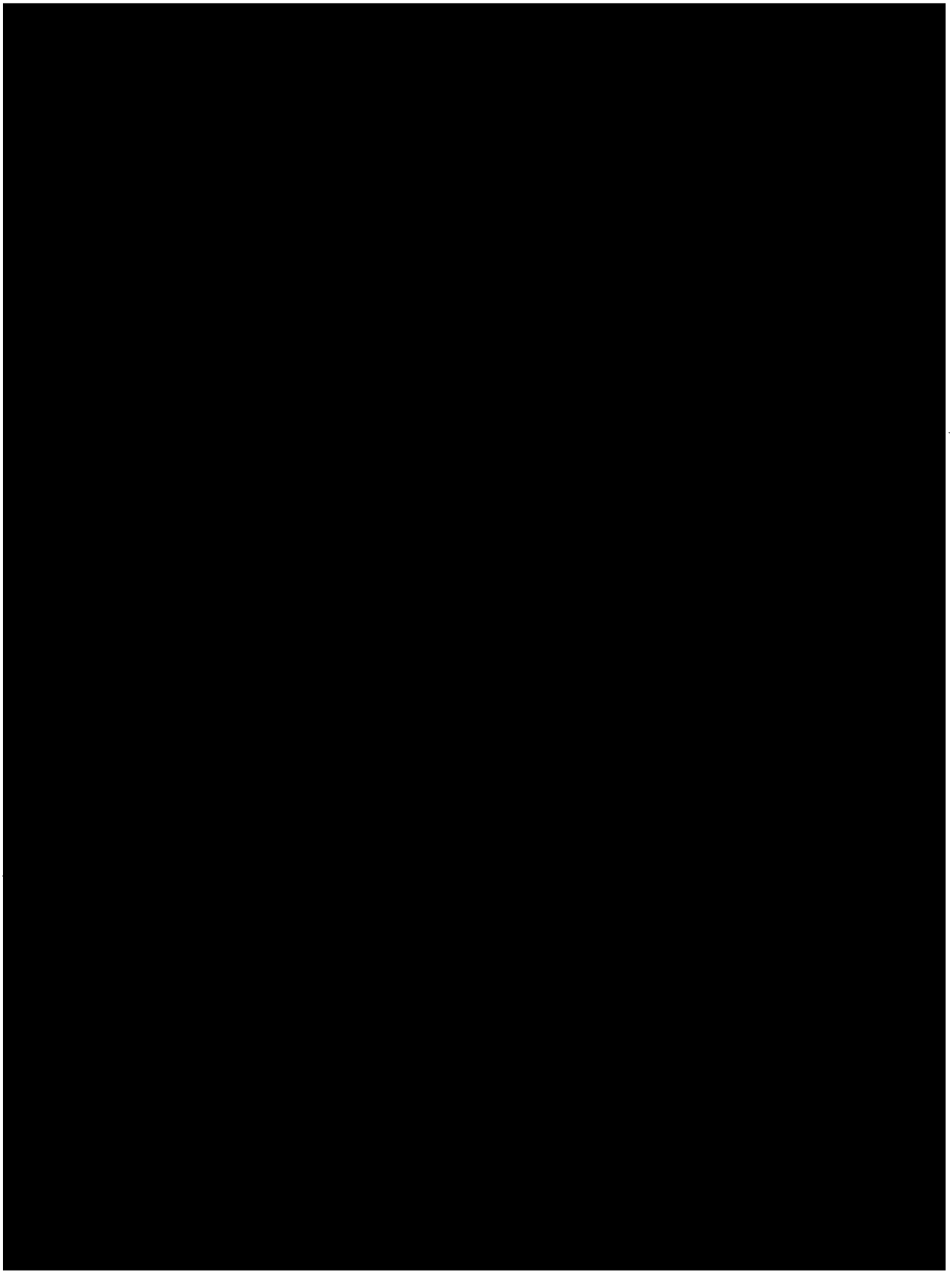

[redacted]

It is my understanding that Chief Commission Graham Ashton made false misleading statements regarding why EF/Informant 38438/Lawyer X became an informer in 2005. She herself also I view made false/misleading statements.

The Office of Public Prosecutions and the Government Solicitors Office I understand were involved to conceal this rot of EF/Informant 38438/Lawyer X and others like her from the courts. And those are now who somehow exonerate the Red shit persons who I view defrauded Consolidated Revenue Funds? Come on. How can anyone trust any of those people who willingly were perverting the course of justice?
Let it be clear that this gangland murders never really stopped because the police and others were in my view [redacted]

According to the Herald Sun February 16 NEWS 07 in an article about Lawyer X and Tony Mokbel it states:
QUOTE

> **"EF (Lawyer X), when speaking to her handlers, said of Mokbel: 'Well, one of the many ironies of all this is I have so many conflicts with the bloke but what does he know? He doesn't know about any of them They'll stay hidden'."**

END QUOTE

It is reasonable to expect she did the same with other clients, as Carl Williams seemed to underline.

What kind of credibility would the Victorian Police have where not just one but for decades they went along to pervert the course of justice by unlawfully/unethically using Officers of the Courts as informants in violation to what they had to do for their clients?

In my view those police officers, lawyers of the Solicitors Office/DPP, etc, [redacted]

As this SUBMISSION sets out I filed formal complaints with the DPP and others regarding the Red shirt issue and it is the same DPP that allegedly exonerate the persons involved despite my complaint not being completed.

It then begs to ask will the Royal Commission follow suit and turn this into some **WHITE ELIPHANT** where the very people who perverted the course of justice will in the end not be recommended for charges?

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I am no friend of any drug dealer/pusher and when i some decades ago suspected [redacted] I so to say read him so to say the riot act that he better not involve any of t[redacted] To his credit he never did so. However, I do not accept that a person suspected of being a drug dealer can be convicted by having his lawyer being a police informer in violation of her being an Officer of the Court. In my view the courts themselves should have immediately set aside all convictions involving those kind of informers and leave it to the authorities to try to pursue the alleged offenders by a FAIR and PROPER trial and the prosecutor to prove the evidence is not tainted and is admissible.

In my view as long as the courts fails to set aside each and every questionable conviction involving such kind of an informer then the Court are accepting that its Officers of the Court can violate their obligations/duties, etc, and as such place its own credibility in disrepute.

It in my view would be lunacy and total idiotic if because some informer may have a child or children then the legal consequences are somehow not to be pursued. We have this equality movement and well let all people be equal also in how they are pursued for offences and sentenced.

We cannot have our democracy undermined by those kind of traitors to our constitution. Our governor is to provide for an IMPARTIAL administration of justice and the Supreme Court of Victoria and other courts involved clearly fasil to deliver where they place the onus upon those convicted rather than upon its own failure to ensure its officers of the Court are acting honourable and appropriate.

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It to me is totally irrelevant what Tony Mokbel or whomever may be accused of violating laws unless they are convicted by a FAIR and PROPER hearing and an IMPARTIAL administration of justice. Clearly the courts themselves failed to provide for this where its own Officers of the Court were undermining the IMPARTIALITY of the administration of justice.

Hansard *1-2-1898* Constitution Convention Debates (Official Record of the Debates of the National Australasian Convention),
QUOTE **Mr. OCONNER** (New South Wales).-

> Because, as has been said before, it is [start page 357] necessary not only that the administration of justice should be pure and above suspicion, but that it should be beyond the possibility of suspicion;

END QUOTE

When any court is willing to let people convicted as result of their lawyers being Officers of the Court having betrayed their positions then the courts themselves are no more within the term of IMPARTIAL administration of justice and I view could be deemed KANGAROO COURTS and STAR CHAMBER COURTS (OUTLAWED in the 1980 Act Interpretation Act) as the courts cannot command jurisdiction where they themselves are allowing its Officers to pervert the course of justice.

Hansard *1-3-1898* Constitution Convention Debates
QUOTE

Mr. HIGGINS.-Suppose the sentry is asleep, or is in the swim with the other power?

Mr. GORDON.-There will be more than one sentry. In the case of a federal law, every member of a state Parliament will be a sentry, and, every constituent of a state Parliament will be a sentry. **As regards a law passed by a state, every man in the Federal Parliament will be a sentry, and the whole constituency behind the Federal Parliament will be a sentry.**

END QUOTE

Therefore we as citizens must all accept that we have an obligation to hold those who defy the rule of law regardless if they are in high or powerful positions are also prosecutor in a fair and proper manner. We must also protect any accused against a trial by media as then no matter how innocent a person might be a person will be or might be convicted not on evidence but on what the media might purport to be the issues.

Hansard *8-2-1898* Constitution Convention Debates (Official Record of the Debates of the National Australasian Convention)

QUOTE Mr. OCONNOR.-

So that any **citizen** of any portion of the Commonwealth would have the guarantee of liberty and safety in regard to the processes of law, and also would have a guarantee of the equal administration of the law as it exists. I think Mr. Isaacs will bear me out, that in the United States it has been decided that the title to equal treatment under the law does not mean that you cannot make a law which differentiates one class of the community from another; but, as has been decided, it means that in the administration of the laws you have made, all the **citizens** shall be treated equally. And that should be so. **Whatever privilege we give to our citizens, the administration of the law should be equal to all,** whatever their colour. The case I refer to is one of the Chinese cases-I forget the name of it.

END QUOTE

What really is absurd is that the courts essentially decide who can or cannot represent a party. I being self-educated in legal issues including constitutional matters assisted/represented parties as a Professional Advocate and not being an Officer of the Court never was by this corrupted to serve the court for unethical or other unlawful conduct. To me this is an important issue as we now have witnessed that regardless that the supreme Court of Victoria in December 2018 acknowledged in a judgment (as I understand from media reports) the wrongdoings of EF/Informer 3838/Lawyer X it didn't at all bother to ensure she was held legally accountable for placing the administration of justice in disrepute. After all being an Officer of the Court means she is part of the administration of justice and should therefore have been made an example that her conduct is unacceptable. [redacted]

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We should never set up a deceptive administration of justice where the accused should prove his innocence and/or having been denied a FAIR and PROPER trial as the onus lies upon the Court to ensure any accused is provided with a FAIR and PROPER trial and the moment the court becomes aware that this might not have eventuated the duty lies upon the courts and not the accused to make this public and the court **MUST** set aside any such conviction.

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Doncaster v Day (1810) Common Pleas 3 Taunt, 262; 128 E.R. 104 Sir Mansfield CJ.

QUOTE

You do not want a rule of court for what purpose. What a witness, since dead, has sworn upon a trial between the same parties, may, without any order of the court, be given in

evidence, either from the judge's notes, or from notes that have been taken by any other person, who will swear to their accuracy; or the former evidence may be proven by any person who will swear from his memory to its having been given.

END QUOTE

See also; ***Morgan v Nicholl*** Common Pleas 1866 L.R. 2 C.P. 117

Llanover v Homfray Court of Appeal 1881 19 Ch. D. 224; 30 W.R. 557

How on earth can we expect a person murdered in prison such as Carl Williams to petition the courts to set aside questionable convictions?

Any judge who presides over a trial under the colour of administration of justice but find afterwards this was not or not likely provided must then upon his./her own initiative set aside the judgments being it for fraud or otherwise.

International Finance Trust Company Limited v New South Wales Crime Commission [2009] HCA 49 (12 November 2009)

QUOTE

In 1864 the Supreme Court of the United States said: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified."[193] Under Pt 2 of the Act, there is notification only after the defendant's rights are affected, and no provision for any opportunity for defendants to argue that orders affecting them should be dissolved. **In 1965 the Supreme Court of the United States said that the opportunity to be heard "must be granted at a meaningful time and in a meaningful manner."[194]**

END QUOTE

In my view a party was denied to be heard appropriately where his/her lawyer sided with the prosecution.

County Criminal Court: CRIMINAL LAW – Statute of Limitations – Criminal conviction reversed because prosecution was not commenced within the time allowed by applicable statute of limitations, regardless of whether or not the crime was considered to be a continuing offense. Conviction reversed; case remanded with directions to enter judgment of acquittal and to vacate and set aside conviction and sentence. *Csulloghne v. State*, No. 11-00070APANO (Fla. 6th Cir. App. Ct. January 30, 2013).

In my view any order convicting a person obtained by fraud/concealment, etc must be set aside.

The book "Law Made Simple" by Colin F. Padfield, LL.B.,D.P.A.(Lond.) on page 55:

QUOTE

"**The Rule against Bias.** A true judicial decision can be reached only if the judge himself is impartial. This is an obvious requirement in a court of law or a tribunal. In *R. v Rand* (1866) it was held that a judge is disqualified where (i) he has a direct pecuniary interest, however small, in the subject-matter in dispute; or (ii) there is real likelihood that the judge would have a bias in favour of one of the parties.

For example, if a judge is related to, or is a friend of, one of the parties to a dispute there would be real likelihood of bias. It is immaterial whether a judicial decision was in fact biased, for as was said by Lord Chief Justice Heward in *R. v Sussex Justices, ex parte McCarthy* (1924): 'Justice should not only be done, but should manifestly and undoubtedly be seen to be done.'

As an example of pecuniary bias we may quote:

Dimes v. Grand Junction Canal (1852). Lord Chancellor Cottenham made decrees in a Chancery suit in favour of a canal company. Lord Cottenham held several shares in the company. *Held:* (by the House of Lords): that the decrees be set aside on the ground of pecuniary interest. No bias was proved in fact, nor could it be shown that Lord Cottenham was in any way influenced by his shareholding.

As an example of likelihood of bias we may quote:

R. v Sussex Justices, ex parte McCarthy (1924). *A* was summoned before magistrates for a motoring offence. The acting clerk to the justices was a member of a firm of solicitors representing *A* in civil proceedings arising out of the same accident. The acting clerk did not advise the magistrates, but he retired with them to consider their decision. *Held:* that as the acting clerk was connected with the case in the civil action he ought not to advise the magistrates in the criminal prosecution. Conviction accordingly quashed, despite the fact that the acting clerk took no part in the decision to convict and had not been asked by the justices to give his opinion or advice. "

END QUOTE

It is clear that where an Officer of the Court acted in violation of her/his client then this is sufficient ground to have the orders set aside.

* So far as material to this case s. 79A (1) of the Family Law Act 1975 (Cth) provides that "When, on application by a person affected by an order made by a court under section 79, the court is satisfied that the order was obtained by **fraud**, by duress, by the giving of false evidence or by the **suppression of evidence**, the court may, in its discretion, set aside the order . . .". Section 83 provides, inter alia, that "in proceedings with respect to the maintenance of a party to a marriage . . . if there is in force an order with respect to the maintenance of that party . . . the Court may . . . (c) discharge the order. . . ."

HEARING

Sydney, 1978, October 31, November 1. 1979, August 22. 22:8:1979
APPEAL from the Family Court of Australia.

In my view this applies to the police/prosecutor as well as to the lawyers when they conceal relevant details relating to a miscarriage of justice/perverting the course of justice.

R.v Baines King's Bench Division 1908 [1909] 1 K.B. 258

Regarding that any party to legal proceedings may subpoena any person as a witness. Without the leave of the court. If the Court is satisfied that the process is being abused, the Court has the jurisdiction to set aside the subpoena.
See also; ***McKinley v. McKinley*** [1960] 1 W.L.R. 120
In this case an unnecessary subpoena was set aside, however an application to set aside the subpoena may be refused, when the grounds of the application is privileged, which the witness may claim after he has attended in pursuance of the subpoena.
See also Broome v Broome (195

In my view this is not restricted to subpoena but also to any order fraudulently obtained being it by concealment or otherwise.

Taylor v. Taylor (1979) Fam LR 5, 289289 at 290 298 and 300 HIGH COURT OF AUSTRALIA.

QUOTE

Although the Family Court is a court created by statute, it never the less possesses an inherent jurisdiction to set aside a judgement obtained by default - there is no indication in the Family Law Act of an intention to displace this inherent jurisdiction.

END QUOTE

And

Taylor v. Taylor (1979) Fam LR 5, 289289 at 290 298 and 300 HIGH COURT OF AUSTRALIA

QUOTE

In my opinion, the words 'false evidence' in s79A(1) do not mean evidence which is wilfully false. The sub-section should be read according to its terms. To say that 'false evidence should be read as 'wilful false evidence' is to introduce a provision not expressed by the provision; cf s6H of the Royal Commission Act 1902 which speaks of a witness 'who knowingly gives false testimony'. This interpretation is reinforced by reference elsewhere in s79A(1) **to the separate grounds of fraud and suppression of evidence which would comprehend cases of wilful false evidence. At common law, a judgment will be set aside if it has been obtained by fraud.** In the exercise of this jurisdiction, it has been held that an applicant must show something more than perjury, ie. new facts (Baker v. Wadsworth [1898] 67 LJQB 301; Everett V. Ribbands [1946] 175 LT 143). This tends to suggest that the words 'false evidence' should be given their literal meaning

END QUOTE

QUOTE R.V. Crimmins (1959) VR 270

Suppression of relevant evidence

END QUOTE

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QUOTE Byrne v Byrne (1965) 7 FLR 342 at 343

Fraud: Usually takes the form of a statement of what is false or the suppression of what is true.

END QUOTE

QUOTE Schorel v Elms (1994) Unreported M2944X of 1989 SA27 of 1993 Page 16 and 17: -

Justice must not only be done but must be seen to be done

END QUOTE

QUOTE Magna Carta Charter (Chapter 29)(1115)

No free man shall be taken or imprisoned, or be diseased of his freehold, or Liberties, or from custom, or be outlawed, or exiled, or otherwise destroy & deny will we not pass upon him, nor condemn him, but by lawful judgement of his peers, or by law of the land, We will sell to no man, We will not deny or defer to any man either Justice or right.

END QUOTE

IN THE SUPREME COURT OF NEW SOUTH WALES CRIMINAL DIVISION, NO 70007 of 1991, R -v- CHEUNG

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QUOTE *IN THE SUPREME COURT OF NEW SOUTH WALES CRIMINAL DIVISION, NO 70007 of 1991, R -v- CHEUNG*

RELEVANT LAW: JAGO v. THE DISTRICT COURT

Jago was a case in which a stay was sought because of the long delay between the offences and the charges, and between the laying of charges and the trial. The stay was refused by the trial judge and his decision was upheld by the Court of Appeal and by the High Court. **The High Court held, in effect, that proceedings may be stayed where the right to a fair trial is so much impaired that the further prosecution of the proceedings will be an abuse of process.** In the words of Mason, CJ.:

> "The continuation of process which will culminate in an unfair trial can be seen as a misuse of the court process which will constitute an abuse of process because the public interest in holding a trial does not warrant the holding of an unfair trial."

The Chief Justice pointed out that the appropriate remedy for unfairness, specifically because of undue delay but not limited to that, was not necessarily a stay of the proceedings.

> "There is no reason to confine the discretionary power of the courts by arbitrarily stipulating that a stay is the only proper remedy for undue delay."

Mason, CJ. went on to make a second and related point:

> "In appropriate cases, orders may be made to prevent injustice notwithstanding that there is no reason to suspect that the actual trial, when held, will not be fair. Thus orders may be directed to ensuring fairness in pre- trial procedures."

His Honour instanced an order for expedition where delay was becoming prejudicial. His Honour gave other instances of orders which might be made, short of a permanent stay, to meet the exigencies of the particular case - the grant of a limited or conditional stay, or the making of an order that a proceedings be stayed and not proceeded with further without specific order of the court.

There are two other important points which emerge from the judgment of Mason, CJ. in **Jago.** First, the power to grant a stay or to make any other order to prevent the use of court processes in a manner which gives rise to injustice is discretionary, to be exercised in a principled way. Second, the power will be used only in most exceptional circumstances to order that a criminal prosecution be stayed. The touchstone for the exercise of discretion is in every case fairness. As to that, Mason, CJ. said:

"The test of fairness which must be applied involves a balancing process, for the interests of the accused cannot be considered in isolation without regard to the community's right to expect that persons charged with criminal offences are brought to trial. ... At the same time it should not be overlooked that the community expects trials to be fair and to take place within a reasonable time after a person has been charged."

It was his Honour's view that:

> "A permanent stay should be ordered only in an extreme case and the making of such an order on the basis of delay alone will accordingly be very rare." (p.34).

Speaking more generally, rather than in the context of delay alone, his Honour said:

> **"To justify a permanent stay of criminal proceedings, there must be a fundamental defect which goes to the root of the trial 'of such a nature that nothing that a trial judge can do in the conduct of the trial can relieve against its unfair consequences':** Barton (1980) 147 CLR at 111 per Wilson, J."

Brennan, J. maintained the distinction between a power to prevent an abuse of process and a power to ensure a fair trial. His Honour said:-\

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"A power to ensure a fair trial is not a power to stop a trial before it starts. It is a power to mould the procedures of the trial to avoid or minimize prejudice to either party."

His Honour pointed out that obstacles in the way of a fair trial are often encountered in administering criminal justice, but do not ordinarily cause the proceedings to be permanently stayed:

"**Unfairness occasioned by circumstances outside the court's control does not make the trial a source of unfairness.** When an obstacle to a fair trial is encountered, the responsibility cast on a trial judge to avoid unfairness to either party but particularly to the accused is burdensome, but the responsibility is not discharged by refusing to exercise the jurisdiction to hear and to determine the issues. The responsibility is discharged by controlling the procedures of the trial by adjournments or other interlocutory orders, by rulings on evidence and, especially, by directions to the jury designed to counteract any prejudice which the accused might other suffer."

On the other hand:-

"More radical remedies may be needed to prevent an abuse of process. An abuse of process occurs when the process of the law is put in motion for a purpose which in the eye of the law it is not intended to serve or **when the process is incapable of serving the purpose it is intended to serve**. The purpose of criminal proceedings generally speaking is to hear and determine finally whether the accused has engaged in conduct which amounts to an offence and, on that account, is deserving of punishment. When criminal process is used only for that purpose and is capable of serving that purpose, there is no abuse of process. Although it is not possible to state exhaustively all the categories of abuse of process, it will generally be found in the use of criminal process inconsistently with some aspect of its true purpose. ... When process is abused, the unfairness against which a litigant is entitled to protection is his subjection to process which is not intended to serve or which is not capable of serving its true purpose. **But it cannot be said that a trial is not capable of serving its true purpose when some unfairness has been occasioned by circumstances outside the court's control unless it be said that an accused person's liability to conviction is discharged by such unfairness. ...**"

Brennan, J. pointed out that:

"When serious delay is attributable to the prosecution and an accused has been prejudiced thereby, the courts are tempted to offer the remedy of a permanent stay. ..."

"**It avoids the possibility that a person may be convicted after a trial and which he may suffer some prejudice in his defence.**"

His Honour emphasized, however, that:-

"However understandable the granting of a permanent stay for delay causing prejudice might be, **the remedy cannot be supported unless it would truly be an abuse of process to try the case**. In determining what does amount to an abuse of process the considerations which favour the expansion of that notion so that it will support the remedy of permanent stay for delay causing prejudice to an accused must be set against countervailing considerations which have particular force in the criminal jurisdiction. Before this court sanctions such an expansion of the notion, it is appropriate to consider the need for such a radical discretionary power to refuse to try a criminal case and the effects of vesting such a power in a trial judge."

His Honour continued (p.49):-

"By the flexible use of the power to control the procedure and by the giving of forthright directions to a jury, a judge can eliminate or virtually eliminate unfairness. The judge's

responsibilities are heavy but that are not discharged by abdication of the court's duty to try the case. If it be said that judicial measures cannot always secure perfect justice to an accused, we should ask whether the ideal of perfect justice has not sounded in rhetoric rather than in law and whether the legal right of an accused, truly stated, is a right to a trial as fair as the courts can make it. **Were it otherwise, trials would be prevented and convictions would be set aside when circumstances outside judicial control impair absolute fairness.** To take an obvious example, the administration of the criminal law in notorious cases brought to a halt be adverse media publicity. To admit a power to stay a case permanently for delay causing prejudice seems wrongly to undervalue the advocacy of the orders, rulings and directions of a trial judge removing unfairness to an accused caused by delay or other misconduct by the prosecution.

Moreover, although our system of litigation adopts the adversary method in both the criminal and civil jurisdiction, interests other than those of the litigants are involved in litigation especially criminal litigation. The community has an immediate interest in the administration of criminal justice to guarantee peace and order in society..."

At p.53 his Honour expressed disapproval of cases in this court and other State Supreme Courts where "these courts have asserted that the categories of cases in which the power to grant a permanent stay should be exercised are not closed and the power is available whenever it would be unfair to the accused to permit the prosecution to proceed ... in practice so broad a power does not fall far short of a power which is incompatible with the rule of law".
Deane, J. held that the power of a court to control proceedings before it includes the power to ensure that the court's process is not abused by the proceedings being made an instrument of unfair oppression. The reference commonly made to an accused's right to a fair trial was in his Honour's view not sufficiently precise:

"Strictly speaking, however, there is no such directly enforceable right since no person has the right to insist upon being prosecuted or tried by the state. What is involved is more accurately expressed in negative terms as **a right not to be tried unfairly or as an immunity against conviction otherwise than after a fair trial.**"

His Honour acknowledged that as a general proposition it can be said: -

"That the fault or impropriety on the part of the prosecution in pre trial procedures can, depending on the circumstances, be so prejudicial to an accused that the trial itself is made an unfair one."

His Honour proceeded to offer examples:

"One example is where particulars supplied to an accused have been so inadequate and misleading that an accused has been denied a proper opportunity of preparing is defence. **Another is where impropriety on the part of the prosecution has concealed from an accused important evidence which would have assisted him in his defence.** In each of those examples, the effect of the default or impropriety could ordinarily be dealt with by orders (eg. adjournment, further particulars or new trial) which would avoid unfairness in a subsequent trial or re-trial. It is however possible to formulate examples of cases in which the effect of default or impropriety on the part of the prosecution would necessarily be that any subsequent trial was unfair to the accused. Thus one can envisage circumstances which calculate an unreasonable delay on the part of the prosecution in bringing proceedings to trial that so unfairly and permanently prejudice the ability of an accused to defend himself that no subsequent trial could be a fair one."

His Honour was disposed, as was the Chief Justice, to adopt a broad view of abuse of process so that the prosecution of an accused in circumstances where the trial could not be fair might amount to such. He said:

> **"An unfair trial represents a miscarriage of the curial process. If circumstances exist in which it can be seen in advance** that the effect of prolonged and unjustifiable delay is **that any trial must necessarily be an unfair one, the continuation of the proceedings to the stage of trial against the wishes of the accused will constitute an abuse of that curial process.** In such a case, the continuation of proceedings to the stage of trial will inevitably infringe the right not to be tried unfairly and a court which possess jurisdiction to prevent abuse of its process, possesses jurisdiction at the suit of the accused to stay the proceedings pursuant to that power."

Toohey, J. also declined to treat the principles of abuse of process and the tight to a fair trial as separate and distinct. He said:

"It is consistent with authority in principle to regard each notion as part of the responsibility of the courts to see that justice is done for the parties and the wider community, ensuring that the appropriate remedy s applied in the particular case. Where proceedings have been instituted for an improper purpose (abuse of process), no remedy is likely to be appropriate other than a stay of the proceedings. No directions given by the judge at trial can protect the accused in that situation. On the other hand, **where an accused has suffered some prejudice in his defence** by reason of delay in bringing his case to trial (a fair trial), **it will often be possible to cure that prejudice by evidentiary rulings and by directions to the jury regarding the way they should approach the evidence adduced.** But it is conceivable that delay has been so great and consequent prejudice to an accused so manifest that directions cannot ensure a fair trial. In that situation a stay of proceedings is the only remedy that meets the situation. Uncommon as that situation may be, it cannot be excluded. To treat abuse of process and fair trial as entirely distinct concepts carries the risk that the remedies in each case will be seen as necessarily different. That will not always be the case. Greater flexibility and in the end greater justice will be achieved if the two notions are understood as bearing on each other."

Gaudron, J. acknowledged the existence of a discretionary power to grant a permanent stay of proceedings founded not on any narrow view of abuse of process but a power exercisable if the administration of justice so demands. The power was to serve the general purpose of controlling the court's process and proceedings and accordingly:

> "The limited scope of the power to grant a permanent stay necessarily directs an enquiry whether there are other means by which the defect attending the proceedings can be eliminated or remedied. And the purpose directs attention to the legal propriety of the process or proceeding, as distinct from any broad consideration of the general merits of the case ... Another feature attending criminal proceedings and relevant to the grant of a permanent stay thereof is that a trial judge, by reason of the duty to ensure the fairness of a trial, has a number of discretionary powers which may be exercised in the course of a trial, including the power to reject evidence which is technically admissible but which would operate unfairly against the accused ... The exercise of the power to reject evidence, either alone or in combination with a trial judge's other powers to control criminal proceedings, will often suffice to remedy any feature of the proceedings which might otherwise render them unjust or unfair. The existence and availability of these powers, when considered in the light of the necessary limited scope of the power to grant a permanent stay, serve to indicate that **a court should have regard to the existence of all its various powers, and should only grant a permanent stay if satisfied that no other means is available to remedy that feature which, if unremedied, would render the proceedings so seriously defective, whether by reason of unfairness, injustice or otherwise as to demand the grant of a permanent stay."**

In all of the passages quoted, the emphasis has been added by me.

I take from that case the following propositions which govern the way in which I should approach the present matter.

1. There is a power in this court to stay proceedings either permanently or conditionally.

2. It is a power to be exercised in exceptional circumstances only, where the making of any other order would be ineffectual to secure the object of the exercise of the power.

3. The object of the exercise of the power is to protect an accused person from being exposed to a trial which in the circumstances must be unfair.

4. The exercise of the power is discretionary and involves a balancing of the interests of the accused on the one hand with, on the other, the community's right to expect that persons charged with criminal offences are brought to trial.

5. The conditions for the exercise of the power look not only to the fact of unfair treatment of the accused but also to its source. Distinctions are to be drawn between situations of unfairness attributable to the conduct of the accused, the conduct of the prosecutor, or the conduct of some person or body outside the court's control.

6. The conditions for the exercise of the power are not satisfied merely by demonstrating that the accused has been or is being in some respect treated unfairly, whether or not there is a means available to the court to remedy such unfairness at the time when it was brought to notice. The condition of the exercise of the power is that the trial itself will be an unfair trial.

END QUOTE *IN THE SUPREME COURT OF NEW SOUTH WALES CRIMINAL DIVISION, NO 70007 of 1991, R -v- CHEUNG*

.The following should be considered also:

QUOTE RELEVANT LAW - REGINA v. JUDITH WARD

> **"(i) 'Where the prosecution have taken a statement from a person whom they know can give material evidence but decide not to call that person as a witness, they are under a duty to make that person available as a witness for the defence ...'** Archbold, 44th edition, paragraph 4-726.

END QUOTE RELEVANT LAW - REGINA v. JUDITH WARD

If therefore the Prosecutor failed to notify the accused that his/her own lawyer had given statements against him/her then I view the Prosecutor concealment of this was to cause a miscarriage of justice and perverting the course of justice.

QUOTE RELEVANT LAW - REGINA v. JUDITH WARD

RELEVANT LAW - REGINA v. JUDITH WARD

On 4 November 1974 Judith Ward was convicted in the Crown Court of 12 charges of murder and other offences arising out of her alleged involvement in a number of IRA bombings. On 17 September 1991, the Home Secretary referred her case to the Court of Appeal (Criminal Appeal Division) acting under s.17(l)(a) of the Criminal Appeal Act 1968. On 4 June 1992, that court quashed the convictions on all counts. One of the substantial matters that led to that outcome was the failure of the DPP to disclose before or during the trial certain evidence not used at the trial, some in the possession of the police, some in the possession of forensic scientists engaged on behalf of the prosecution and some in the possession of the DPP itself. The judgment of the court delivered by Glidewell, LJ. makes a close examination of the obligation cast upon the prosecution to make disclosure of material in its possession but not proposed to be used at the trial. The obligation to disclose arises in relation to evidence which is or may be material in

relation to the issues. Before trial, the measure of the obligation to disclose relates to the issues which are reasonably expected to arise in the course of the trial. During the trial, the obligation may be extended, insofar as issues unexpectedly arise in the course of the trial which were not reasonably foreseeable beforehand. The obligation is to disclose only such evidence as is or may be material - which means something less than crucial but admits of the possibility that there may be material in the possession of the prosecution, the nature of which is such that it is relatively so insignificant in the context of the case viewed as a whole that non-disclosure may be excused. The court emphasized however that the scope of the application of the proposition that there may be evidence the disclosure of which is not required because it is not material is limited to matters which at the end of the day can be seen to have been of no real significance.

> "The possibility that this view will ultimately be taken of any particular piece of disclosable evidence should be wholly excluded from the minds of the prosecution when the question of disclosure is being considered. Non- disclosure is a potent source of injustice and even with the benefit of hindsight, it will often be difficult to say whether or not an undisclosed item of evidence might have shifted the balance or opened up a new line of defence."

The court held that the extent of the prosecution's duty of disclosure was not adequately to be measured in terms of the **Attorney-General's Guidelines** (1982) 74 Cr. App. R. 302. The accused is entitled to be supplied with "all relevant evidence of help to the accused" which is not to be led at the trial. The court emphasized that "all relevant evidence of help to the accused" is "not limited to evidence which will obviously advance the accused's case". It is of help to the accused to have the opportunity of considering all the material evidence which the prosecution have gathered, and from which the prosecution have made their selection of evidence to be led. The court recognized the existence of public interest immunity and the possibility that material might ultimately be withheld from the accused by reason of the public interest. It emphasized, however, that it was no part of the duty of the prosecuting authority to make a decision that certain material should be withheld on such grounds. The decision whether evidence otherwise disclosable should be withheld from disclosure on the grounds of public interest immunity was one to be made only by the court.

In **Ward**, there was no issue about the fact of non-disclosure, and the major matter argued was whether in the circumstances of the particular case the failure to disclose particular evidence amounted to a material irregularity in the trial. Consequently, a great deal of the very lengthy judgment is concerned with an analysis of the significance of particular items of evidence in relation to the issues at the trial, and needs no further comment. Shortly, the materials not disclosed comprised a number of statements made by the accused at different stages of the police investigation; the statements of a number of other witnesses whom the police had interviewed; and material in the possession of the forensic scientists, which was relevant to the evaluation of the results of certain tests earned out by the scientists, upon which the Crown case heavily relied. At pp.60-61 of the judgment, the court summarized the principles of law and practice which in its view at the present time govern the disclosure of evidence by the prosecution before trial.

> **"(i) 'Where the prosecution have taken a statement from a person whom they know can give material evidence but decide not to call that person as a witness, they are under a duty to make that person available as a witness for the defence ...'** Archbold, 44th edition, paragraph 4-726. It is part of the same passage as is quoted with approval in this court in **Lawson** (1990) 90 Cr. App. R. 107 at 114 from the preceding edition. **'Material evidence' means evidence which tends either to weaken the prosecution case or to strengthen the defence case.**
>
> (ii) Unless there are good reasons for not doing so, the duty should normally be performed by supplying copies of the witness statements to the defence or allowing them

to inspect the statements and make copies: Lawson. Where there are good reasons for not supplying copies of the statements, the duty to disclose can be performed by supplying the name and address of the witness to the defence.

(iii) In relation to statements recording relevant interviews with the accused, as we have already said, subject to the possibility of public interest immunity, the defence are entitled to be supplied with copies of all such statements.

(iv) In relation to the evidence of expert witnesses, both for the prosecution and the defence, the Crown Court (Advance Notice of Expert Evidence) Rules 1987 now require that any party to the proceedings in the Crown Court who proposes to adduce expert evidence must, as soon after committal as possible, furnish the other party with a written statement of any finding or opinion of which he proposes to give evidence, and where a request in writing is made by that other party, either supply copies of, or allow the other party to examine, the record of any observation, test, calculation or other procedure on which such finding or opinion is based. There is an exception to rule 4 which is not here relevant. What the rules do not say in terms is that if an expert witness has carried out experiments or tests which tend to disprove or cast doubt upon the opinion he is expressing, or if such experiments or tests have been carried out in his laboratory and are known to him, the party calling him must also disclose the record of such experiments or tests. In our view the rules do not state this in terms because they can only be read as requiring the record of all relevant experiments and tests to be disclosed. It follows that an expert witness who has carried out or knows of experiments or tests which tend to case doubt on the opinion he is expressing is in our view under a clear obligation to bring the records of such experiments and tests to the attention of the solicitor who is instructing him so that it may be disclosed to the other party. No doubt this process can often be simplified by the expert for one party (usually the prosecution) supplying his results, and any necessary working papers, to the expert advising the other party (the defence) directly.

(v) It is true that public interest immunity provides an exception to the general duty of disclosure. For present purposes it is not necessary to attempt to analyse the requirements of public interest immunity. But in argument the question arose whether, if in a criminal case the prosecution wished to claim public interest immunity for documents helpful to the defence, the prosecution is in law obliged to give notice to the defence of the asserted right to withhold the documents so that, if necessary, the court can be asked to rule on the legitimacy of the prosecution's asserted claim. Mr. Mansfield's position was simple and readily comprehensible. He submitted that there was such a duty, and that it admitted of no qualification or exception. Moreover, he contended that it would be incompatible with a defendant's absolute right to a fair trial to allow the prosecution, who occupy an adversarial position in criminal proceedings, to be judge in their own cause on the asserted claim to immunity. Unfortunately, and despite repeated questions by the court, the Crown's position on this vital issue remained opaque to the end. We are fully persuaded by Mr. Mansfield's reasoning on this point. It seems to us that he was right to remind us that when the prosecution acted as judge in their own cause on the issue of public interest immunity in this case they committed a significant number of errors which affected the fairness of the proceedings. Police (sic; presumably an erroneous substitution for 'these') considerations therefore powerfully reinforce the view that it would be wrong to allow the prosecution to withhold material documents without giving any notice of that fact to the defence. **If, in a wholly exceptional case, the prosecution are not prepared to have the issue of public interest immunity determined by a court, the result must inevitably be that the prosecution will have to be abandoned.** (emphasis added)

(vi) For the avoidance of doubt we make it clear that we have not overlooked the **Attorney General's Guidelines** for the disclosure of 'unused' material to the defence in cases to be heard on indictment: see (1982) 74 Cr. App. R. 302. It is sufficient to say that nothing in those guidelines can derogate in any way from the legal rules which we have stated. It is therefore unnecessary for us to consider to what extent the Attorney General's guidelines relating to 'sensitive material' (the phrase used in those guidelines) are in conformity with the law as we have expounded it in the judgment."

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Ward deals and purports to deal only with the obligation of disclosure that falls upon the prosecuting party. The analogy that Mr. Nicholson seeks to advance is not valid. Where the prosecutor wrongly refuses to produce documents, that of itself might justify a stay, without enquiry except as to whether any of the material withheld is "relevant material of help to the accused" - that phrase being understood in the expansive sense explained in the judgment. The obligation of disclosure that rests on the Crown is an obligation of voluntary or spontaneous disclosure, not a matter merely of responding to a request or complying with a subpoena. But where an accused person seeks access to information contained in documents which are in the hands of a person or body which is not the prosecutor, no such obligation of disclosure can arise. The only obligation of such a person or body is to comply with the requirements of a subpoena validly issued.

If, because there is a valid claim of privilege or public interest immunity, or because (as here) the party concerned is not amenable to subpoena, the documents are not made available, the ground (if any) of complaint on the part of the accused is not that there is a breach of an obligation of disclosure, but that because he has not access to the documents in question, his trial cannot be a fair trial. In other words, the relevant principles are to be found not in **Ward** but in **Jago**.

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The prosecution is a prosecution in Australia for an alleged offence against the law of Australia and it is conducted by the Commonwealth Director of Public Prosecutions. The obligation of disclosure does not fall on those who, whether in Australia or elsewhere, investigated the matter - it is not an obligation cast on the Australian Federal Police for example. **It is an obligation that falls upon the prosecutor but the extent of it is such as to require disclosure of materials in the possession of those by whom the investigation was carried out so far as the DPP is in a position to compel production. Thus the DPP is obliged to disclose all material able to assist the accused which is in the possession of Australian authorities and all material which has come into the DPP's possession from the Royal Hong Kong Police, the Royal Hong Kong Customs or any other source. It is true that in** Ward **it was made clear that the obligation of disclosure extended to materials in the possession not only of the DPP and the police but also forensic scientists independent of both who had been engaged to carry out investigations: but it would seem that the DPP was in a position to compel production of materials supplied to it by its consultants or held by the consultants on its behalf - hence the obligation of disclosure extended so far.**

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RELEVANT LAW - INTERNATIONAL COVENANT

By the Human Rights and Equal Opportunity Commission Act 1986, the Commonwealth established the Human Rights and Equal Opportunity Commission as a body corporate with perpetual succession, with functions including "to promote an understanding and acceptance, and the public discussion, of

human rights in Australia" and "where the Commission considers it appropriate to do so, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, to intervene in proceedings that involve human rights issues". "Human rights" is defined in s.3(1) of the Act to mean "the rights and freedoms and recognized in the Covenant, declared by the declarations or recognized or declared by any relevant international instrument".

By "the Covenant" is meant "the International Covenant on Civil and Political Rights", a copy of the English text of which is set out in Schedule 2 of the Act.

Paragraph 3 of Article 14 provides:

> "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality;
> ...
>
> (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
>
> (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."

The Commission resolved to seek leave to intervene in this stay application (not the trial itself, if it proceeds) for the purpose of assisting the court in relation to the human rights issues said to be involved in the proceedings. I have determined that the Commission should have leave to intervene for that purpose and that it is proper that I should receive submissions on his behalf in view of recent authority emphasising the relevance of the content of the Covenant to the common law of Australia. See for example **Mabo v. Queensland** (1992) 66 ALJR 408 at 417, 422, per Brennan, J. and per Kirby, P. in **Regina v. Greer** (Court of Criminal Appeal, unreported 14 August 1992). In **Mabo**, Brennan, J. said (at 417):-

> **"The peace and order of Australian society is built on the legal system. It can be modified to bring it into conformity with contemporary notions of justice and human rights, but it cannot be destroyed.** It is not possible, a priori, to distinguish between cases that express a skeletal principle and those which do not, but no case can command unquestioning adherence if the rule it expresses seriously offends the values of justice and human rights (especially equality before the law) which are aspirations of the contemporary Australian legal system. If a postulated rule of the common law expressed in earlier cases seriously offends those contemporary values, the question arises whether the rule should be maintained and applied. Whenever such a question arises, it is necessary to assess whether the particular rule is an essential rule of our legal system and whether, if the rule were to be overturned, the disturbance to be apprehended would be disproportionate to the benefit flowing from the overturning."

I have no difficulty with that. It seems to me abundantly clear that the rule of the common law expressed by the majority in **Jago** (ironically, not altogether commanding the assent of Brennan, J.) does not offend but is on the other hand entirely consonant with "contemporary values", including those expressed in the Covenant. In ***Greer***, the learned President observed that those basic rights expressed in the Covenant are rights which the common law in Australia will ordinarily respect.

It appears to me that the relevance of the Covenant to the present matter is this and no more than this, that it puts the court on notice that a trial conducted in circumstances where the accused has not been accorded fully the rights referred to in paragraphs (b) and (e) of paragraph 3 of Article 14 of the Covenant may be an unfair trial within the meaning of the principles established by **Jago**.

I would have welcomed some assistance from counsel for all parties as to the meaning of the phrase "in full equality" in the opening paragraph of clause 3 of Article 14 of the Covenant. It

may refer to equality with all other persons facing trial in this country - paragraph (b) is perhaps more compatible with that reading - or, equality with the prosecutor.
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I have said, that in my view the effect of the Covenant is that it draws to the attention of the court that a trial, which takes place in circumstances where the so called "minimum guarantees" are not afforded to the accused, may be unfair within the Jago **principle.** It does not in my view follow that it must be unfair. It is necessary to examine the circumstances and see to what extent in the particular case the fact that the accused is deprived in whole or in part of one of the rights purported to be guaranteed by the Covenant in fact prejudices him, and whether it does so to such an extent that the trial is to be seen as unfair.

"UNFAIR TRIAL"

It is clear from the judgments in Jago **that a stay of proceedings may be the appropriate remedy where the prosecution is an abuse of process in the traditional and narrowest sense (and, per Brennan, J., only then) - that is, where the prosecution is brought for an improper purpose, or is oppressive (eg. successive prosecutions for the same act) etc.; but also where the continuance of the prosecution will be in a broader sense an abuse because, whether on account of delay or for some other reason, the outcome will be a trial which, no matter how the trial judge may utilize his many powers and discretions, will be unfair. It is clear that it is not the possibility of unfairness to the accused which calls for the drastic remedy of a permanent stay, for such may well be mitigated, or obviated, by other remedies within the discretion of a judge pre-trial or within the discretion of the judge at the trial. Absent abuse of process in the narrowest sense, a stay is justified if it appears, at the time when the stay is sought, that no other exercise of the court's discretion at that stage or during the trial is likely to avoid a trial which, after the trial, will be seen to be unfair.**
It is perhaps worth pausing for a moment to ask what is meant by a "fair trial" or an "unfair trial". **Jago** and other relevant authorities from various jurisdictions were discussed by Professor David Paciocco, *The Stay of Proceedings as a Remedy in Criminal Cases: Abusing the Abuse of Process Concept* (1991) 15 Crim. L.i 315. At p.332-333 the learned author said:

> "The 'fair trial' rationale has been challenged on the basis of its uncertainty. It has been said that the invocation of such a broad discretionary power would be 'unacceptable in a country acknowledging the rule of law.' *DPP v. Humphrys (1977) AC 1 at 24.* and its dangers have been lamented as 'too obvious to need stating'. *Connelly (1963) 3 All E.R. 510 per Lord Edmund Davies at 519.* Discretionary powers are not, of course, unknown in the law. They can be exercised on a more or less principled basis, and this is particularly true, I would suggest, of a discretion to ensure that a trial is fair. There is a significant difference between saying that judges have the power to stay proceedings to achieve a fair result (which might arguably be a subjectively exercised power not in keeping with the rule of law) and saying that judges have the power to stay proceedings to ensure a fair trial. **This is because the fairness of a trial can be tested by its conformity with those principles underlying the accusatorial system of justice ..A fair trial is a public hearing in which the Crown makes a specific allegation, for which the accused has never before been convicted or acquitted, that the accused has violated a pre-existing rule of law, during which trial the Crown bears the burden of establishing that allegation with evidence before an independent and neutral trier of law and fact, without compelling the accused in any way to participate in establishing the allegation against him until a case to meet has been established, and in which the accused is provided with a reasonable opportunity to**

> **make full answer and defence. It is only where the conduct of those responsible for the prosecution of an offence has jeopardized one or more of these accusatorial principles that the power to act to ensure a fair trial should arise."**

The remedy of stay is available to prevent the occurrence of an unfair trial: to prevent injustice. It is a remedy not to be resorted to wherever and whenever there is a risk of procedural injustice but only where if, if the trial is permitted to proceed, the outcome (if a conviction results) would be such that a court of criminal appeal after the event would be unable to say that no miscarriage of justice had occurred. The equation of the concept of an unfair trial with the concept of miscarriage of justice is implicit in the judgment of Mahoney, JA. in **Gill v. Walton** (1991-92) 25 NSWLR 190 at 210-211. It may, as his Honour pointed out, include the situation where there is a denial of natural justice; but I would with respect include his Honour's use of the term "unacceptable injustice" which extends beyond the traditional concept of a denial of natural justice to embrace the "procedural or evidentiary fairness of a particular trial"; but does not extend so far as to give rise to the power to stay a prosecution "whenever there will be less than perfect justice". (His Honour dissented in respect of the outcome of that particular case, but the approach of the other members of the court was entirely different and did not, as I understand the matter, involve any dissent from the principles which Mahoney, JA. expressed). Mahoney, JA. went on to say:

> "It is settled that, if a party to a proceeding cannot or will not have a fair trial of the matters involved, the supervisory jurisdiction of this court may be invoked. I do not mean by this that this power may be exercised whenever there will be less than perfect justice. This power is exercisable when the trial of the issue will depart so far from perfect justice that the result is unacceptable. The mere fact that a defendant in a proceeding, criminal or civil, suffers from disadvantages which, in a perfect system operating perfectly, he would not suffer, is not sufficient to warrant intervention by this court. I made reference to this in, for example, the **Barron** case" (*Barron v. Attorney General for New South Wales (1987) 10 NSWLR 215 at 226-22 7*) "and in the **Cooke** case" (*Cooke v. Purcell (1988) 14 NSWLR 51 at 65-67*). In **Jago**, the members of the High Court made reference to this matter (at 33, 48 et. seq., 55-56, 71, 76-78). No doubt in each case the court will have regard to what, in other cases which have been decided by it, it has seen to be an unacceptable disadvantage. But in the end the court will make a decision, more or less normative, in respect of the particular disadvantages in question."

A court of criminal appeal asked to set aside a conviction upon the grounds of some demonstrated procedural defect or error of law or discretion does not intervene merely upon demonstration of the error; but only if the court finds itself unable to say that no actual miscarriage of justice has resulted. Where the case is able to be seen in advance as of that nature, the fact that the accused if convicted might confidently expect to be successful on appeal is not a sufficient reason to refuse a stay: **Barton v. The Queen** (1980) 147 CLR 75 at 96-97. However, the existence of a right of appeal is not irrelevant: the grant of a stay is reserved for the case where "no other means is available" to avoid injustice, and unless so much is established at the time of the stay application, the case for stay is not made out. It is necessary to bear in mind the community's interest in having a trial (**Jago** per Mason, CJ. at p.34., Brennan, J. at p.4.9, Toohey, J. at p.72) and unless there is seen in advance to be a "fundamental defect which goes to the root of the trial of such a nature that nothing the trial judge can do in the conduct of the trial can relieve against its unfair consequences", the proper course is to refuse the stay, leaving the accused to his right of appeal, when with the benefit of hindsight, the question whether the conviction was a miscarriage of justice may better be able to be determined.
As it seems to me, when it is said that a stay must be granted to prevent an unfair trial, what is referred to is a trial so affected by the events that have happened that it can fairly be said in advance that a guilty verdict would be set aside after the event as a miscarriage of justice.

It is not enough that there be a risk of miscarriage - indeed there is a risk of such in every trial. It is to be recognized that much that appears, in advance of the trial, to present such a risk can be (and in the ordinary trial is) nullified by the appropriate exercise of the trial judge's powers and discretions. An "unfair trial" in the relevant sense is only a trial of which it can be said in advance, that notwithstanding all that the trial judge may do, a miscarriage of justice will be the outcome. The degree of probability of miscarriage of justice that must be shown is a high one: not a mere possibility that the trial will be unfair; not that such an outcome is "on the cards", or just probable, or very probable; "there must be a fundamental defect" (per Mason, CJ.), it must be seen in advance that "any trial must necessarily be an unfair one" (per Deane, J.).

It follows that a trial may be permitted to proceed even after gross delay or even where the accused has not had the benefit of the "minimum guarantees" mandated by the international Covenant, where he has no legal representation or has been unable to locate or summon witnesses whom he would have wished to call, or to have access to documents which he would wish to have used, unless it can be seen in advance that the situation is such that should a conviction result it would represent a miscarriage.

The test therefore that has to be applied is a demanding one. It is a test which has not been addressed by the submissions advanced on behalf of the applicant. Counsel has been content to demonstrate what materials have been withheld from the accused and to what forensic purpose such materials may have been put; but has not gone the necessary further step, to show how the lack of any such material so relates to the issues in the case that a trial in the absence of access to such material will necessarily be in the relevant sense unfair. Notwithstanding the lack of assistance from counsel in that regard, this is a matter that lies at the heart of the application and which I must consider in due course.

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Undoubtedly, the fact that the accused cannot compel the production of documents before this court, and cannot have the issues which arise in respect of such production determined by this court after proper arguments, inspection of the documents by the trial judge, if appropriate, and subject to a right of appeal, are circumstances which are of great relevance in determining whether the trial which may follow must be an unfair one. But it seems to me that it is not possible to reach a conclusion that the trial, even in those circumstances, must necessarily be unfair, without regard to what it is that is withheld from the accused, what is the nature of the forensic purpose that it would serve if produced, and what is the extent of the prejudice that the accused will suffer. For example, if there is evidence available to the accused to support his case on a particular issue, it may be very difficult for him to show that he is in any way or significantly prejudiced because he cannot get access to other evidence upon the same issue, because a party in possession of other evidence upon that issue fails or refuses to produce it, because he is unable to ask the trial court to rule on the propriety of the objection that is taken, and because he cannot invoke the coercive powers of the trial court to have that material brought before it. In short, the question whether the trial will be an unfair one because the accused is unable to compel the production of documents before the court, and unable to have the benefit of a ruling by the court upon such objections to production as may be taken, must depend upon an evaluation of the forensic purpose to which the documents would be put and the significance of each particular item in the context of the case as a whole.

THE PAPER CHASE

The resolution of the stay application would have been assisted had the applicant's counsel provided a single definitive statement of the documents which, it is asserted, were at the time of the hearing still withheld from the accused, and the lack of which is asserted to produce (in

conjunction with the asserted lack of access to relevant witnesses) the consequence that the trial of the accused must be unfair.
END QUOTE
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QUOTE

FORENSIC PURPOSE

Upon the approach derived from **Jago v. District Court**, whether a stay should be ordered requires consideration of the question whether the fact that the accused cannot get access before the trial to the documents he lists nor make use of them at the trial will (alone or in conjunction with other circumstances) cause any trial that ensues to be unfair. That compels an enquiry as to whether any document to which he points in fact exists, and (if it does) as to the use to which the accused would put such document or class of document at the trial or in the course of preparation, that is to say, for what forensic purpose is access sought.
It is no basis for objection to a subpoena that the party who served it does not know whether or not documents exist meeting the description in the subpoena; although if he is not able to prove that documents exist he will not be in a position to invite the court to deal with the subpoenaed party for disobedience to the subpoena. So, it is no objection to the accused's case merely that he has asked for the production of documents some of which he does not know to exist in fact. However, the want of such documents cannot be shown to lead to an unfair trial unless it is shown that such documents do exist (or, perhaps, having at some former time existed, have since been destroyed: indeed the destruction of evidence which would otherwise have been available has been a major consideration in many cases where a stay of proceedings has been granted on the basis of delay). The question whether each particular document to which the accused points has been shown to exist is something to be dealt with as a matter of fact in respect of each document as I come to it.
The enquiry into forensic purpose is similar to that which arises where, upon the return of a subpoena for the production of documents by a stranger to the litigation, the party producing objects to the documents being made available for inspection by the parties (but after any objection to the subpoena itself or claim for privilege or public interest immunity has been disposed of adversely to the party producing): in terms of the analysis undertaken by Moffitt, P. in **Waind v. Hill & National Employers' Mutual General Association Limited** (1978) 1 NSWLR 372, the second step. His Honour pointed out that there are three steps in the procedure of having a third party bring documents to court, and in their use thereafter:

> "The first is obeying the subpoena, by the witness bringing the documents to the court and handing them to the judge. This step involves the determination of any objections of the witness to the subpoena, or to the production of the documents to the court pursuant to the subpoena. The second step is the decision of the judge concerning the preliminary use of the documents, which includes whether or not permission should be given to a party or parties to inspect the documents. The third step is the admission into evidence of the document in whole or in part; or the use of it in the process of evidence being put before the court by cross- examination or otherwise. It is the third step which alone provides material upon which ultimate decision in the case rests. In these three steps the stranger and the parties have different rights, and the function of the judge differs."

In relation to the second step, the learned President posed the question, "Does he" (ie the trial judge) "have a judicial discretion to permit the use of the documents in any such way as he considers will aid a proper decision of the issues between the parties, by facilitating the elucidation of the truth in respect of relevant facts ...?" (p.383) and in the course of the following pages, gave a firm affirmative answer. His Honour at p.384 observed:

> "It is true that in the exercise of the power in relation to the subpoena, the invasion of the rights of a third party have been jealously guarded (sic). It is accepted that the documents should not go beyond the judge against objection of the owner, unless there is valid reason to do so. **It is clear that it can only be legitimate to do so, so far as is necessary in the proper conduct of the litigation.** It is difficult to see why to do that which is 'requisite for the purpose of justice' should be restricted by some arbitrary limit ... If a subpoena for production is properly issued and not set aside, and, if there is ruled to be no valid objection to the production of the documents to the court, then the documents are in the control of the judge who is invested with jurisdiction to take all steps necessary for the proper trial of the issues before him, subject to the due observance of any relevant rules and procedures of the court. **So far as factual matters are concerned, the proper conduct of the litigation can only be that which fairly leads to the introduction of all such evidence as is material to the issues to be tried, and the testing of that evidence by the accepted procedures of the court. The only legitimate purpose of requiring the production, and permitted the inspection of a stranger's documents can be to add, in the end, to the relevant evidence in the case."**

At p.385 his Honour stated the practice to be as follows:

> "Where however objection is raised by the owner of the documents, the judge examines the documents with some care to ensure there is no abuse of the subpoena, and to determine whether the documents **appear relevant in the sense that they relate to the subject matter of the proceedings** in which event he will permit inspection by one or both parties at an appropriate time. The question of their admissibility without more, in accordance with the rules of evidence, does not then arise because, if relevant, they may be admitted in a variety of ways, as by first establishing facts or adopting procedures which make them admissible or by their being admitted by consent. **If apparently relevant, I do not see how the objections of the stranger could prevent their admission in evidence, by consent or otherwise, or the inspection which may lead to this occurring."**

His Honour's statement at p.384 that "the only legitimate purpose of requiring the production and permitting the inspection of a stranger's documents can be to add in the end to the relevant evidence in the case" is not to be understood as meaning that there is no right to inspect documents except such as would themselves be admissible. That is made abundantly clear by the sentence immediately preceding; and by the passage on p.385 that I have quoted also. Indeed, it was established in **Madison v. Goldrick** (1976) 1 NSWLR 651 that an accused is prima facie entitled to inspect any document which may give him the opportunity to pursue a proper and fruitful course in cross-examination, in the latter case Samuels, JA. pointed out that:

> "Unless some means is available of obtaining access to documents such as witness's statements, a defendant ... may be quite unable to establish vital discrepancies where they do in fact occur."

In **Regina v. Saleam** (1989) 16 NSWLR 14, the Court of Criminal Appeal adapted to the question of the right of access to subpoenaed documents the test expressed by Gibbs, CJ. in **Alister v. The Queen** with regard to the question whether a judge required to rule upon a claim for public interest immunity should inspect documents. Hunt, J. (as he then was) said:

> "In my view when a trial judge is faced with a subpoena of this kind, he should require counsel for the accused to identify expressly and with precision the legitimate forensic purpose for which he seeks access to the documents, and the judge should refuse access to the documents until such an identification has been made ... In my view the criterion finally suggested by Gibbs, CJ. in Mister v. The Queen" (**Alister v. The Queen** (1984) 154 CLR 404) "as that which had to be satisfied before a court should inspect documents

> in relation to which a claim for public interest immunity had been made is appropriate to be applied also when the trial judge has to determine whether access should be granted to documents subpoenaed from the police in relation to which objection has been taken that no legitimate forensic purpose exists for their production. He must be satisfied that it is 'on the cards' that the documents would materially assist the accused in his defence. Before granting access when such an objection has been taken the judge should usually inspect the documents (or those which the Crown may suggest are sufficiently representative) for himself, as it is unfortunately not unknown for the objection taken to be misconceived ... If no public interest immunity or other privilege is claimed (and upheld), and if a legitimate forensic purpose for their production has been demonstrated, the judge should not withhold access to the documents simply on the basis that in his view that purpose would not be satisfied in that particular case because he can see nothing in the documents which will in fact assist the accused in his defence. Provided that a legitimate forensic purpose has been demonstrated, it should be for the accused (or, in appropriate cases, for his legal advisers only) to satisfy himself on that score after his own inspection of the documents."

In summary, therefore, the accused will have shown a legitimate forensic purpose for which he seeks access to the documents in question if he shows that they have apparent relevance to the subject matter of the trial, meaning thereby the issues to be tried. If they have no apparent relevance, there is no legitimate forensic purpose attaching to them; if they have apparent relevance, and hence are capable of being used to add to the relevant evidence, either directly by tender or indirectly by facilitating the testing of other evidence, it is for the accused and his counsel to determine whether they can in fact be used, and it would be wrong to conclude that they have no legitimate forensic purpose, merely because it does not appear to the judge that the documents in question can in fact be used to the advantage of the accused.
END QUOTE
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QUOTE
Were the question in fact one of granting or withholding access to documents in fact produced on subpoena, the Crown's submission that the documents were not capable of serving the suggested forensic purpose would not arise: ***R. v. Saleam*** (supra). It will, however, be a matter of significance in determining whether the fact that the accused is deprived of access to documents in respect of which a legitimate forensic purpose has been identified is likely to cause the trial to be unfair.
END QUOTE
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QUOTE
The proposed investigation of the adequacy, competence or thoroughness of the investigation, implicit in paragraph 5 and expressed in paragraph 10(c) appears on the face of it to be no more than a fishing expedition in the sense specifically deprecated in **Associated Dominions Assurance Society Pty. Limited v. John Fairfax & Sons Pty. Limited**:-

> "A 'fishing expedition' in the sense in which the phrase has been used in the law means as I understand it that a person who has no evidence that fish of a particular kind are in a pool desires to be at liberty to drag it for the purpose of finding out whether there are any there or not."

To show that police did not investigate as thoroughly as might have been done (paragraph 10(b)) is a matter of no relevance or significance unless there is some reason to believe that a better investigation would have revealed matters of assistance to the accused; not merely matters implicating others. The existence of any such matter would have to be shown, or at least reason to believe in its existence. One would have thought that the accused was best placed to know of

the existence of any exculpatory material upon which he wished to rely, but he has given no evidence of the existence of any such.

The forensic purpose expressed in paragraph 10(a) amounts to fishing, in the sense that there is no evidence that informers had been coached to expand or embroider their stories to the detriment of the accused; although there was some cross-examination at the first trial along those lines. Can it nevertheless be justified? Just as it may be a legitimate forensic purpose to seek access to statements of witnesses in advance of their giving evidence, so that discrepancies may be detected, it may also, as was the case in **Madison v. Goldrick**, be a legitimate forensic purpose to seek access to statements in the possession of a police officer in order to show that he had the wherewithal to construct what was alleged to have been a false confessional statement. That, however, falls short of showing the validity of the forensic purpose stated in paragraph 10(a). It would be one thing to obtain access to successive statements made by the same witness in order to show how his story had developed or varied from time to time. In such a case, however, the relevant material would be what appeared in the witness's statements, not what was within the knowledge of police officers conducting the investigation - if indeed, the witness's story had been expanded at the instigation of the police, the source was as likely to be in the imagination as in the knowledge of the police officer.

With these preliminary comments, I now turn to a consideration of the accused's claim in respect of each group of documents he has sought.

DOCUMENTS DENIED TO THE ACCUSED

It appears to me that the onus which rests upon the accused to establish the factual basis of his claim to a stay requires him to show, as to each document or class of documents of the withholding of which he complains:

1. Some prima facie reason to believe in the existence of the document.

2. That the documents are not available despite reasonable efforts on the part of the accused to procure them.

3. A legitimate forensic purpose.

4. In what way the lack of access to the document will render the trial unfair.

As I pointed out in the course of the argument, this last is not so much a matter of fact to be proved by evidence, but a matter to be demonstrated by legal argument, on which basis I cut short the oral evidence of Mr. Bilinsky and invited Mr. Nicholson to tell me from the bar table in what way lack of access to each document would prejudice the accused.

END QUOTE

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QUOTE

DISCRETION

The power to order a stay of proceedings is said to be discretionary. In a sense that is so:

> "The expression 'discretionary power' generally signifies a power exercisable by reference to considerations no one of which and no combination of which is necessarily determinative of the result. In other words it is a power which 'involves a considerable latitude of individual choice of a conclusion.': **Russo v. Russo** (1953) VLR 57 per Sholl, J. at 62. See also **Pattenden**, *The Judge, Discretion and the Criminal Trial* (1982), p. Notwithstanding this latitude, a discretionary power is necessarily confined by general principle. It is also confined by the matters which may be taken into account and by the matters, if any, which must be taken into account in its exercise.": per Gauldron, J., **Jago** (supra) at 75-76.

In another sense, the power is not truly discretionary. It is rather a matter not of discretion but of judgment. Once the court concludes that the circumstances are such that any trial that would ensue must necessarily be unfair, notwithstanding anything that may be done by way of interlocutory orders or rulings and directions at the trial, there is no option but to stay the proceedings. On the other hand, once the court is satisfied that the circumstances, taking into account all interlocutory orders that may be made and all rulings and directions that may be given at the trial, are such that the trial will not inevitably be an unfair trial, there is no option but to refuse to stay the proceedings.
END QUOTE

R v Butterwasser, Court of Criminal Appeal (947)(1948) 1 K.B. 4;63 T.L.R. 463;111J.P. 527;91 S.J. 586;32 Cr App R. 81(1947)ALL E.R. 415
QUOTE

> But it is admitted that there is no authority, and I do not see on what principal it could be said, That if a man does not go into the witness box and put his own character in issue, he can have evidence given against him of previous bad character when all he has done is to attack the witness for the prosecution. The reason is that by attacking the witnesses for the prosecution and suggesting they are unreliable, he is not putting his character in issue; he is putting their character in issue

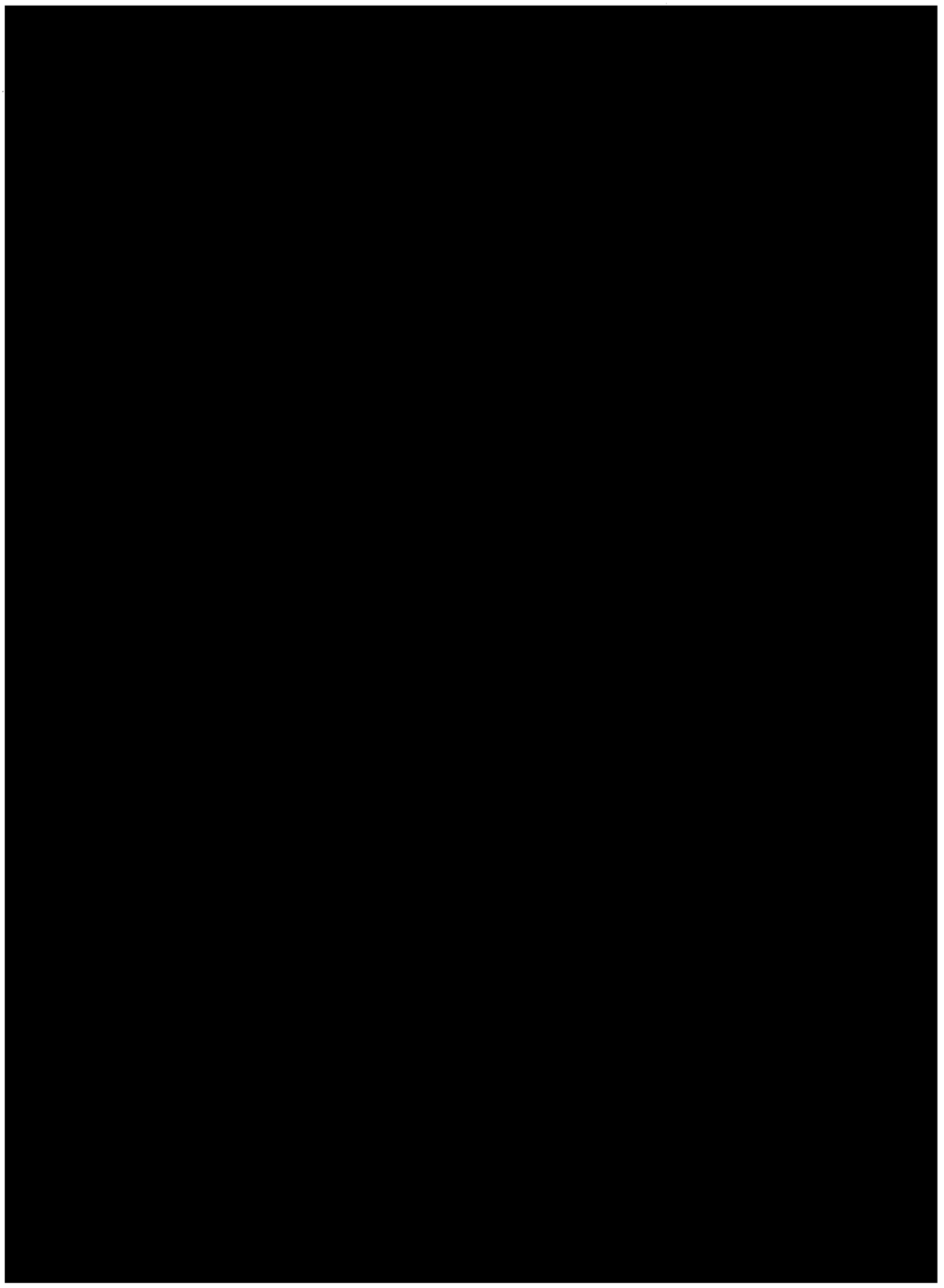
END QUOTE

In my view there can be no excuses as to the Victorian Police, [redacted] and others having used Officers of the Court in violation to their positions to be informers of their own clients because it undermines the credibility of the administration of justice and if anything I view [redacted] by what I consider false/misleading claims about why EF/Informer 3838/Lawyer X in 2005 commenced to be a registered informer I view underlines that despite past warning the Victoria Police high ranking officers still will refuse to be honest about matters.

Government Ministers, the police and others in such positions must be held to be model citizens who will for sure uphold the law and not thwart the rule of law themselves for whatever purpose they may deem it to justify.

The following may also indicate that criminal conduct far too often is ignored by the Victorian Police. Perhaps by doing so they can achieve special treatment when certain people are elected and gain certain political status as result to provide certain benefits, never mind it undermines out democratic system.

[redacted]



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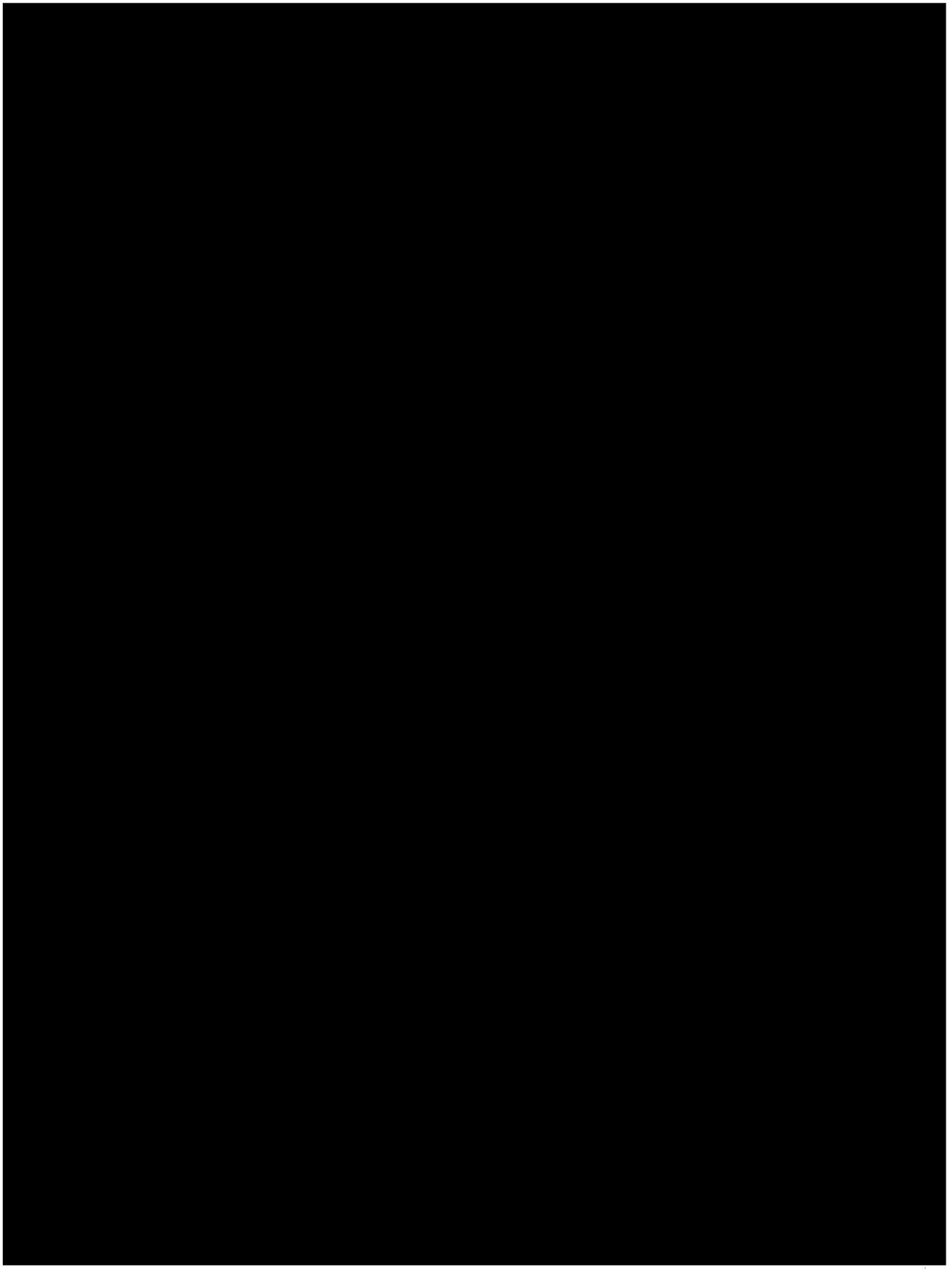

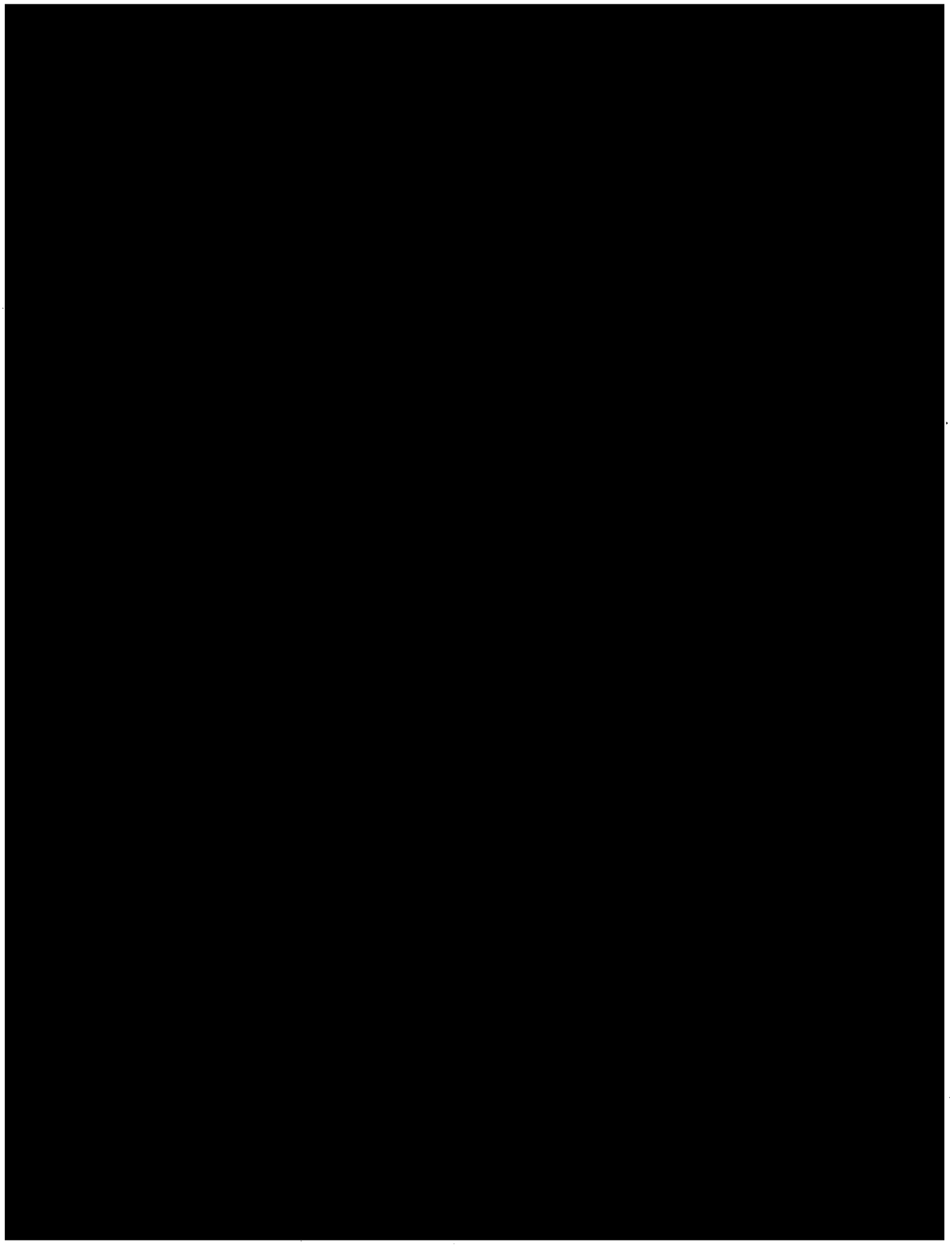

[redacted]

. As I have set out below I was able to check transcripts to discover

where previously a barrister had failed proper representation. Because Lawyer X and others like her who acted in conflict with their positions as being an Officer of the Court it is therefore that the credibility of the administration of justice itself is in question. The failure of the Legal Service Commission to take appropriate action when matters were reported also underlines this. In essence lawyers being Officers of the Court when admitted to the bar then are deemed not to do anything wrong no matter the lawyer did so and as such any complaint usually, at least to my understanding is railroaded. [redacted]

Lawyer X conduct and those like her might be compared to being like pavers in a paved road where underneath is hiding a gigantic sink hole. The moment one start to replace some of the pavers one loosen the structure and the gigantic sinkhole is then taking over. This is how I view this issue with lawyer X and others like her is developing that it now will expose not just the unlawful/illegal conduct of lawyer X, the police and others but that the entire legal system in real terms is not a proper legal system at all. It has a cancerous growth within it like a sink hole. Like a house of card the entire purported administration of justice turns out to be no more but merely a form of gangster operating a **KANGAROO COURT/STAR CHAMBER COURT** system purporting to be an **IMPARTIAL** administration of justice. That is my evaluation after spending nearly 40 years at the bar tab le exposing often the rot within the administration of justice.

I quote below a publication of a recent media article that very much appears to underline as to what I have set out below.

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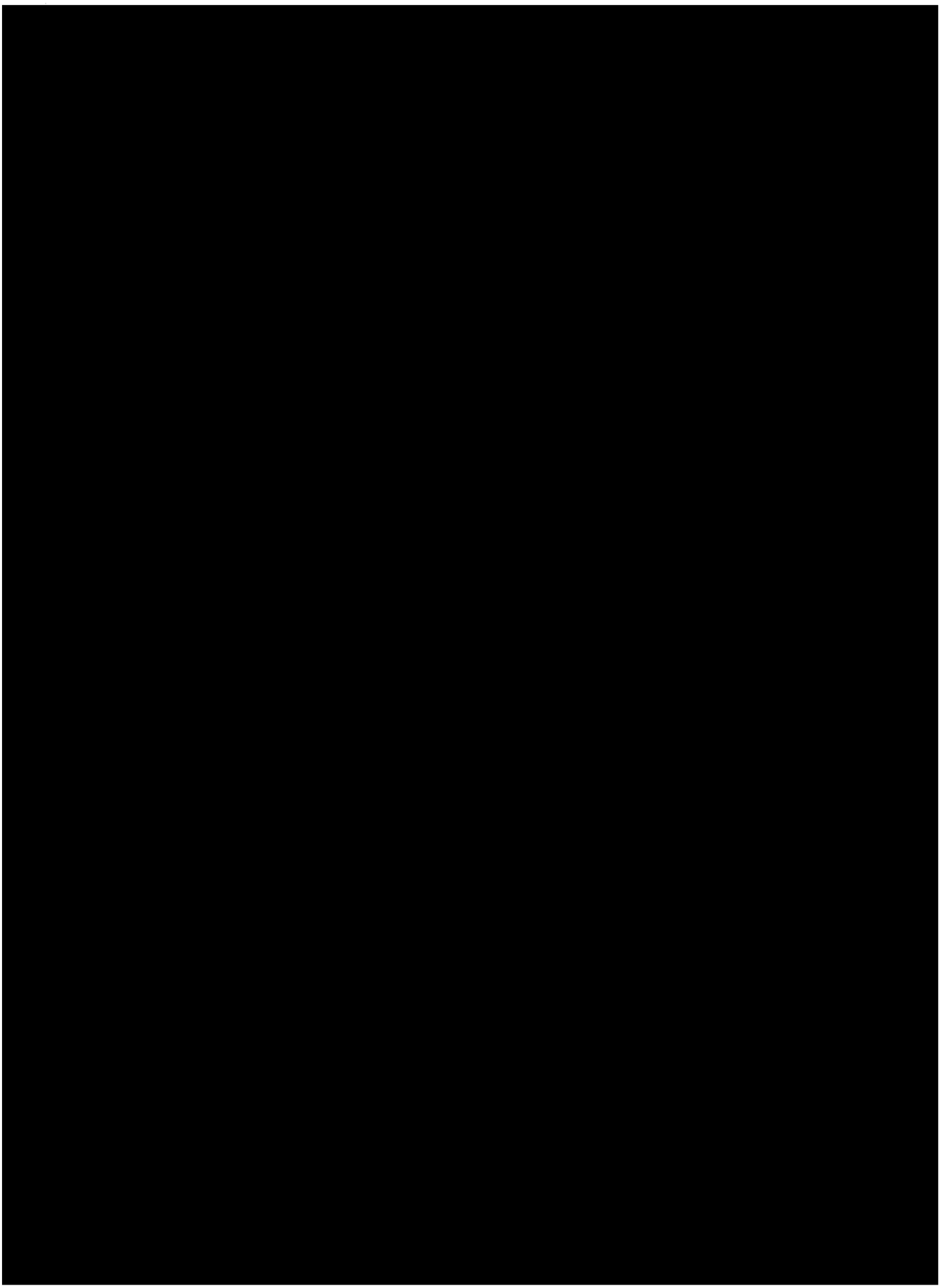
https://www.theguardian.com/australia-news/2019/feb/10/deeper-wider-longer-lawyer-x-inquiry-reveals-corruption-of-justice-system

Deeper, wider, longer: Lawyer X inquiry reveals corruption of justice system

[redacted]

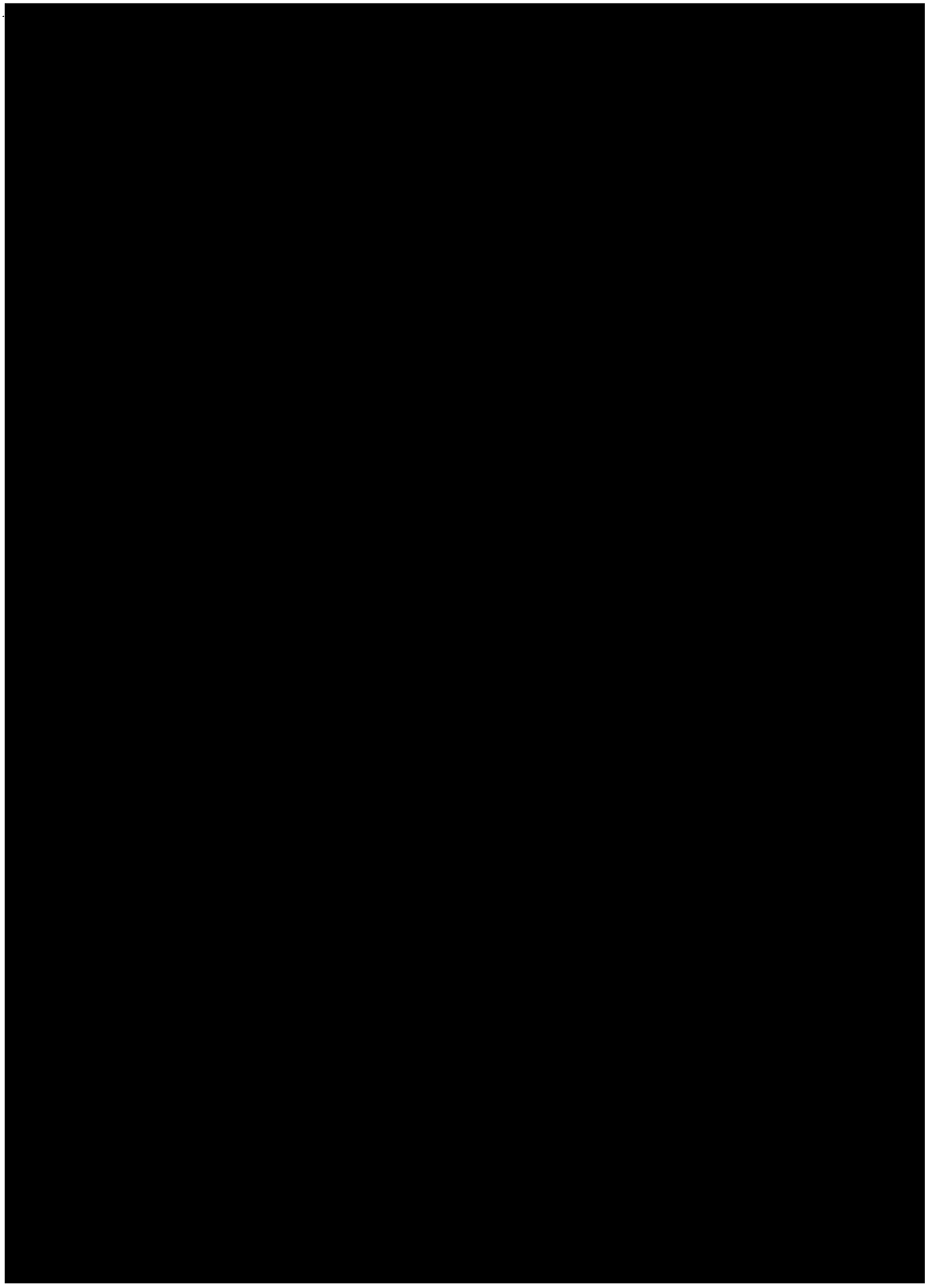


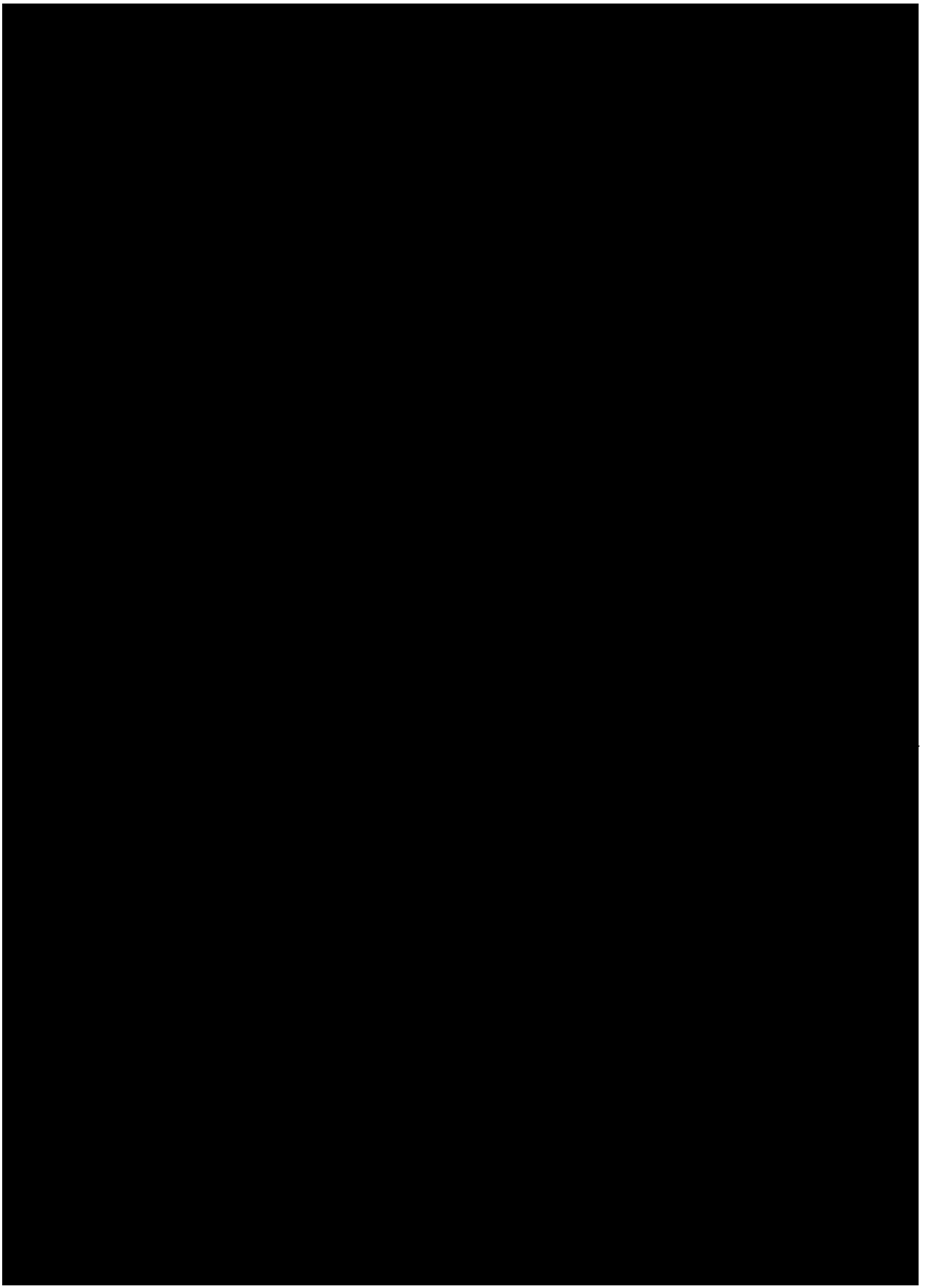
[redacted]

To me lawyer X is merely one deteriorating paver in a street where most pavers are deteriorating and to replace just one or some more isn't going to do it. After all to loosen some pavers may like a house of cards causes the collapse of the road and a gigantic sink hole then appears.
As I over the years have published in my books various incidents with the identity of judicial officers concerned it is not something I need to fabricate as the judicial officers and lawyers concern so far never even attempted to litigate against me for publishing the accounts.

This submission is extensive to some degree as to make clear that even if Lawyer X was to be charged, convicted and perhaps imprisoned it still wouldn't solve the cancerous growth within the legal system. It doesn't mean she should not be held legally accountable but that unless and until the entire legal processes and so the administration of justice is held subject to a proper investigation all this Royal Commission may appear to do in view of ordinary citizens is to do another cover up by shielding other culprits.

[redacted]





[redacted]

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Albeit I never read the order of any court regarding prohibiting publication of the identity of Lawyer X, if there is any, to prohibit the identification of Informer 3838 also known as Lawyer X I view that the courts are bound to provide judgments which are in principle to serve the general community. Any prohibition which is to prevent identification of a particular person but in the process places in jeopardy innocent persons, in this case lawyers I view is contrary to the public interest where the particular person can change the identity at will to prevent knowledge as to her whereabouts.

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[redacted]

In my view to have allegedly a court order to prevent the identification of lawyer X but then placing in jeopardy the credibility of other barristers is not at all to the credibility of the courts. In my view any ban should be deemed unconstitutional and invalid as it denies a proper identification of the person who was Lawyer X. Indeed, there may be some or many citizens who might be able to reveal critical details about this person if they are made aware of the name of Lawyer X. It then is the question iof the courts approved to conceal the identity of lawyer X for no other purpose but to seek to cover up for the involvement and the extent of the involvement of the courts themselves and any politicians.

.

In particular where many a convicted criminal may have been subjected to the unlawful and I view treasonous conduct of any lawyer then the courts must not pursue any method to cover yup matters. There must be a frank and open acknowledgement of the identity of Lawyer X as she was at the times when she I view treasonously acted against her being an Officer of the Court.
No matter what this Royal Commission might pursue and come up with in the end it will always be under a stain that it was nothing more but a tool to hide the offender(s) against the interest of the general community.

With reportedly more lawyers involved having been informers contrary to their duties and obligations as an Officer of the Court then surely it makes no sense to prevent citizens to be aware of the identities of all those lawyers involved.

Surely it is a gross injustice to allow people convicted in such circumstances to be kept in imprisonment for a further time where their conviction is in question.

It in my view is essential for the credibility of any Royal Commission that citizens can make submissions knowing the identity of those informers. Not to reveal the identities of those informers rather I view undermine the credibility of the Royal Commission. As such the court should be petitioned to immediately set aside/withdraw any orders which may in part or in whole prevent publication/naming the identity of any informer to which the Royal Commission is required to investigate.

Hansard *8-3-1898* Constitution Convention Debates (Official Record of the Debates of the National Australasian Convention)
QUOTE
Mr. ISAACS.-We want a people's Constitution, not a lawyers' Constitution.
END QUOTE

HANSARD*18-2-1898* Constitution Convention Debates (Official Record of the Debates of the National Australasian Convention)
QUOTE **Mr. ISAACS.-**
The right of a citizen of this great country, protected by the implied guarantees of its Constitution,
END QUOTE

HANSARD *17-3-1898* Constitution Convention Debates
QUOTE
Mr. BARTON.- Of course it will be argued that this Constitution will have been made by the **Parliament of the United Kingdom.** That will be true in one sense, but not true in effect, **because the provisions of this Constitution, the principles which it embodies, and the details of enactment by which those principles are enforced, will all have been the work of Australians.**
END QUOTE

Hansard *8-3-1898* Constitution Convention Debates
QUOTE
Sir JOHN DOWNER.-Now it is coming out. **The Constitution is made for the people and the states on terms that are just to both.**
END QUOTE

It is clear that the Government of the Day cannot provide any system that some Royal Commission serve the very lawyer at possible harm of innocent lawyers nor that the courts can do so where they must b e and remain to be **IMPARTIAL** administration of justice.

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As the High Court of Australia itself appeared to conclude that lawyer X herself refused any witness protection service e and so placed herself and her children at risk.

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If the courts and the government is going to operate outside the legal principles embedded in the constitution that a constitution is between the State and its people and not between the state and just one person then we have no democratic system at all but a pretended democratic system.

In my view any orders to prohibit the identification of lawyer X is contrary to **PUBLIC INTEREST** and indeed harmful to many honest hardworking decent lawyers.

As I set out below I question the vazlidity of this Royal commission as to matters I have set out.

[redacted]

[redacted]

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For any Chief Commissioner of Police to as I understand it to claim that desperate times justify desperate conduct (including unlawful conduct) in my view shows the extent how perverted the system is. We lack democracy if a person like a Chief Commissioner of Police is willing to justify treasonous and other unlawful conduct to suit his means.

Law enforcement can only exist if the law enforcement authorities and the administration of justice are conducting matters within the framework of the law and not beyond.

As the Framers of the Constitution made clear:

Hansard *1-3-1898* Constitution Convention Debates

QUOTE

> **Mr. HIGGINS.-Suppose the sentry is asleep, or is in the swim with the other power?**
>
> **Mr. GORDON.-There will be more than one sentry. In the case of a federal law, every member of a state Parliament will be a sentry, and, every constituent of a state Parliament will be a sentry. As regards a law passed by a state, every man in the Federal Parliament will be a sentry, and the whole constituency behind the Federal Parliament will be a sentry.**

END QUOTE

It is therefore a **PUBLIC INTEREST** issue when a person, such as I am doing, seek to act as a Sentry to hold those legally accountable who in my view violated constitutional and other legal issues

I am a CONSTITUTIONALIST and (now retired) Professional Advocate spending decades in courtrooms, including assisting/representing lawyers.

[redacted]

[redacted]

It is claimed, albeit I am unaware of the precise terms of any court order about Lawyer X (Informant 3838) as to her true identity. In fact when I was trying to find out who really was the person I did some limited research and then held it likely to be Sarah Garden-Wilson. Just then it then was that my wife explained she still is a practicing lawyer. As such this utter and sheer nonsense not to identify the alleged lawyer means that another lawyer might be wrongly assumed to be the Lawyer X person.

.

We have a federal constitution which was in part build upon the provisions such as the first 14 Amendments of the USA constitution. Regrettably most lawyers/judges/politicians do not grasp this as they either couldn't bother to research the true intentions of the Framers of the Constitution (***Commonwealth of Australia Constitution Act 1900*** (UK)) or simply were unable to understand/comprehend its application. Because the states were created within section 106 of this constitution then any Royal Commission of a State is bound by the legal principles embedded in this constitution.

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And political freedom is one that is clearly enshrined in the constitution as was (finally) also made known by ***Monis v The Queen, Droudis v The Queen***, [2013] HCA 4, *27 February 2013, S172/2012 & S179/2012*

As such as this is a political issue where the Government of the Day via its law enforcement agencies and others wrongly influenced the (**IMPARTIAL**) administration of justice then the suspicion of the true dispense of justice by the courts is and remains in question, this in particular where the courts continue to leave judgements in question on foot.
In my view the courts themselves should immediately set aside all questionable judgments/orders, this even without the need for any person to appeal. If the courts fails to do so than clearly it is not a proper administration of justice at all.

[redacted]

[redacted]

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In my view Chief Commissioner of Police Mr Graham Ashton should stand aside if not resign because I view his statements about why the police used Lawyer X was false and misleading and somehow seems to try to justify the police themselves violating the separation of powers and to place themselves above the rule of law.

The police and other law enforcement authorities should understand that their aim is not and should not to try to score convictions but rather to present all relevant details before a competent court of law and then let the court make the decision of the accused is innocent or guilty.

[redacted]

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Was it Lawyer X who perhaps with the police set up the murder of Carl Williams in view that he was suspecting if not knew she was a police informer against her own clients in violation to her oath as an OFFICER OF THE Court?

Was she the person who gave confidential details to the media to ensure the Herald Sun published details hours before Carl Williams was murdered?

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It appears to me to be clear that the Victorian Police didn't want to stick to the agreement to pay the purported ATO debt of George Williams and so it ensured that the payment was in a holding account and well have Carl Williams murdered and get the monies back might have been a solution.

It appears to me that so to say Lawyer X was as I understand it playing the field sleeping with police, some clients she represented, charging them for representation while using details as a police informer and then the general community is prohibited to know her identity supposing to protect her and her children where she could simply use a different identity. What kind of JUSTICE is this when people unbeknown to her and other treasonous lawyers are hiding behind a screen and so their victims may never know they too were duped?

And lawyer X may have defrauded clients by billing them for consultations/representations where her real motives were against her client(s).

HANSARD *8-2-1898* Constitution Convention Debates

QUOTE

> **Mr. HIGGINS**.-I did not say that it took place under this clause, and the honorable member is quite right in saying that it took place under the next clause; **but I am trying to point out that laws would be valid if they had one motive, while they would be invalid if they had another motive.**

END QUOTE

Likewise I hold that if a lawyer attends to a client for ulterior purposes then strictly in the interest of the client then the lawyer cannot charge the client for this and to do so I view constitutes fraud.

Sorell v Smith (1925) Lord Dunedin in the House of Lords

QUOTE

> In an action against a set person in combination, a conspiracy to injure, followed by actual injury, will give good cause for action, and motive or instant where the act itself is not illegal is of the essence of the conspiracy."

END QUOTE

Hence, where a lawyer contrary to being an Officer of the Court acts as an informer against her clients interest then I view this is in essence a conspiracy.

Hansard *22-4-1897* Constitution Convention Debates

QUOTE

> **Mr. BARTON:** At first I thought it would be necessary to have some provision of this sort, but now I think it is unnecessary. In the clause it is prescribed that [start page 1183] an elector "shall have only one vote"; as to the Senate and as to the House of Representatives I intend to move, on the recommittal of the clause, that the matter shall be turned into a direct prohibition; that is, that "no elector shall vote more than once." A breach will be a Statutory misdemeanor, and the offender can be punished, this being an Imperial Statute, in the same way as he would be for a breach of any other Imperial Statute applying to the colonies, such as the merchant shipping laws. Lest there should be any doubt in connection with the giving of a vote, when there is a distinct law against it, there is a passage in Russell on "Crimes," which the legal members of the Convention will be satisfied with. It is in the fifth edition, page 192:
>
> **Where an offence is not so at common law, but made an offence by Act of Parliament, an indictment will lie where there is a substantive prohibitory clause in such Statute, though there be afterward a particular provision and a particular remedy given. Thus, an unqualified person may be indicted for acting as an attorney contrary to the 6 and 7 Vict., c. 73, a. 2, although sec. 35 and sec. 36 enact that in case any person shall so act he shall be incapable of recovering his fees, and such offence shall be deemed a contempt of court, and punishable accordingly.**
>
> That is to say, although the Statute provides a distinct means of punishment, yet if by the disregard of the prohibition a misdemeanor is committed, a court can convict the offender of that misdemeanor and may fine or imprison him. The passage continues:
>
> **And it is stated as an established principle that when a new offence is created by an Act of Parliament and a penalty is annexed to it by a separate and substantive clause, it is not necessary for the prosecutor to sue for the penalty, but he may proceed on the prior clause on the ground of its being a misdemeanor; and wherever a Statute forbids the doing of a thing, the doing of it wilfully, although without any corrupt motive, is indictable.**
>
> Wherever the Statute, as I intend to ask the House to make it in this case, says that no elector shall vote more than once, there is a distinct prohibition, and voting more than once wilfully will be a crime and misdemeanor, and the courts will be able to punish by fine or imprisonment. They will have the distinct power. There is in all of these colonies an electoral law, and power to alter it, until Parliament otherwise

provides, and if there are not distinct provisions for punishment for such offences, it is still in the power of the State law to subject the offenders to such punishment as it prescribes. But even if that were not done, the case is distinctly met by the Statutory prohibition, which will be imposed by the form in which we propose to put it, and, I think, my hon. friend will agree that his new clause will not be necessary.

Mr. ISAACS: I suppose you propose to put in words to make it a misdemeanor.

Mr. BARTON: If necessary; but where the statute expressly forbids it is a misdemeanor without further words.

Dr. QUICK: Without any corrupt motive is it indictable?

Mr. BARTON: Although there may be no corruption in the doing of the act, if it is done intentionally it is indictable.

Mr. HIGGINS: What words do you propose to put in?

Mr. BARTON: I propose to alter the words "each elector shall have only one vote" to "no elector shall vote more than once," and that being a distinct statutory prohibition will meet the case.

END QUOTE

https://insidestory.org.au/dont-mention-the-law/

Don't mention the law

QUOTE

If judges don't have a clear idea of how police should behave, where does that leave everyone else?

END QUOTE

https://insidestory.org.au/dont-mention-the-law/

Don't mention the law

QUOTE

The courts' rulings sometimes vary. Late in 2011, the High Court stopped the prosecution of the Solomon Islands attorney-general for alleged child sex offences because Australian officials connived in his illegal deportation. A few weeks earlier, Victoria's Court of Appeal permitted the state's trial judges to toss out evidence because of Victoria Police's widespread practice of obtaining search warrants without actually swearing (that is, orally declaring) the truth of the affidavits they presented to magistrates. But when Tony Mokbel responded by seeking to withdraw his guilty pleas to drug offences because the evidence against him was founded on illegal warrants obtained by anti-drug and anti-gangland taskforce officers, Victoria's parliament hurriedly stepped in. Within hours of a Supreme Court ruling on Mokbel's application — which justice Simon Whelan said that he would have rejected anyway — parliament rushed through retrospective legislation validating over a decade's worth of invalid search warrants.

Attorney-general Robert Clark said parliament wasn't excusing the police's failings, only remedying all their "grave" consequences. Victoria Police could scarcely have missed the lesson: the courts or, failing them, parliament could be counted on to make good any and all of their mistakes and misdeeds on the way to ending the gangland war. It was during this period that Victoria Police first acknowledged that its handling of Lawyer X may have been an error.

END QUOTE

In my view laws are only valid if they are within constitutional provisions and not in violation of it and the moment any person formally object to the application of any legal provision it is not

for the court to provide lip service to the legislation in challenge but to appropriately establish if such legal provision under challenge is within constitutional limitations and not in violation of it. A clear example is the compulsory voting which after a 5 year litigation I successfully defeated, yet despite this judges are ordinary nevertheless enforcing compulsory voting. This may underline how extensive throughout the Commonwealth those exercising their powers in the seat of justice are ruling on their misconceptions without having any true understanding and comprehension about the relevant constitutional provisions.

In my view if the police used information obtained from an informer in violation to his/her obligations toward the accused then the police should have disclosed this to the court and failing to do so the police themselves must be deemed to have concealed relevant details from the court. It is therefore clear that the police and other laws enforcement authorities are manipulating the legal processes not to pursue justice but to perhaps advance their own future positions.

.

https://www.abc.net.au/news/2019-02-07/informer-3838-not-only-lawyer-to-turn-victoria-police-informer/10789844

Lawyers were used as informants last year, prominent gangland barrister claims

QUOTE

> The scandal embroiling the Victorian criminal justice system widened yesterday with revelations the newly formed royal commission into potentially tainted gangland convictions will broaden its scope after police disclosed "further informants who held obligations of confidentiality" — including other lawyers.
>
> The state's Attorney-General, Jill Hennessy, refused to say whether they were still acting lawyers, but the ABC understands a further six lawyers were also police informers.
>
> Ms Garde-Wilson said she had known for a while that informer 3838 — a gangland lawyer, also known as Lawyer X, who covertly informed on her clients — was not the only one.
>
> "We got information about 12 months ago that current lawyers were registered," Ms Garde-Wilson said.
>
> "Given the High Court decision, wouldn't you deregister them as a matter of course?"
>
> In a searing judgement released to the public in December last year, the High Court described the police's use of informer 3838 as "reprehensible conduct" which involved sanctioning "atrocious breaches of the sworn duty of every police officer."
>
> The court also stated it was greatly "hoped that it will never be repeated".
>
> The High Court's criticism came after several investigations into the use of Lawyer X, including the Kellam inquiry, which found negligence of a high order in the management of human source information by Victoria Police.
>
> The Independent Broad-based Anti-Corruption Commission (IBAC) investigation was led by former Supreme Court judge Murray Kellam and noted Victoria Police failings when it came to the use of human sources had the potential to have adversely affected the administration of justice in Victoria.
>
> Victoria Police Chief Commissioner Graham Ashton has previously used Melbourne's gangland wars to justify the use of informer 3838, saying "desperate times called for desperate measures".
>
> However, the use of lawyers as human sources now appears to have been occurring for two decades, after it was also revealed informer 3838 had been on the books since 1995, a decade earlier than first disclosed by police.
>
> The number of criminal convictions that could be tainted is set to balloon as a result.
>
> "This is the worst legal scandal in Australian history," Ms Garde-Wilson said.

"Hundreds of cases could have been compromised."

END QUOTE

While I understood from comments of Mr Graham Ashton Chief commissioner of police that the conduct to use lawyers as informers against their own clients was stopped years ago, this appears to be an elaborate lie if Sarah Garden-Wilson is telling the truth.
In my view our political rights are to know the truth.

https://www.theage.com.au/national/victoria/the-revelation-that-has-made-certain-melbourne-lawyers-very-nervous-20190206-p50w3u.html

The revelation that has made certain Melbourne lawyers very nervous

By John Silvester
February 6, 2019 — 7.24pm

QUOTE

> The experienced detective was surprised when a barrister rang out of the blue to say a judge wanted to meet him for an off-the-record chat.
>
> The judge and the cop had known each other for some time as they rose to prominence in their respective professions, but this meeting was not about reminiscing about the old days. The judge wanted to pass on a tip about an unsolved crime.
>
> On Wednesday, the royal commission into police use of a lawyer as an informer known as 3838 was hit by two bombshells that exploded simultaneously. One was that she was first registered as a police informer in 1995, not 2005 as initially claimed, and the second was that an undisclosed number of lawyers had acted as informers.
>
> This led to commissioner Mal Hyde resigning on Wednesday due to a perceived conflict of interest because he was part of Victoria Police command in 1995 - although he had no dealings or knowledge of 3838. It is also likely to blow out the December deadline set for the commission's final report.
>
> It is now entirely possible the commission will end up examining the ethics and practices of both police and lawyers and it also explains why the use of information from 3838 wasn't seen by detectives as breaking a perceived immovable line.

END QUOTE

I for one do not have an issue with a judge to report what the judge perceive to have been a criminal offence where this was obtained as a citizen or having been stated in open court under evidence. In my view while a judge is an Officer of the Court he doesn't have the same confidentiality applicable as there is between a lawyer and a client. Hence a judge becoming aware of a criminal offence having been committed, even if it relates to an unsolved criminal case is well entitled and indeed obligated to report the details he/she became aware of. If the judge however knowingly concealed information for a long time and merely reports matters for ulterior purposes then I view the conduct is to some extend unlawful and may amount to a conspiracy.

:

To use a hypothetical incident;

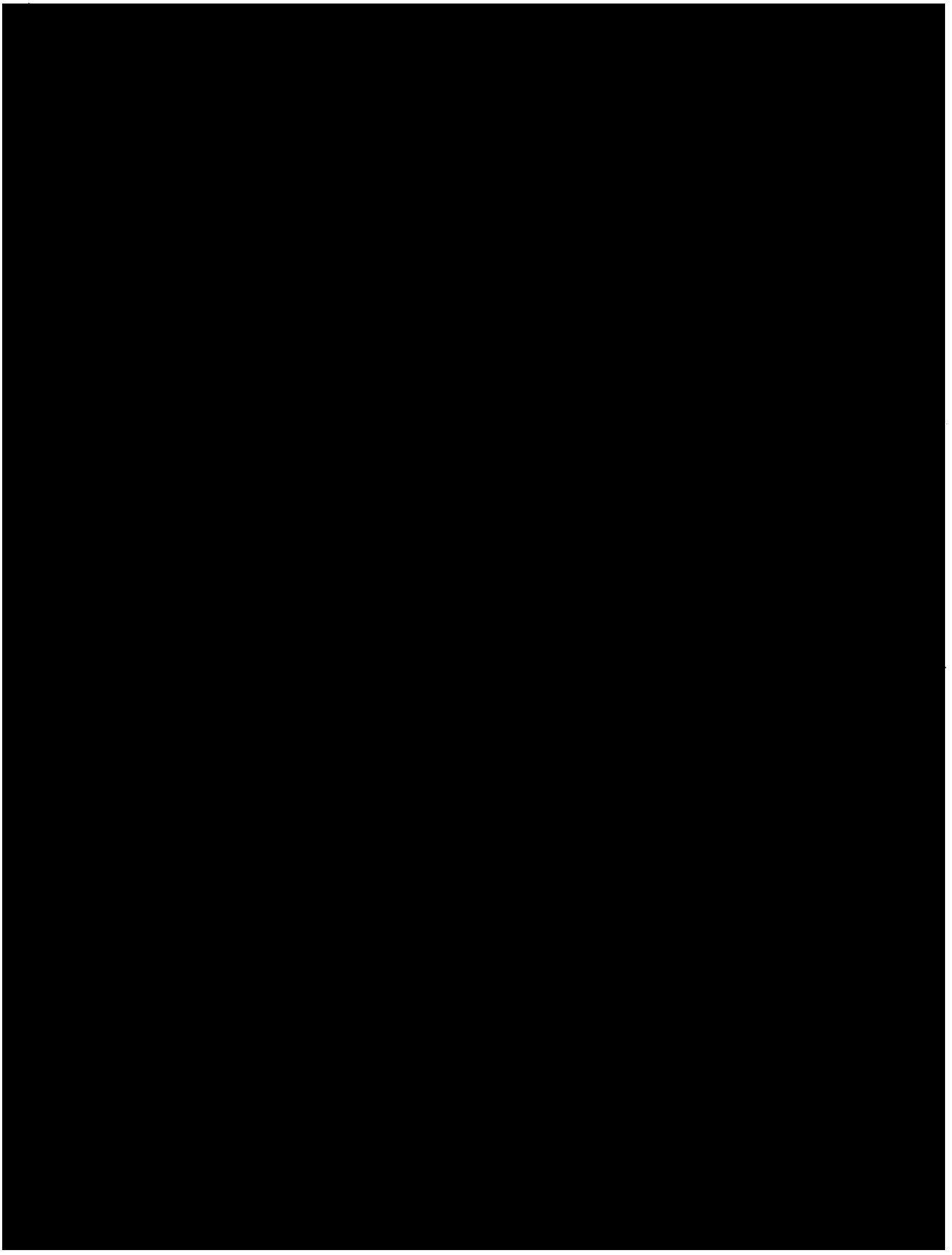
> A police officer is standing on the footpath talking to a person when he notice that there is a motorist unlawfully parking. He tells the person to whom he is in conversation: You see this motorist, he last week defeated me in court and I will now pay him back to charge him for illegal parking. It is clear that the police officer is not pursuing the motorist purely for violation of road regulations/laws but to do a pay back and so misuses his powers for purposes not acceptable. Hence, the police officer MOTIVE is unlawful.

Likewise if the police pursues criminal charges by employing a person being it an Officer of the Court or otherwise to violate the person's duties and obligations to score or seek to score a

conviction then I view the conviction cannot stand and must be set aside as well as the person doing so and the official (police or otherwise) should be charged accordingly. The conviction would be the product of a conspiracy and unlawful conduct and no fair minded person could accept such a conviction to remain standing. If this means to release prisoners who were convicted as such then so be it. One can only blame those who were involved in the scams.

.

[redacted]



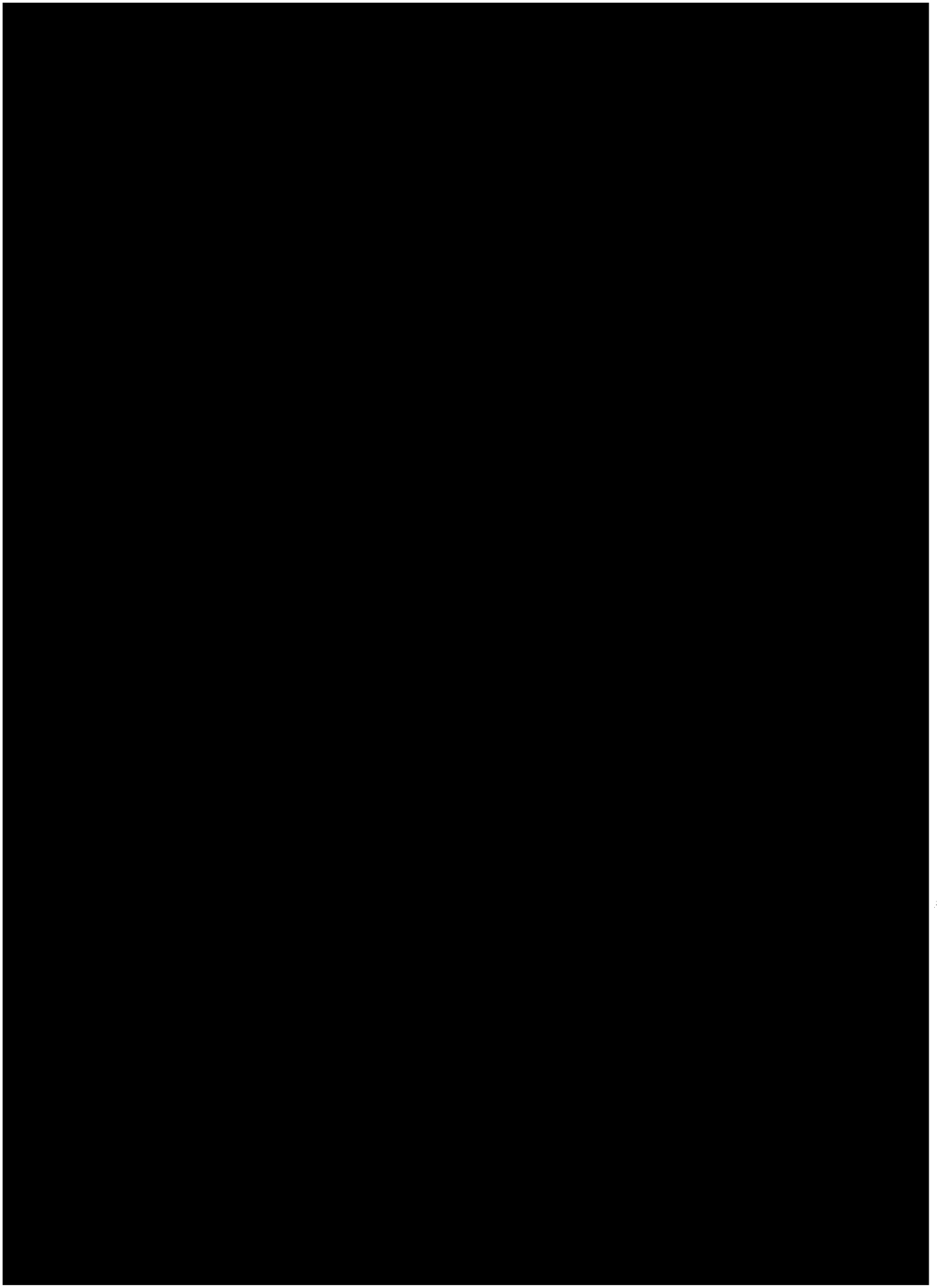
INSPECTOR-RIKATI® about the BLACK HOLE in the CONSTITUTION-DVD
A 1st edition limited special numbered book on Data DVD ISBN 978-0-9803712-6-0

[redacted]

In my view every person, including any commissioner in a Royal Commission and any lawyer (that is if they are actually validly legal practitioners) should without hesitation direct that those police officers/lawyers/judges who placed the administration of justice in disrepute by their unlawful conduct to undermine the rights of accused persons should be charged accordingly without undue delay. **The administration of justice is no more unless and until if ever at all wed simply rebuild the entire administration of justice and never again a court so to say closes its eyes to violations of rules and legislation by prosecutors and others.**

.

[redacted]



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Hansard *1-2-1898* Constitution Convention Debates (Official Record of the Debates of the National Australasian Convention),
QUOTE **Mr. OCONNER** (New South Wales).-

> Because, as has been said before, it is [start page 357] necessary not only that the administration of justice should be pure and above suspicion, but that it should be beyond the possibility of suspicion;

END QUOTE

It means that any court order that denies to acknowledge the true identity of the lawyer and/or lawyers involved is unconstitutional as it denies any citizen who might have been affected by the treasonous conduct of such lawyers to be aware if he/she was/is affected by this treasonous conduct.
In my view this Royal Commission itself has its integrity in question where it would fail to acknowledge the identities of any lawyer who were registered or otherwise informers in violation to being an Officer of the Court.

It should be understood that when a citizen seeks legal advice/representation of a lawyer then this citizen is entitled that such communication is in confidence. While no one could hold that a lawyer could participated by silence into a planned criminal action such as murder, as then lawyer-client privileges cannot be deemed to be maintained, it is another matter where a client details any past events.

.

Re Wakim; Ex parte McNally; Re Wakim; Ex parte Darvall; Re Brown; Ex parte Amann; Spi [1999] HCA 27 (17 June 1999)
QUOTE

> *For constitutional purposes, they are a nullity.* ***No doctrine of res judicata or issue estoppel can prevail against the Constitution. Mr Gould*** *is entitled to disregard the orders made in Gould v Brown.* ***No doubt, as Latham CJ said of invalid legislation, "he will feel safer if he has a decision of a court in his favour". That is because those relying on the earlier decision may seek to enforce it against Mr Gould.***

END QUOTE

It is clear that the High Court of Australia itself acknowledged that a citizen can act in violation to any court order which was/is unconstitutional.

.

We have and let us not ignore this issue, many persons in prison who may have upon legal advice of their lawyers pleaded GUILTY where the lawyer did made such recommendations to the client because the lawyer may have had some deal with police or other government authorities.

No **FAIR MINDED PERSON** could possibly sanction this kind of conviction of a person.

In my view each and every court conviction involving any lawyer who was also an informer in violation of being an Officer of the Court must be set aside, even if it was a conviction by a jury, this because we may never know if the lawyer concerned had failed to do a proper cross-examination or failed to make proper recommendations or objections as to ensure a client was convicted.

.

It should be clear that any lawyer who in violation of his/her oath as an Officer of the Court became an informer then should be publicly named so that every citizen can then check if such a lawyer was in/is involved in certain litigation.

If such a lawyer refuses any witness protection program then this in my view cannot override the rights of the victims/possible victims. They are entitled to know the names of the lawyers involved.

.

It is much like the crazy system that pedophiles may not be named where it could identify the victims. However those who raped strangers might be named. This means that the so called public listing of offenders will be limited to those who say raped adults and not children. It simply doesn't make sense to me. As such any public register must be deemed inappropriate as it would only deal with a selected criminal and not necessarily with those who are real threats to children as those in favour of a public register are seeking to claim.

We now have a Royal Commission asking for submissions but failing to disclose the identity of the lawyer(s) concerned to whom the Royal Commission seeks submissions. To me this undermines the integrity of the Royal Commission. Let those treasonous lawyers change their identity if they wish to do so but they should be publicly named as JUSTICE demand that any possibly victim is entitled to pursue justice.

.

Our legal system provides for appeals but that is limited in numerous ways, for example if you are a person of limited financial resources then you may not have the finances to fund any appeal. And if you burden, if this is possible, to get a loan to engage a lawyer who then unbeknown to the appellant is a treasonous lawyer who is acting against the appellant interest to undermine the appeal then JUSTICE DOESN'T EXIST.

IT MUST BE CLEAR THAT MANY WHO HAD A FAILED APPEAL IN THE PAST BEING REPRESENTED BY A LAWYER WHO WAS A POLICE INFORMER MAY LIKELY HAVE LOST THEIR APPEALS BECAUSE THE LAWYER MAY HAVE ACTED IN REALITY CONTRARY TO THE CLIENTS INTEREST.

.

As such any appeals that were dismissed or partly dismissed now also are in question.

.

Unless we can ensure that **JUSTICE ALWAYS WILL PREVAIL** we lack an **IMPARTIAL** administration of justice!

It appears from media reports that Carl Williams himself made complaints. What happened to those complaints and his subpoenas?

As the media reported that he found that there was no proper investigations in his complaints, such as the legal Service commission and again this very much underlines what I have written about in the past that it seeks to protects its own rather than enforce the Rule of law.

.

One has to question why was any lawyer being an police informer in violation of being a Officer of the Court not subjected to having to explain/to show cause why their position as an Officer of the Court should not be terminated?

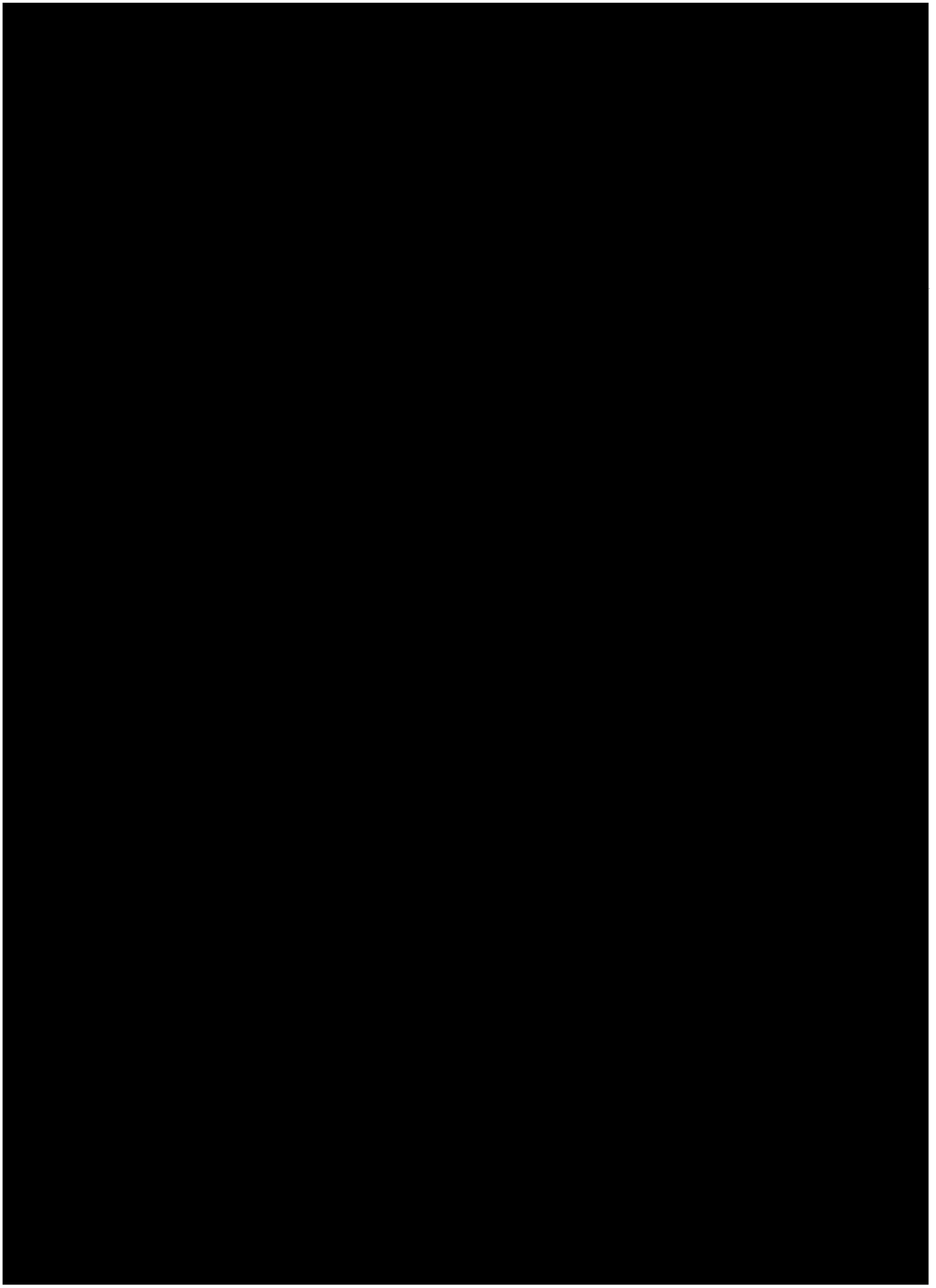
.

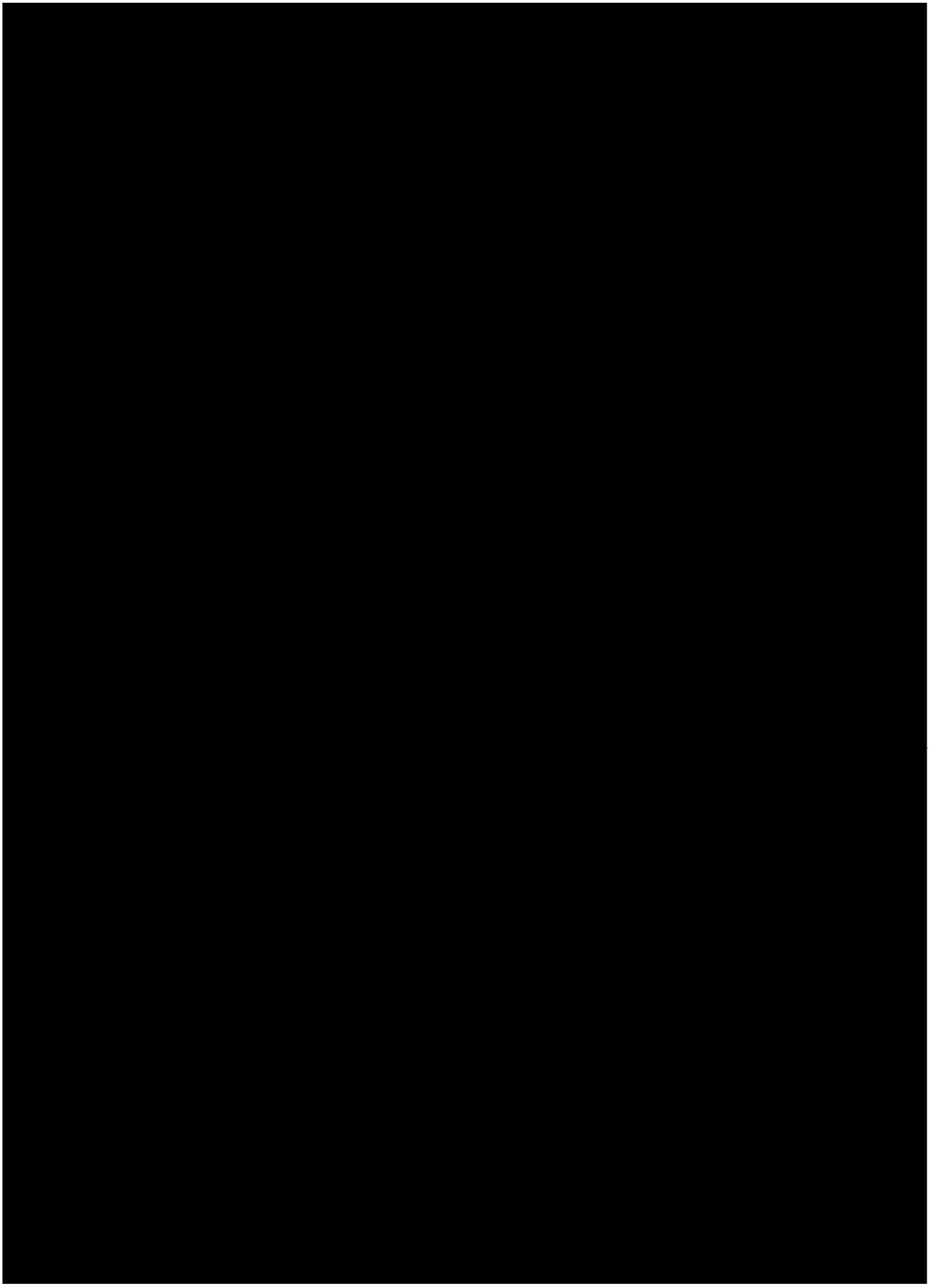
.

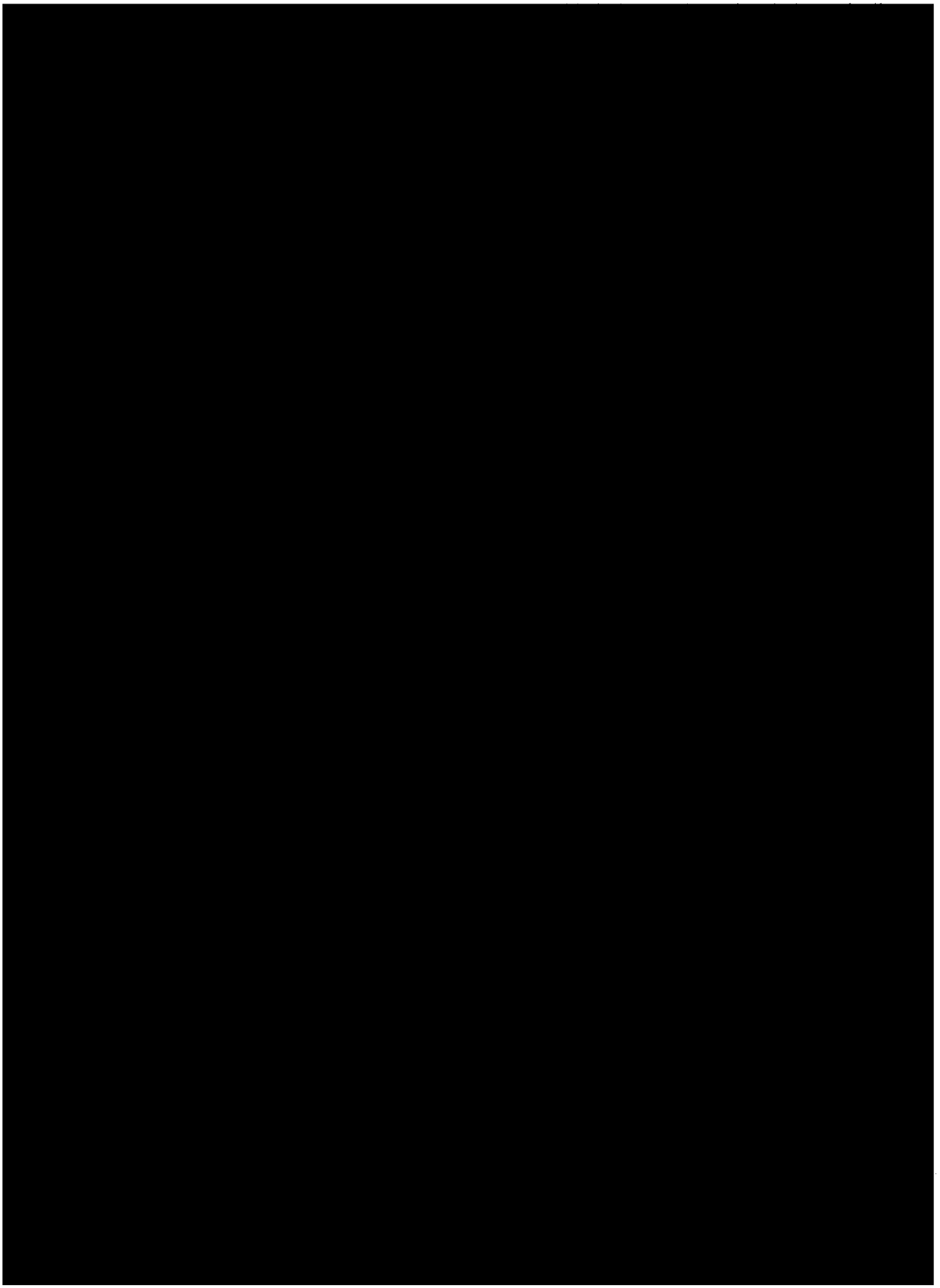
Again, this is very relevant to this Royal Commission in view that many persons wrongly convicted by involvement of their lawyers as informers in violation to them being Officers of the Court could be wrongly denied to sue for damages.

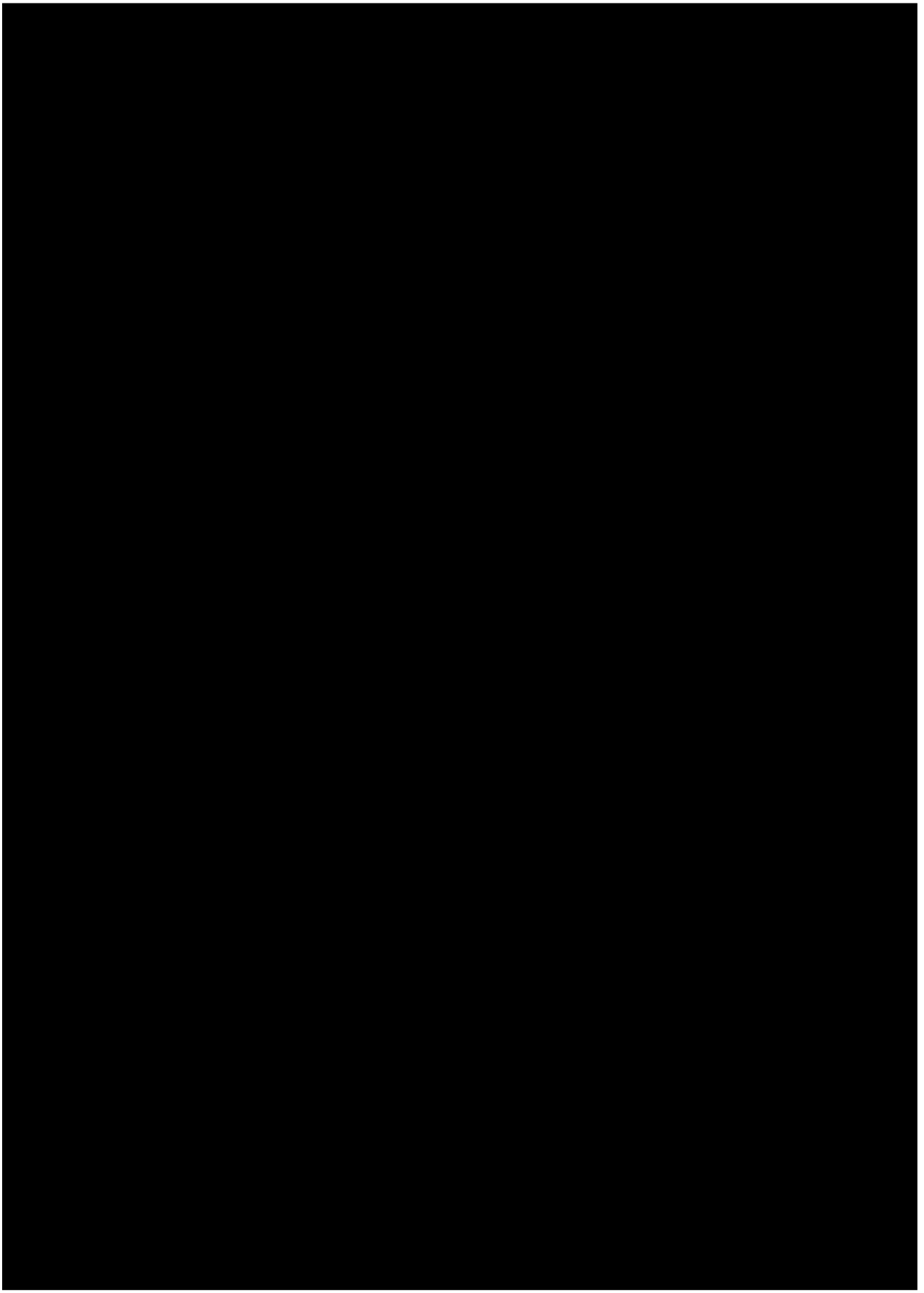
.

I shall clarify that there is absolutely nothing wrong with an Officer of the Court being a witness to a crime, even if the offender is his/her client to give evidence in regard of this event., albeit where this were to cause a conflict of interest then the Officer of the Court should terminate representation for this client.









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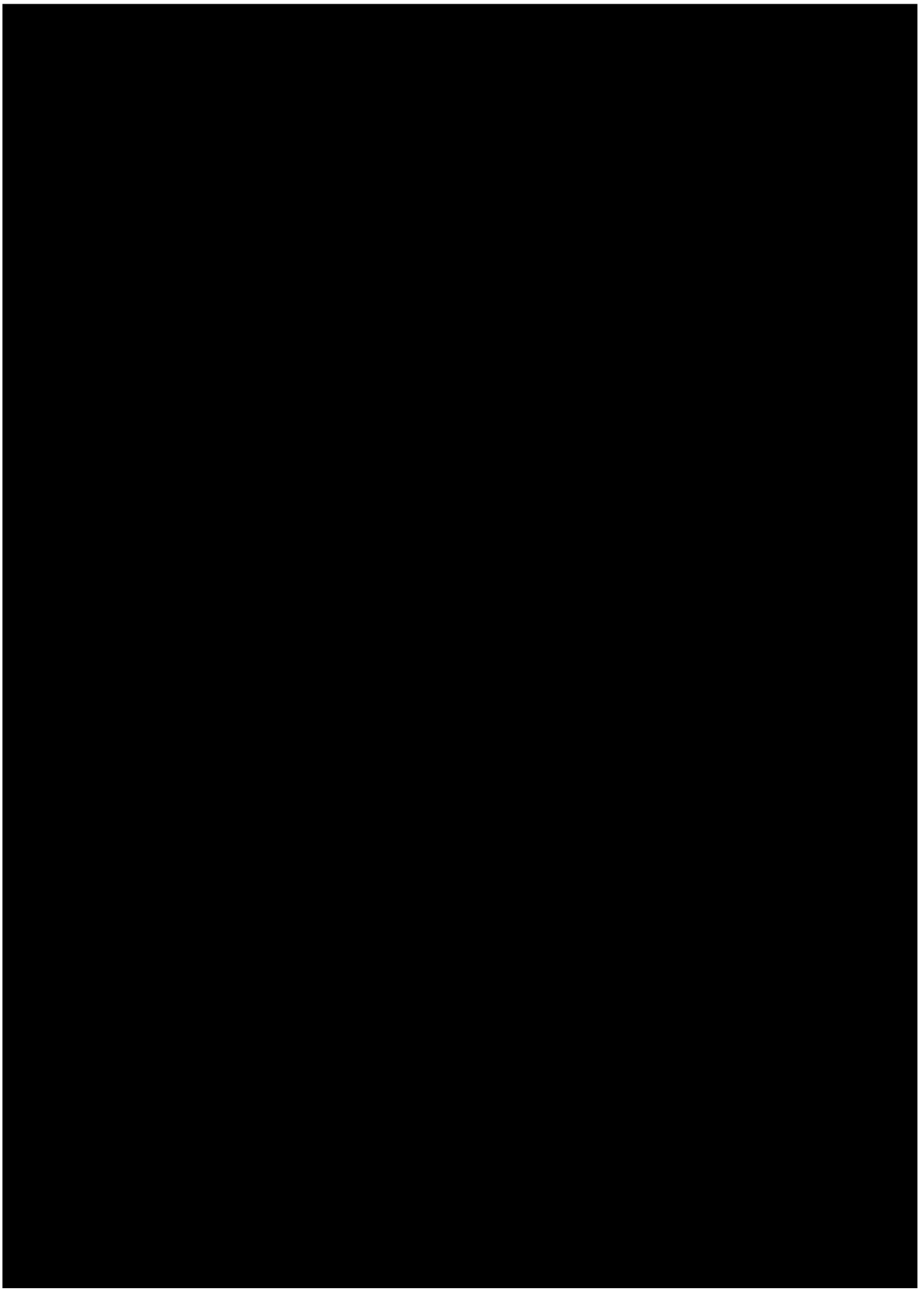

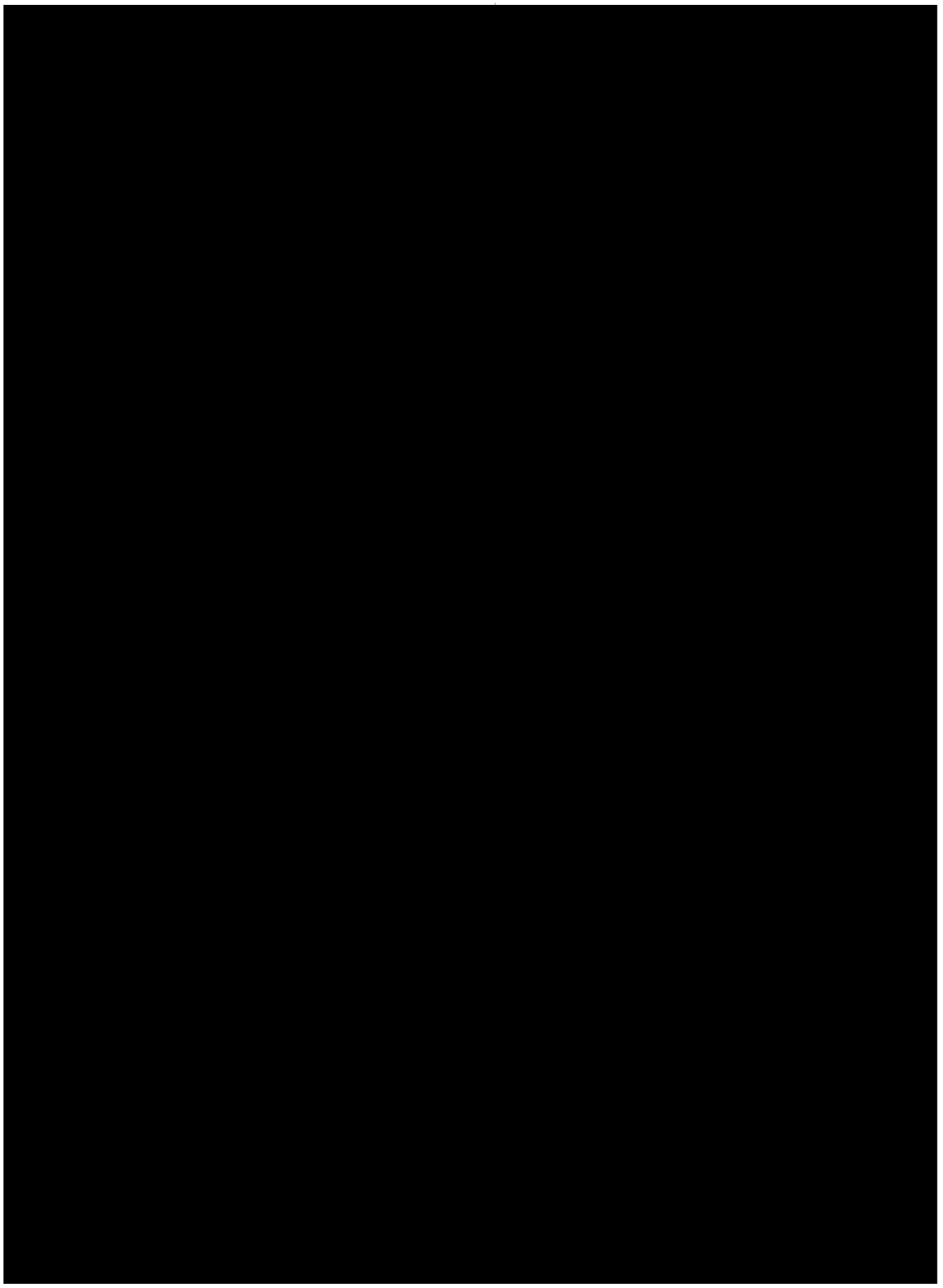

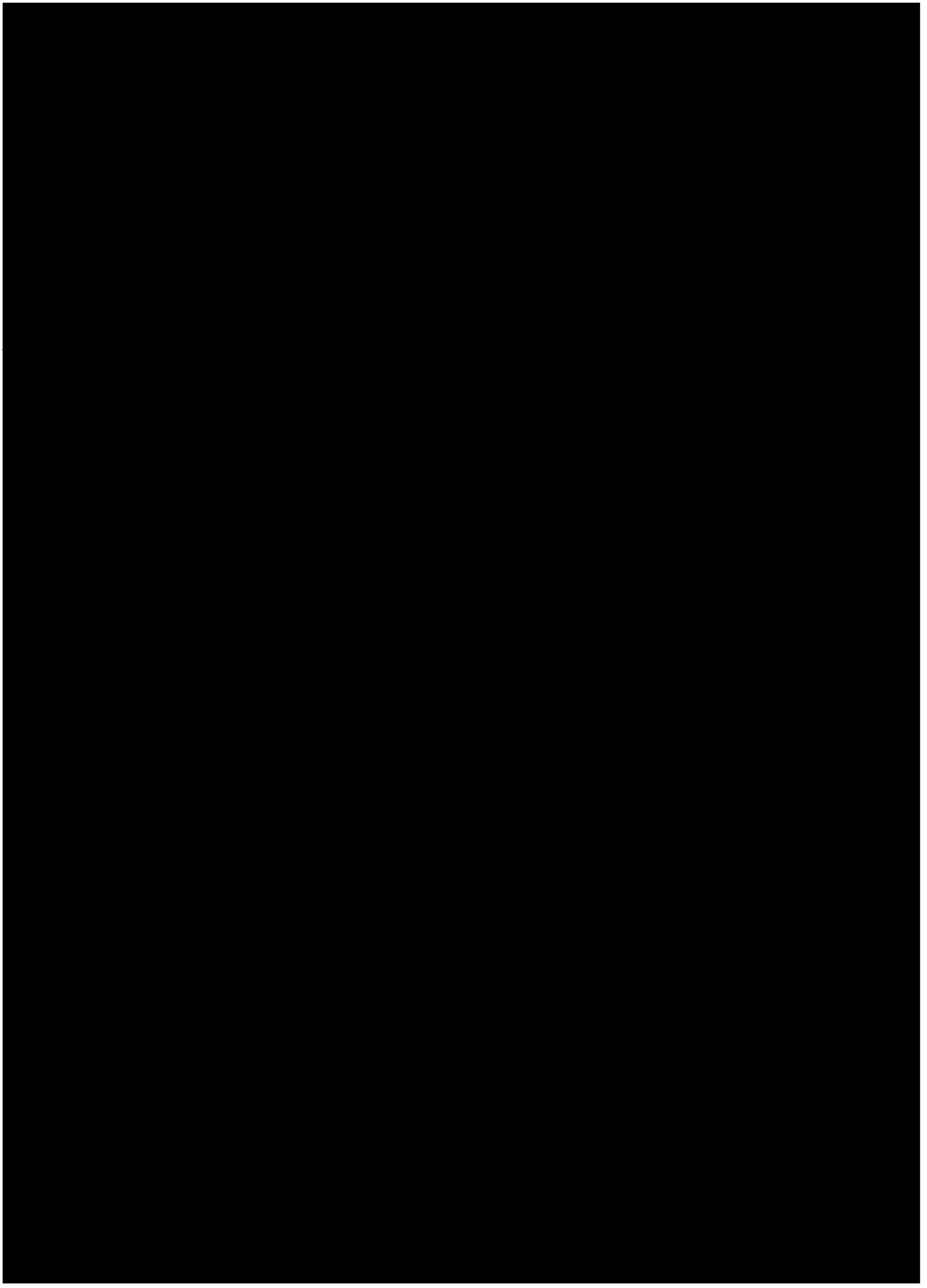

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The function of litigation is:

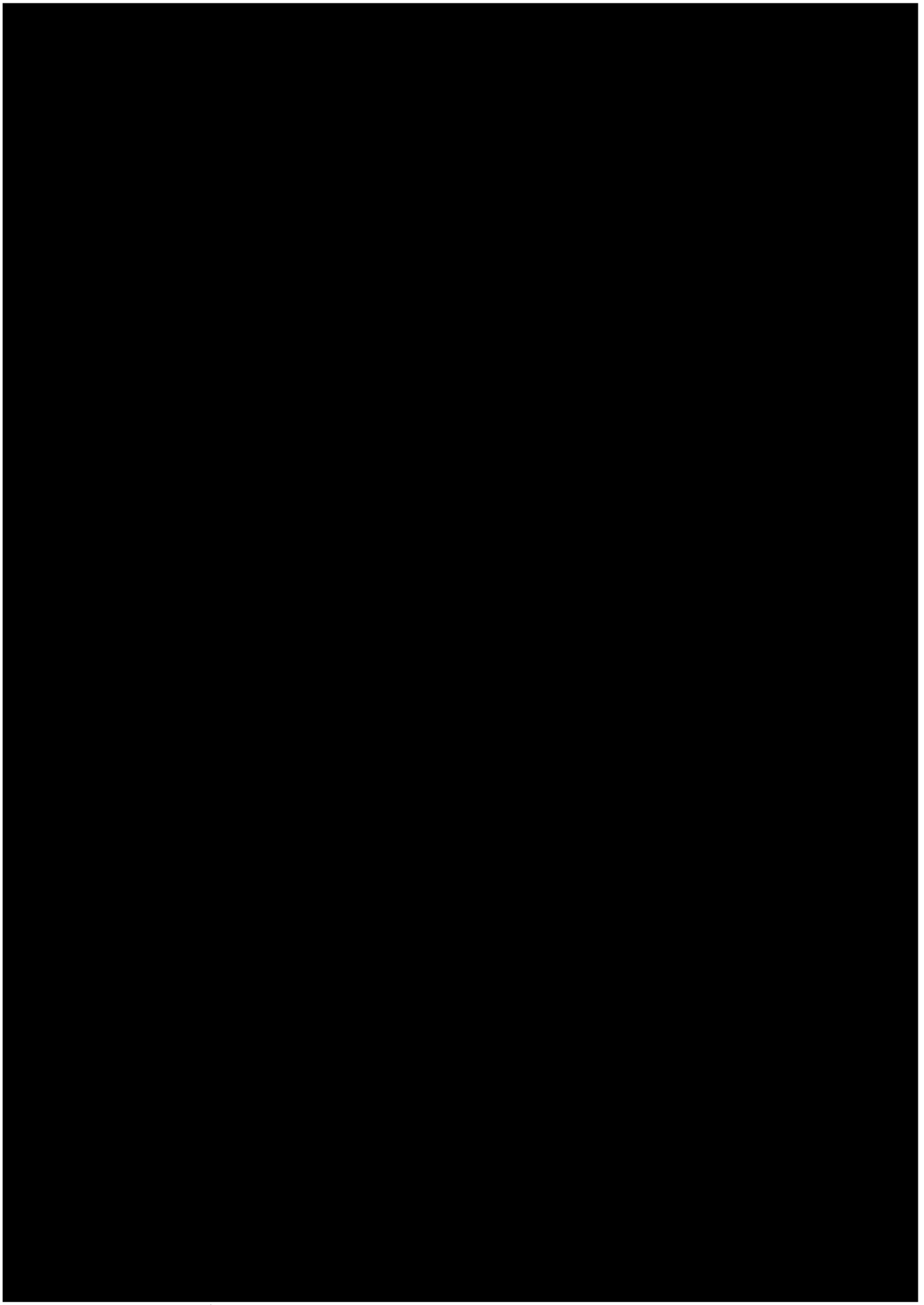
> **The Prosecutor is not there to pursue a conviction but to present all relevant details before the Court**
>
> **The Court is not there to convict an accused but to hand down a decision showing a proper consideration of all relevant matters which may or may not include a conviction.**

I understand that Chief Commissioner of Police Mr Graham Ashton sought to excuse the use of Lawyer X (albeit it turns out she was an informer since about 1995 and not since 2005 as was claimed) to putt in in my own words that desperate times requires desperate solutions. Well I do not buy this. If we have a purported law enforcement that is willing to act unlawfully indeed treasonous to the legal principles embedded in the constitution as well as in the relevant letters Patent then we have no law enforcement at all. Wed merely have people using and misusing their positions to likely advance their own careers and future disregarding what JUSTICE is about.

.

https://www.abc.net.au/news/2019-02-05/silk-miller-murders-ibac-hearing-told-statement-was-backdated/10782146

[redacted]



[redacted]

A point of issue was the ***Moti*** case. The Victorian Police claimed that because of the ***Moti*** case it could no longer abide by the agreement with police informer Carl Williams.
As soon as I came across the correspondence of the Moti case I immediately checked what the case was about and discovered that it was not at all what the Victorian Ethical Standards Department had made it out to be.

The files (not even all) I like to provide to the Royal Commission is about 350MB (which also include copies of my writings to the various persons) and hence I view it would be better to provide this on CD.

It should be understood that I did the investigation without any financial arrangements being made between me and Roberta Williams.

I heard about the Williams over the years but never had any personal contact with any of them until about the middle of 2017 when requested to investigate matters.
.
I understand that Lawyer X made a gross error of judgment as to have a correspondence published by the media in which she refers to IVF and also to the termination of her career as a lawyer. It is in my view then very easy to establish who at the time the particular barrister was.

As the media reported "Carl Williams first to suspect his lawyer was an informer".
Roberta Williams also was recently quoted in the media that Lawyer X (informer 3838) also known as EF had made known to Carl Williams to move away as he could be imprisoned.

This means that Lawyer X was involved before Carl Williams ended up in prison.
.
Hypothetically then Carl Williams suspecting Lawyer X was betraying him to Paul Dale and to others including to the Victorian Police and others became a liability to Lawyer X. With as I understand it having a cell mate as a client Lawyer X in my view may have been instrumental to the leaking of information to the media also as to set up a possible killing. Obviously the police officer who delivered the CD with the statements to the prison as I understand it concealing this from the Victorian Ombudsman investigation may have been also instrumental to this. I understand he had also other connections with prisoners held in the same prison.
The Victorian Police may have learned from lawyer X that her client Carl Williams had no further information that could be use ful (after all she may have obtained information from Carl Williams and conveyed this herself to the Victorian Police, and hence the Victorian Police Ethical Standards Department saw the ***Moti*** issue as a way to renege on the deal they had made with Carl by twisting the true meaning of this Moti case to suit itself.

One has to question why the lawyers didn't bother to check the case themselves as I did!
.
Obviously where Lawyer X was a police informer against her own client, then I view this was **TO PERVERT THE COURSE OF JUSTICE**.

In my experiences over the decades I found it not uncommon for lawyers so to say sell out their clients. As some lawyers made clear they cannot speak up because then they may not get the needed referrals of Legal Aid clients.
.

.

https://www.reddit.com/r/auslaw/comments/a2ijnq/ab_a_pseudonym_v_cd_a_pseudonym_secret_squirrel/

AB (a pseudonym) v CD (a pseudonym) - Secret squirrel case has finally been published. (eresources.hcourt.gov.au)

QUOTE

MOD ANNOUNCEMENT

Anyone speculating as to the name of EF will have their post removed and will get a time out.

I don't care if you're clever enough to work it out on your own, doxxing is against Reddit's rules, and I'm not about to let this sub become a story on news.com.au because someone decided to demonstrate how clever they were - or worse, named the wrong person.

Regardless of the practical efficacy of the pseudonym given to EF by the Courts, the fact of the matter is that the name has been suppressed. For those who are members of the profession, you would do well to remember your duty to the Court.

This is your first and only warning

A bunch of consequential judgments will flow from this - stay tuned!

Edit: Judgment below has now been published: https://austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2017/350.html

Among the most remarkable opening couple of paragraphs you'll ever read:

> Early in February 2015, the Victorian Independent Broad-based Anti-corruption Commission provided to the Chief Commissioner of Victoria Police ("AB"), and AB in turn provided to the Victorian Director of Public Prosecutions ("CD"), a copy of a report ("the IBAC Report") concerning the way in which Victoria Police had deployed EF, a police informer, in obtaining criminal convictions against Antonios ("Tony") Mokbel and six of his criminal associates ("the Convicted Persons"). The Report concluded among other things that EF, while purporting to act as counsel for the Convicted Persons, provided information to Victoria Police that had the potential to undermine the Convicted Persons' defences to criminal charges of which they were later convicted and that EF also provided information to Victoria Police about other persons for whom EF had acted as counsel and who later made statements against Mokbel and various of the other Convicted Persons. Following a review of the prosecutions of the Convicted Persons, CD concluded that he was under a duty as Director of Public Prosecutions to disclose some of the information from the IBAC Report ("the information") to the Convicted Persons.
>
> In the months which followed, Victoria Police undertook an assessment of the risk to EF if CD were to disclose the information to the Convicted Persons. The conclusion reached was that, if the information were disclosed, the risk of death to EF would become "almost certain". On 10 June 2016, AB instituted proceedings in the Supreme Court of Victoria seeking declarations that the information that CD proposed to disclose and other information in the IBAC Report was subject to public interest immunity and thus that CD is not permitted by law to make the proposed disclosures. On 11 November 2016, EF was added as a plaintiff to the proceeding. On 15 November 2016, EF instituted a separate proceeding in the Supreme Court of Victoria seeking similar relief on the basis of an equitable obligation of confidence.
>
> It gets more brutal:
>
> EF's actions in purporting to act as counsel for the Convicted Persons while covertly informing against them were fundamental and appalling breaches of EF's obligations as counsel to her clients and of EF's duties to the court. Likewise, Victoria Police were guilty of reprehensible conduct in knowingly encouraging EF to do as she did and were involved in sanctioning atrocious breaches of the sworn duty of every police officer to discharge all duties imposed on them faithfully and according to law without favour or affection, malice or ill-will. As a result, the prosecution of each Convicted Person was corrupted in a manner which debased fundamental premises of the criminal justice system.
>
> ...
>
> If EF chooses to expose herself to consequent risk by declining to enter into the witness protection program, she will be bound by the consequences. If she chooses to expose her children to similar risks, the State is empowered to take action to protect them from harm.

END QUOTE

Again;

QUOTE

> EF's actions in purporting to act as counsel for the Convicted Persons while covertly informing against them were fundamental and appalling breaches of EF's obligations as counsel to her clients and of EF's duties to the court.

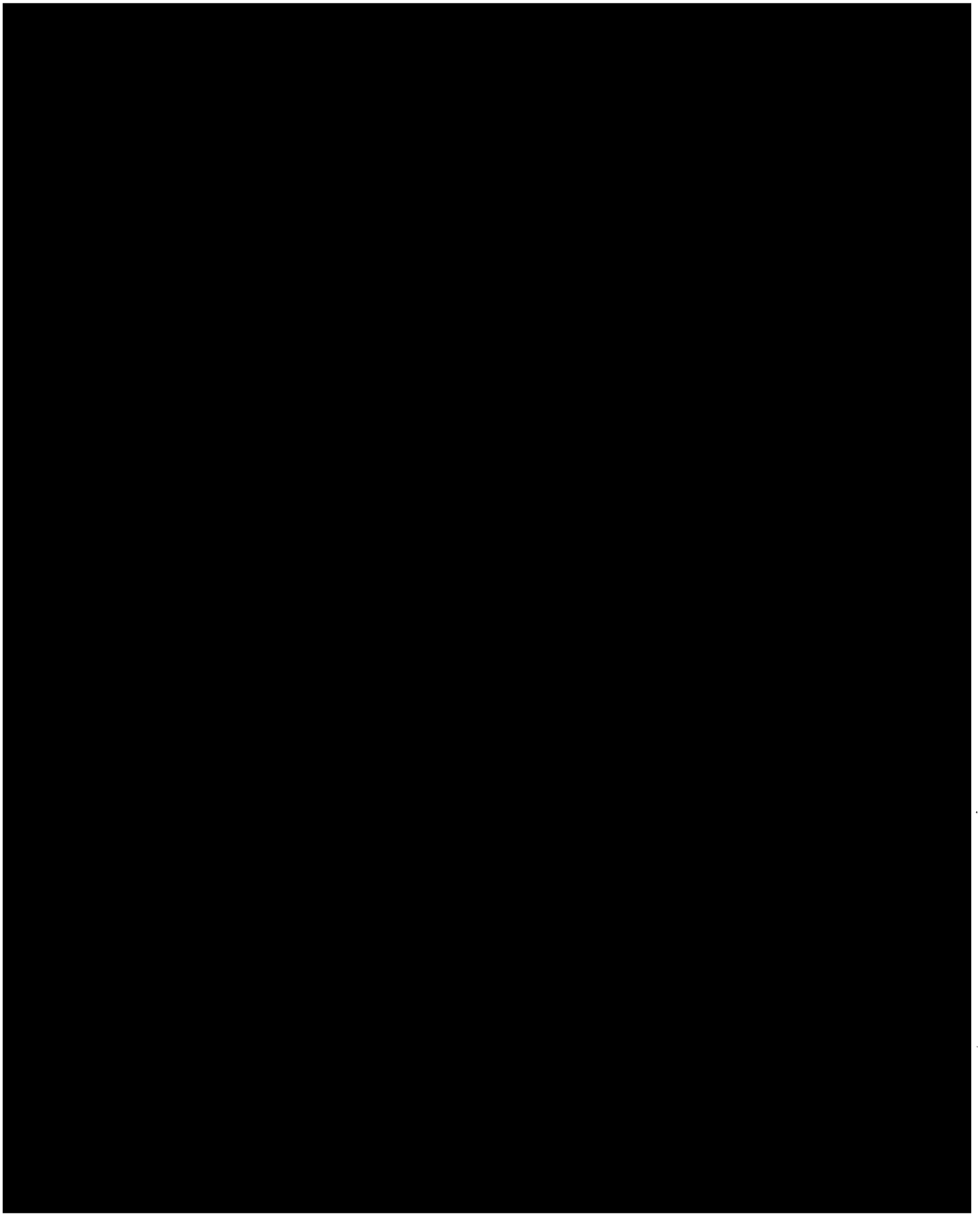
END QUOTE

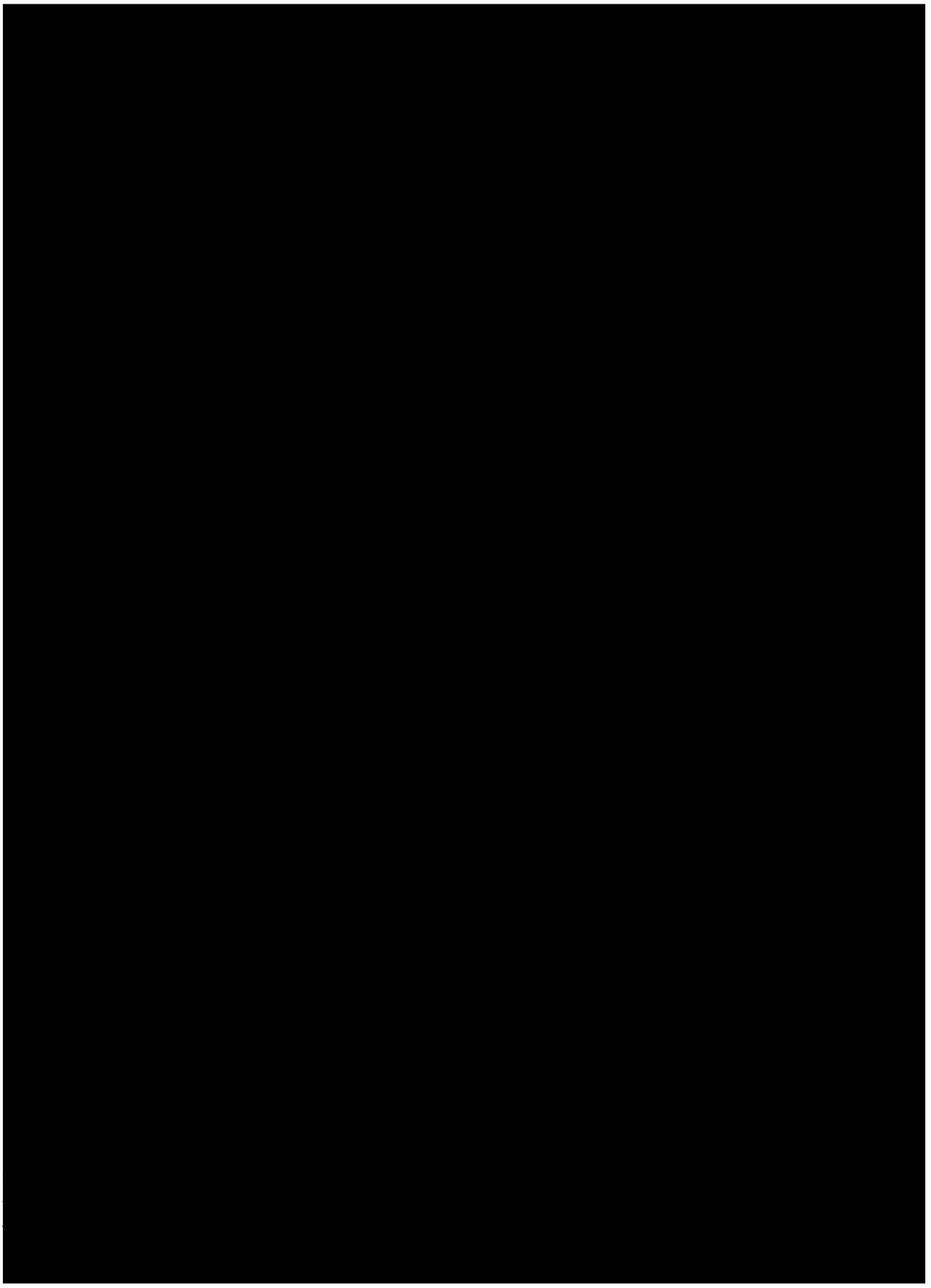
It therefore is obvious that if she was informing against her own client than more than likely her manner of representation can be questioned. Did she for example avoid questioning witnesses for the prosecution where it could assist her clients? Did she omit to put forwards submissions in favour of her clients? Did she avoid making submissions in favour of her clients to ensure a conviction could eventuate?

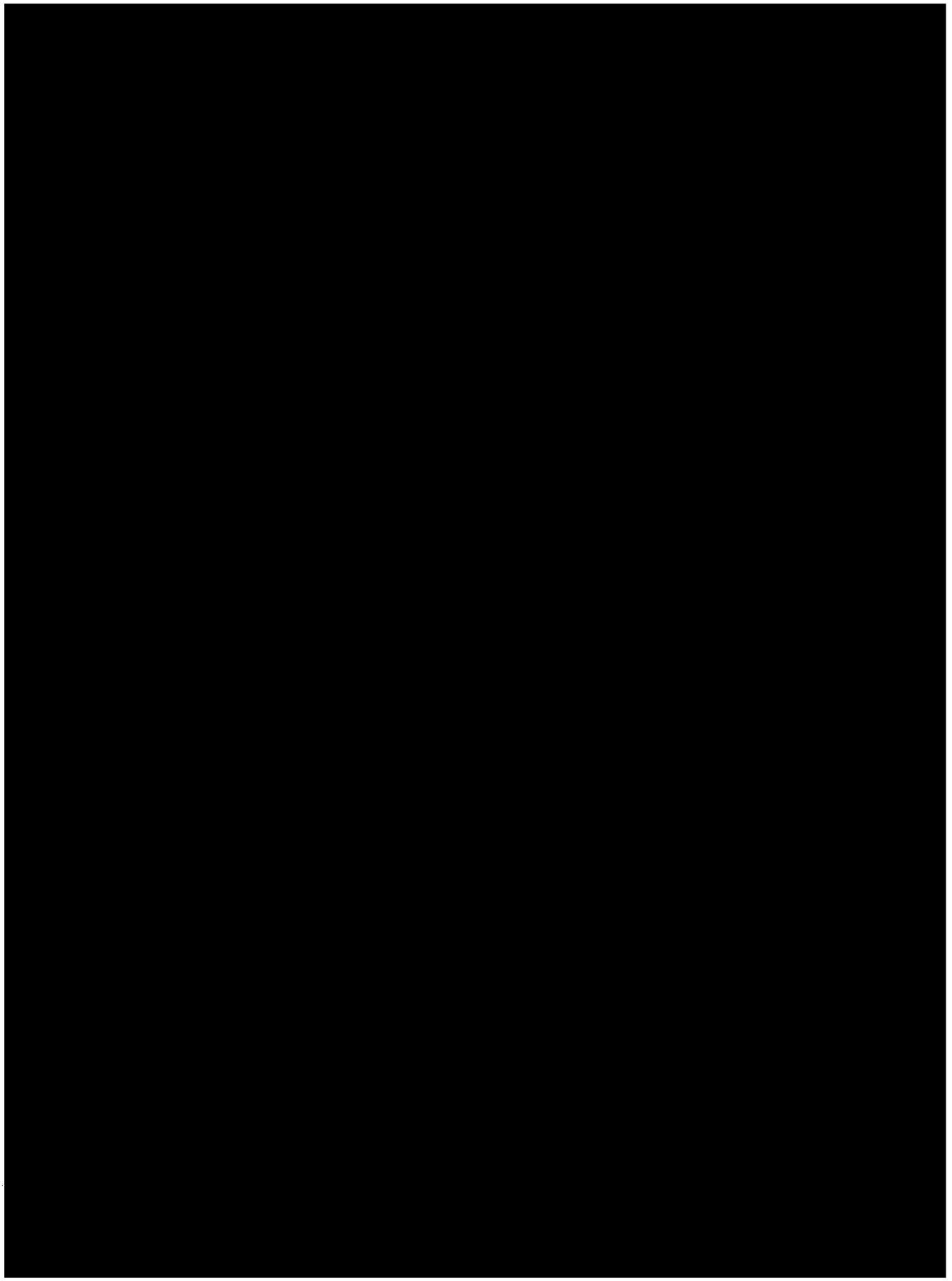
What I view we have is a lawyer who perverted the course of justice numerous times and as such was not at all serving the public interest but rather her own as I view it twisted version of justice.

.

Did she have contact with her clients and billed them for it when in reality her contact was to obtain information for her to pass on to the Victorian Police? As such she might be deemed to have defrauded her clients.







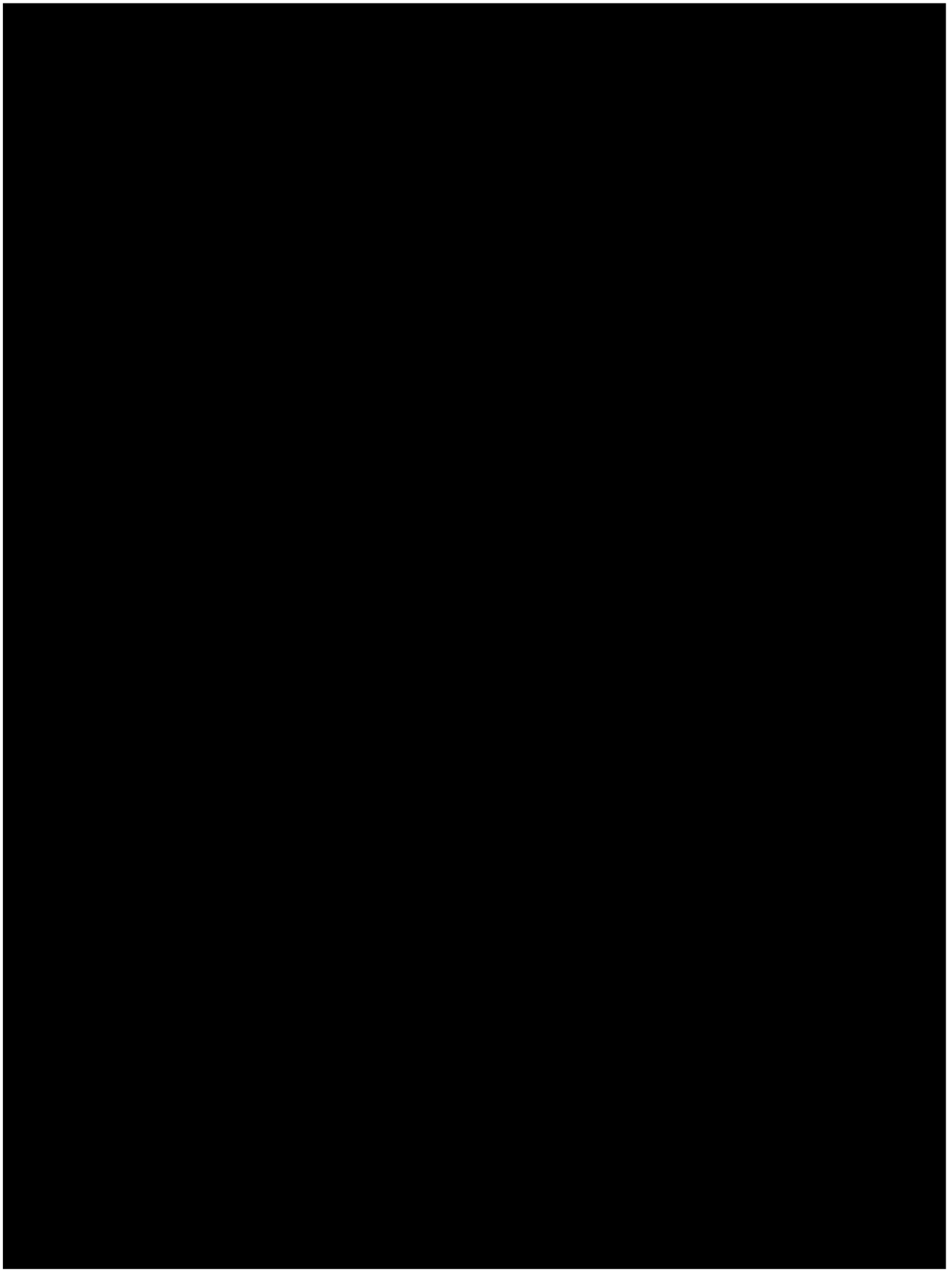
[redacted]

.

While it may be argued that Carl Williams was a criminal I do not accept this kind of argument to justify any murder. To me when a person requested my assistance/representation then I must act in the best interest of that person, albeit must avoid any conflict as a citizen in society. As such when I was assisting a person in legal proceedings and I discovered he was concealing evidence relevant to the issues before the court I made clear I had from onset stated I would not undermine the courts ability to provide justice and so got out of the case altogether. In my view if lawyer X had a moral issue to represent people she held were criminals then she should have applied leave from the court to withdraw.

There is nothing wrong to be an informer to authorities as long as it doesn't undermine the administration of justice and neither the obligations a person has towards a client. Albeit I held persons I assisted/represented were not clients but referred to them as friends I still had my set of morals.

[redacted]



[redacted]

QUOTE Matter No M732018 -Informer 3838- EF-58

> As Ginnane J and the Court of Appeal held, there is a clear public interest in maintaining the anonymity of a police informer, and so, where a question of disclosure of a police informer's identity arises before the trial of an accused, and the Crown is not prepared to disclose the identity of the informer, as is sometimes the case, the Crown may choose not to proceed with the prosecution or the trial may be stayed.
>
> 10 Here the situation is very different, if not unique, and it is greatly to be hoped that it will never be repeated. EF's actions in purporting to act as counsel for the Convicted Persons while covertly informing against them were fundamental and appalling breaches of EF's obligations as counsel to her clients and of EF's duties to the court. Likewise, Victoria Police were guilty of reprehensible conduct in knowingly encouraging EF to do as she did and were involved in sanctioning atrocious breaches of the sworn duty of every police officer to discharge all duties imposed on them faithfully and according to law without favour or affection, malice or ill-will2. As a result, the prosecution of each Convicted Person was corrupted in a manner which debased fundamental premises of the criminal justice system. It follows, as Ginnane J and the Court of Appeal held, that the public interest favouring disclosure is compelling: the maintenance of the integrity of the criminal justice system demands that the information be disclosed and that the propriety of each Convicted Person's conviction be re-examined in light of the information. The public interest in preserving EF's anonymity must be subordinated to the integrity of the criminal justice system.

END QUOTE Matter No M732018 -Informer 3838- EF-58

QUOTE Matter No M732018 -Informer 3838- EF-58

> It is further not without significance that Victoria Police may bear a large measure of responsibility for putting EF in the position in which she now finds herself by encouraging her to inform against her clients as she did. But large though those considerations may be, they do not detract from the conclusion that it is essential in the public interest for the information to be disclosed.

END QUOTE Matter No M732018 -Informer 3838- EF-58

QUOTE Matter No M732018 -Informer 3838- EF-58

> Generally speaking, it is of the utmost importance that assurances of anonymity of the kind that were given to EF are honoured. If they were not, informers could not be protected and persons would be unwilling to provide information to the police which may assist in the prosecution of offenders. That is why police informer anonymity is ordinarily protected by public interest immunity. But where, as here, the agency of police informer has been so abused as to corrupt the criminal justice system, there arises a greater public interest in disclosure to which the public interest in informer anonymity must yield.

END QUOTE Matter No M732018 -Informer 3838- EF-58

This quotation clearly underlines that the failure by the Victorian Police to conceal Carl Williams to be a police informer was what really likely was why he was so viciously murdered.

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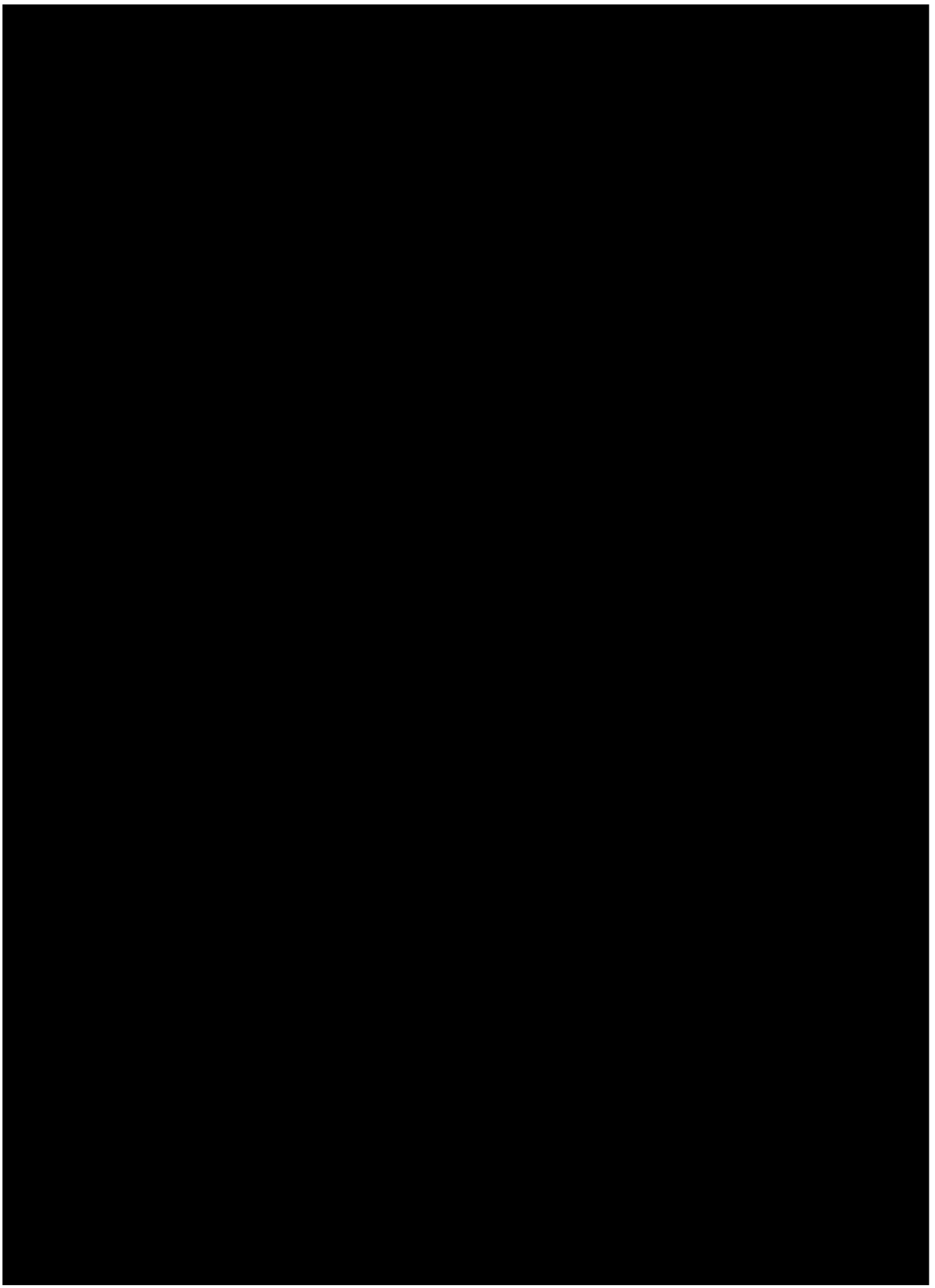
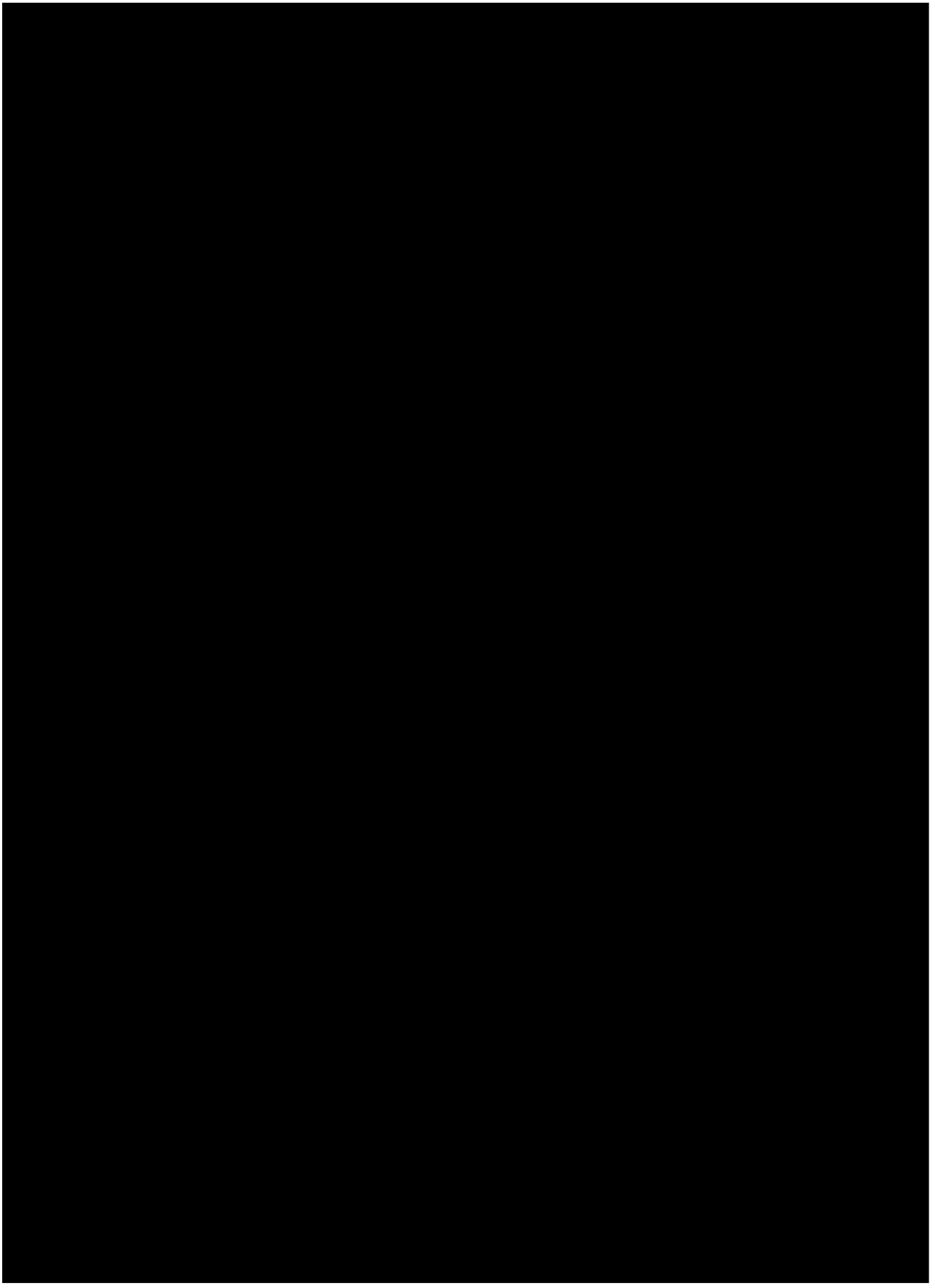
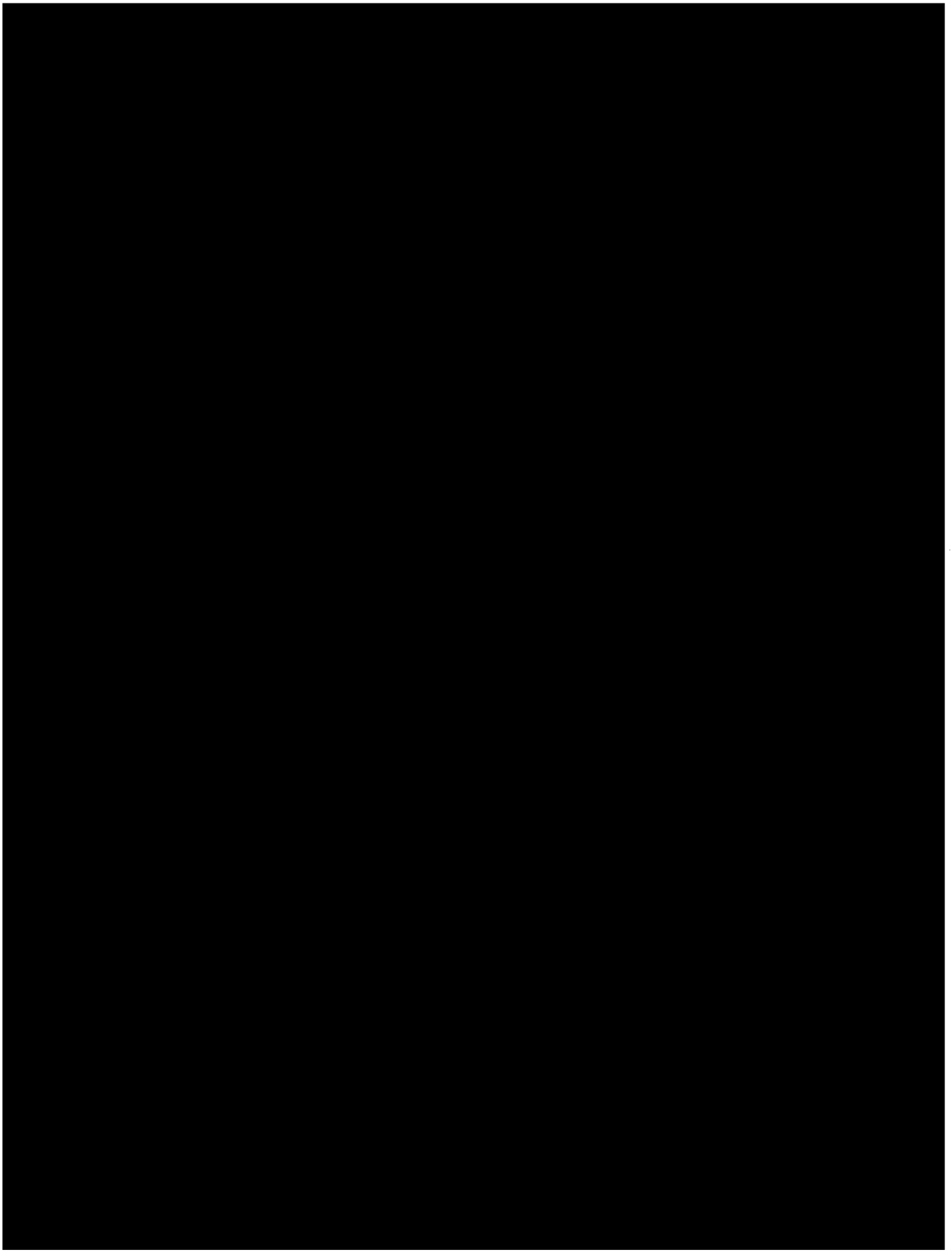
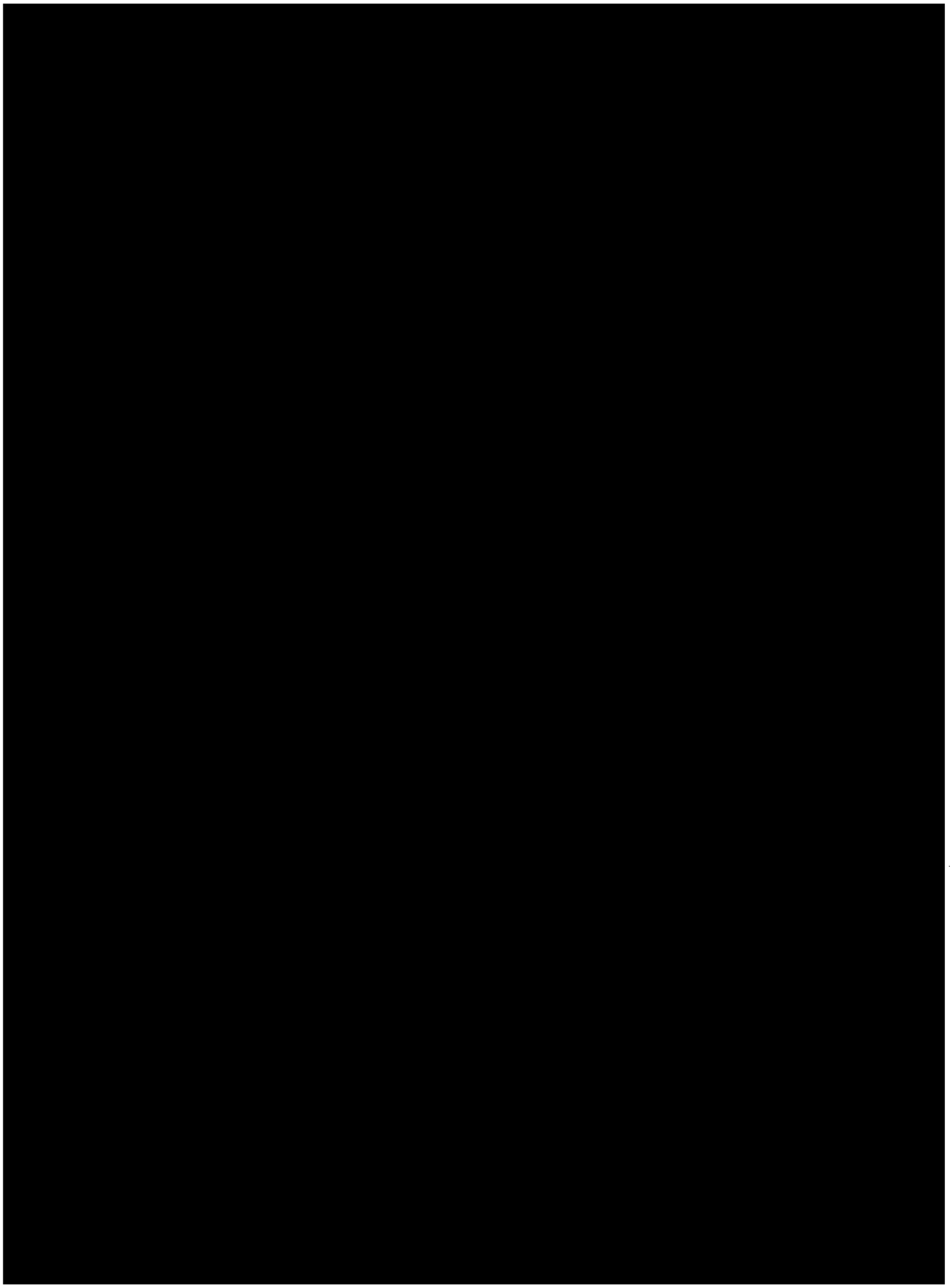
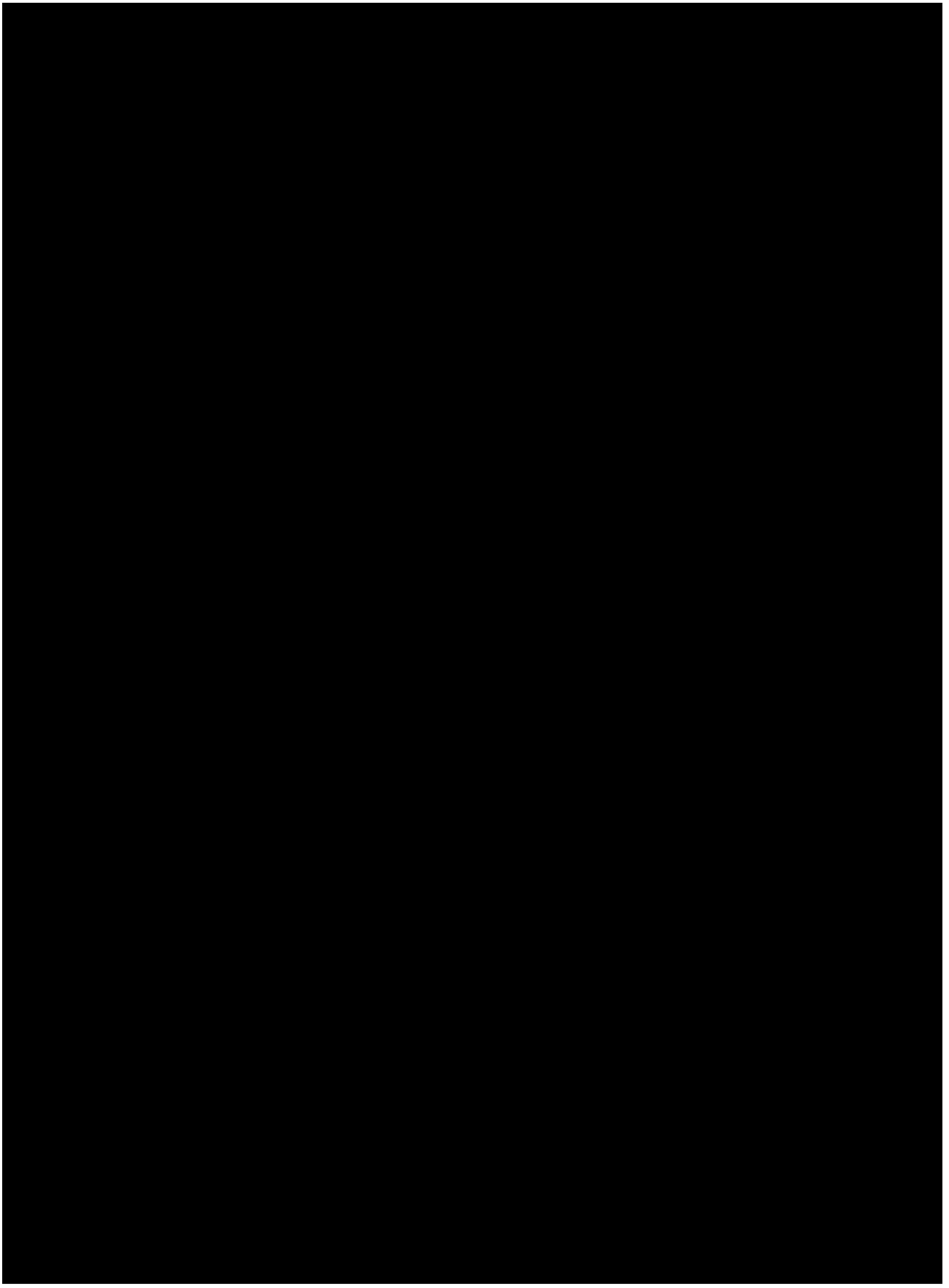
Because the media (Herald Sun) published the article in the morning of his murder then I view the Herald Sun could be deemed complicit to the murder and should be questioned as to how it obtained the information.

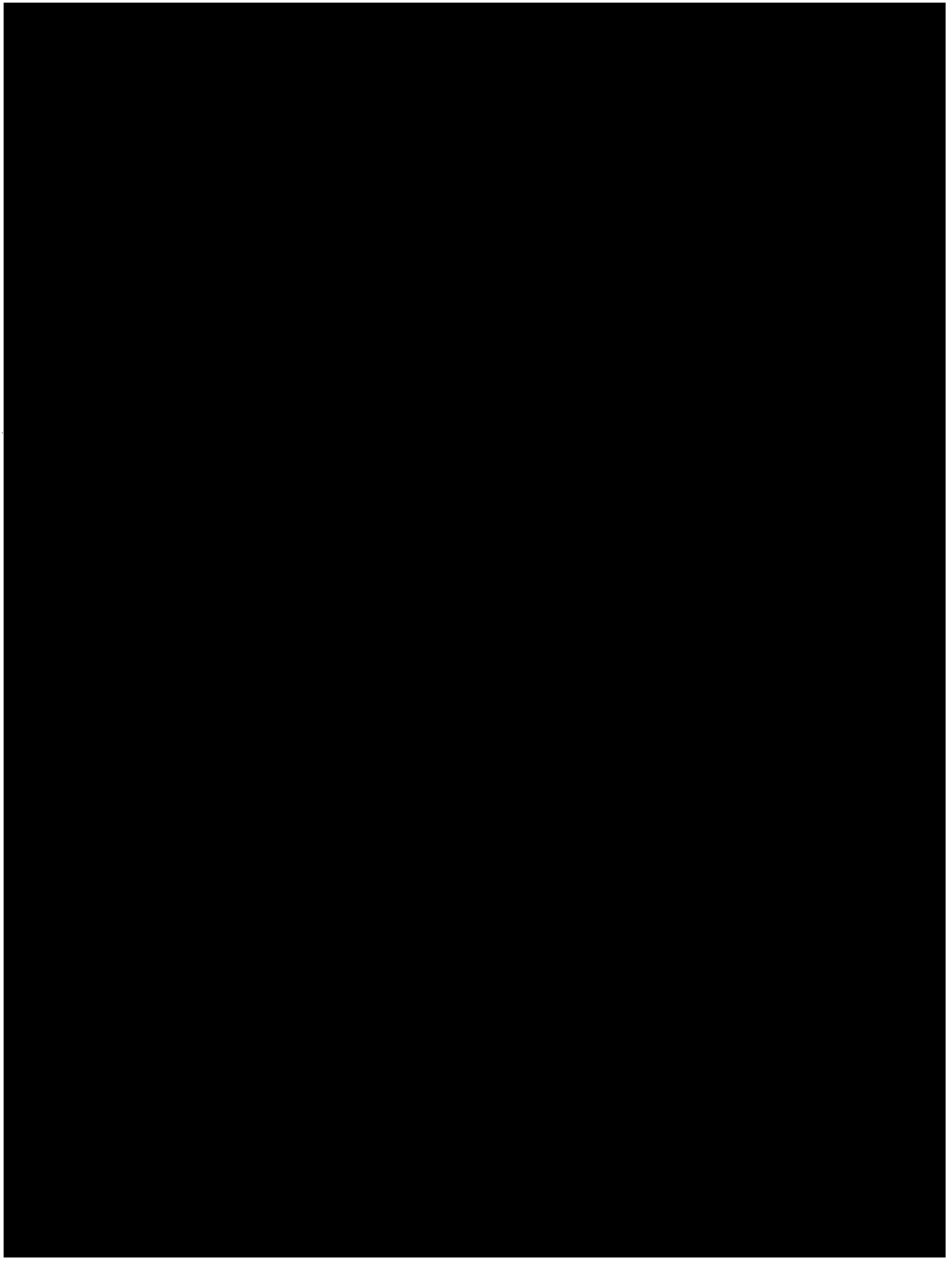












[redacted]

I do not know to what extend Lawyer X betray her clients but while she allegedly was a registered police informer from about 2004 till 2009 it may have been that prior to that and afterwards she may still had further involvement.

While Carl Williams is not deceased nevertheless justice should not be denied to him and if lawyer X was a police informer against her client Carl Williams then any GUILTY plea I view should be set aside.

[redacted]

.

It is totally irrelevant, at least to me, if Carl Williams and/or his father had a criminal past. Each time either one were represented and were subject to litigation in court they were entitled to the best kind of administration.
I always held the view and still does that the prosecutor is there to provide all relevant details to the court and the defendant, meaning both adverse as well as to the benefit of the accused.
The Courts are not there to convict a person but to adjudicate upon evidence before it and if this includes a conviction then so be it.
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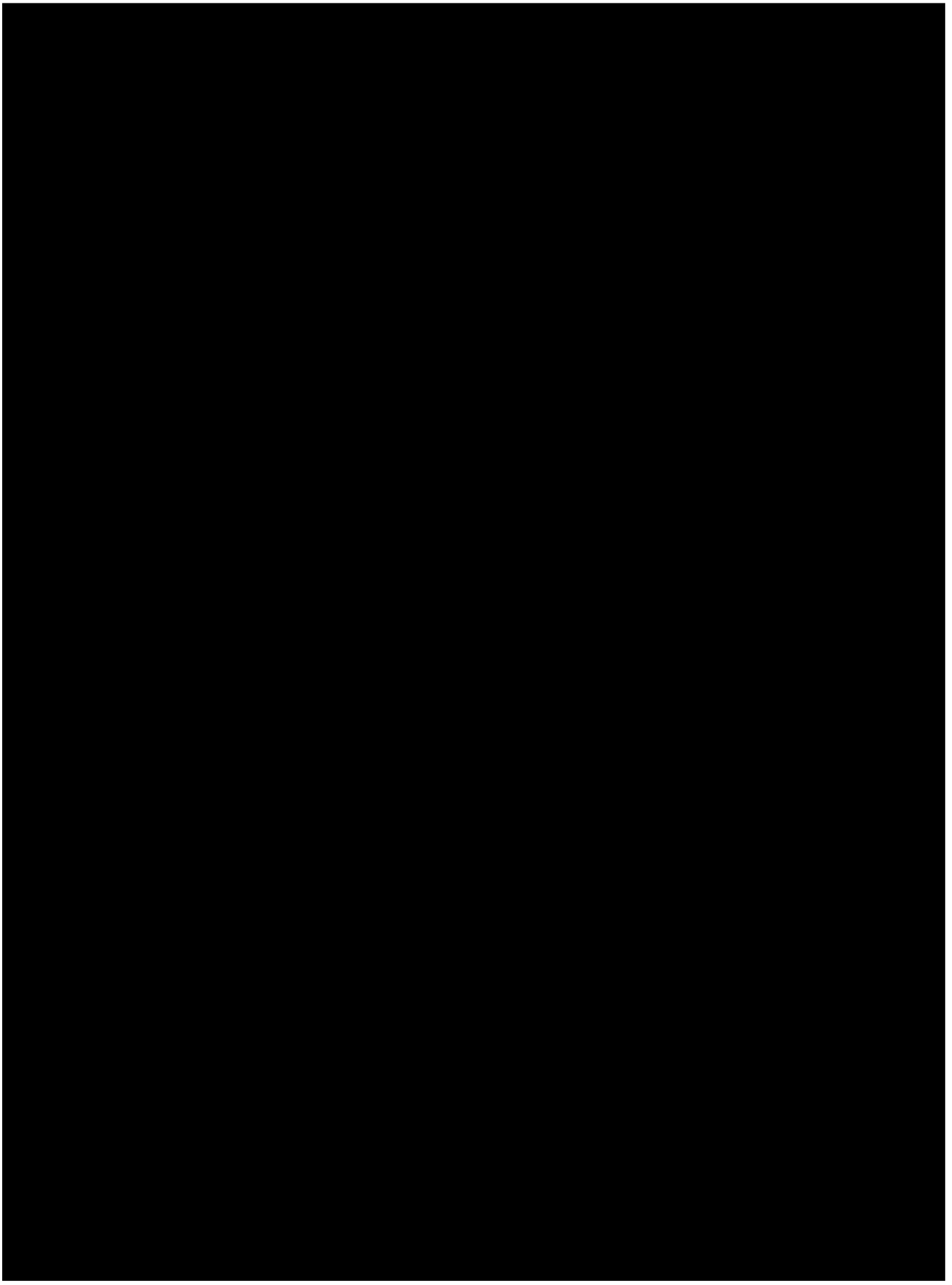

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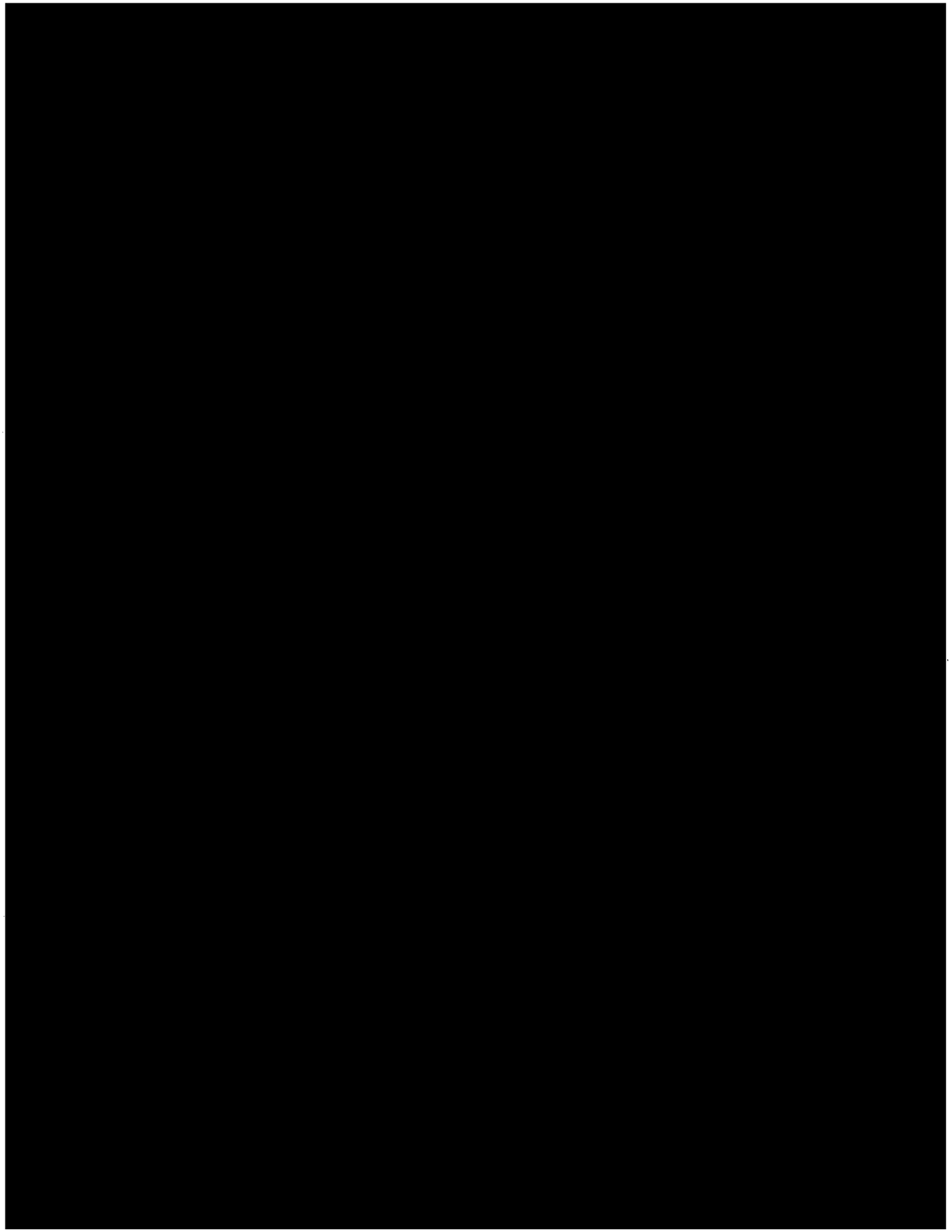

[redacted]

Again the 2-1-1901 Victorian Gazette published letters Patent refers to an IMPARTIAL administration of justice. This means that you cannot have any lawyer who is acting as an OFFICER OF THE COURT to then undermine DUE PROCESS such as a FAIR and PROPER hearing of any accused. Where then a lawyer becomes a police informer against her own client(s) then I view this is perverting the course of justice and conspiring to pervert the course of justice. Those who then were involved as police officers, being it directly and/or indirectly as a supervisional body must I view all be charged for perverting the course of justice, conspiring to pervert the course of justice and for bringing the administration of justice in disrepute, etc.

.

https://www.reddit.com/r/melbourne/comments/a2sj3q/ashton_oversaw_corruption_investigations_using/

Ashton oversaw corruption investigations using Informer 3838

QUOTE

Informer 3838 had been used to try to elicit information from one of the officers under investigation, David "Docket" Waters.

Then Deputy Commissioner Overland asked Briars investigator Ron Iddles to take a formal statement from the informer, who was then living in Southeast Asia.

But Detective Iddles refused to allow the statement to be formally signed, fearing the use of the informer was so unethical it could lead to a royal commission.

Informer 3838 was also deployed during Taskforce Petra, sent to covertly record a conversation with Detective Dale who police believed was involved in the murders of the Hodsons in 2004.

END QUOTE

https://www.reddit.com/r/melbourne/comments/a2sj3q/ashton_oversaw_corruption_investigations_using/

Ashton oversaw corruption investigations using Informer 3838

QUOTE

The operation of the registered informant was managed by officers from Victoria Police's human source unit, which was disbanded in 2013 amid concerns about serious misconduct.

But the overall investigations – code-named Taskforce Briars and Taskforce Petra – were overseen by a "steering committee" that included Mr Ashton, who was then deputy director of the Office of Police Integrity, current Victoria Police assistant commissioner Luke Cornelius and then-deputy commissioner Simon Overland. Mr Overland is now chief executive of the Whittlesea council.

Sources said there was "no way" Mr Ashton would not have known about the use of the barrister given his senior position at the OPI and on the steering committee.

END QUOTE

In my view the refusal of Ron Iddles to accept a signed statement surely ought to have already been a warning to others not to use such unlawful kind of litigation against those charged.
Surely the then committee overseeing this conduct of lawyer X should have questioned why Ron Iddles refused to accept any sworn statement from lawyer X and also why Ron Iddles did not file a formal complaint against such conduct, if that is if he didn't do so.

An IMPARTIAL administration of justice in my view means that any interference by government and its authorities is a violation of separation of powers. It means that a lawyer acting as an OFFICER OF THE COURT cannot be a police informer in regard of anything that was in confidence conveyed to the lawyer.
Here we had Lawyer X making claims that she became a police informer to pursue justice when in reality she was about a decade prior to that already a police informer. It means to me that she and the police concealed this from the courts and ought to be charged with perjury, etc.

One now also have to ask how much of the information Lawyer X provided to the police might not just have been fabricated against her own clients? After all she proved not to be trustworthy as an OFFICER OF THE COURT and hence I view that all convictions

involving Lawyer X and other lawyers who were police informers should all be squashed/set aside.

The courts cannot stand by and have people incarcerated where the due process regarding the administration of justice was compromised.

[redacted]

The fact that reportedly you spend millions of dollars to prevent matters to be exposed, and that is taxpayers monies, I view that you can no longer be trusted and certainly not as Chief Commissioner of Police and should forthwith resign. You may hold that to stand aside might perhaps in the interim be a solution so that the Royal Commission can do its own fact finding.

[redacted]

[redacted]

Let me make it very clear that I find there is nothing wrong with any person becoming a police informer provided that person is not in conflict with his/her sworn duties and obligations towards the person in regard of whom they are informing the police about. If for example a person disclose to the lawyer to contemplate to commit a murder then the lawyer cannot ignore this as to do so could implicate the lawyer in the commission of a crime, if only by his/her silence.

[redacted]

So here we had the niece of Justice Gobbo charged about drug offences and remarkably she is without conviction but not the other 2 persons. To me that seems to indicate the Victorian Police all along was undermining the administration of justice to get her to become a police informer knowing that she would become a lawyer. One has to question how many more current and past lawyers were involved as a police informer against their own clients.

.

How did all those lawyers appropriately represent their clients? I wonder if the transcripts might show that the relevant lawyer(s) at the time may have skipped certain line of cross-

examination of witnesses as to ensure the client would be convicted in some deal with the police.

.

[redacted]

This correspondence is not intended and neither must be perceived to address all issues.

Awaiting your response, **G. H. Schorel-Hlavka O.W.B.** (Friends call me **Gerrit**)

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END QUOTE 20190208-G. H. Schorel-Hlavka O.W.B. to Graham Ashton AM Chief Commissioner Victorian Police-Re resignation-standing aside-COMPLAINT

https://www.theguardian.com/australia-news/2019/feb/10/deeper-wider-longer-lawyer-x-inquiry-reveals-corruption-of-justice-system

Deeper, wider, longer: Lawyer X inquiry reveals corruption of justice system

QUOTE

Deeper, wider, longer: Lawyer X inquiry reveals corruption of justice system

As the identity of Informer 3838 remains under wraps, the royal commission into police informants exposes a scandal that worsens by the day

Richard Ackland

@JustinianNews

Sun 10 Feb 2019 12.06 AEDT Last modified on Sun 10 Feb 2019 12.08 AEDT

The Victorian police informer scandal will betray a justice system supposedly designed to give every advantage to the citizen against the state. Photograph: Alexander Kirch/Getty Images/EyeEm

It's a matter of pride for lawyers that they are free and able to work both sides of the street. In particular the cab-rank rule for barristers dictates as much. One day as a prosecutor, next for an accused; for the state and against it. And in the civil sphere there's much swapping of hats while working for plaintiffs and alternatively for defendants.

Now we have the Victorian police informer and former barrister known variously as Lawyer X, Informer 3838 or in judicial proceedings as EF, working "both sides of the street" to new and previously unexplored levels. She was shopping her clients to the police who were prosecuting them, notably when she acted as counsel for Melbourne crime figure Tony Mokbel and his associates while simultaneously providing information to the police about her clients. About eight years ago Victoria police paid her almost $2.9m in compensation for her troubles.

In November last year the high court lifted suppression orders that had kept the story under wraps for years, while imposing other orders to protect the identity of EF.

As is often the case with suppression orders in an era of porous information, the story got out. There's hardly a Melbourne lawyer, judge or convicted criminal who doesn't know the identity of Informer 3838.

On 4 February, the Victorian court of appeal extended the suppression orders and to be sure there'll be more of them emerging from the inquiry now under way, which has the benign name of "royal commission into management of police informants".

More appropriately, it might be called royal commission into the corruption of the criminal justice system. The terms of reference already have to be tweaked because Victoria police has discovered that Informer 3838, aka Lawyer X, aka EF was informing from 1995, 10 years earlier than first suspected.

Royal commissioner Malcolm Hyde fell on his sword because of a perceived conflict of interest, having been a senior Victorian police officer during this earlier period. The commission soldiers on with the former president of the Queensland court of appeal, Margaret McMurdo, at the helm.

It is now apparent that this perversion of justice runs deeper, wider and longer than was first imagined. Other lawyers are said to be involved in dishing-up their clients to the police, and not

just in Victoria. How far it has spread is for now a matter of conjecture. Are any judges in on the racket? Perish the thought.

This will continue to unravel painfully, damaging the so-called independence of the legal profession, and betraying a criminal justice system supposedly designed to give every advantage to the citizen against the state. The Victorian Bar has been quick to quarantine the fallout, saying there is nothing to suggest other barristers are involved and that what has been uncovered so far is "wholly aberrant".

At its heart this is a story about secrets, and the struggle in the courts over the past four years to keep the lid on them.

In 2014 Victoria's independent broad-based anti corruption commission (IBAC) had former supreme court judge Murray Kellam conduct an investigation into Victoria police's "management of human sources and in particular the issue of whether or not such management has complied with appropriate ethical and legal obligations". This was Operation Leven.

By February 2015, Kellam had completed the report examining how Lawyer X came to work as defence counsel for Mokbel and six of his criminal associates in the drug trade, while simultaneously working with the police to secure their convictions. This had the potential to undermine the defences of the accused, quite apart from keeping relevant information from the prosecutors.

In July 2012 Mokbel had been was sentenced in the Victorian supreme court to 30 years in prison, to serve a minimum of 22 years.

The IBAC report was not made public, but it went to the Victorian police who then sent it to the DPP. Ever since those two agencies have been engaged in lengthy and expensive litigation. The DPP believes he had a duty to disclose the report's findings to the convicted clients of Lawyer X, while the police have strenuously opposed the release of the information, saying it would result in the "almost certain" death of their informant.

The police commissioner started proceedings in the supreme court on 10 June 2016 seeking a declaration that disclosure of the information was against the public interest – known to lawyers as public interest immunity.

On 11 November 2016, Lawyer X was added as a plaintiff and she also started separate proceedings on the grounds that she was owed an obligation of confidence.

The case was heard in secret with publication suppressed.

In June the following year, Justice Timothy Ginnane dismissed the proceedings, finding that while there was a public interest in preserving the anonymity of EF's identity, there was a stronger public interest in favour to disclosure of the information in the anti-corruption commission report.

Confidence in the criminal justice system demanded no less.

On 21 November 2017 the appeals were dismissed and in May last year the police and Lawyer X went to the high court where in November their case was thrown out to the accompaniment of scathing comments.

The lawyer's breach of professional duty was "appalling"; the Victoria police were guilty of "reprehensible conduct"; the prosecution outcomes had been "corrupted in a manner which debased fundamental premises of the criminal justice system".

It follows that the convictions be re-examined by the DPP. It was only then that the world at large became aware of the deeds of Informer 3838 and the inevitable fallout followed in quick order.

Throughout, the courts expressed concern for the informant's safety, yet she has refused to go into a witness-protection program with her children. Indeed, there are reports she has been seen around Melbourne and delivering her children to school. She is a member of a prominent Victorian family and is widely known.

In a dark twist, the high court noted that she is anxious to avoid witness protection because she believes the "Victoria police cannot be trusted to maintain confidentiality".

END QUOTE

The following article might also underline the sheer misuse and abuse of taxpayer's monies. The police should in the first place not have engaged lawyers in violation to their position as an Officer of the Court.

One has to consider the harm inflicted to persons who were jeopardized in their representation by Lawyer XC and others like her. It would be absurd to hold that lawyer X so called safety is more important than the rights of those she harmed, as after all where she refused police protection then it is self-inflicted and should not be used by her or any other lawyer like her to deny proper scrutiny and the reveals of her identity. After all there are ample of media reports already on the internet about her suing the Victorian Police that were reported using her name as shown above.

https://www.abc.net.au/news/2018-12-08/victoria-polices-lawyer-x-legal-battle-cost-over-$4.5m/10596904

QUOTE

Victoria Police's legal fight to keep Lawyer X gangland informer secret cost $4.52 million

Updated 8 Dec 2018, 12:38pmSat 8 Dec 2018, 12:38pm

Photo: Chief Commissioner Graham Ashton may be called to give evidence to the royal commission. (AAP: Ellen Smith)
RELATED STORY: I've done nothing wrong in gangland lawyer scandal, says Victoria's police chief
RELATED STORY: Melbourne gangland lawyer explains why she became a police informant
RELATED STORY: Police handling gangland informant 'saw risks' but were told to keep going: former officer

Victoria Police has revealed it spent $4.52 million on a legal fight to keep the use of a criminal defence barrister as an informer during Melbourne's gangland war a secret due to fears she and her family "would be murdered".

Key points:

- Victoria Police feared the lives of the lawyer and her family were at risk if identifying information was made public
- A royal commission will investigate the arrangement, which the High Court described as "reprehensible conduct"
- The police chief said he was aware of the use of the barrister but is "very confident" he has done nothing wrong

The arrangement will be the focus of a royal commission next year, which will investigate whether the scandal could taint the convictions of senior gangland criminals such as Tony Mokbel, drug trafficker Rob Karam and convicted killer Faruk Orman.

On Monday, the High Court lifted suppression orders to reveal the barrister, who cannot be identified, represented Mokbel and other underworld figures while informing against her clients between 2005 and 2009.

The High Court described police's use of the lawyer, known as Informer 3838 or Lawyer X, as "reprehensible conduct" which involved sanctioning "atrocious breaches of the sworn duty of every police officer".

The court also found the defence lawyer had engaged in a "fundamental and appalling breach" of her obligations as a barrister.

Victoria's Director of Public Prosecutions wrote to 20 criminals after the suppression orders were lifted, to let them know their convictions were potentially tainted by the arrangement.

In a statement today, Victoria Police confirmed it had spent a total of $4.52 million in legal costs in a bid to keep the arrangement secret.

"Our priority throughout has been the safety of the lawyer and her family who we feared would be murdered if identifying information was released," the statement said.

"We are duty bound to do all we can to keep people safe."

Defence lawyer David Galbally QC, who has several clients affected by the scandal, said the sum was "extraordinary".

"It is a lot of money … for a government agency, a police department. It's extraordinary. I mean, the whole thing is extraordinary," he said.

Chief Commissioner Graham Ashton said on Thursday that he was aware of the use of the barrister as an informer during his time at the Office of Police Integrity or OPI.

But he said he had done nothing wrong and would not stand down from the top job.

"I am very confident in my own knowledge and role that I've done nothing wrong in this," he said.

Space to play or pause, M to mute, left and right arrows to seek, up and down arrows for volume

Video: Graham Ashton speaks to ABC Radio Melbourne's Jon Faine (ABC News)

Former homicide squad detective Ron Iddles said on Tuesday that up to 15 senior police officers turned a "blind eye" to the consequences of using the barrister as an informant and he had raised concerns with a superintendent at the time.

"I said, 'you don't get this. I can tell you now, this will cause a royal commission'," Mr Iddles said.

"I just couldn't get that they didn't understand the ramifications of deploying, employing and registering a solicitor."

The Victorian Government is yet to appoint two royal commissioners to lead an investigation into the use of the lawyer-turned-informant.

On Thursday Premier Daniel Andrews said both appointments would be made from interstate to create "appropriate distance" from the Victorian criminal justice system.

Topics: police, crime, law-crime-and-justice, government-and-politics, state-parliament, states-and-territories, courts-and-trials, melbourne-3000, vic

First posted 8 Dec 2018, 11:19amSat 8 Dec 2018, 11:19am

END QUOTE

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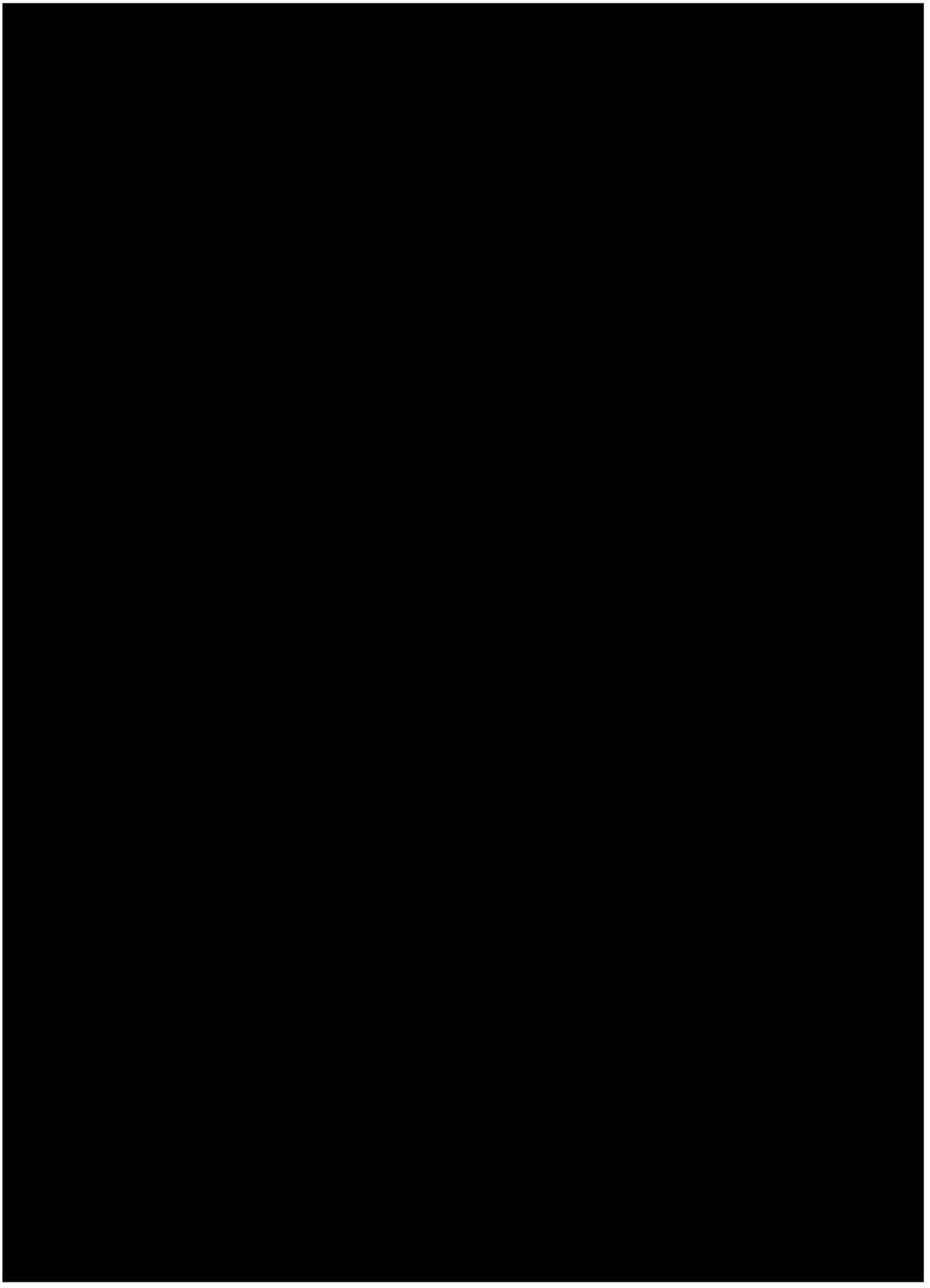

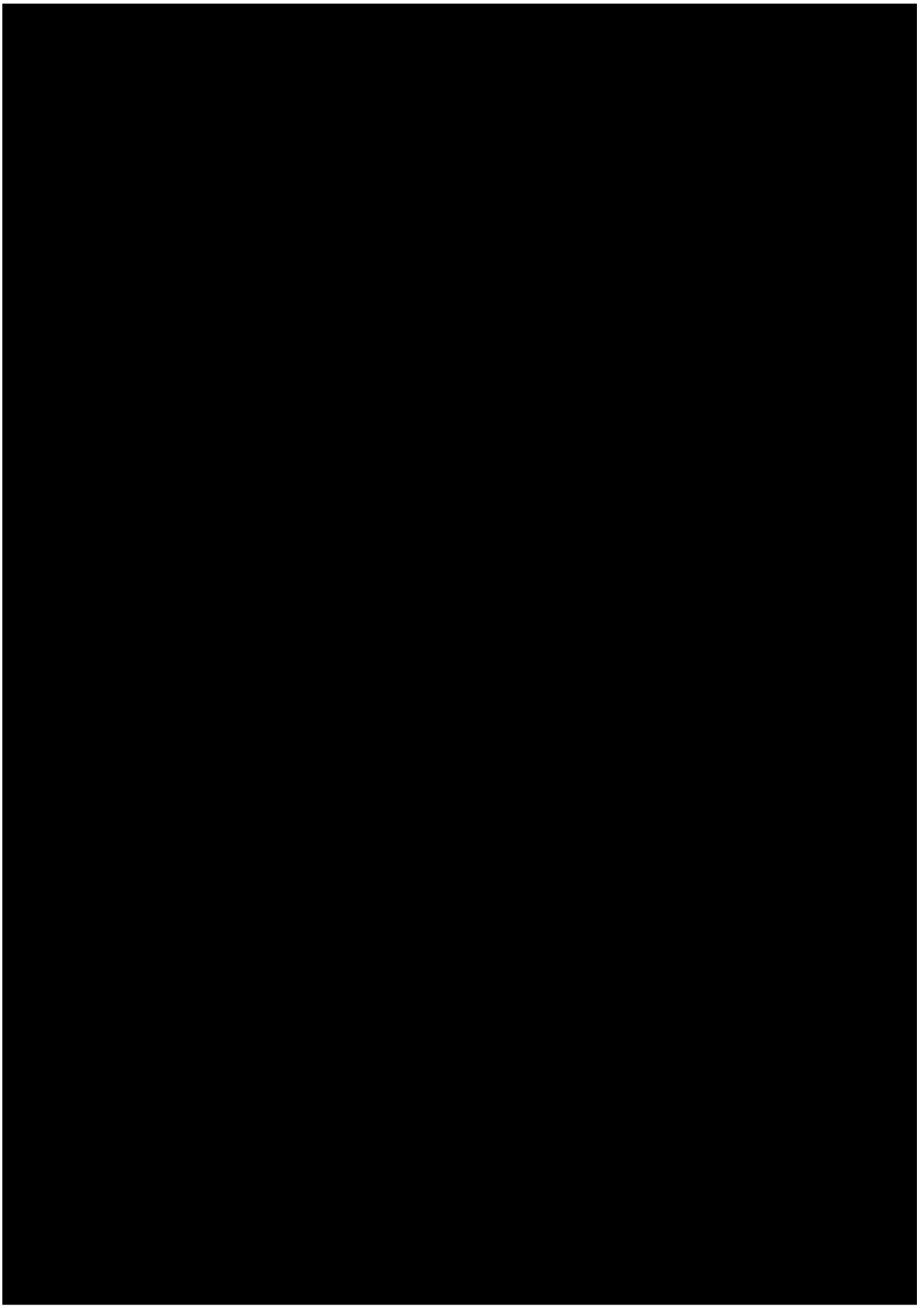

Awaiting your response, **G. H. Schorel-Hlavka O.W.B.**

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END QUOTE 28-3-2018 COMPLAINT

In my view Lawyer X and others like her should face criminal sanctions as she undermined the administration considerably and so should the members of the Victorian Police who colluded in this.

Despite of my self-acknowledged Crummy English, because I had no former education in the English language and being born in the Netherlands at least I care more about the true meaning and application of the constitution then many if not most lawyers seem to do.

Again:

QUOTE **Ambard v Att Gen for Trinidad and Tabaco** (1939) AC 322 at 335

> The basic of the right to fair comment is the Right of Freedom of speech and the inalienable right of everyone to comment fairly upon matters of public importance.

END QUOTE

For those unaware of it the Framers of the Constitution aware of the 14 amendments of the USA constitution nevertheless held that our (federal) constitution in which the States are created within Section 106 **SUBJECT TO THIS CONSTITUTION** contained liberties equal at least to that of the USA. Hence, our freedom of speech cannot be denied merely because some court may seek to hide its own failure to provide FAIR and PROPER trials, indeed it is of public importance and so in the interest of the public that matters are exposed. You cannot have that a informant is in her own capacity pursing publications and is reported about in the media but somehow a Royal Commission cannot reveal the identity and so thwart the ability of citizens to be aware as to the true identities of those officers of the Court who were registered informers or otherwise betraying their oath and their clients. In my view the Royal Commission should request the court to set aside any court orders which would undermine the purpose of the Royal Commission and the ability of citizens to be aware what precisely is being investigated.

This correspondence is not intended and neither must be perceived to address all issues.

Awaiting your response,  **G. H. Schorel-Hlavka O.W.B.** (Friends call me **Gerrit**)

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From: Mr G. H. Schorel-Hlavka O.W.B. [redacted]

Blog: www.scribd.com/inspectorrikati Email: admin@inspector-rikati.com LH-20160921-06

THE MORALS OF A SOCIETY CAN BE MEASURED AS TO HOW IT LOOKS AFTER THE DISABLED

Please note: ***The opinion(s) expressed in this letter by the writer, are stated considering the limited information available to him and may not be the same where further information were made available to him, is not intended and neither must be perceived to be legal advice!***

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Margaret McMurdo, AC **Royal Commissioner** 26-2-2019
Victorian Royal Commission into Management of Police Informants
PO Box 18028, Melbourne VIC 3001.

Ref: 20190218-G. H. Schorel-Hlavka O.W.B. to Royal Commissioner Margaret McMurdo, AC
Re -SUBMISSION

THIS SUBMISSION IS PROVIDED FOR PUBLICATION AS IDENTITIES RELATING TO CONFIDENTIAL MATTERS HAVE NOT BEEN REVEALED.

Commissioner,

Further to my 18-2-2019 submission I desire to state the following:

Any lawyer who is a member of the Bar and acting as a legal practitioner must act within the applicable rules being an Officer of the Court. Hence, failing to do so not only is a disgrace being a legal practitioner but undermines the credibility of the court.

If therefore Lawyer X/Informer 3838/EF and any other lawyer are registered with the High Court of Australia bar (as to act before the High Court of Australia as a legal practitioner) then I view the High Court of Australia cannot protect such a lawyer from any wrongdoing in violation to an oath to be a member of the Bar. As such, I view that where any lawyer were to seek the High Court of Australia to overturn the orders of the Supreme Court of Victoria to set aside any non-disclosure order of the court then the High Court of Australia is bound to protects its own credibility to deny any such application/appeal.

It should be understood that any legal practitioner who is/was part of a criminal conspiracy, eve n by silence, then no longer can rely upon the lawyer-client confidentiality. Likewise, I view that any legal practitioner who acts or acted in a conspiracy with the Victorian Police likewise can no longer obtain the protection of the courts to have and/or conceal the lawyer(s) identity. To argue that somehow the lawyer who placed the courts in disrepute by such criminal conduct can pursue the protection of the courts for the sake say of any children in the lawyers care would be discriminatory to others. The authorities can always remove the children from the lawyer's care where she by her own conduct placed them or may have placed them in harm's way or likely did so.

It would in my view be idiotic that the courts would place the alleged self -interest of the lawyer above that of the credibility of the court. It is like the lawyer making clear I didn't care less about upholding the credibility of the court and was willing to place the court in disrepute and cause gross injustices to my clients but for my sake that is all irrelevant even so I placed my own children at possible danger.

In my view the lawyer(s) concerned, the Victorian Police officers, the Prosecutor(s), etc, who were all involved committed criminal offences and by this undermined the democratic system we all are entitled upon. They all should be charged and held legally accountable as not to do so would mean that those wielding power are above the rule of law.

It is for this also that as I understood it the then Attorney-General Robert Hulls wife was a prosecutor and concealed relevant evidence from the court to score a conviction of a person in regarding rape while aware that the man was innocent, then she should have been held legally

accounble for perverting the course of justice and placing the court in disrepute as an Officer of the Court.
Lawyers who appear at the bar table must conduct themselves as model litigants and where they fail to do so the court cannot tolerate this.
The courts by the 2-1-1901 published Letters Patent are bound to be and be seen as impartial administration of justice and any legal practitioner who defies this cannot be shielded.

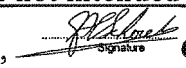
Hansard *1-2-1898* Constitution Convention Debates (Official Record of the Debates of the National Australasian Convention),
QUOTE **Mr. OCONNER** (New South Wales).-

> Because, as has been said before, it is [start page 357] necessary not only that the administration of justice should be pure and above suspicion, but that it should be beyond the possibility of suspicion;

END QUOTE

In my view if the High Court of Australia were to grant any stay of the Supreme Court of Victoria order to lift the non-disclosure order would or could be seen that it too has become a so called STAR CHAMBER COURT where there no longer is any impartial administration of justice and the court no longer seeks to ensure that the credibility of the courts are upheld.
Indeed, in my view each and every judge who presided over a case where it is shown that a legal practitioner ac ted in violation of his/her obligations as an Officer of the Court should have there and then have charged the legal practitioner or in the alternative have requested the relevant authorities to investigate the conduct of the legal practitioner.
This clearly has so far not eventuated and by this the relevant judges themselves placed the integrity of the administration of justice in disrepute.
In regard of EF/Lawyer X/Informer 3838 she became an informer long before she had children, at least as I understand it, and as such if there was any danger to children then it is clearly self-inflicted. It is not to mean the safety and/or wellbeing of the children can be ignored but that the authorities must simply place them in security while EF/Lawyer X/Informer 3838 is so to say pay the price for her unlawful conduct. Not to do so means that there is a sexual discrimination applied to the courts that a male lawyer can be punished but a female lawyer can hide to have a child and use it as some sort of a shield to avoid being held legally accountable.
We have this ongoing drive about women's equality but none of it seems to relate to women having a similar system of punishment applied to them as is applied to male offenders in similar circumstances, as I have written about to expose this for decades.
We must not ignore that what appears to me over a period of about 2 decades EF/Lawyer X/Informer 3838 undermined the credibility of the administration of justice and disregarded time and time again the gross injustice she inflicted upon her client and now somehow expect the courts to hide her identity merely because she has children? She knew what she was doing and did so time and time again and gave to my understanding a false excuse alleging to relate to Tony Mokbel in 2005 where later it turned out she had been an informer even as a law student in 1995. In my view this was not just a once of error but a continuous deliberate conduct. She so to say played judge and jury over the faith of her clients and should be held legally accountable for this, and so those who conspired to this conduct with her. The concealment of her identity might prevent many to be aware how she may have misled them also and in my no impartial administration of justice can permit this to be left as such. The courts are bound to ensure that any person wronged are provided their entitlement to know which lawyer(s) was involved.

This correspondence is not intended and neither must be perceived to address all issues.

Awaiting your response,  **G. H. Schorel-Hlavka O.W.B.** (Friends call me **Gerrit**)

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From: Mr G. H. Schorel-Hlavka O.W.B. [redacted]

Blog: www.scribd.com/inspectorrikati Email: admin@inspector-rikati.com LH-20160921-06

THE MORALS OF A SOCIETY CAN BE MEASURED AS TO HOW IT LOOKS AFTER THE DISABLED

Please note: WARNING *The opinion(s) expressed in this letter by the writer, are stated considering the limited information available to him and may not be the same where further information were made available to him, is not intended and neither must be perceived to be legal advice!*

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Margaret McMurdo, AC **Royal Commissioner** 28-2-2019
Victorian Royal Commission into Management of Police Informants
PO Box 18028, Melbourne VIC 3001.

Ref: 20190228-G. H. Schorel-Hlavka O.W.B. to Royal Commissioner Margaret McMurdo, AC
Re –SUBMISSION-Supplement 2

THIS SUBMISSION IS PROVIDED FOR PUBLICATION AS IDENTITIES RELATING TO CONFIDENTIAL MATTERS HAVE NOT BEEN REVEALED.

Commissioner,

Further to my 18-2-2019 submission and 26-2-2019 I desire to state the following: In my 18-2-2019 submission I made it an issue that EF/Lawyer X/Informer 3838 and other lawyers like her was an Officer of the Court then the police officers and others involved to cause them to act in violation of their obligations and duties I held this should be dealt with that those involved are being dealt with for CONTEMPT OF COURT CONTEMPT IN THE FACE OF THE COURT, perverting the course of justice, placing the administration of justice in disrepute, etc. I now refer to a recent article in the media.

https://www.abc.net.au/news/2019-02-27/george-pell-returns-to-court-for-presentencing-hearing/10851152
George Pell returns to court, prosecutors push for 'immediate' jail sentence for child sex abuse
QUOTE (red colour added)

> **Lawyer targeted outside court**
>
> As he left the court for the lunch break, Mr Richter was jostled by abuse survivors and advocates who shouted "dirty money".
>
> When the hearing reconvened, Judge Kidd addressed the court about the heckling.
>
> **"An assault on counsel like Mr Richter is an assault on the court and if anybody is caught doing that ... I would view that as raising a really serious example of contempt and I would want to see that person prosecuted," he said.**
>
> **"This is not a game.**
>
> **"The system requires defence counsel to defend people."**

END QUOTE (red colour added)

To my understanding it has always been a legal principle that if you cause a conflict with a legal practitioner and/or any party top and from the court or in the court premises itself then this can constitute **CONTEMPT OF COURT**. It would be **CONTEMPT IN THE FACE OF THE COURT** if this eventuates in the court room itself.
This is to provide safe access to and from the courts as well as ensure that any party attending in the court room (including tribunal hearings) can do so without Any conflict being caused that might cause a party to fear to attend to a court/tribunal and/or to give certain evidence.

Having stated this I however found that when a n opposing Council did so towards me the judge simply ignored it. This I view is **DOUBLE STANDARDS**.

Likewise I view this is **DOUBLE STANDARDS** where I understand neither [redacted] or any other judge held the Victorian Police officers involved in the EF/Lawyer X/Informer 3838 and other legal practitioners scam to undermine the administration of justice legally accountable.
Here we have as I understand it [redacted] going after the media for making certain reports in their publications regarding Pell and yet for all those years [redacted] and other judges like him appear to me to have done nothing to deal with members of the Victorian Police who enlisted legal practitioners as informers against their own clients. And the fact that there was ample of litigation before the Supreme Court of Victoria about EF/Lawyer X/Informer 3838 being an informer against her own clients then I view this was a scandalous ignorance as each judge who was dealing with this case as to conceal the identity of EF/Lawyer X/Informer 3838 should in my view have been obligated to immediately charge EF/Lawyer X/Informer 3838 for undermining the credibility of the administration of justice and placing it in disrepute, and for so far this was concealed in previous hearings against any of her clients then for CONTEMPT OF COURT and CONTEMPT IN THE FACE OF THE COURT, etc.
What about fraudulently charging a client for attendance where she might have attended for no other purpose but fact finding as an informer? After all I understand Carl Williams raised this issue in his writings that she appeared to attend for trying to get information. This I view likely also may have resulted that the Victorian Police made the deal with Carl Williams with the intend to later cancel it, even so Carl Williams pleaded GUILTY as part of the deal, which conviction I view should be set aside. It was the Victorian Police who requested the ATO to place the monies in a holding account, and to me this indicates that the Victorian Police were milking Carl Williams for information directly as an informer but then were using EF/Lawyer X/Informer 3838 to verify details and when the Victorian Police held , so I assume, that Carl Williams had no more use to it then so to say Carl Williams fate was sealed and his subsequent murder I view was part of getting rid of Carl Williams in view that he was so to say sounding the alarm bells that EF/Lawyer X/Informer 3838 appeared to be an informer. Hence the leaking of confidential details to the media which was published the very day before the murder eventuated. If therefore any proceedings were held in the County Court of Victoria involving EF/Lawyer X/Informer 3838 and/or any other legal practitioner turned informer against his/her own client then why has Kidd CJ not pursued them rigorously to be held legally accountable with those of the Victorian Police and others who participated in this fraud upon the courts and the relevant clients? To me this is applying **DOUBLE STANDARDS** which I view itself places the administration of justice in disrepute. **Legal practitioners who informed against their clients in such manner such as EF/Lawyer X/Informer 3838 and others like her never can nor should have the protection of the courts to conceal their identity.** The legal doctrine of "*ex turpi causa non oritur action*" denies any remedy to a litigant (including a prosecutor) who does not come to court with clean hands. (If your own action is very unlawful and very unethical, if you come to court with "Dirty Hands" best not to question others legality, morality, and ethics!)

[redacted]

This correspondence is not intended and neither must be perceived to address all issues.

Awaiting your response, Signature **G. H. Schorel-Hlavka O.W.B.** (Friends call me **Gerrit**)

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From: Mr G. H. Schorel-Hlavka O.W.B. [redacted]

Blog: www.scribd.com/inspectorrikati Email: admin@inspector-rikati.com LH-20160921-06

WITHOUT PREJUDICE

Margaret McMurdo, AC **Royal Commissioner** 1-3-2019
Victorian Royal Commission into Management of Police Informants
PO Box 18028, Melbourne VIC 3001.
https://www.rcmpi.vic.gov.au

Ref: 20190301-G. H. Schorel-Hlavka O.W.B. to Royal Commissioner Margaret McMurdo, AC
Re –SUBMISSION-Supplement 3

THIS SUBMISSION IS PROVIDED FOR PUBLICATION AS IDENTITIES RELATING TO CONFIDENTIAL MATTERS HAVE NOT BEEN REVEALED.

Commissioner,

further to my 18-2-2019 submission and 26-2-2019 and 28-2-2019 supplements I desire to state the following:

For decades I have been concerned as to the usage of counsellors in legal proceedings. Conducting since 1982 a special lifeline under the motto MAY JUSTICE ALWAYS PREVAIL® it has not been uncommon to me that persons complained that counselors (social workers, etc) were making false/fabricated claims in court as being experts witnesses. Often this could means losing a case upon such expert witness evidence.

This Royal Commission is dealing with legal practitioners who are police informers against their own clients and I did in my last supplement 2 of 28-2-2019 refer to [redacted] about CONTEMPT OF COURT issues, and regretfully far too often lawyers who are so to say placing the administration of justice in disrepute are not held accountable for this. [redacted]

[redacted]

[redacted]

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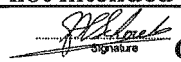
[redacted]

Likewise with the concealment of the identity of EF/Lawyer X/Informant 3838 somehow publication on the internet is unrestricted as if people wouldn't know about how to obtain information via the internet. Obviously one could question on constitutional grounds how a State court not exercising federal jurisdiction possibly can prevent publication in any area within the Commonwealth of Australia beyond the jurisdiction of the State of Victoria. And as I found former newspapers articles published ion the internet still reveal the identity of EF/Lawyer X/Informant 3838. This makes it an absurdity to have a ban on publication which may be argued to protect certain persons or even an accused to be able to obtain a FAIR and PROPER trial but may in this day of age in technology be out of date. And not to hold lairs of Officers of the Court legally accountable means that when a publication is permitted a person who might have relevant information may be prevented to present them within a time frame permitted. Failing to legally deal with Officers of the Court who are undermining the administration of justice such as EF/Lawyer X/Informant 3838 and the police officers involved will be in itself to place the administration of justice in disrepute.

<u>This correspondence is not intended and neither must be perceived to address all issues.</u>

Awaiting your response,  **G. H. Schorel-Hlavka O.W.B.** (Friends call me **Gerrit**)

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Blog: www.scribd.com/inspectorrikati Email: admin@inspector-rikati.com LH-20160921-06

THE MORALS OF A SOCIETY CAN BE MEASURED AS TO HOW IT LOOKS AFTER THE DISABLED

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Margaret McMurdo, AC **Royal Commissioner** . 4-3-2019
Victorian Royal Commission into Management of Police Informants
PO Box 18028, Melbourne VIC 3001.
https://www.rcmpi.vic.gov.au

Ref: 20190304-G. H. Schorel-Hlavka O.W.B. to Royal Commissioner Margaret McMurdo, AC
Re –SUBMISSION-Supplement 4

THIS SUBMISSION IS PROVIDED FOR PUBLICATION AS IDENTITIES RELATING TO CONFIDENTIAL MATTERS HAVE NOT BEEN REVEALED.

Commissioner,

further to my 18-2-2019 submission and 26-2-2019 and 28-2-2019, 1-3-2019 supplements I desire to state the following:

While I migrated to Australia from The Netherlands in 1971 I refused to naturalize until 1994. This as my peaceful demonstration against the misuse and abuse of how the courts such as the Family Court of Australia was making decisions in clear violation to the rule of law. I will not bother you with the details save to say to me many of the judges in my view were

[redacted]

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[redacted]

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[redacted]

[redacted]

.

Where we now apply some STAR CHAMBER COURT system then anarchy can only result, this because those in power will manipulate the system not against those who might have offended but against anyone who might be for whatever reason in their way.

.

As the article of Sunday 3-30-3019 indicated Nicola Gobbo was telling one person to remain silent while making a deal with the police with another person who was also arrested. She as I understood it violated in numerous ways her duties and obligations as an Officer of the Court and yet so far I gain the impression that the Victorian Police and others are claiming no laws were broken and they committed no crimes.

To me the sanctity of the constitutional rights to have an impartial administration of justice, also enshrined in our Letters Patent cannot but deemed to be violated if any Government official and/or Officer of the Court violates this.

Any decision that was the product of denial of an impartial administration of justice litigation must be deemed without legal force. While the Court at the time may have been perceived as a competent court of justice by hindsight it was as I view it no more but a **STAR CHAMBER COURT** and hence the convictions cannot stand for this.

.

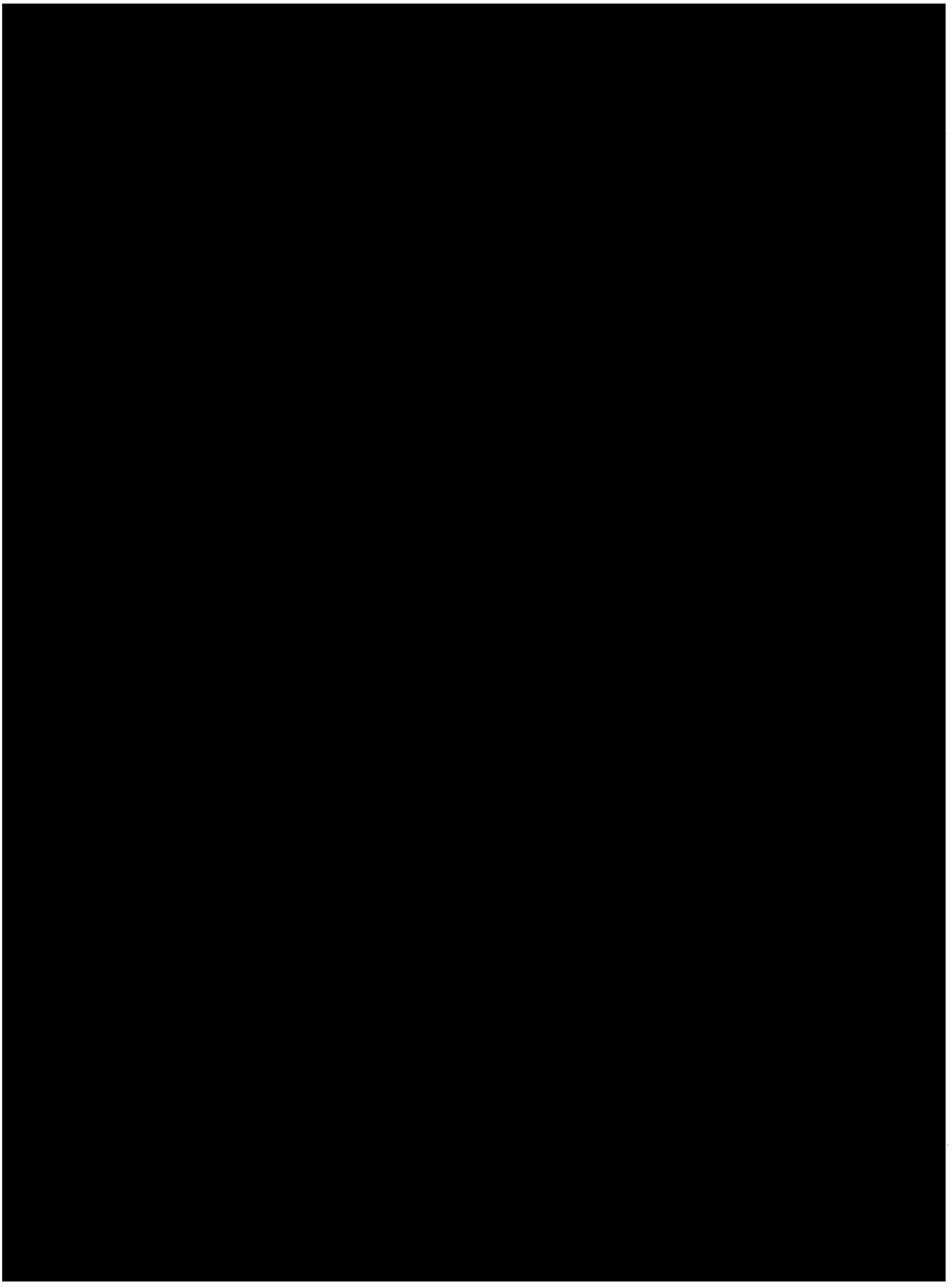
A judicial officer may have believed to preside over an impartial administration of justice (court) hearing but well where the Officer of the Court undermined this then this only underlines the weakness of the court/judiciary system to fail to avoid this.

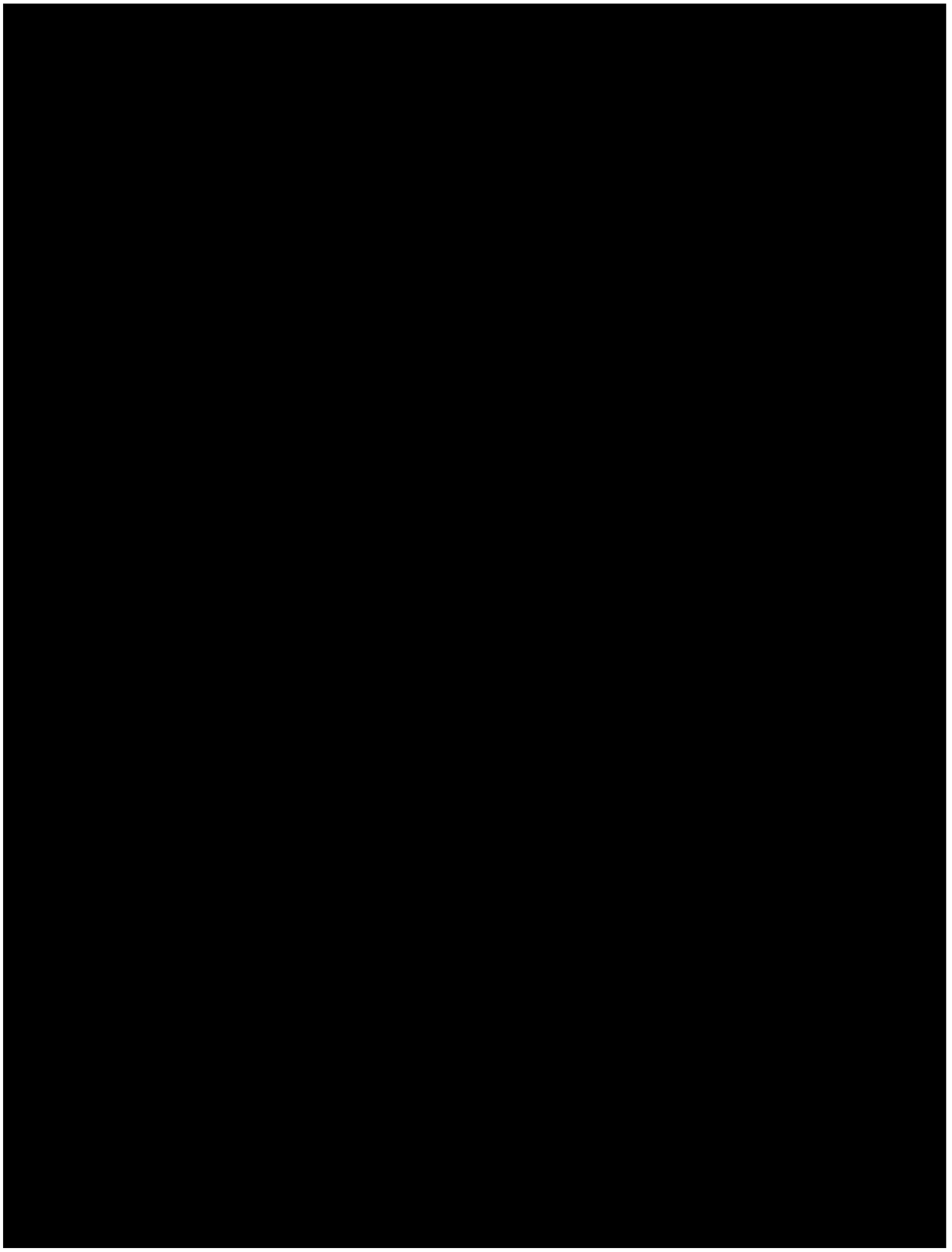
I as a citizen had a right that Tony Mokbel and others were provided a FAIR and PROPER hearing and this clearly appears not to have eventuated. How can I trust anyone associated with the judiciary to do better when they are not willing to accept that those wrongful obtained convictions should be held a nullity?

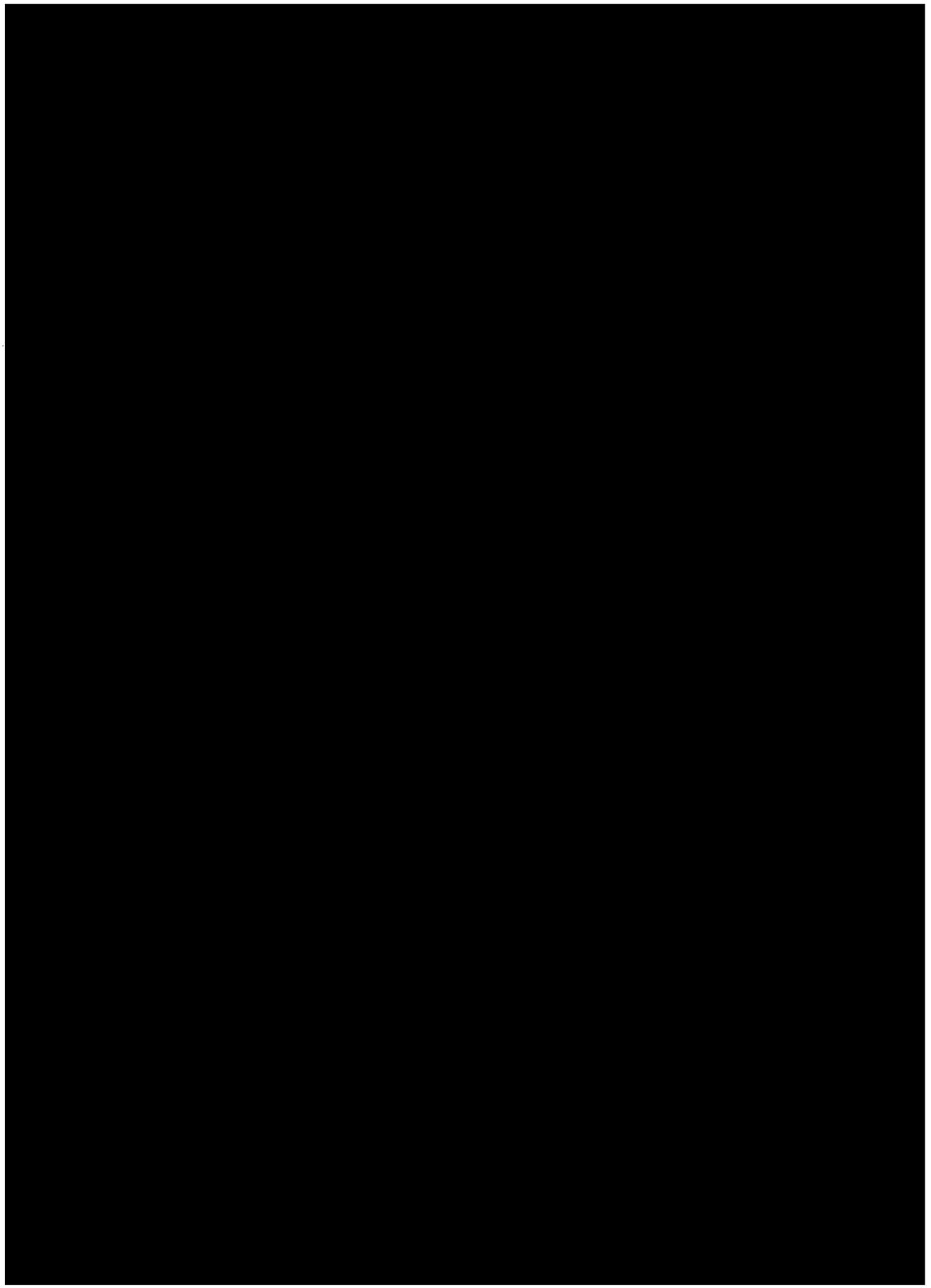
.

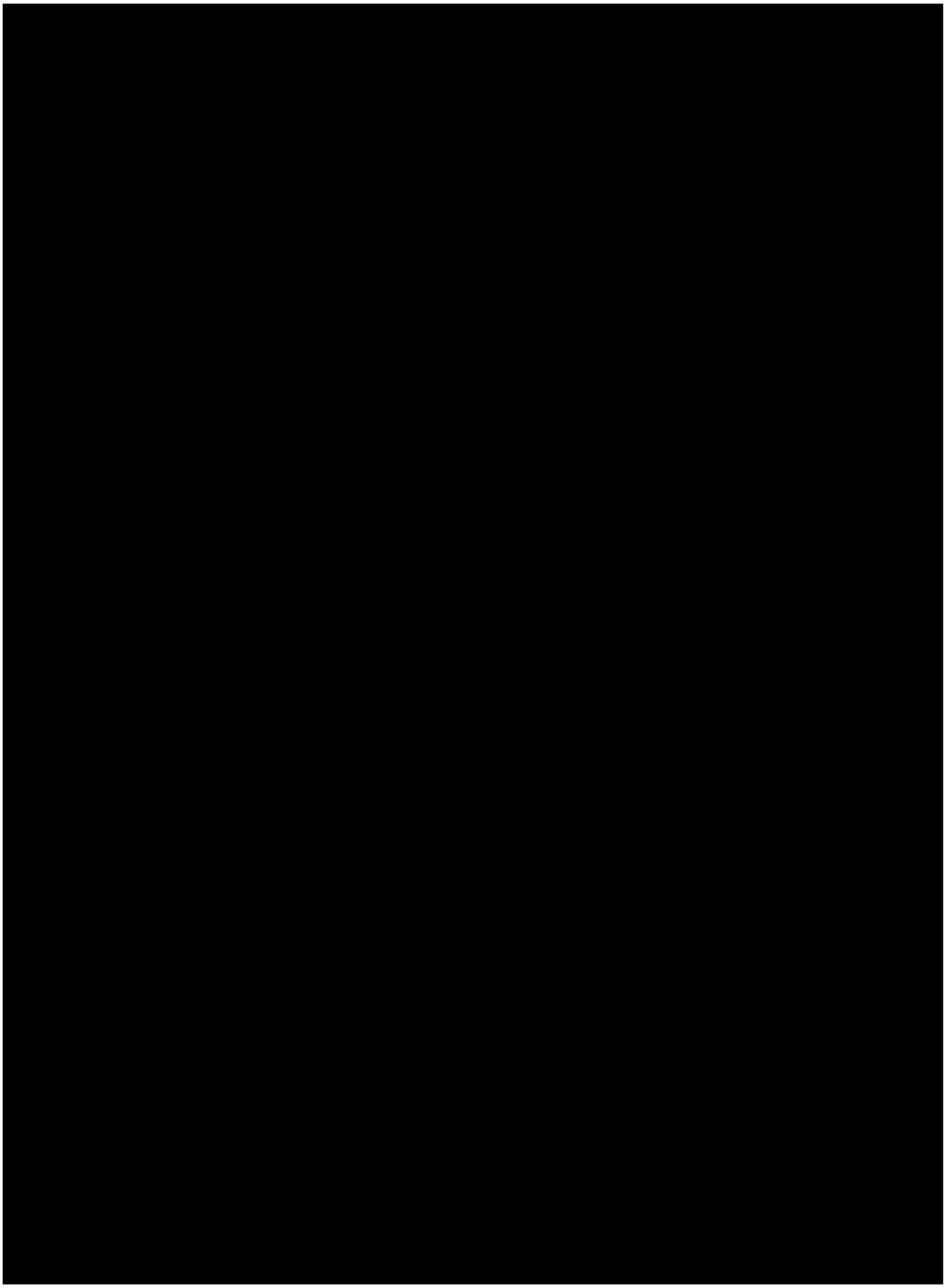
How on earth could the prosecutor in each case have been allowed to conceal from the court this treasonous conduct is beyond me. Those Prosecutors as Officers of the Court should be prosecuted for violating their duties and obligations as Officers of the Court.

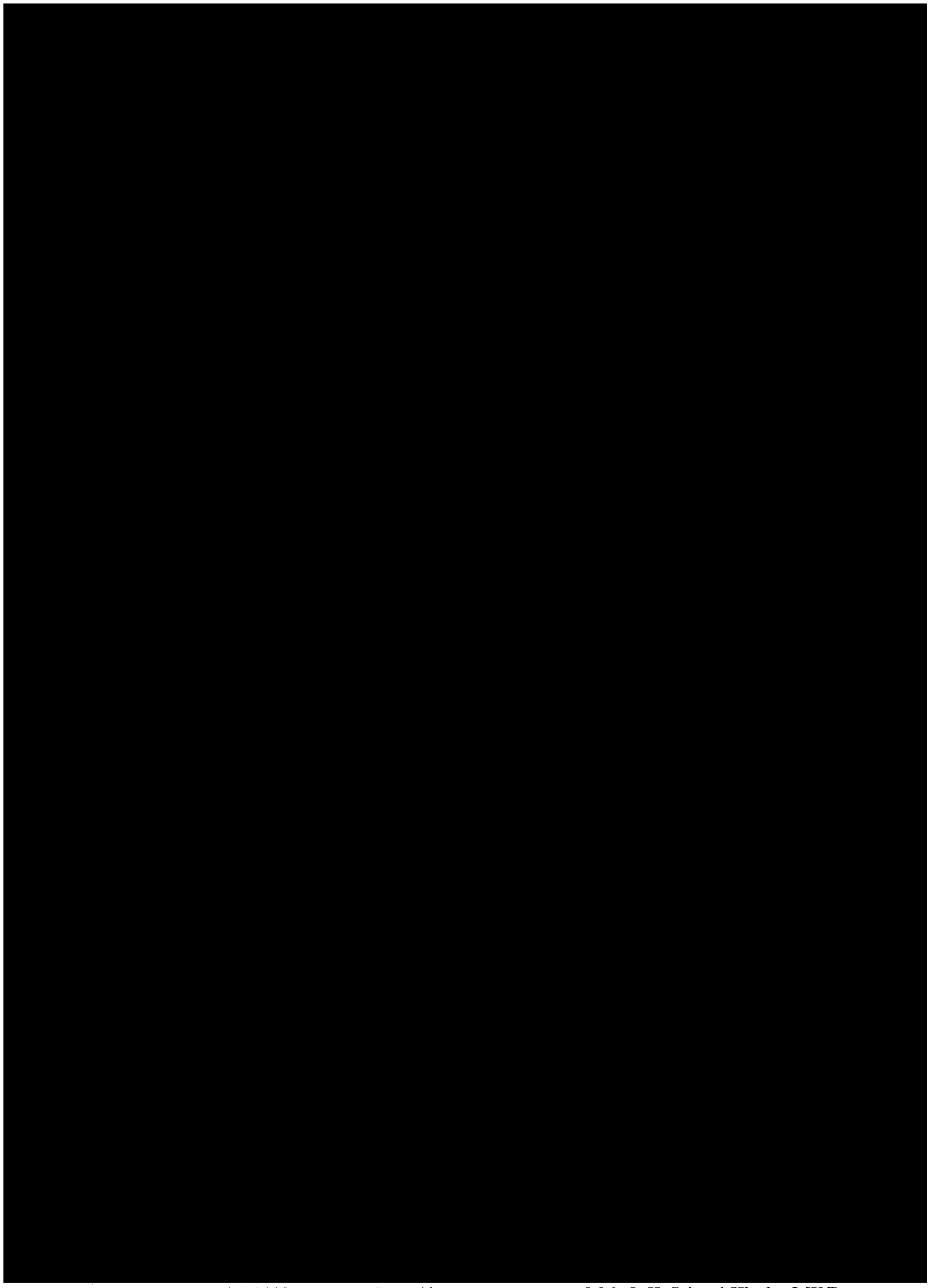
.

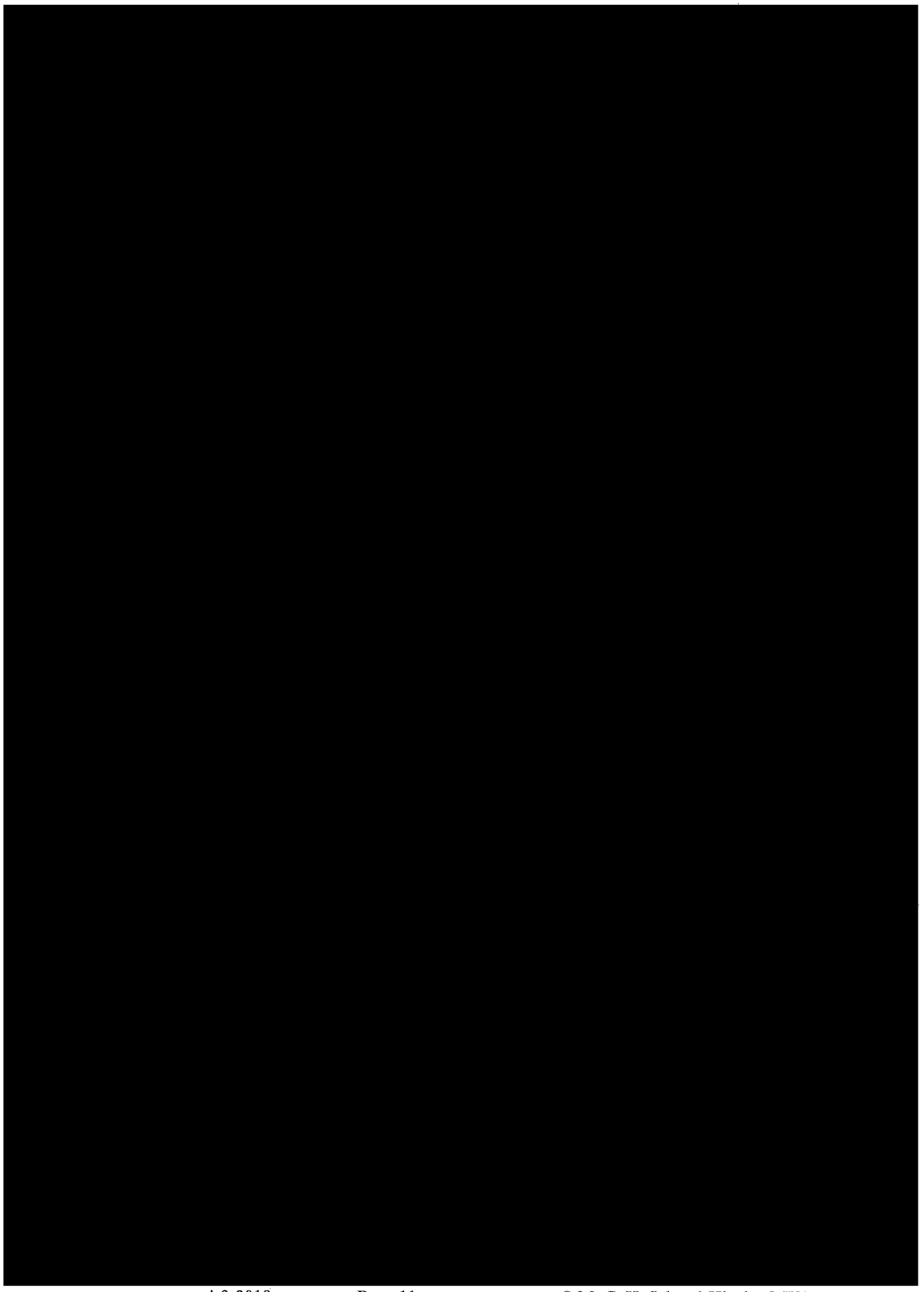


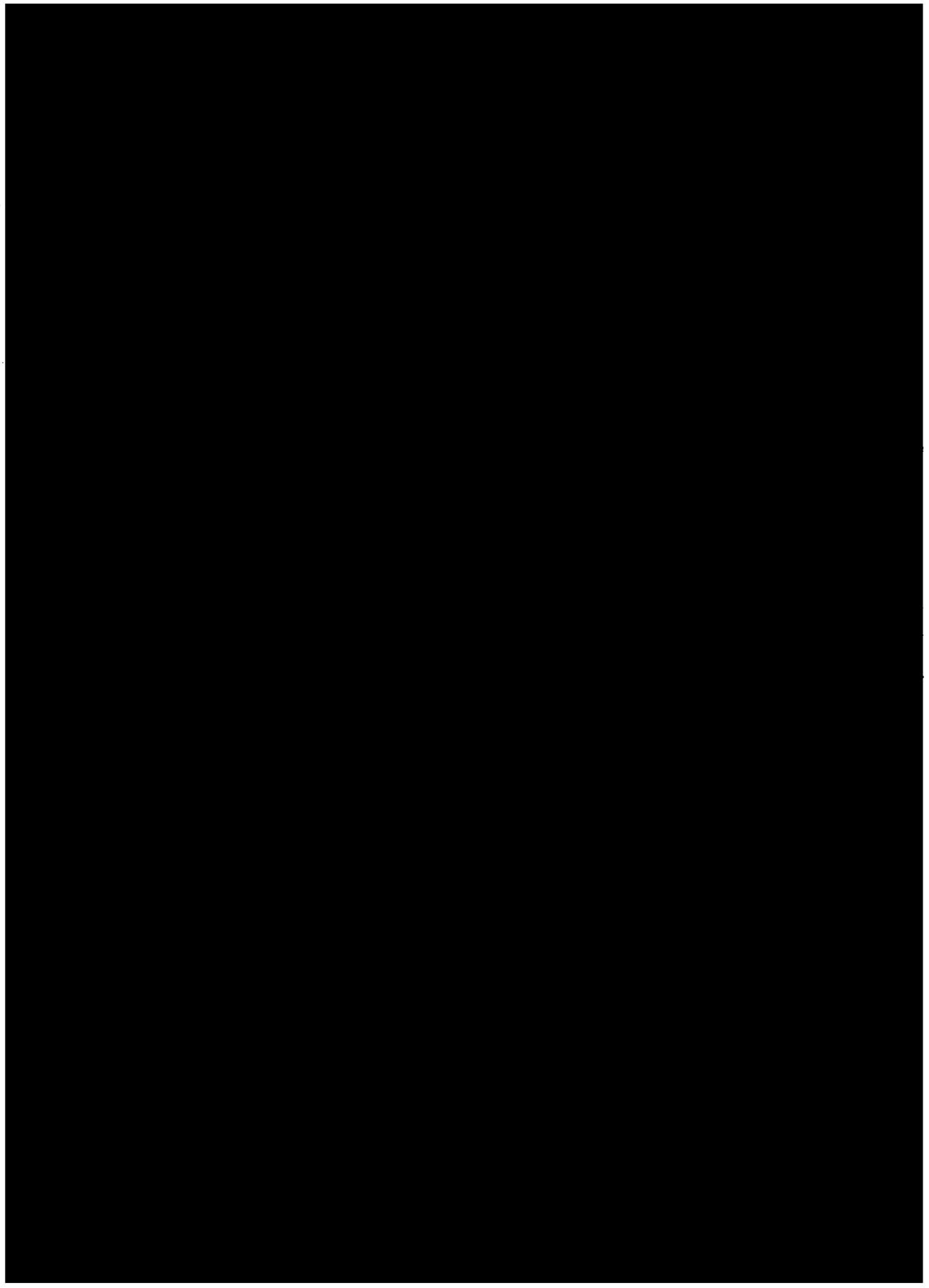












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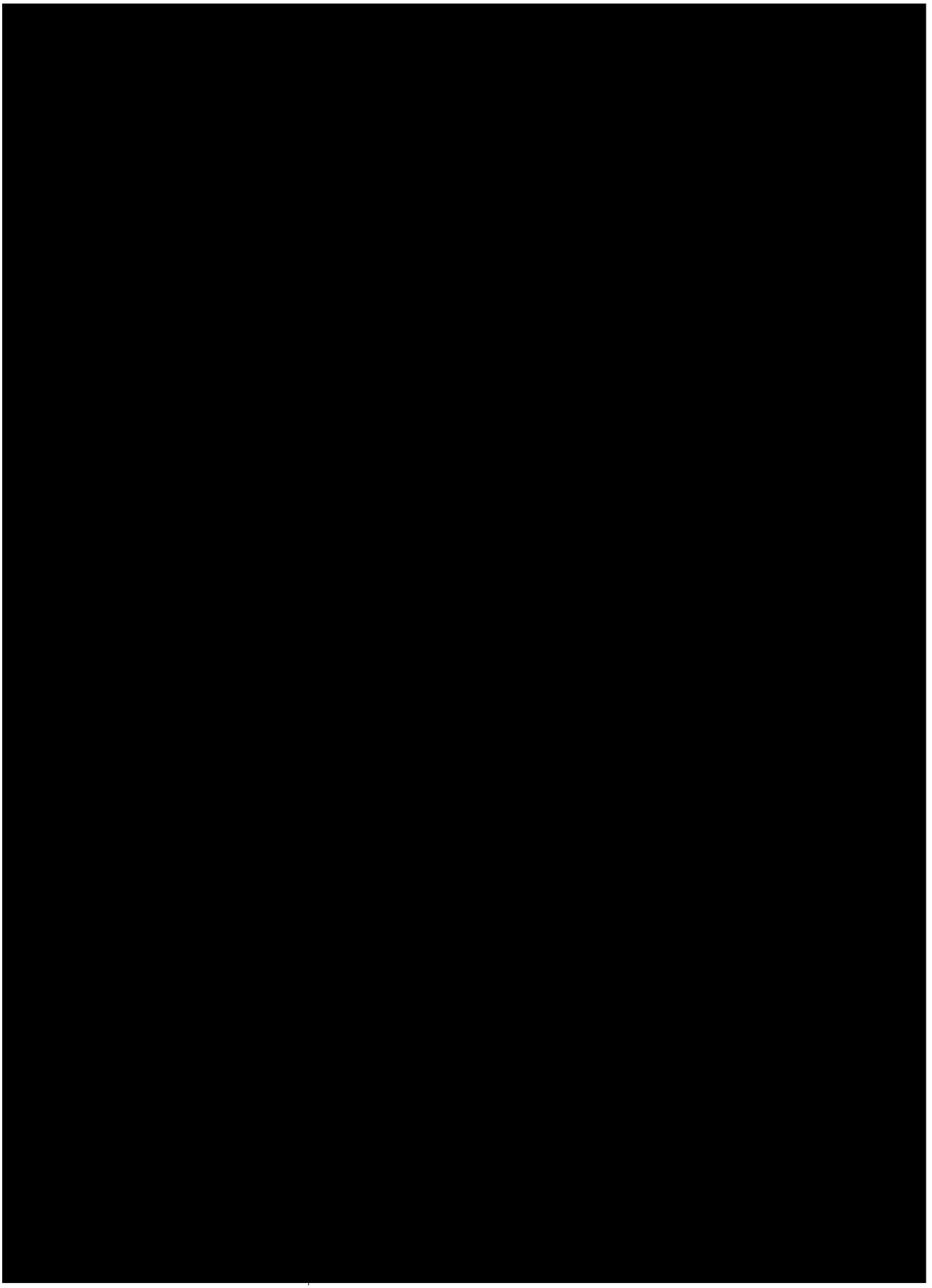

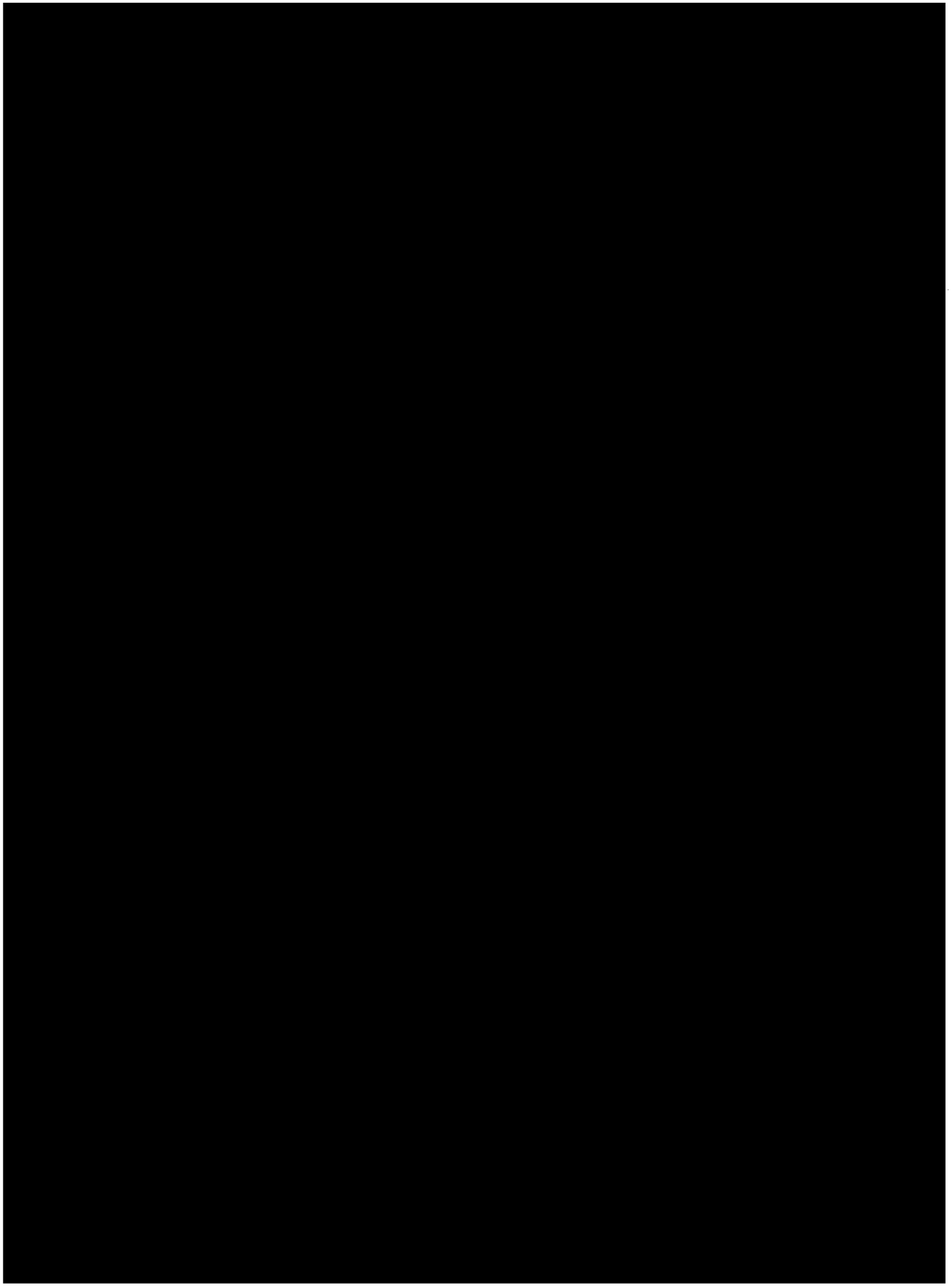

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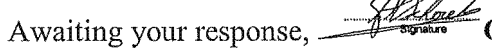
Awaiting your response,  **G. H. Schorel-Hlavka O.W.B.** (Friends call me **Gerrit**)

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Margaret McMurdo, AC **Royal Commissioner** 5-3-2019
Victorian Royal Commission into Management of Police Informants
PO Box 18028, Melbourne VIC 3001.
https://www.rcmpi.vic.gov.au

Ref: 20190305-G. H. Schorel-Hlavka O.W.B. to Royal Commissioner Margaret McMurdo, AC
Re –SUBMISSION-Supplement 5

THIS SUBMISSION IS PROVIDED FOR PUBLICATION AS IDENTITIES RELATING TO CONFIDENTIAL MATTERS HAVE NOT BEEN REVEALED.

Commissioner,

further to my 18-2-2019 submission and 26-2-2019 and 28-2-2019, 1-3-2019, 4-3-2019 supplements I desire to state the following:

[redacted]

There are many legal practitioners to whom it is an honour to be a Officer of the Court and during their working life pursues to act accordingly to their duties and obligations. However if they try to criticize a wrongdoer who is an Officer of the Court then they risk that they can have their practicing license suspended, even permanently. As a Professional Advocate I had no such dangers and always was able to speak out. Hence many legal practitioners (Officers of the Court), albeit of the record, expressed to me they valued my conduct to expose the rot.

The legal doctrine of "*ex turpi causa non oritur action*" denies any remedy to a litigant (including a prosecutor) who does not come to court with clean hands.

If your own action is very unlawful and very unethical, if you come to court with "Dirty Hands" best not to question others legality, morality, and ethics!

Hence, I view that when Nicola Gobbo appeared before the Supreme Court of Victoria to sue for millions of damages the trial judge there and then becoming aware of the unlawful collaboration/conspiracy between the Victorian Police and Nicola Gobbo should have there and then exercised his legal duties to have them all charges with CONTEMPT OF COURT,

conspiracy to pervert the course of justice, perverting the course of justice, bring the administration of justice in disrepute, etc.
That is the duty and obligation of any judicial officer as an Officer of the Court to ensure that any criminal conduct is appropriately attended to. Further, the trial judge then in my view had an obligation to immediately ensure that the victims of this collusion/conspiracy had their convictions set aside. Instead we had that former Chief Commissioner Cromrie did his investigation but nothing was done to immediately provide justice for the victims. Neither did the judges of the appeal court bother to take appropriate steps and so years went by while those I view wrongly convicted nevertheless were kept in imprisonment.
While the High Court of Australia judges were critical they too each being an Officer of the Court failed to ensure appropriate charges were immediately laid. In the process of all those years the victims suffered horrendously. Carl Williams was viciously murdered.
Other Officers of the Court joined in to become police informers against their own clients and this because the Supreme Court of Victoria judges failed to act to take appropriately steps to stop this rot, like a cancer.
.
Here we have Victorian Police supposing to enforce the rule of law placing itself above the rule of law and not a single judge took action to stop this. Each of them therefore I view should be charged for placing the administration of justice in disrepute.
.
It also means that if you as a royal commissioner have persons appearing before you who you are aware of have been involved in this kind of conduct to pervert the course of justice then as an Officer of the Court you are bound to ensure that appropriate steps are taken to have them charged. Failing to do so in my view means you are yourself failing your duties as an Officer of the Court.
While you may argue that you are a Queensland Officer of the Court, this is no excuse because the High Court of Australia as I understand it made clear that a legal practitioner in one state can likewise conduct matters in any other state. Well, then your duties and obligations as an Officer of the Court are likewise applicable in other states, even if being a royal commissioner you are limited. This as the separation of powers cannot mean that the Government of the Day can somehow undermine/interfere with your duties and obligations as an Officer of the Court.
In my view it would be utter and sheer nonsense that the victims are still being kept in imprisonment while those who colluded/conspired are walking free as if they committed no crimes and have pro-motions as result of their unlawful conduct and/or have a massive financial benefit.

[redacted]

We now have that the victims of Nicola Gobb and the Victorian Police and other officers of the Court like her now are still denied justice while the culprits somehow are still protected.
.
I view that any decent legal practitioner being an Officer of the Court should demand that immediately appropriate action is taken against the offenders.

The ***Imperial Act Interpretation Act 1982*** (Vic) clearly outlaw the **STAR CHAMBER COURT** and yet this is really that was and still is applied.

In my view Nicola Gobbo lied as to that Tony Mokbel was why she became an informer as I understand she was already an informer in 1995.

Likewise I view Chief Commissioner Graham Ashton lied as to claim Nicola Gobbo became an informer in 2005 relating to her dealings with Tony Mokbel.

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I have always made clear that I am against drug dealers, etc, but I have also always made clear that we can never deny them a FAIR and PROPER trial and provide **NATURAL JUSTICE**.

The fact that the Victoria Police appear to me to have a ***modus operandi*** to get Officers of the Court betraying their clients as well as acting in violation of being an OFFICER OF THE COURT and the Prosecutors went along with this I view is a very serious issue.

This has not been a once of incident but a repeated conduct not only with Nicola Gobbo but also with other Officers of the Court where the Victorian Police disregarded the rule of law and so undermined our democratic system.

Even Counsel assisting the Royal Commissioner has an obligation as an Officer of the Court to ensure appropriate charges are laid against those who offended.

[redacted]

We appear to have had at least a dozen or more judges who were dealing with Nicola Gobbo and aware of her unlawful conduct and yet none of them actually took appropriate steps against her and the relevant police officers.
How on earth can any **FAIR MINIDED PERSON** trust the administration of justice when the judges themselves are flaunting their obligations as Officers of the Court?

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This Royal Commission may take a year or more since its announcement to present a final report but it would be a grave injustice if those who were wrongly convicted in the meantime are denied justice. As I understand you made yourself clear that you are not to deal with the convictions themselves and that is correct but you as an Officer of the Court you must not delay any action against those who offended against their victims' rights and for undermining the administration of justice.

[redacted]

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Commonwealth v Schorel-Hlavka).Indeed the County Court of Victoria in its orders made this very clear on 19-7-2006 to uphold both appeals I had filed.
Why then are they not charged for perverting the course of justice and harming the child Dhakota Williams? Moreover, if as appears to me Nicola Gobbo was involved to have George Williams pleading guilty then I view this decision should have been set aside long ago and this would also mean that the ATO case has no legal standing for this also.

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While you may restrict yourself to only deal with how police deals with informers and so ignore the harm such as caused upon Dhakota Williams that flowed from it, this to me would mean really that **JUSTICE CONTINUES TO BE DENIED**. One cannot separate the end result from the Victorian Police as I view it criminal conduct to undermine the administration of justice.

Citizens of the state of Victoria cannot accept that those persons who were convicted due to having lawyers who violated their obligations/duties as an Officer of the Court are rightly convicted. In my view any court who nevertheless allows those convictions to remain on foot rather than to immediately set aside each and every so to say questionable/contaminated conviction only becomes part of placing the administration of justice in disrepute.

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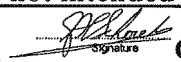
Let the prosecutor consider if without any contaminated evidence there is a case against any person and then follow up with appropriate charges to pursue the courts to deal with those accused in a FAIR and PROPER hearing, but let us never accept that any STAR CHAMBER COURT kind of system can be part of our administration of justice. To allow for this means that soon many innocent people will end up convicted because those involved to uphold the law may simply abuse the system for their own benefits.

This correspondence is not intended and neither must be perceived to address all issues.

Awaiting your response,  **G. H. Schorel-Hlavka O.W.B.** (Friends call me **Gerrit**)

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