

Everyone's Entitled To My Opinion

CHARACTERS

BOLT: ANDREW BOLT, Herald Sun columnist

POPOVIC: JELENA POPOVIC, Deputy Chief Magistrate,

SHER: JEFFREY SHER, counsel for Popovic

HOUGHTON: WILLIAM HOUGHTON, counsel for Bolt

JUDGE: JUSTICE BONGORIONO, trial judge

PROSECUTOR DECLAN COLLINS, witness for Bolt

PROSECUTOR MICHAEL MOHAMMED, witness for Bolt

SET

The set is a courtroom with the relevant sections of two articles printed on the walls so the audience can read them. The articles, written by Andrew Bolt and published in the Herald Sun, appear at the end of this play.

(BOLT, POPOVIC, SHER, HOUGHTON and the JUDGE enter dancing to techno music. BOLT steps forward, shakes hands with members of the AUDIENCE)

BOLT

Andrew Bolt, mate. Call me The Bolta. Qualified journalist. More people read me than Chopper Read. Popovic here, so-called Deputy Chief Magistrate, is suing me.

POPOVIC

And the Herald Sun.

BOLT

You're not allowed to have an opinion anymore!

POPOVIC

I'm suing him because he wrote lies about me. Nothing to do with having an opinion. And the Herald Sun refused to apologise or retract the lies.

BOLT

Everything I write is true, fair and balanced.

BOLT

Anyone got a contact for Dancing With The Stars? Not that I'm interested. Can't stand egoistical grandstanders. Un-Australian. Our artists are so stupid they wouldn't know if they had rabbits coming out their arse. Don't take my word for it, check out *Rabbit Proof Fence*. I mean why would you build a rabbit fence in the first place? Rabbits create employment. Akubras. And the so-called stolen generation. The only thing stolen was the billions of taxpayers' money we gave them to get over it. That's the stuff I write, what everyone's thinking but too scared to say. True, fair and balanced.

POPOVIC

If it was true, fair and balanced we wouldn't be here.

(Pulls a copy of his book from his jacket)

BOLT

I wrote this. *Still Not Sorry*. Came up with the title myself. John Howard, there's a bloke you can believe. What's he say about me? "*Andrew Bolt writes a great deal of sense.*" See, right there on the cover. It's his opinion and he's entitled to it.

(The JUDGE steps forward, the others continue dancing)

JUDGE

Members of the jury, as Judge of this civil trial, it's my duty to inform you you will be asked to determine six important questions. *(Referring to article written on wall)* Was the article Mr Bolt wrote in the Herald Sun, December 13, 2000, defamatory to Ms Popovic?

BOLT

(aside) Is bin Laden a soft-cock pacifist?

JUDGE

Was the article true?

BOLT

(aside) Do they grow tulips in Holland?

JUDGE

Did it accurately report what happened in the magistrate's court on November 1, 2000, presided over by Ms Popovic?

BOLT

(aside) Did Mark Latham have a foul mouth or what? Called me a Nancy boy.

JUDGE

Was the article fair comment on a matter of public interest?

BOLT

(aside) Is the green movement a Nazi menace to humanity?

JUDGE

Was the conduct of Andrew Bolt and The Herald Sun in publishing the article reasonable in the circumstances?

BOLT

(aside) Is The Age newspaper a waste of good ink?

JUDGE

And finally, were Mr Bolt and The Herald Sun actuated by malice in publishing the article?

BOLT

(waving book) Should everybody be forced to read my book?

POPOVIC

Definitely not!

BOLT

Of course not. That's what this case is all about, *freedom* of speech. The right to hold an opinion and freely express it. I may not agree with what you say but I will fight to the death

for your right to say it. That's the type of stuff I come up with. Original and factual. At the end of the day they'll be out of pocket and I won't be sorry.

(The music stops. BOLT takes the stand. HOUGHTON appears for BOLT and the HERALD SUN)

HOUGHTON

Your full name is Andrew Bolt?

BOLT

Yes. That's a fact. Though I prefer The Bolta.

POPOVIC

Melbourne's own village idiot.

HOUGHTON

What year were you born?

BOLT

1959, year of the pig. Did you know pigs are good humoured?

HOUGHTON

Did you attend university?

BOLT

I believe I attended for a year at Adelaide University, 1978.

POPOVIC

(aside) He attended? Did he pass?

BOLT

I object.

JUDGE

Upheld. Continue.

BOLT

I object. *(HOUGHTON shakes his head)* I withdraw that.

HOUGHTON

Did you serve your cadetship as a journalist with The Age newspaper in Melbourne?

BOLT

Ha, ha, yes I did. The Age of the barbarians. 1979, it lasted two years.

HOUGHTON

Did you then work for a politician in the Northern Territory?

BOLT

Yes, 1984. A Labour politician. Thank Christ we lost the election. So I decided to go to Holland, work in my uncle's factory, a flower exporter.

POPOVIC

(aside) The Dutch Tulip. Alias, Dutch oven.

BOLT

That's below the belt. I don't play the man. I never play the man. I always play the ball.

HOUGHTON

Go on, Mr Bolt.

BOLT

I returned to The Age, under duress I might add, then received an offer to go to the Herald.

HOUGHTON

What year was that?

BOLT

86. Then I got a job with the National Media Liaison Office working in a sort of propaganda area.

POPOVIC

Who for?

BOLT

Do I have to answer that? Never mind. The Hawke Labour Government. Ha, ha, they never knew what hit them. *(aside)* I had my own band you know. Russell Crowe used me as a role model.

HOUGHTON

What did you do after that?

BOLT
1988 I again took up a job with the Herald--

POPOVIC
Coffee boy?

BOLT
Opinion page editor.

POPOVIC
Same thing.

JUDGE
That's it. Any more I'll close the court.

(POPOVIC angrily folds her arms, listens intently)

BOLT
Opinion page editor is the most important position
a journalist can hold! My job as editor is to
uphold the right to have an opinion.

HOUGHTON
About this time had you met your future wife?

BOLT
Yes. Did I mention she also writes for the Hun,
sorry Herald Sun? We're a family of writers.

(BOLT waves to his imaginary wife)

SHER
Your Honour, I have to object to that.

JUDGE
Yes, Mr Sher?

SHER
It really does seem, with respect, absolutely
nothing to do with the issue in this case.

JUDGE
Yes. Confine it to relevant background, Mr
Houghton.

BOLT

(aside) I once worked as a Father Christmas.

JUDGE

That'll do, Mr Bolt.

HOUGHTON

(referring to an article on the wall) The article Ms Popovic is suing yourself and the Herald Sun over was written on the 13th of December, 2000?

BOLT

Correct.

HOUGHTON

(referring to the other article on the wall) But two months prior, on October 9th, you wrote another article under the title--

BOLT

To a lay person, the sentence some magistrates pose can be quite a puzzle.

(BOLT searches his folder for the article)

BOLT

Correct. If I may quote?

HOUGHTON

Please.

BOLT

(over-the-top interpretation) You may be puzzled to hear our chief magistrate, Michael Adams, is causing outrage by describing magistrates as being either 'soft c-o-c-k-s' or 'rednecks'.

POPOVIC

(aside) He can spell it but he can't say it. What a soft cock!

HOUGHTON

And that was your opinion?

BOLT

Yes, my bloody oath.

HOUGHTON

I have nothing further to ask at this stage, Your Honour.

JUDGE

Mr Sher.

SHER

The Age newspaper spelt the words "soft cocks" out in full.

BOLT

Ours is a family newspaper.

SHER

Your family newspaper makes its money advertising brothels doesn't it?

BOLT

(outraged) It does not!

SHER

Let me take you to the classifieds.

(reads from Herald Sun)

Adult Hot Missy, there's a number here, I won't read it, Hot Gals, grannies, trannies. Bored blonde, Sally, Ring a bell? Good time Sally. Seeks discreet fun.

BOLT

You obviously haven't been to a brothel. They're chat lines. We do not advertise brothels.

SHER

Of course not. *Quick and discrete, nasty Gals. Long tall Sally.*

BOLT

You're selectively quoting.

SHER

It's right here.

BOLT

At the back.

SHER

That makes it okay does it?

BOLT

Out of sight of our mainstream readership.

SHER

"*Andrew Bolt writes a great deal of sense.*" Did John Howard write that about your book?

BOLT

You'll have to ask him.

SHER

He didn't did he?

BOLT

Ask John.

SHER

You lifted that from something else he said about you, on the hoax issue of climate change.

BOLT

(*aside*) Anyone who believes in climate change has been drinking too much water.

SHER

You put it on the front of your book to imply he said it about your book. That's selective quoting, isn't it?

BOLT

I didn't put it there.

SHER

How did it get there?

BOLT

My publisher put it there. Can't trust anyone these days.

SHER

That's selective quoting though, isn't it?

BOLT

The Prime Minister said it about me. How can it be selective quoting?

HOUGHTON

What has this got to do with the case in hand?

JUDGE

I agree, Mr Houghton. Could we return to the relevant case?

SHER

This expression "soft cocks", it's crude?

BOLT

My bloody oath.

SHER

It's offensive?

BOLT

To some it would be offensive, bloody oath.

SHER

To magistrates it would be offensive, wouldn't it?

BOLT

They might would find it offensive.

SHER

What about a female magistrate?

BOLT

Some might not but others might.

SHER

Did you know how long Ms Popovic had been a magistrate?

BOLT

I might've been told she was appointed by the Kirner government, but I can't recall that.

SHER

Did you know what sort of work she'd done on the bench over the years she'd been a magistrate?

BOLT

Our newspaper files have some sense of the kind of cases she'd been dealing with.

SHER

You knew nothing of her background?

BOLT

Whether she was *Serbian Orthodox*? No I didn't know that.

SHER

When you say you don't play the man you didn't turn your mind to the hurt you might cause her when you wrote this article?

BOLT

That's untrue.

SHER

You did?

BOLT

It's impossible to write a criticism, opinion piece, of someone's performance without hurting their feelings and that's the thing that I hate most, that people get hurt.

SHER

And you maintain you never play the man?

BOLT

That's not my style. I deplore bullying of any kind. (to AUDIENCE) If you don't believe me ask Mary 'Condoms' Delahunty or Red Red Kerry O'Brien of the ABC. They'll back me up.

SHER

In relation to what Mr Adams is talking about, namely soft cocks, you said,

BOLT

"Now here I think I can help."

SHER

You were going to help your readers work out what Mr Adams was talking about when he called some magistrates soft cocks?

BOLT

And rednecks.

SHER

Where are the rednecks mentioned in that particular paragraph?

BOLT

(smiling) Well, I went looking for "redneck" examples. I asked the police but couldn't find any.

SHER

Just a moment. Where are "rednecks" referred to in describing this puzzle which you were going to help the readers solve?

BOLT

It is not referred to after that.

SHER

No, you were only going to help them solve Mr Adams' comments on "soft cocks"?

BOLT

I intended to do both.

SHER

Did you?

BOLT

Yes.

SHER

Did you really expect the police to tell you who the rednecks were in the Victorian Magistrates' Court?

BOLT

Well I asked them that but--

SHER

Would you please answer my question?

BOLT

If there were such, yes.

SHER

You really thought the police would tell you,
*"Well look we've got on the one hand these
magistrates who are too soft but on the other hand
we've got these magistrates who are too tough."*?

BOLT

I thought they would. If there was a case of a
guy being jailed for a year for jaywalking I'd
expect them to tell me, yes.

SHER

But they didn't?

BOLT

No.

SHER

I want to quote to you from the December 13
article, the article which is the basis for this
case.

BOLT

*"Our two top magistrates have in recent cases
handed out 'justice' which seems so lenient that
we must now tell them who is boss. In fact police
prosecutors are so fed up that a senior sergeant
has asked that Attorney-general Rob Hulls examine
the behaviour of Deputy Chief Magistrate Jelena
Popovic, who he says is famed as 'probably the
softest magistrate on the bench'. These
recommendations by Acting Sen-Sgt Jeff Birrell are
yet to be endorsed by his superiors and, then, the
Director of Public Prosecutions. Now for Ms
Popovic, the deputy Chief Magistrate, who--*

SHER

Skip the rest of that sentence.

BOLT

Ha, ha, now who's guilty of selectively omitting?
*Hmmmmmm? Who once hugged two drug traffickers she
let walk free. And you want to omit that. That's
why the world needs writers like me.*

SHER

I'll come to that in due course. Continue please.

BOLT

"On November 30 she presided over a hearing involving five protesters who had allegedly..."

(The JUDGE becomes MOHAMMED. POPOVIC is melodramatically hostile [BOLT'S pov] to MOHAMMED who is conciliatory. The following section is from one of the articles)

POPOVIC

"Who is pushing this prosecution? The Indonesian consulate?"

MOHAMMED

"No the police are."

POPOVIC

"I don't know what the facts are but it is clearly some kind of East Timorese protest. The young people, I presume they are young people, and reading some of the material, some of these young people have worked in a voluntary capacity in East Timor. If they have got no prior convictions, the worst thing that would happen to them if I was a presiding magistrate and found the charges proven is to have them dismissed."

BOLT

"Having already decided, before hearing any evidence, she would not punish demonstrators for destroying Indonesian property, Ms Popovic turned on the prosecutor."

POPOVIC

"You have to wonder sometimes whether these matters are brought for any legitimate purpose."

MOHAMMED

"Your worship, we have a situation where we have a victim. It is their property and they have laid the complaint and we are obliged to investigate and prosecute."

POPOVIC

"I reckon it would be much cheaper to buy them a new flag."

MOHAMMED

"Your worship..."

POPOVIC

"One, two, three, four, five people to court over it."

MOHAMMED

"Your worship, the situation is that it is their property, they have a right to--"

POPOVIC

"Mr Mohammed, you repeatedly argue with me."

MOHAMMED

"Your worship--"

POPOVIC

"I'm warning you now!"

BOLT

"I'm warning you now!" she threatened. "How outrageous to so bully a prosecutor for simply arguing the law must be upheld against demonstrators who destroy the property of others. We have clear laws on these matters and we pay the Popovics of this world very good money to uphold them. If they refuse, why should we employ them for a day longer?" That's what I wrote, true, factual and good journalism.

SHER

"Why should we employ them for a day longer?" You, in effect, called for her dismissal because you claimed she failed to uphold the law.

BOLT

I deny that. I didn't say she didn't uphold the law and I didn't call for her dismissal.

HOUGHTON

(aside) The article doesn't mean what they say it means.

SHER

(to POPOVIC) When you read the article what was your reaction?

POPOVIC

I was shocked, devastated, very, very upset.

SHER

What did you believe the article was saying about you?

POPOVIC

That I was unfit to hold office and that I ought to be dismissed.

MOHAMMED eagerly takes the stand

MOHAMMED

My full name is Michael Anil A-n-i-l Mohammed. I joined the Prosecutions Division in 1997. I prosecuted for three years. I'm now a prosecutor instructor at the Research and Training Division of Prosecutions. On 30th November, 2000, I appeared in a matter before Deputy Magistrate Popovic. There were five defendants. It was an adjournment application. The defendants were involved in an incident of burning an Indonesian flag. Arson, which is an indictable offence, had been raised. We were getting an opinion on it, that's why we were seeking the adjournment. I thought it should really have gone down the arson path to a higher court. Something wasn't right with the way Ms Popovic conducted the proceedings. We started off friendly but her demeanour changed. She was upset because I was telling her there was a victim, that I was trying to get my version of events across. At the end of the proceedings I obtained a copy of the transcript tape because I wanted my superiors to know about her behaviour. Mr Birrell, my immediate superior, drafted a letter of complaint to the Director of Public Prosecutions hoping he would forward it to the Attorney General.

SHER

You have appeared before Ms Popovic on other occasions?

MOHAMMED

Yes.

SHER
How many times?

MOHAMMED
I couldn't estimate.

SHER
A lot?

MOHAMMED
Yes.

SHER
Have you had arguments with her before?

MOHAMMED
No.

SHER
Never?

MOHAMMED
Not that I believe, no.

SHER
She's never said to you to stop arguing with her before this case?

MOHAMMED
The only time she's said to me, stop arguing with her, and that's where she warned me, I thought for contempt, was on that day.

SHER
You thought she was warning you for *contempt of court*?

MOHAMMED
Yes.

SHER
What did she say?

POPOVIC
I'm warning you I don't wish to get into an argument.

SHER

You're sure?

MOHAMMED

Course I am.

SHER

And that's how she said it, just as you said?

MOHAMMED

Exactly.

SHER

She was warning you about dealing with you for *contempt*?

MOHAMMED

She was getting flustered, she was getting red in the face so I apologised to calm the situation.

SHER

You were being helpful were you, just having been threatened with contempt, you apologised?

MOHAMMED

I didn't want to be locked up for contempt, no.

SHER

You thought you could be locked up?

MOHAMMED

Definitely.

SHER

Did you say?

MOHAMMED

(to Popovic) *"The Indonesian Consulate have laid the complaint and we are obliged to investigate and prosecute."* (to SHER) Yes.

SHER

If I said to you, I want you to prosecute somebody because they've destroyed something of mine, you'd be obliged to prosecute?

MOHAMMED

I said there was a victim--

SHER

The fact is it's totally wrong to suggest to a magistrate that because the Indonesian Consulate had laid a complaint that the police were obliged to prosecute?

MOHAMMED

No, what was suggested to the magistrate--

SHER

That's wrong isn't it?

MOHAMMED

No, what you're saying is wrong. What was suggested to the magistrate is there is a victim, the victim has a voice--

SHER

But you didn't say we're obliged to investigate and prosecute because there's evidence they've committed an offence. You just said we're obliged to investigate and prosecute?

MOHAMMED

I wasn't--

SHER

That's what you said.

MOHAMMED

I wasn't given the opportunity. Her Worship cut me off on three occasions.

(SHER checks documents)

SHER

Ah, yes, Lyfield.

BOLT

"Ms Popovic is said by prosecutors to have a tender heart, which some people might say is to her credit. People, that is, like James Lyfield."

SHER

Were you the prosecutor in the case of Lyfield?

MOHAMMED

If you give me the facts or circumstances.

SHER

How many times have you appeared in court?

MOHAMMED

Numerous times.

SHER

As an instructor of prosecutors do you discuss rules of evidence and conduct in court as a witness?

MOHAMMED

Yes we do.

SHER

One of the things you tell people is listen to the question and answer the question?

MOHAMMED

Yes.

SHER

Do you tell them just to answer the question?

MOHAMMED

As prosecutors they don't have to do that.

SHER

No, but witnesses do, don't they?

MOHAMMED

Yes.

SHER

You know that, don't you?

MOHAMMED

Yes.

SHER

Let's see if we can do that. Listen to my question, answer my question and don't volunteer

anything. Were you the prosecutor in the case of Lyfield?

MOHAMMED

No.

SHER

You can't remember the name Lyfield?

MOHAMMED

Not offhand, no.

SHER

Do you remember reading the article in the Herald Sun on the 9th of October?

MOHAMMED

Yes, I read this article, yes.

SHER

You knew it was coming, didn't you?

MOHAMMED

No I didn't.

SHER

You'd spoken to Mr Bolt, hadn't you?

MOHAMMED

No, I've never met him.

SHER

Are you telling this court you've never spoken to Mr Bolt, the author of these articles, based on your complaint, and he's never spoken to you?

MOHAMMED

No, never.

SHER

Ever?

MOHAMMED

Never.

SHER

Were you the prosecutor in a case involving a man named James Lyfield who came up before Jelena Popovic?

MOHAMMED

Not that I can recall, no.

SHER

Are you sure you weren't the prosecutor?

MOHAMMED

It doesn't stick out in my mind, no.

SHER

So you know nothing about what happened in Mr Lyfield's case?

MOHAMMED

No.

(SHER hands MOHAMMED a file)

SHER

This is the Lyfield file. See the court written on it?

MOHAMMED

Yes.

SHER

See the date?

MOHAMMED

Yes.

SHER

See the defence lawyer?

MOHAMMED

Yes.

SHER

See the signature at the bottom of the page. Deary me, whose signature is it?

MOHAMMED

(double checking) Yes, that's my signature.

SHER

Were you the prosecutor?

MOHAMMED

I'm not sure. The reason--

SHER

What's your signature doing on it?

MOHAMMED

(considering) If the prosecutor in court hasn't done the job and written it off, you just write them off with your own name and give them back to the office.

SHER

Oh please! Why in heaven's sake would you do that?

MOHAMMED

It's a practice that's developed over time.

SHER

Why wouldn't you sign it off by putting the name of the prosecutor responsible for the case?

MOHAMMED

I just don't.

SHER

But if it was your case you would have signed your name on the brief at the bottom?

MOHAMMED

Possibly.

SHER

Mr Mohammed, I suggest if that was your case and your name in on the bottom of the brief, then it's more than likely you signed it off.

MOHAMMED

Possibly. I might have forgotten and another prosecutor might have signed it off for me. So possibly.

SHER

We can check it by looking at your court diary.

MOHAMMED

I don't have my diary with me--

SHER

You do keep a legal diary?

MOHAMMED

Course I do! But I don't have it with me so I can't tell you exactly.

SHER

Just hand the file back.

MOHAMMED

I may have been in court, I may not have. I'm not sure.

SHER

It is your handwriting isn't it that records what happened in this case of Lyfield?

MOHAMMED

Well, that's my handwriting, yes. I may have been in court that day, I'm not sure.

(SHER shakes his head disbelievingly)

SHER

Now, you saw, I take it, the written complaint on your behalf, criticising Jelena Popovic that Mr Birrell, lodged to the director of Prosecutions?

MOHAMMED

I think I did, yes.

SHER

Did you read it before he sent it?

MOHAMMED

Not sure. Don't think I did.

SHER

Why wouldn't you have read it?

MOHAMMED

Can't remember.

(SHER laughs)

SHER

Did you know the result of that complaint, the response your senior officers had made to it?

MOHAMMED

I don't think the matter proceeded any further.

SHER

You knew that?

MOHAMMED

Yes.

SHER

That the matter was dismissed out of hand by your superior--

MOHAMMED

Yes.

SHER

--as being frivolous?

MOHAMMED

I wouldn't know that.

SHER

I submit it was dismissed by your superior as being totally frivolous, baseless and unworthy of consideration.

MOHAMMED

I wouldn't know.

SHER

Dismissed though before Mr Bolt's article appeared?

MOHAMMED

Yes.

SHER

You're excused.

(MOHAMMED returns to being the JUDGE)

SHER

(to BOLT) I want to take you to your use of the word *hearing*.

BOLT

"On November 30 she presided over a hearing involving five protesters who had allegedly--"

SHER

You knew it was not a *hearing* where evidence was to be given before Ms Popovic?

BOLT

I didn't.

(SHER hands Bolt a transcript)

SHER

If you look at the transcript the police gave you, Mr Mohammed has told Jelena Popovic, "*We seek this matter to be adjourned off to a further contest date.*"

BOLT

Yes.

SHER

It is apparent, if you read it carefully with an objective mind, that she treated the matter as an adjournment to a further date for a contest mention and that no evidence was to be given before her on the day the adjournment was sought?

BOLT

I reject that totally.

SHER

Do you now? Tell me how.

BOLT

It was an adjournment *hearing*.

SHER

Oh, an adjournment *hearing*? Did you work that definition out for yourself did you?

BOLT
I certainly did.

SHER
You didn't ask anyone?

BOLT
No.

SHER
You did not ask Mr Mohammed?

BOLT
I've never spoken to Mr Mohammed. It's in the transcript. The transcript plainly states it is not a contest mention.

SHER
Where does it say that?

(BOLT indicates the transcript)

BOLT
Here, she asks, "*Is this going to be a contest mention?*" And it goes on to say, "No".

SHER
Where does it go on to say, "No"?

BOLT
At the very first paragraph it says, "*The reason the adjournment is required--*"

SHER
Where does it say "No"?

(BOLT appears confused)

BOLT
I didn't say it said "No".

SHER
You just did!

BOLT

I apologise, I did not intend to say so.

SHER

This is what she said,

POPOVIC

"The reason I was suggesting the contest mention, and I have certainly disqualified myself from any further involvement in this case, but I just have real problems with cases of this nature."

SHER

You knew that what was going on before Jelena Popovic was an application for an adjournment?

BOLT

That's correct.

SHER

And the likelihood of there being any evidence led on that occasion was zero? And no evidence was in fact led?

BOLT

Well, details of the case were mentioned.

SHER

You know what evidence is don't you?

BOLT

Yes.

SHER

And no evidence was led, was it?

BOLT

That's right.

SHER

So why did you mention "evidence"?

BOLT

Well, when you read the sentence, *"Having already decided before hearing any evidence, she would not punish the demonstrators for destroying Indonesian property."* She made it clear, irrespective of who

they would be or whatever, the worst she would do, without hearing any evidence, would be to dismiss. So it's the truth. It's true.

HOUGHTON

(aside) True or *substantially* true, that is a complete defence. It's *substantially* true.

SHER

But she wasn't going to hear any evidence?

BOLT

(angrily) She made it clear that even if she did, she would not punish them.

SHER

But you knew from reading the transcript, this was an adjournment application at which no evidence was to be heard?

BOLT

That's right, yet she made those comments.

SHER

And she also disqualified herself from hearing the case which was yet to take place?

BOLT

She was right to do so.

SHER

She wasn't going to hear it, right?

BOLT

Well, when she said she was disqualifying herself, from that point, that's correct.

SHER

And yet you told your readers that it was a hearing and you criticised her for doing something before evidence was heard, indicating that she was about to hear evidence, isn't that right?

BOLT

It was a hearing, and without any evidence, she said the worst she would do in cases of this kind was dismiss.

SHER

Mr Bolt, nobody dictated to you the words you were to use in this article?

BOLT

That's right. No one ever does.

SHER

You choose the word "*hearing*" yourself?

BOLT

That I did.

SHER

You choose to mention "*evidence*" yourself?

BOLT

Yes. She's wrong.

SHER

(to *POPOVIC*) Ms Popovic, did you treat this as an application for an adjournment to a future contest mention?

POPOVIC

Yes, I did.

SHER

Where no evidence was to be given before you that day?

POPOVIC

That's correct.

SHER

And that was plainly clear to everyone in the court.

POPOVIC

Absolutely.

SHER

(To Bolt) you weren't in court that day were you?

BOLT

Of course not.

SHER

You formed your own interpretation of events from transcripts given to you by disgruntled police prosecutors?

BOLT

I interpreted the facts and wrote an opinion piece.

SHER

(*To BOLT*) You realise now that it was treated by Jelena Popovic, and she has so sworn on her oath, and she was conducting it, that she treated this as an application to a future contest mention in which no evidence before her was to be given?

BOLT

I'm afraid that--

SHER

You know that now, don't you?

BOLT

I don't. I'm afraid I don't believe her.

SHER

Don't you believe her?

BOLT

I don't believe her.

SHER

So you're not going to apologise even now?

BOLT

I simply don't believe her, and I can't apologise for holding an opinion.

SHER

She's lied about it, has she?

BOLT

I don't want to--

SHER

Is that your case, that Jelena Popovic is also a liar?

BOLT

No it's not my case.

SHER

Well, that's what you're saying?

BOLT

There's a difference of opinion.

SHER

Do you want to withdraw it?

BOLT

I don't believe her. And I'm entitled to my opinion that she's wrong!

SHER

Do you now want to withdraw your suggestion just made, that Jelena Popovic has lied about this matter?

BOLT

I don't say she has lied. I don't say it. I haven't said it and I won't say it.

SHER

But she hasn't told the truth?

BOLT

I don't...She's either mistaken. I don't. I don't understand it.

SHER

How could she possible be mistaken about what she was doing herself? Your article isn't true! It's based on a lie! It's not a fair report, a faithful and accurate report of a court proceeding. It's a false report of a court proceeding and it wasn't reasonable to publish it in the circumstances (to AUDIENCE) because the man who wrote it *had* the transcript, he knew what had happened but he chose to manufacture his own version of events.

HOUGHTON

The average reader is entitled to think from the evidence that Ms Popovic had prejudged the case. She indicated that if she was the presiding magistrate she would dismiss the charges without knowing the facts of the case. It's true. She prejudged this case. That justifies the article. (to POPOVIC) It was extremely unwise of you to have uttered those words, that you would have dismissed the case if you were hearing it, on that occasion?

POPOVIC

I was trying to get some discussion going in this case to get it resolved on a more appropriate and practical basis.

HOUGHTON

You bullied Mr Mohammed. *"I'm warning you now."*

POPOVIC

I didn't say it like that at all.

HOUGHTON

"I'm warning you now." It's here in black and white. It's what Mr Bolt wrote.

POPOVIC

He didn't write all of what I said. It's out of context.

HOUGHTON

"You are repeatedly arguing with me," you complained to Mr Mohammed. A reasonable person could only have come to the view that you were having a go at the prosecutor by that comment! Mr Mohammed was only trying to put his case, not argue with you.

POPOVIC

With all respect to Mr Mohammed he has a tendency to be very one-eyed, to be argumentative, not to understand the nuances that are occurring in court. In short I have had a tendency to find him very frustrating in court.

HOUGHTON

You were the one who made the critical remarks about the prosecution case. *"Why don't you buy a new flag? I am wondering if it is brought for any legitimate law and order purpose."* You gave him a warning, a warning that he thought had something to do with possible contempt. He thought you were going to jail him. That's how seriously he took it. (to AUDIENCE) It was unwarranted, an attempt to shut him up. Consider her judicial oath for a moment, that is, the sacred oath that Ms Popovic swore when she was appointed a magistrate, to do equal justice for all, on all occasions without fear, favour or affection. (to POPOVIC) I put to you you shut him up by your words, *"I'm warning you now."*

POPOVIC

I wanted to put a stop to it.

HOUGHTON

You put to him whether the charges were brought for any legitimate law and order purpose?

POPOVIC

I said that by way of comment, I didn't put it to him.

HOUGHTON

You said the worst you would do if you were the presiding magistrate and the charges were found proven was to dismiss them?

POPOVIC

Yes.

HOUGHTON

You put to him the provocative comment that it would be cheaper to buy a new flag?

POPOVIC

Yes.

HOUGHTON

And when he tried to respond to those criticisms you shut him up, didn't you?

POPOVIC

That's not how it happened. It's--

HOUGHTON

At the time you accused him of repeatedly arguing with you, he hadn't been arguing with you at all on that day, had he?

POPOVIC

I didn't accuse him of anything.

HOUGHTON

He wasn't arguing with you at all on that day, was he?

POPOVIC

He wasn't arguing yet.

HOUGHTON

He wasn't arguing yet! I suggest you had become angry by that time.

POPOVIC

I had become frustrated.

HOUGHTON

You turned from being disinterested, dispassionate, to being angry with the prosecutor?

POPOVIC

I was starting to get frustrated.

HOUGHTON

And the reason for that was he wasn't going to go along with your suggestion to drop the prosecution?

POPOVIC

That was never my suggestion and I wasn't asking him to do that. I was asking him to think about the issues.

HOUGHTON

Thank you, Ms Popovic. (to AUDIENCE) Her conduct on this occasion fell below the conduct of what the community can expect of a magistrate. She bullied Mr Mohammed. (referring to BOLT'S article) "I'm warning you now." That's what she said, "I'm

warning you now." It was his duty to prosecute. He apologised only because he wanted to calm the situation down. Because if he didn't he thought he would've been charged with contempt of court and jailed, the worst kind of charge a judicial officer can face. And for telling the truth, for bringing Ms Popovic's outrageous judicial behaviour to the notice of the public, Mr Bolt is thanked by having to defend these ridiculous charges.

BOLT

(To SHER) Give up?

SHER

Let's quote some more of what you wrote.

BOLT

(reading) "Let me first say I would never call any magistrate a 'soft c-o-c-k'. We owe our courts more respect than that. Nor am I sure who Mr Adams had in mind, but his remark did remind me of some magistrates' decisions. For example, I've wondered why Deputy Chief Magistrate Jelena Popovic, a former teacher, last year gave only a bond to a brother and sister she found guilty of trafficking heroin, and then hugged them." That's what I wrote. Can you believe it? She gave a bond to a brother and sister she found guilty of trafficking heroin and then hugged them. No one else had the guts to write that. I did.

SHER

"Nor am I sure who Mr Adams had in mind." You expected your readers to infer he had Ms Popovic in mind?

BOLT

Not necessarily.

SHER

Who else could he have had in mind?

BOLT

You'll have to ask Mr Adams.

SHER

Did you really expect people to ask Mr Adams who he was referring to?

BOLT

Well people did.

SHER

So you expected people to ring Mr Adams?

BOLT

I believe he was asked to explain those very comments.

SHER

You expected people who read this article to conclude that Ms Popovic was unduly lenient?

BOLT

Given the article is factually correct, yes.

SHER

You don't like teachers do you?

BOLT

Show me where I wrote that.

SHER

Answer the question!

BOLT

My father was a teacher, a principal.

SHER

You wrote Jelena Popovic was a former teacher.

BOLT

I did.

SHER

Do you consider that a fact or is it your opinion she was a teacher?

BOLT

It's a fact obviously, opinion doesn't come into it.

SHER

(to *POPOVIC*) Have you ever been a teacher?

POPOVIC

No.

(*BOLT is shocked*)

SHER

(to *BOLT*) Where did you get that information from?

BOLT

I can't recall who gave it to me. I talked to a couple of people who knew her personally and they mis-informed me or I mis-heard them. It's a pity, but there it is.

SHER

Who did you talk to?

BOLT

I can't recall.

SHER

Jelena Popovic was not a former teacher, was she?

BOLT

Apparently not.

SHER

You were mistaken, weren't you?

BOLT

I wouldn't call it a mistake, not a deliberate mistake.

SHER

What would you call it?

BOLT

An error.

SHER

What's the difference between a mistake and an error?

BOLT

One's a mistake, the other's an error.

SHER
No difference is there?

BOLT
(aside) They're spelt differently.

SHER
You made a lot of errors in this article didn't you?

BOLT
I don't believe so.

SHER
You know what the Australian Press Council is?

BOLT
Yes.

SHER
Have you read their statement of principles?

BOLT
I have.

SHER
"Newspapers and magazines should not publish what they know or could reasonably be expected to know is false. They should take reasonable steps to check the accuracy of what they report." Do you subscribe to that?

BOLT
Reasonable steps, yes.

SHER
"Publications should make amends for publishing information that is found to be harmfully inaccurate--

BOLT
(aside) Harmfully inaccurate.

SHER
--by printing promptly and with an appropriate prominence such retraction, correction,

explanation or apology as will neutralise the damage so far as possible." Do you agree with that?

BOLT

I do.

SHER

"However the right to privacy should not prevent publication of matters or public record or obvious or significant public interest."

BOLT

Definitely.

SHER

"Rumour and unconfirmed reports if published at all should be identified as such." Do you subscribe to that?

BOLT

Too bloody right.

SHER

You do?

BOLT

I definitely do. I never print rumour or innuendo. Everything I write is factual.

SHER

"Where individuals or groups are singled out for criticism the publications should ensure fairness and balance in the original article. Failing that it should provide a reasonable and swift opportunity for a balancing response in the appropriate section of the publication." Do you subscribe to that?

BOLT

If it is an opinion piece you are entitled to express your point of view. We give opportunity for a balancing response.

SHER

How?

BOLT

We run letters and opinion pieces from other people saying that, "*You are an idiot and this is what the truth is.*"

SHER

Was Jelena Popovic invited to write a response to your criticisms?

BOLT

It was an opinion piece, not a criticism column. No, of course she wasn't.

SHER

But when you wrote these articles which referred to Jelena Popovic, you were obligated to comply with those principles?

BOLT

No.

SHER

Pardon?

BOLT

The Herald Sun has got its own code of ethics which takes in most of that.

HOUGHTON

(aside) Which are harsher and more demanding than the Press Council's.

SHER

The editor has got to take responsibility for you doesn't he?

BOLT

Yes he does.

SHER

So if you don't comply with these principles the newspaper could be in trouble with the press council?

BOLT

True.

SHER

When you wrote these articles were you seeking to comply with these principles?

BOLT

I was seeking to comply with principles in harmony with that, yes.

SHER

So for example we could--

BOLT

With the exception that an opinion piece is your opinion as long as you're fair, accurate, truthful and you honestly hold it.

SHER

You maintain your article was accurate?

BOLT

It certainly wasn't *harmfully* inaccurate. Absolutely.

SHER

Let us go to a proposition with which you agreed. "*Rumour and unconfirmed reports if published at all should be identified as such.*" Do you say that you had a confirmed report that Ms Popovic had hugged two drug traffickers?

BOLT

Absolutely, yes, absolutely. Bloody oath.

SHER

The confirmation came from whom?

BOLT

Declan Collins. One of the guys from Crown Law.

(The JUDGE becomes Declan COLLINS. BOLT acknowledges him like a long lost friend)

BOLT

Good bunch of blokes in Crown Law.

(COLLINS holds an imaginary bible and mumbles the oath. He stands in the witness box, proud of

having been a prosecutor and skilled in the art of giving evidence)

HOUGHTON

Your full name is Declan Patrick Collins?

COLLINS

Correct.

HOUGHTON

You graduated from Monash University with a degree of Bachelor of Laws and Bachelor of Jurisprudence?

COLLINS

And a Master of Laws in Criminal Law.

HOUGHTON

Sorry.

COLLINS

In 1993 I joined the Victoria police to prosecute in the Magistrates' Court on behalf of the Chief Commissioner. That's the highest honour a lawyer in the police force can obtain.

HOUGHTON

Have you appeared before Deputy Chief Magistrate Popovic?

COLLINS

Many times.

HOUGHTON

Do you recollect an incident in which you appeared before Ms Popovic at which hugging took place?

COLLINS

Yes I certainly do. There was no Prosecutor and I was asked to go into Court 11 to prosecute the matter. I was told the evidence had already been given as a plea of guilty, brother and sister, drug trafficking charges, and that I was to just take sentence, to write it on the front of the brief.

HOUGHTON

When did the incident take place?

COLLINS

I recollect around March/April 2000.

HOUGHTON

Are you able to describe the accused's counsel?

COLLINS

Absolutely. Middle aged, around forty-five, male, with grey, just sort of round the, over the ears, sort of in his hair.

HOUGHTON

Did you recognise whom that counsel was from previous occasions in court?

COLLINS

No, never seen him before.

HOUGHTON

The two accused, can you describe them to us, please?

COLLINS

Absolutely. Both Asian appearance, one male, one female, late teens, early twenties, around that age. The male was considerably taller. He was wearing a dark green olivy-coloured jacket, light shirt, dark tie. All I remember about the sister is that she was female and had long dark hair.

HOUGHTON

Do you recall their names?

COLLINS

No.

HOUGHTON

What took place during the court hearing?

COLLINS

Ms Popovic was addressing the two accused. She then passed sentence which was essentially an undertaking to be of good behaviour.

HOUGHTON

No jail time?

COLLINS

Definitely not. Then she left the bench and walked around behind the accused counsel. He turned around sort of as Ms Popovic walked around and hugged the two of them.

HOUGHTON

What did you observe when she hugged them?

COLLINS

She used a one arm sort of hugging motion and just hugged the male and then went over to the sister and hugged the sister.

HOUGHTON

Do you recall which arm she used for this hugging motion?

COLLINS

The left.

HOUGHTON

Did you observe anything about the demeanour of the accused?

COLLINS

Certainly. They looked surprised.

HOUGHTON

Do you recall anything being said between Ms Popovic and the accused?

COLLINS

No.

HOUGHTON

You are in no doubt that Jelena Popovic, Deputy Chief Magistrate, hugged two drug traffickers to whom she had just given a bond, in essence to whom she had just let walk free?

COLLINS

Absolutely certain. She did. Yes. Absolutely.

(SHER cross examines an evasive COLLINS)

SHER
Court eleven you say?

COLLINS
Yes, April 2000.

SHER
They were Asians?

COLLINS
Yes.

SHER
You don't know their names?

COLLINS
No.

SHER
Were they on the Credit Program?

COLLINS
Wouldn't know.

SHER
You wouldn't disagree?

COLLINS
No, I wouldn't know.

SHER
You know what the Credit Program is?

COLLINS
Yes.

SHER
This particular incident that you've described Ms Popovic leaving the bench, was she carrying anything?

COLLINS
Don't recall.

SHER
Could she have been?

COLLINS

Possibly.

SHER

Could she have been carrying a certificate or two certificates?

COLLINS

Possibly.

SHER

You say she approached the male defendant first?

COLLINS

Yes.

SHER

Did she hand him a certificate?

COLLINS

Don't remember her handing him a certificate, no.

SHER

She walked up to him and what, put her left arm round his shoulder?

COLLINS

Over his shoulder.

SHER

Did she embrace him, pull him towards her?

COLLINS

Well, there was, I couldn't see any distance between them, so, yes.

SHER

What was the sister doing?

COLLINS

She was just sort of looking.

SHER

Then what happened?

COLLINS

She moved across to the sister and gave her a hug.

SHER

When you told Mr Bolt about what happened did he ask you to describe what you have called a hug?

COLLINS

No.

SHER

He just took your word for it?

COLLINS

Don't know.

SHER

Did you tell him it happened in 1999?

COLLINS

I don't think I even told him when it happened.

SHER

You see he wrote an article in early October, 2000, in which he said this happened "*last year*".

COLLINS

Yes.

SHER

That means it must have been in 1999?

COLLINS

Wouldn't know.

SHER

He's obviously wrong is he?

COLLINS

Don't know.

SHER

But you claim this hugging incident happened in 2000, March or April.

COLLINS

I said I recollect it happening then.

SHER

When did it happen?

COLLINS
Can't recall exactly.

SHER
You don't even know the names of the people she supposedly hugged?

COLLINS
Nope. Can't remember.

SHER
That shouldn't be a problem. We only have to check the court documents. You have the police briefs on this matter I presume?

COLLINS
No.

SHER
Pardon?

COLLINS
We haven't been able to locate them.

(SHER scoffs)

SHER
That's an honest answer, is it?

HOUGHTON
Objection!

SHER
Every case has its own brief?

COLLINS
Of course.

SHER
And there would be a brief for this case in question?

COLLINS
Definitely.

SHER

If we had the police brief we would be able to find out their names?

COLLINS

Yes.

SHER

We would be able to find out the date on which it occurred?

COLLINS

Possibly, yes.

SHER

We would be able to check you were the prosecutor?

COLLINS

Possible. But I was!

SHER

We would be able to check whether in fact it was Ms Popovic sitting in that court on that day?

COLLINS

Possibly. But she was.

SHER

We would be able to find out the name of the defence counsel?

COLLINS

Maybe.

SHER

None of which we can check because you claim to have forgotten all those details and now you claim you can't find the police brief?

COLLINS

Unfortunately that's the case.

SHER

Have you ever lost a brief previously?

COLLINS

Not that I can remember. But I might've.

SHER

You've heard of a computer system in the court called *Courtlink*?

COLLINS

I have.

SHER

The police prosecutors have a terminal in their office in which they access *Courtlink*?

COLLINS

Certainly not when I was there, that wasn't there, but it was touted as an option--

SHER

But you knew there were computers in the building which had access to *Courtlink*?

COLLINS

In the police?

SHER

No, in the building in which your office was located?

COLLINS

I wasn't aware of that.

SHER

Have you asked the police to check out the details?

COLLINS

I don't work with the police any more at the Prosecution Division. I didn't feel comfortable asking for information.

SHER

You can't give us a name of the defence counsel?

COLLINS

No, unfortunately.

SHER

Did you write the name of the counsel on the police brief?

COLLINS
May have, can't recall.

SHER
That is usually done?

COLLINS
Not necessarily.

SHER
I didn't ask you about 'necessarily' I asked you whether it was usually done.

COLLINS
I don't believe it is the practice to write it down, no.

(SHER scoffs)

SHER
Did you used to write down the name of the defence counsel when you were preparing to prosecute?

COLLINS
Occasionally.

SHER
Did you on this occasion?

COLLINS
I can't recall doing it.

SHER
Finding the police brief would tell us the name of the defence counsel?

COLLINS
If I had written it down, yes.

SHER
The date on which the case was heard?

COLLINS

Possibly. It was part heard from another date. I may have just written the sentence down.

SHER

You may have written the date down?

COLLINS

I may have.

SHER

In any event the date may have been on the document?

COLLINS

I couldn't see why it would be.

SHER

Why wouldn't the police brief have the date of the hearing?

COLLINS

Because the initial date of the hearing was the date the evidence was read out.

SHER

But this was not the initial date of the hearing, this was the date on which they were going to be dealt with?

COLLINS

That's right.

SHER

Why wouldn't that date be on the police brief?

COLLINS

As I say it may well have been. I can't say 100% whether it was.

SHER

It's part of a policeman's duty to keep a diary?

COLLINS

Yes it is.

SHER

Do you keep one?

COLLINS

In the past, yes.

SHER

Did you keep one in 1999?

COLLINS

I possibly did, yes.

SHER

Let's not have possibilities about whether you kept a diary. You either remember you did or you remember you didn't.

COLLINS

I don't recall if I did for sure, but I have a feeling I did keep a diary.

SHER

What about 2000?

COLLINS

Possibly. In the Prosecution division it wasn't common to use a diary because we weren't evidence gathering, we didn't have to justify our time.

SHER

Did you or didn't you keep a diary in the year 2000?

COLLINS

I can't recall. I possibly did. I don't know.

SHER

Have you looked for them?

COLLINS

I have.

SHER

Have you found them?

COLLINS

No, I haven't.

SHER

In the Prosecution Section is there a roster kept?

COLLINS

Yes, but I don't know if they're thrown out or they're kept.

SHER

Have you asked?

COLLINS

No I haven't asked.

SHER

Let's return to the issue of the date. Have you ever told people the date of the hearing was March or April 2000?

COLLINS

I...I believe it was about April but--

SHER

You are deliberately being obstructionist. You are a police prosecutor who has a higher obligation when giving evidence than other people. Your evidence has been evasive and at times less than candid.

COLLINS

Look, a lot has happened since then, a lot's happened to me in terms of work history, my personal life and...I'm, yes I'm a bit vague about the date.

SHER

It didn't happen, did it, this hugging incident?

COLLINS

It definitely did!

SHER

You falsified the story because you don't like the way Jelena Popovic conducts her court.

COLLINS

Untrue! I object to your line of questioning.

(COLLINS leaves the witness box)

COLLINS

Sorry, I've got to pick up the kids...um...Where are they? Can't remember. Have you looked for them? Yes I have. Have you found them? No I haven't. Possibly. Can't remember. Got to check the herb garden.

(COLLINS becomes the JUDGE as BOLT enters the witness stand)

SHER

(to AUDIENCE) This is a blatant conspiracy by Mr Collins and other dissatisfied police prosecutors to denigrate Jelena Popovic because they did not approve of her tolerant attitude towards sentencing. Mr Collins invented a brother and sister whom she supposedly hugged. He conspired with other dissatisfied police prosecutors in assisting Andrew Bolt to write a series of inflammatory articles containing false information solely for the purpose of vilifying and embarrassing Jelena Popovic.

HOUGHTON

That is an outrageous accusation!

(SHER goes to HOUGHTON and takes HOUGHTON'S brief for the trial)

SHER

If it had happened as he claimed the details of such an event would have been so indelibly encrypted on his memory that he would have known--

(SHER shows the AUDIENCE names, dates, etc. written on HOUGHTON'S brief)

SHER

--the names, the dates, every specific detail. If it happened as he claimed it would have been the story of the century in the Prosecutors' Office. Every police officer in court that day, every lawyer present, everyone in the court would have been talking about it. He would have become the cause celebre in the legal world because everyone would have wanted to discuss it with him to the

point where he would never have forgotten a single detail. Yet he claims he can't even remember the date or names of the people he was prosecuting, can't remember who acted as defence. This hugging incident is so obviously a blatant lie.

(to BOLT)

Mr Bolt, did Sergeant Collins produce a single document--

HOUGHTON

Your Honour, we request a short adjournment.

JUDGE

I think this is an appropriate time for a brief adjournment. Back in fifteen minutes.

INTERVAL

SHER

Mr Bolt, did Sergeant Collins produce a single document to you confirming what he told you about the hugging incident?

BOLT

I can't recall.

SHER

Did he tell you a date on which this hugging occurred?

BOLT

I can't remember. I remember I satisfied myself that...

SHER

Don't say that! Just answer my question. Do you recall him telling you the date upon which this event occurred?

BOLT

No I don't.

SHER

This event you have described as *amazing*?

BOLT

I don't recall it.

SHER

Let us go to the situation *before* Mr Collins showed up.

BOLT

Yes.

SHER

Excluding Mr Collins, I repeat excluding Mr Collins, nobody in the police prosecutions office could tell you any details of this alleged hugging incident, could they?

BOLT

Yes, yes, they definitely could. Definitely could.

SHER

Could they?

BOLT

Well they...Someone mentioned it was Declan Collins for example.

SHER

I have asked you to exclude him for a moment. Did any other police prosecutor tell you that they had witnessed the hugging incident?

BOLT

Not personally, no.

SHER

They had heard about it?

BOLT

They certainly had. Bloody oath they had!

SHER

So what you were told was in effect a *rumour*?

BOLT

A bit more substantial than a rumour, mate. There were several incidents and this was one of them.

SHER

What were the other incidents?

BOLT

At that stage I did not bother to check the truth of the others, at that stage.

SHER

But what were they?

BOLT

There was...I haven't established the truth. I mean--

SHER

Don't worry about the truth or otherwise.

BOLT

I do worry about the truth. I always worry about the truth. It's the most important thing I worry about.

SHER

What were you told?

BOLT

They told me there were stories that...They told me they knew of cases where she had hugged drug traffickers. I wasn't sure--

SHER

This wasn't a one-off?

BOLT

I wasn't sure at the time. I don't know whether by 'cases' plural they meant these two.

SHER

What *two*?

BOLT

The brother and sister.

SHER

That's one case.

BOLT

I meant there were two people involved.

SHER

Go on.

BOLT

I asked for proof and that is what I got and I didn't inquire further. I'm not a prosecutor. My story wasn't about hugging drug traffickers. It was about leniency. I have a responsibility to draw these issues to public notice. Lenient sentencing is a major issue--

SHER

Who initially told you about the hugging?

BOLT

I can't recall. It was common knowledge.

SHER

Who amongst the police prosecutors told you that Jelena Popovic was hugging drug traffickers?

BOLT

It was common knowledge so--

SHER

Don't answer like that please!

BOLT

I'm sorry. I think Sergeant Geoff Birrell probably told me. And I think Sergeant Petrovic told me. I can't recall exactly. Sorry I can't remember. I had a number of conversations with a number of people.

SHER

Birrell, Petrovic, these are policemen who work as prosecutors. A number of police prosecutors told you about Jelena Popovic hugging drug traffickers?

BOLT

I can't recall how many did.

SHER

But there were at least two, possible three, maybe even more?

BOLT

That could be right.

SHER

Well it shouldn't be too hard to verify. I assume the defence will be calling Sergeant Birrell to support your claim. We can ask him.

HOUGHTON

Um, unfortunately, Your Honour, Sergeant Birrell is on sick leave and is unable to be called.

(SHER scoffs)

SHER

Then Sergeant Petrovic.

HOUGHTON

Sergeant Petrovic is not being called Your Honour. We don't see the need to unnecessarily burden the police force. It's been clearly established that Declan Collins informed Mr Bolt *(to AUDIENCE)* that Ms Popovic definitely hugged two drug traffickers to whom she had given a bond.

SHER

(to BOLT) But it wouldn't have been too difficult for you to find out from somebody who had been involved and what cases they were talking about?

BOLT

Well it wasn't. I mean I asked for Declan Collins.

SHER

You asked for him by name?

BOLT

Yes.

SHER

Why did you ask for him?

BOLT

Because I had been told he had witnessed such an incident and I could speak to him.

SHER

Who told you that?

BOLT

I can't recall. It may have been Birrell or Petrovic.

SHER

Who very conveniently will not be called. Up until the time you spoke to Declan Collins what you were being told was a rumour, wasn't it?

BOLT

A bit more than a rumour I would have thought.

SHER

None of the people you spoke to had witnessed such an event?

BOLT

That does not necessarily mean it is a rumour.

SHER

What does it mean?

BOLT

It means that they may have received evidence or heard from the man himself which is what I understood it to be.

SHER

It could mean that it was a rumour couldn't it?

BOLT

That's why I wanted to check it out if it was.

SHER

Because it might have been a rumour you wanted to check it out?

BOLT

Absolutely.

SHER

Did Declan Collins tell you the name of the case?

BOLT

I can't recall that I'm afraid.

SHER

Did he tell you what court it was in?

BOLT

Can't recall.

SHER

Court eleven?

BOLT

Can't recall.

SHER

You don't even know what court it was in?

BOLT

I know it was the Melbourne Magistrates Court but not which one.

SHER

Did you say to him, for example, "*Look, can you check the police brief and see who the people were and tell me their names and the date on which this occurred?*"

BOLT

I don't recall seeing it and I don't recall if in fact I got a document saying that.

SHER

Did you ask him to do that?

BOLT

I don't recall.

SHER

Did you ask Mr Collins to check out the police briefs for you?

BOLT

I don't recall that I did do that, no.

SHER

But you asked for other briefs, didn't you?

BOLT

I was given other briefs, yes.

SHER

With the court details on the brief.

BOLT

I believe so, yes.

SHER

Within a short time of being told about this incident you were asserting it as a truthful fact, in an article to be read by more than a million people and you were obliged to check out the truth of it, weren't you?

BOLT

It was my opinion and I did. Yes.

SHER

And you know it was disparaging of Ms Popovic to report she'd done this?

BOLT

I thought it was inappropriate and it needed to be discussed.

SHER

This claim that a magistrate had hugged two drug traffickers that she had let go free, was not complimentary of Ms Popovic, was it?

BOLT

I didn't think that it went to her credit, no.

(HOUGHTON addresses the audience)

HOUGHTON

Mr Bolt and the Herald Sun acted reasonably, they made reasonable inquiries to establish the truth of the matters. They weren't reckless. The hugging incident. Only the briefest of mentions was made in the October 9 article about that. Mr Bolt wasn't content to publish without making further inquiry. He asked to talk to the eye witnesses and was put on to Mr Collins. He talked to the eye witnesses. He was told Ms Popovic had hugged drug traffickers she had set free. He took

steps to verify the accuracy of that incident, and he believed it was true. The conduct of the Herald Sun and Mr Bolt in publishing this material was reasonable in the circumstances. Andrew Bolt is the voice of the people. He speaks for the little people. He was relaying the concerns to police prosecutors to his readers--

SHER

Mr Bolt is a fleapit journalist.

BOLT

Objection!

HOUGHTON

You don't have the right--!

SHER

To an opinion?

HOUGHTON

Not when it's a blatant lie!

SHER

Then it's substantially true Mr Bolt is a fleapit journalist!

BOLT

Everything I write is of the highest standard. I'm Australia's most read columnist. I'm Australia's most controversial columnist! What I write is as wise as it is brilliant. Lack of facts never hurt Michael Mann claiming there were one hundred thousand stolen Aborigines despite not being able to name one, or Tara Brown's assertion global warming is wiping out the polar bears, that are actually, uh, increasing and Phillip Adams' claim no nation has a more bloodstained history than the US. Never heard of Germany, Spain or Holland? Hmmmmmm? That's what fleapit journalism is all about. Let them accuse me. It's you I care about, my friends, you who count, not my contacts, nor my fellow journalists, nor the idiots who judge media awards. If I please you then I'm proud to be a fleapit journalist. Proud, proud, proud.

HOUGHTON

It's outrageous to accuse my client of fleapit journalism!

SHER

Then look at the evidence. Go to your quote on James Lyfield?

BOLT

"His lawyer begged Ms Popovic not to convict him of the car thefts, because that could cost him his licence, therefore his job. She assented, adjourning the case till December." She turned him loose!

SHER

But you knew she was going to deal with the charges later that year.

BOLT

That's correct.

SHER

And when she did deal with them later that year she sent him to goal?

BOLT

Because he stabbed...well he had stabbed a taxi driver I believe.

SHER

No, Ms Popovic didn't deal with him for that. That is not a magistrate's court matter. She sent him to goal for those charges she had *adjourned*.

BOLT

Subsequent to my article, yes. That occurred *after* my article was written.

SHER

Of course, but it may have occurred when you wrote the article. You used as an example of her tender heart the fact she had adjourned the charges against Mr Lyfield until December.

BOLT

No.

SHER

Isn't that so?

BOLT

That is not so.

SHER

That is, I suggest, exactly what you did.

BOLT

No, I believed it was lenient because she adjourned the charges which I'd have thought that she should properly have dealt with at the time and also the *treatment* she gave in those charges which she did deal with. She let him loose on the streets to--

SHER

What was important was to find out why Ms Popovic had adjourned these cases against Mr Lyfield, wasn't it?

BOLT

It was clear from the outline of the case why she had done that. Lyfield's lawyer begged her to.

SHER

The police outline of the case?

BOLT

Yes, it was clear, yes.

SHER

You relied on what the police told you?

BOLT

What the police had written in an official report.

SHER

The police had written they weren't happy with Jelena Popovic.

BOLT

That's an understatement.

SHER

You didn't check with defence counsel?

BOLT

No I didn't.

SHER

Did you check with Jelena Popovic?

BOLT

No.

SHER

Did you check with anyone other than the police prosecutor?

BOLT

No.

SHER

Did it occur to you that when the police gave you this man's record that the police were acting improperly, unlawfully, in providing a journalist with a list of prior convictions?

HOUGHTON

I must object most strongly, Your Honour.

JUDGE

Yes, Mr Houghton?

HOUGHTON

What's the relevance of this attack on the police, Your Honour?

SHER

It's illegal behaviour by the police! They don't have the right to disclose sensitive records of accused people to journalists.

HOUGHTON

Whatever the rules or protocol that might govern the Victoria police it has nothing to do with any issue in this particular case.

JUDGE

Mr Sher?

SHER

It goes to the issue of whether the Herald Sun, and Mr Bolt in particular, had lent their assistance to the police in attacking Jelena Popovic with whom they were not happy and the police did so in breach of their own regulations indicating the enthusiasm with which they were pursuing this particular matter. The police have shown they were prepared to break the law in their endeavour to discredit Ms Popovic.

HOUGHTON

Mr Sher is now putting a different slant on this question of malice, Your Honour. We've had no indication that that was his intention, to attack the police. He's not entitled to do so at this late stage.

JUDGE

This goes to the issue of malice. I will permit the question.

SHER

Were you aware the police were breaking the law?

BOLT

I don't think so. No.

SHER

You had a pretty good relationship with these police, didn't you?

BOLT

They were helpful to me on this occasion, yes.

SHER

Not only helpful, they were friendly weren't they?

BOLT

I don't have any friends there so--

SHER

You don't have any close friends in Police Media Liaison?

HOUGHTON

Objection, inflammatory and irrelevant.

SHER

I withdraw the question. But these police, you refer to them as "the guys"?

BOLT

They are guys.

SHER

These guys gave you two police briefs, namely Lyfield and Nguyen, including Lyfield's criminal history sheet?

BOLT

Yes.

SHER

They broke the law to assist you. I would call that a little more than courteous. Did you consider writing an article of their illegal activities?

HOUGHTON

Really, Your Honour.

JUDGE

Yes, move on, Mr Sher.

(BOLT grins triumphantly)

SHER

"His lawyer begged Ms Popovich not to convict him." These are your words, "his lawyer begged"?

BOLT

Begged! (*Proudly*) They are my words, yes. Every word I write is mine.

SHER

Who told you that the defence counsel for Mr Lyfield had *begged* Ms Popovic?

BOLT

I believe I read it in the prosecution's recommendation to appeal against the leniency--

SHER

Did the police report refer to the lawyer *begging*?

BOLT

I don't recall. I don't know if it used the word 'beg'.

SHER

That was your spin on what had happened in court?

BOLT

It was my impression.

SHER

You know what I mean by the word *spin* don't you.

BOLT

I simply don't agree with you. I prefer the word impression. That was my impression.

SHER

Putting a spin on things, that's what you did in this article, isn't it?

BOLT

No, I tried to do it truthfully. A spin usually refers to an untruth, usually to put the best side of a case. I always write the truth.

SHER

The third last paragraph, "*Tan Nguyen too should admire Mrs Popovic.*" Why should he admire Ms Popovic?

BOLT

Well she had shown leniency to him, that showed she had a tender heart, and I think he was fortunate.

SHER

This case had also been adjourned by Ms Popovic. She had not finally dealt with Mr Nguyen?

BOLT

Well she dealt with him in a manner of speaking, but she had not finally dealt with him, no.

SHER

Thank you. (to audience) The police prosecutors illegally produce two files. Jelena Popovic has been a magistrate for thirteen years. Has risen to the position of Deputy Chief Magistrate. She had done thousands of cases. Two cases out of thousands the police prosecutors aren't happy with and in both cases the person concerned has not been finally dealt with. (to BOLT) There was nothing in this article favourable about Jelena Popovic, other than her reference, I suggest a cynical reference, to her having a tender heart.

BOLT

I'm sorry you think it's cynical.

SHER

At no stage did you ever ask her anything about the cases you wrote about?

BOLT

No, her actions must speak for themselves in court.

SHER

If the actions speak for themselves why did you speak to the police?

BOLT

The objectivity of the police was not in issue here because the documentation I had allowed me to see for myself.

SHER

But the documentation was provided by the police?

BOLT

Yes, but if they provide a criminal record, irrespective of where it comes from, the record is either the record or it isn't.

SHER

You allowed yourself to be used. You broke the major tenant of the first principle of good journalism, objectivity.

HOUGHTON

(Jumping up and addressing the audience) He wrote about her conduct as a senior magistrate. He desired to bring to his readers' attention important issues to stimulate public discussion. That's what journalism is all about. There is absolutely no malice in that. Having an opinion doesn't imply objectivity. Subjectivity is inherent in the very nature of having an opinion. (to BOLT) Why did you write this column of 9 October?

BOLT

The chief magistrate of this state, Mr Adams, had made a disparaging remark about magistrates. He called them soft (spelling)c-o-c-k-s, obviously a comment directed at Popovic. It needed to be put into context. I mean, I had to say, that, golly, you know...this were...these were examples of undue leniency in my view.

HOUGHTON

Were they views you held at the time you wrote this article?

BOLT

They certainly were.

HOUGHTON

Did you have any personal views about Ms Popovich?

BOLT

None. I'd never heard of her before.

HOUGHTON

It has been implied that this article forms part of a campaign of denigration by the police against Ms Popovic.

BOLT

That is simply untrue.

HOUGHTON

To your knowledge did anyone other than Ms Popovic ever complain about these columns?

BOLT

Absolutely not.

HOUGHTON

Never?

SHER

(to BOLT) Have you heard the expression "selective quoting"?

BOLT

Here we go again! Selective quoting is selecting quotes you feel are appropriate to the case you are trying to advance. Some people like to add that it misrepresents the whole.

SHER

That's its untrue?

BOLT

Some people claim that.

SHER

Have you ever done it?

BOLT

Never.

SHER

You did it in this article, didn't you?

BOLT

Most certainly not.

SHER

The quotes in the December 13 article of Jelena Popovic and Mr Mohammed the prosecutor were taken from the transcript the police sent you?

BOLT

Yes they were.

SHER

Do you see the last quote attributed to Ms Popovic, "*I'm warning you now.*"?

BOLT

Certainly.

SHER

That's the entirety of the quote, "I'm warning you now."?

BOLT

That's correct, yes.

(SHER hands around copies of a transcript. BOLT doesn't look at it)

SHER

Now look at the transcript of what was really said. "I'm warning you now I don't wish to enter into an argument."

BOLT

That's right.

SHER

You have deliberately distorted what Jelena Popovic said by putting a full stop after the word now.

BOLT

I listened to the tape, to verify it. It is clear that there is a pause between, "I'm warning you now". Full stop. "I don't wish to enter into an argument." They are two sentences.

(SHER indicates the transcript)

SHER

Look at the transcript supplied to you by the police, you will see there is a lot of pink highlighting on it?

(Bolt scrutinises the transcript, surprised)

SHER

See it?

BOLT

Yes.

SHER

But the police who gave you that transcript have highlighted *I'm warning you now*. They stopped the highlighting after the word *now*.

BOLT

Yes, I do see that.

SHER

But the police transcript doesn't have a comma or full stop after the word "now" does it?

(*BOLT searches the transcript for the full stop*)

BOLT

It's too faded. I can't see any punctuation mark after that but--

SHER

There is no full stop. You added it!

BOLT

It may well have been. I don't know.

SHER

But either way you eliminated the second part, *I don't wish to have an argument with you*. You couldn't have put in a full stop on the basis of the police transcript because it doesn't have a full stop?

BOLT

I think you are putting it too simplistically here. I treated that as two distinct sentences. It didn't matter to me. I would have liked to have had both sentences. For reasons of space I inserted the first, not the second as well.

SHER

That was your contribution, a full stop?

BOLT

That was my correction of an error, yes.

SHER

You put a full stop after "now" and you left out entirely her words,

POPOVIC

"I'm warning you now I don't wish to have an argument with you. I don't care whether you prosecute this matter or not, all I'm endeavouring to do is to raise some issues for you to consider."

MOHAMMED

"I apologise, Your Worship. I'm just explaining why we're proceeding with this prosecution and that is there's a victim."

BOLT

I left out everything else that followed, yes.

SHER

You left out Mr Mohammed's apology?

BOLT

Yes I did.

SHER

Importantly you left out the context in which Mr Mohammed's apology was made.

BOLT

I totally reject that!

SHER

Which had nothing whatsoever to do with an attitude of Mr Mohammed legitimately thinking he might be charged with contempt of court.

BOLT

That's your opinion...and, I add, everyone's entitled to it.

SHER

This is an example of selective quoting, changing the meaning of what was said?

BOLT

Certainly not.

SHER

You have no shame or regret for having stopped the quotation in the article? You simply wrote what the police prosecutors selected for you.

BOLT

No I corrected it. The mistake was a lack of a full stop. I was correct and I stand by that. I would have liked to have had the whole sentence because I think it would have been even more damning to have included it.

SHER

It would have been even more damning?

BOLT

It would have indicated a state of mind that she wanted to shut the prosecutor up.

SHER

What you wrote is a gross distortion, absolute gross distortion and it can't be other than deliberate. *(Angrily)* "I'm warning you now." That's not what she said. It's part of what she said. *(to AUDIENCE)* If you're clever and you want to sell a story you can change the meaning of language. Yesterday His Honour said,

JUDGE

"I'm just trying to get some feel of where we're going, so I can tell the jury what we're going to be doing. We've run over time but I warned them at the start that might happen."

SHER

So we can look forward to an article from Mr Bolt about Justice Bongiorno bullying counsel and juries. *(Angrily)* "I warned them." The word is synonymous with tell. *"I told them this might happen. I'm telling you now, I don't want an argument."* And the reading audience who weren't there, who didn't know the truth, are told by Mr Bolt and his publishers that this is what Jelena Popovic said. And to make sure you get the message that this is not a good magistrate and we've got to do something about her, he goes on to say,

BOLT

"How outrageous to so bully a prosecutor for simply arguing that the law must be upheld against the demonstrators who destroyed the property of others."

SHER

You described her conduct as outrageous?

BOLT

Yes I did.

SHER

You accused her of being a bully?

BOLT

No, not of being a bully, of having bullied. There is a difference.

SHER

You expected your readers to appreciate that difference did you?

BOLT

I hope that when I state something plainly people will read it plainly.

SHER

So having accused Jelena Popovic of bullying the prosecutor you don't concede that leaving out the fact that Mr Mohammed apologised for what *he* had done would have changed the meaning of what Jelena Popovic said and did?

BOLT

Not at all.

SHER

That's not what Mr Mohammed was arguing either. He was saying, *"We've got a complaint, we're obliged to prosecute."* He was saying why they were prosecuting, not that the law should be upheld. And then we have this gem,

BOLT

"True, Ms Popovic may have a point, maybe protesters shouldn't be prosecuted for arson."

SHER

(to AUDIENCE) That's not what she's saying at all. She's saying, on the facts of this case, five people shouldn't be put up for arson, an indictable offence, for a seventy dollar flag. And here we go, here's the expert about to tell us what we need to know, "*But that's for us to decide, not them,*" says Mr Bolt. This is the royal "we" from Mr Bolt. He's speaking for us the community. "*We've got to tell the Popovics of this world how to behave.*" And he goes on to say, "*Right now we have clear laws on these matters.*" Is he an expert on the law now? Where did he get that from and what law is he talking about? Clear laws on what? "*We pay the Popovics of this world...*" Not Ms Popovic, just her surname. He's given up the pretence of paying her any respect. "*We pay the Popovics of this world good money to uphold them.*" Uphold what? The clear laws in which Mr Bolt is an expert? Why is he saying that? Because according to him, she hasn't upheld the law! And then the ridiculous and extravagant complaint by Mr Mohammed to his superior, the infirmed Mr Birrell who passes it on to his superior. Which is then rightfully dismissed out of hand, a dismissal which we suggest prompts these embittered prosecutors to initiate a campaign of innuendo and lies against Jelena Popovic. When Mr Bolt wrote his article he knew that complaint was not going to be pursued. But what does he tell his reading audience?

BOLT

"These recommendations made by acting Senior Sergeant Greg Birrell are yet to be endorsed by his superiors and then the director of Public Prosecutions."

SHER

"Yet to be endorsed." What would any reader have thought that meant? Still under consideration? Did he check what happened to the complaint? Did he wait to find out before rushing to print? No. Because if he found out the complaint had been rejected that would have caused him to abandon

part of his story. This is supposed to be an honest and fair article.

BOLT

It is. You're selectively misinterpreting it.

SHER

You're familiar with the term fleapit journalism, Mr Bolt?

JUDGE

I'm not familiar with the term *fleapit journalism*, Mr Sher. Perhaps you could give us an example.

SHER

Headline, *Graham Kennedy died of aids* after it was medically established he didn't. It's a lie designed to create a sensational media commodity from the death of Graham Kennedy. Fleapit journalism at its best.

BOLT

I never said Graham Kennedy died of aids. *(aside)* Is he dead? What did he die of?

HOUGHTON

What has that example got to do with Mr Bolt?

SHER

Mr Bolt writes lies.

BOLT

I totally reject that!

SHER

You deliberately sensationalise to create a media commodity.

BOLT

If having an opinion and expressing an honestly held view is sensationalising then yes I'm guilty.

SHER

Your articles about Jelena Popovic were fleapit journalism.

BOLT

My articles on Jelena Popovic were truthful, fair and balanced opinions--

SHER

They contained lies--

BOLT

--and I have every right to them and everyone has a right to my opinions. Why would I lie?

SHER

Because criticising judicial officers sells newspapers. (to AUDIENCE) Mr Bolt doesn't like protesters. Many people were horrified at what was going on in West Timor and thought the Indonesian government and the army in particular were to blame for all these murders that were discussed daily in the newspapers because the East Timorese people had made the serious mistake of indicating they wanted to be independent. And what did these protesters do? *"They invaded the Indonesian Consulate."* They didn't *invade* the Indonesian Consulate. Mr Bolt purposefully sensationalised that. They went onto the premises and they took a flag and burned it. No violence whatsoever. A total distortion.

BOLT

You keep making that claim but it's untrue.

SHER

Look at this heading, *"We pay our magistrates good money to uphold the laws."*

BOLT

It's factually correct.

SHER

Are they your words?

BOLT

No.

SHER

Who wrote them?

BOLT

John Kiley, I think.

SHER
Your editor?

BOLT
Yes.

SHER
Will Mr Kiley be appearing on your behalf?

BOLT
Don't know.

SHER
Did he show you the heading before publication?

BOLT
I can't recall.

SHER
Mr Bolt, do you tell lies?

BOLT
No.

SHER
I'll ask you again, did Mr Kiley show you the heading before publication?

BOLT
I don't recall, probably not.

SHER
I've counted the number of times your response to questions has been "I can't recall", "I don't know". More than one hundred times you've been unable to remember basic information. Yet you claim to be a journalist. Did he show it to you before publication?

BOLT
He might've. I usually go through my articles to make sure they are exactly as I want them, so I may have seen it.

SHER

The chances are you did see it?

BOLT

I can't remember.

SHER

I didn't ask you whether you remembered, I asked you whether the chances were that you did see it.

BOLT

There's a chance I saw it, yes.

SHER

And you didn't disagree with it?

BOLT

I certainly didn't and I don't now.

SHER

When you said at the end of this article, "*If they refuse, why should we employ them for a day longer?*" You were suggesting that magistrates who don't uphold the law should be sacked, weren't you?

BOLT

No.

SHER

Mr Bolt, it hard to accept you don't tell lies when you contradict yourself so obviously.

BOLT

The paragraph is quite clear. If they *refuse* to uphold the law, yes they should be sacked, and I venture I wouldn't get an argument from anyone here.

SHER

But the ordinary person in the street would've thought you were saying Jelena Popovic ought to be sacked because she refused to uphold the law?

BOLT

If I wanted her to be sacked, I would've said so in the first paragraph. The words are plain. "*If they refuse to do their job.*" *If they refuse.* I

don't see how there can be any ambiguity about that.

SHER

The words "*employ them for a day longer*" refers to instant dismissal.

BOLT

No.

SHER

They don't?

BOLT

No.

SHER

What else could it refer to? You suggest she hadn't upheld the law and ought to be sacked?

BOLT

No.

SHER

It doesn't refer to Jelena Popovic?

BOLT

No.

SHER

Who does it refer to?

BOLT

People who don't uphold the law?

SHER

But you were implying Jelena Popovic didn't uphold the law.

BOLT

No, no, that's your opinion, you're totally wrong there.

SHER

Then if in fact you did convey that message to your readers inadvertently it wasn't your opinion was it?

BOLT

Pardon?

SHER

It was not your opinion?

(BOLT considers, looks at HOUGHTON)

BOLT

If it had of been my opinion I would have said so straight out.

SHER

So it wasn't your opinion?

BOLT

It wasn't at the time, no.

SHER

You weren't intending to convey that opinion?

BOLT

No.

SHER

And if you've done so, a terrible mistake has been made?

BOLT

Not necessarily. I could hold that opinion and state it and still be here today insisting on my right to have that opinion.

SHER

But the fact is, it wasn't your opinion?

BOLT

No it was not my opinion at the time?

SHER

If you've communicated as your opinion inadvertently, that she ought to be sacked, you should apologise, shouldn't you, because you've said something you didn't intend to say to a million people?

BOLT

This is a truthful article, a balanced article, on a subject that's important, expressing an opinion I sincerely hold and I cannot apologise. I cannot apologise for holding opinions or expressing them. That's what makes Australia a democracy.

SHER

Mr Bolt, the thrust of your defence has been your article wasn't defamatory because you believed in what you were writing at the time you wrote it--

HOUGHTON

And that it was substantially true.

SHER

--However if you didn't believe Jelena Popovic ought to have been sacked then that's the end of your case, because you wrote, *she shouldn't be employed for a day longer*. Instant dismissal, that's what you wrote.

BOLT

I haven't conveyed she ought to be sacked.

SHER

My interpretation is you have.

BOLT

Everyone's entitled to your opinion. And everyone's entitled to mine and my opinion is I didn't.

SHER

But if you did convey it, a serious, very serious mistake was made by both you and the Herald Sun?

BOLT

No. If people gain the impression from what I've written that they thought she should be sacked, then that's their point of view, they're entitled to it. And I won't apologise for them having their point of view.

SHER

Your task as a columnist is to seek to persuade, isn't it?

BOLT

No. My task as a *journalist* is to seek to honestly inform on the facts and honestly give my opinion.

SHER

For what purpose?

BOLT

To raise issues of great public concern and to have them discussed honestly and intelligently in a balanced way.

SHER

You've absolutely no regrets about writing these articles have you?

BOLT

I regret being up here, given that I wrote a truthful and intelligent article and expressed honestly held beliefs. I very much regret this. I regret the stress it's caused my wife and children. I regret the threat to free speech that this represents. I think it's a misuse of the courts for me to be here.

SHER

But none of your regrets extend to Jelena Popovic, do they?

BOLT

I did my best to uphold--

SHER

You've had a chance to reflect on your articles and the effect they've had on Jelena Popovic, don't you think it's about time you apologised?

BOLT

No. Definitely not!

SHER

Said sorry?

BOLT

For telling the truth? For Christ sake she hugged two drug traffickers that she'd just let loose on the streets.

(POPOVIC enters the witness box)

SHER

Mr Bolt's article refers to you hugging drug traffickers. Can you recall any incident that might be the basis for what he wrote?

POPOVIC

Yes I can--

BOLT

See!

SHER

I'd like you to tell the jury the circumstances of that incident.

POPOVIC

In April 1999, a young woman, extremely young, came before me, from the cells. She was seriously ill. She was withdrawing from heroin and methadone, had been in custody, three, four or five days and was seven and a half months pregnant, stick thin. Frankly I thought she was in danger of losing her life. I put her on the CREDIT program.

SHER

Does the CREDIT program require the consent of the police?

POPOVIC

Yes it does. It's a team approach and the police are an integral part. She was immediately released on bail, on CREDIT conditions, to be admitted to the Drug Dependency Unit at the Royal Melbourne Hospital. My recollection is she had no supports. She did have a boyfriend who was a co-accused who had a long criminal history. She was charged with one set of street-trafficking offenses, that is trafficking one or two caps of heroin that she was on bail for but had been apprehended subsequently with charges of shop theft and again, small level

drug trafficking. Two weeks later she gave premature birth to the baby. That two weeks she'd been in custody as an in-patient was sufficient to stabilise her condition and the baby was born drug-free. She was placed on a methadone program and during the time she was breast feeding the baby I was seeing her regularly. As the months progressed she became reunited with her family, who lived in Canberra. On the final hearing of this matter her parents were in court. She and her baby and her mother and father were in court, and to see this family reunited, the parents were beaming. The young woman herself...I can't describe to you the difference between the young woman whom I'd initially seen in court...

HOUGHTON

I object to that. If the witness can't describe the demeanour of the witness--

SHER

That's simply a method of description.

JUDGE

Overruled.

POPOVIC

It was just extraordinary. She's completed the CREDIT program, there's been no re-offending and I was going to present her with a certificate. Because her parents had made the effort of coming from Canberra I took the view that it would be appropriate for me to congratulate the whole family, so rather than have them all come to the bench I actually stepped from the bench and approached the family to shake hands with them. When I approached the young woman she hugged me. It was a very emotional time and very extraordinary.

SHER

And that was April 1999. Who was the prosecuting officer?

POPOVIC

Declan Collins.

SHER

Apart from that incident have you ever hugged anyone in court or has anyone hugged you?

POPOVIC

Never.

SHER

Although you were upset about the October 9 article you didn't do anything about that article?

POPOVIC

Yes, that's right.

SHER

Why not?

POPOVIC

I didn't like it. But it hadn't occurred before and I thought it was a one off.

SHER

And when it occurred a second time you still didn't want to sue.

POPOVIC

All I wanted was an apology and a retraction which the Herald Sun initially agreed to then reneged. That's when I took the matter further.

SHER

The Herald Sun initially agreed to retract the falsehoods in Andrew Bolt's articles?

POPOVIC

They most certainly did. Their lawyers and our lawyers worked on a retraction that was to be published, to which I and both lawyers agreed to, but it was never published.

SHER

Do you know if that was not published because Mr Bolt refused to apologise?

POPOVIC

You'll have to ask the Herald Sun.

(HOUGHTON aggressively replaces SHER)

HOUGHTON

Ms Popovic, is it appropriate conduct when you congratulate defendants to stray so far from the bench?

POPOVIC

Yes of course.

HOUGHTON

You don't think that runs the risk of you getting down into the fray?

POPOVIC

No.

HOUGHTON

Do you acknowledge that this incident of which Mr Bolt wrote on October the 9th and then repeated on December the 13th could well have happened?

POPOVIC

No.

HOUGHTON

It's not part of your practice to leave the bench and hug people you've just sentenced?

POPOVIC

Of course not but they do it in America as part of therapeutic jurisprudence.

HOUGHTON

I'm not asking you what might be done in America.

POPOVIC

But I don't.

HOUGHTON

You don't? You accept that it would be quite inappropriate conduct for a judicial officer to do that?

POPOVIC

Well again, I've just said that in America they do it.

HOUGHTON

I'm talking about Victoria, Ms Popovic.

POPOVIC

I wouldn't do it.

HOUGHTON

That's not the question. Do you accept that it would be quite inappropriate?

POPOVIC

Yes.

HOUGHTON

You do?

POPOVIC

Yes.

HOUGHTON

Unacceptable conduct for a judicial officer in this state?

POPOVIC

I wouldn't say unacceptable but inappropriate.

HOUGHTON

In this particular case of the October 9 article these two accused had pleaded guilty to trafficking heroin. You punished them with a bond to be of good behaviour.

POPOVIC

Well, I didn't--

HOUGHTON

Do you think your conduct in this case is worthy of comment?

SHER

She doesn't acknowledge that there was such a case.

HOUGHTON

All right. If this case occurred, and I appreciate you have no recollection of it, do you accept that

it would be the subject of legitimate comment within the community?

POPOVIC

Yes, certainly.

HOUGHTON

It would be worthy of the column in the Herald Sun, wouldn't it?

POPOVIC

I don't know.

HOUGHTON

It's relevant, isn't it, the sort of sentences that drug traffickers are getting in our courts?

POPOVIC

Yes, certainly.

HOUGHTON

And you appreciate there are people in the community that might take a very dim view of that sentence, a bond, if it took place?

POPOVIC

Particularly if they weren't appraised of all the facts.

HOUGHTON

You accept that as a judicial officer you come under public scrutiny every day?

POPOVIC

Yes, certainly.

HOUGHTON

And you expect public scrutiny every day?

POPOVIC

Yes, of course.

HOUGHTON

And it's a healthy thing in our democracy that judicial officers such as yourself come under this public scrutiny?

POPOVIC

Yes, certainly.

HOUGHTON

Thank you, Ms Popovic. (*To audience*) We say it is a good thing that citizens in our society can express themselves on matters such as the conduct of a judicial officer. It is important for all of us to have that freedom. It is the hallmark of a democratic society. It is what stimulates public discussion about matters of importance. And Ms Popovic thought it was a good thing too. You just heard her. The real point of this case is whether people like Mr Bolt and the Herald Sun are entitled to write a column in which criticism of judicial officers is expressed. They can't print whatever they like, we accept that. But the first defence Mr Bolt and the Herald Sun are entitled to is that you are satisfied the matters contained in his column were substantially true. True or *substantially* true, that is a complete defence. We say that the account of the court proceeding was substantially accurate and we are entitled to take this defence. You will recall Ms Popovic's evidence about the young Cambodian female, which was clearly not the incident Mr Bolt was writing about because there was only one defendant. But this was an incident where involuntary hugging took place in the sense that the accused hugged the magistrate rather than the other way round. But remember she said it would be inappropriate to get off the bench and come down and hug a defendant. *Inappropriate*. That's what *she* said. Then Mr Collins, a person with no axe to grind whatsoever, never suggested to him that he had it in for Ms Popovic, or that he didn't like her or he wanted to smear her character. He says she comes down and hugs two heroin defendants to whom she'd just given a bond. Totally inappropriate behaviour! We suggest to you that despite Mr Sher's spirited attack on Mr Collins, his recollection was never *really* challenged. Mr Bolt had reasonable grounds for believing the complaints were true. That's not rumour, that's fact. He was told they did by a reputable officer. He took steps to verify the accuracy as best he could. There was a minor error about being a

teacher or not but he wrote a column that was substantially true. That's the hallmark of a good journalist. Mr Bolt is a good journalist.

SHER

Scuttlebutt in the Police Prosecutors Office! If you're prosecuting people all the time it's not unlikely that you'd get a bit upset with magistrates you think were being too soft, so you gossip among yourselves and talk about hugging incidents, then along it comes, our golden opportunity. The fleapit journalist.

HOUGHTON

Withdraw that remark!

SHER

We can tell him, he'll publish it, for a million readers. And what develops is an unhealthy, and I suggest highly illegal, relationship between police and the media. Classical fleapit journalism.

HOUGHTON

Illegal! That's outrageous!

BOLT

I resent your assertion I'm a fleapit journalist!

(BOLT holds his book to the AUDIENCE)

BOLT

That's the title of my book, *Still Not Sorry*, because that's what I stand for. Did I mention my wife reads every column before it goes into print to make sure I don't make a fool of myself? I wrote that in here somewhere.

(POPOVIC sits among the AUDIENCE)

SHER

(to AUDIENCE) Before you consider your verdict I want to raise an important issue. It's pretty obvious why the defence didn't call Sergeant Birrell nor Sergeant Petrovic. However, more importantly, apart from Mr Bolt the defence have not called one witness from the Herald Sun to

argue their case. You can draw an inference from that with great confidence. If they had of had the courage to attend I could have asked them what controls does the Herald Sun exercise over Mr Bolt? Is Mr Bolt a man who writes and they print whatever he writes? Does anyone have control over the subject matter of his articles? What protocols are in existence to ensure that columnists like Mr Bolt make proper inquiries, act reasonably, check their sources? Does the Herald Sun have a policy about giving a person they are about to attack an opportunity to respond to that attack before it's published? What steps does the Herald Sun take, if any, to ensure Mr Bolt doesn't resort to personal vendetta? Because there's a real danger in allowing the likes of Mr Bolt the unchecked opportunity to vent his spleen simply for the purpose of creating a media commodity through salacious attacks on public figures. And why did the Herald Sun agree to print a retraction but renege at the last moment? Was it because they didn't want to upset Mr Bolt? The Herald Sun has a lot to answer for. They provided the platform for this defamation. Mr Bolt has a lot to answer for. Attacking people who are seen as tall poppies sells papers. It's great to see the mighty fall, isn't it? Controversy, criticism, gossip, it sells. It's a sad fact but it does. (*pointing to BOLT*) Andrew Bolt is guilty. The Herald Sun are guilty.

HOUGHTON

(*to AUDIENCE*) If Andrew is innocent the Herald Sun have no case to answer. They don't need to be here. "*I cannot apologise,*" Andrew said, "*for holding opinions and expressing them. This is what makes Australia a democracy.*" We are fighting this case because we think that is a principle worth fighting for and we ask you to consider whether that is a principle worth upholding. Neither the Herald Sun nor Andrew are guilty of anything except having the courage to print the truth as they see it. They are the tall poppies, not the Popovics. Thank you.

JUDGE

Members of the jury--

BOLT

For me silence is not an option. I'll never be sorry. Never!

JUDGE

Members of the jury, have you agreed upon your verdict?

POPOVIC

We have.

JUDGE

Was the article defamatory about Ms Popovic?

POPOVIC

Yes.

(BOLT slightly collapses)

JUDGE

Was the article true?

POPOVIC

No.

(BOLT collapses more)

JUDGE

Was the article a faithful and accurate report of the proceedings before the Magistrates' Court at Melbourne on the first of November, 2000?

POPOVIC

No.

(BOLT collapses more)

JUDGE

Question four, was the article fair comment on a matter of public interest?

POPOVIC

No.

(BOLT is crest fallen)

JUDGE

Was the conduct of Andrew Bolt and The Herald Sun in publishing the article reasonable in the circumstances?

POPOVIC

(pause) Yes.

(BOLT, expecting the worst, hits the floor then rises, lightening-like, punches the air, gives himself high-fives, struts the stage.)

JUDGE

Were Mr Bolt and The Herald Sun actuated by malice in publishing the article?

POPOVIC

No.

BOLT

Yes, no, yes, no, no, no. This is a victory for free speech.

(BOLT erupts into a mad victory dance. The JUDGE attempts to talk over Bolt)

JUDGE

I should make it clear that the verdict of the jury has not decided this case. There are questions of law still to be determined by me. As the matter currently stands the case has not been decided.

(BOLT ignores the JUDGE and addresses the AUDIENCE)

BOLT

Popovic is still going to *challenge* the jury's verdict on this so it's not over but this is a *victory* for free speech.

JUDGE

I repeat the case has not been decided...

BOLT

I repeat this is a victory for free speech. I'd like to thank the jury for standing up for it.

I'd like to thank the Herald Sun for defending my right to say what I do.

(BOLT pulls out a newspaper article with the heading: Verdict backs article)

BOLT

I'd like to thank the Herald Sun for having the courage to run my material. *(blowing kisses)* I'd like to thank my legal team and my wife. Ha, ha, you can defame someone, you can bring their reputation into challenge if you do it accurately and with the right motives. My aim here was to raise genuine questions and express my genuine opinion about a matter of public interest involving a powerful public official. As a person in a very powerful position scrutiny of the courts was a cross Popovic had to bear. And I deny I ever called for her resignation.

(BOLT continues his victory dance)

POPOVIC

I was, I was outraged that he should make those, the remarks that he did in the context of the fact that the matter hadn't been concluded, was surprised and outraged and I was quite upset that he displayed no apology and an unrepentant air about the proceedings, didn't mention that he'd in fact been found to have been defamatory, inaccurate, unfair, that there was nothing to vindicate my reputation and in fact the exact opposite view was conveyed, that somehow his professionalism had been upheld at the expense of mine.

BOLT

In Australia everyone's entitled to my opinion.

JUDGE

That'll do! The Herald Sun and Mr Bolt chose to make tendentious public statements concerning this case before the case was finished and in the face of a clear warning given to them after the jury returned its verdict. By asserting, in effect, that he had won the case, subject only to a 'challenge' by Ms Popovic and by claiming that the

verdict was a "*victory for free speech*" Mr Bolt misrepresented the true situation. He misrepresented the situation to such a degree that his conduct can be characterised as being in arrogant disregard to Ms Popovic's right, not only to further damage the original libel, but also her right to have the public vindication of any ultimate judgment in her favour obscured by such misleading remarks. I consider this aggravates Ms Popovic's damages and entitles her to an increased award. I assess her total compensatory damages at \$210,000.

BOLT

Did someone mention \$210,000? You're joking, sport! That's even more than an average writers' grant.

POPOVIC

Australian record for libel. Come on, mate, don't be a soft cock. I'll shout you a beer.

JUDGE

There will also be an award of \$25,000 for exemplary or punitive damages.

BOLT

Take it easy, cobber!

POPOVIC

I also award the sum of \$11,000 by way of interest.

(BOLT, in shock, stumbles around the stage)

JUDGE

I further order that the Herald Sun and Mr Bolt pay all Ms Popovic's costs.

BOLT

Where're we gonna get that sort of money, the Australia Council? We're not some grant-fed, blood-sucking arts organisation, with money leaking out our arses. Someone's got to foot the bill. *(aside)* Guess who won't be paying a cracker?

POPOVIC

Hey, Bolta, if you're still not sorry how come you didn't put the articles in question in your book?

BOLT

Ha, ha, ask the publisher.

(Techno music. SHER, HOUGHTON, JUDGE and POPOVIC dance wildly. BOLT holds a hat to the audience)

BOLT

Spare a dime, readers? Just kidding. I'm not a bludger. Not the Bolta. I pay my own bills, wink, wink. Did someone mention a Walkley Award? Ha, ha. Not for me, mate, I don't enter them. They're too self-congratulatory. Anyway, excellence is determined more in the market place, mate. Who's the most read journalist in Australia? If you're a shoddy journalist you don't have an audience. I mean there are exceptions of course, Pilger, Adams, hacks like that. What was that term again, fleapit what?

(The others leave the stage)

BOLT

I mean you're a leper if you question the stolen generation, aren't you? And climate change! A Convenient Lie. Bob Brown, did you know he was gay?

(BOLT is pulled off stage by HOUGHTON but quickly returns.)

BOLT

But if someone said to me "*Listen, Bolta, you've just been awarded journalist of the decade,*" boy-o-boy I'd suit up and whip over to the award ceremony quick smart. Where's the entry forms?

(BOLT runs off stage)

BOLT V.O.

And don't forget my book, *I'm Still Not Sorry.*

THE END

ARTICLE 1 - Herald Sun 9/10/2000

To a lay person, the sentences some magistrates impose can be quite a puzzle. So you may be puzzled to hear our chief magistrate, Michael Adams, is causing outrage by describing magistrates as being either "soft c - - ks" or "rednecks".

Mr Adams apparently didn't mean to be taken too seriously, but fellow magistrates didn't get his joke. Nasty letters and threats of legal action are now flying around.

If you've followed the career of Mr Adams, you'll know the fuss started when he decided -- with little consultation with his colleagues -- to apologise to all Aborigines on behalf of our magistrates' courts.

It was a groovy gesture of reconciliation, but no doubt this is also where your puzzlement starts. How can Mr Adams be an apostle of reconciliation, when he seems unable to reconcile himself even with his colleagues?

I wish I knew.

You may also wonder why there's uproar about Mr Adams calling some magistrates "soft c - - ks", when he has simply said what many others have felt. Indeed, you may even wonder what he's talking about.

Now, here I think I can help.

Let me first say I would never call any magistrate a "soft c - -k".

We owe our courts more respect than that.

Nor am I sure who Mr Adams had in mind, but his remark did remind me of some magistrates' decisions.

For example, I've wondered why Deputy Chief Magistrate Jelena Popovic, a former teacher, last year gave only a bond to a brother and sister she found guilty of trafficking heroin, and then hugged them.

Ms Popovic is said by prosecutors to have a tender heart, which some people might say is to her credit. People, that is, like James Lyfield, who has a criminal record four pages long thanks to a weakness for burglary, thieving and driving without a licence. In August Lyfield appeared before Ms Popovic charged with 23 more offences, from burglary and stealing cars to skipping bail.

His lawyer begged Ms Popovic not to convict him of the car thefts, because that would cost him his licence and therefore his job. She assented, adjourning the case until December. If Lyfield stays out of trouble until then, police predict he'll be allowed to keep his licence -- and liberty.

Tan Nguyen, too, should admire Ms Popovic. He'd already been convicted for possessing and trafficking in heroin when he appeared before her in August, charged again with the same crimes.

Result: set free with just a demand he be tested for drug use for two months to make sure he kept "clean".

Or let's consider another Deputy Chief Magistrate, Brian Barrow, who in May gave Truong Pham the first of two very sporting chances.

Truong faced 26 charges, including three of trafficking in heroin and two of breaching a bond. But Mr Barrow gave him six weeks' bail, adding if Truong took drug treatment and kept out of 'significant' I strife, he would not be jailed.

The very next day, Truong was arrested for possessing heroin. The very next week, he was again arrested on heroin charges. And the very next week after that, he was picked up for more drug trafficking.

Not once was his bail revoked. Instead, in June Mr Barrow gave him another month on bail, and in sentencing him in August, ordered him to stay out of trouble until December. Soft?

WHILE you decide, I'll add that Mr Barrow in July gave one heroin dealer an effective sentence of just two months, even though the man's long record included six convictions for trafficking. Then there's the strange case of Geoffrey Toomey, who already had drug convictions when police raided

his home and found four pistols, 426 other weapons, explosives, amphetamines, LSD tabs, hashish, cannabis plants and other drugs.

Toomey was found guilty of 13 charges, including four of drug trafficking, yet a Ringwood magistrate gave him just a community-based order, and recorded no conviction.

Police prosecutors say they are depressed by the leniency of too many magistrates.

Legal activists will no doubt object, and point out more people are being jailed in Victoria these days, not fewer, but they ignore that our crime rate has gone up in four of the past five years, and that our rate of imprisonment is about half that of NSW. In fact magistrates now jail just 20 per cent of drug traffickers and manufacturers they see.

So are they 'soft c - -ks' ? Ask the chief magistrate. As for me, I could never endorse such a crude comment.

"Police say they are depressed by the leniency"

ARTICLE 2 Herald Sun 13/12/2000 - Andrew Bolt

We pay our magistrates good money to UPHOLD the laws. Our two top magistrates have in two recent cases handed out "justice" which seems so lenient that we must now tell them who is boss.

In fact, police prosecutors are so fed up that a senior sergeant has officially recommended that Acting Chief Magistrate Brian Barrow be prosecuted for "misconduct in a public office".

He has also asked that Attorney-General Rob Hulls examine the behaviour of Deputy Chief Magistrate Jelena Popovic, who he says is famed as "probably the softest magistrate on the bench".

These recommendations by Acting Sen-Sgt Jeff Birrell are yet to be endorsed by his superiors and, then, the Director of Public Prosecutions.

Mr Barrow, who runs our magistrates courts since he helped force out his boss, last week handed out the shortest sentence in Victorian history.

He jailed Benjamin Walton "until the court rises" -- which turned out to be the 30 seconds it took Mr Barrow to finish his paperwork.

Even on face value, 30 seconds seems a ludicrously soft penalty, seeing Walton was caught driving while disqualified for the 12th time.

Moreover, Mr Barrow was reminded when he imposed this joke of a sentence that it was contrary to the law for him to be so lenient.

THE prosecutor told him that anyone caught more than once driving while disqualified must by law be jailed for at least a month.

But Mr Barrow told the prosecutor he'd already made his decision, and "it's a matter for yourself if you want to take it any further' '.

Here's the nub of the issue. The public, through our politicians, passed a law to jail offenders like Walton for at least a month. But Mr Barrow did not uphold that law.

Of course, it's possible he may have simply made a mistake. But if not, then I understand why the prosecutor wants action against him, because our laws belong to the public, not magistrates and judges.

AUSTRALIA'S Chief Justice, Murray Gleeson, has put this case best, stating: "Judges whose authority comes from the will of the people, and who exercise authority upon trust that they will administer justice according to law, have no right to subvert the law because they disagree with a particular rule.

"No judge has a choice between implementing the law and disobeying it."

Now for Ms Popovic, the Deputy Chief Magistrate who once hugged two drug traffickers she let walk free.

On November 30, she presided over a hearing involving five protesters who had allegedly invaded the Indonesian consulate and burned its flag.

Even before a word of evidence was heard, Ms Popovic made clear her sympathies.

"Who is pushing this prosecution? The Indonesian consulate?" she demanded.

"No," said the prosecutor. "The police were."

BUT Ms Popovic was not mollified. "I don't know what the facts are but it is clearly some kind of East Timorese protest," she said.

"The young people, I presume they are young people, and reading some of the material, some of these young people have worked in a voluntary capacity in East Timor. If they have got no prior convictions, the worst thing that would happen to them if I was a presiding magistrate and found the charges proven is to have them dismissed. "

Having already decided -- before hearing any evidence -- she would not punish demonstrators for destroying Indonesian property, Ms Popovic turned on the prosecutor.

Popovic: You have to wonder sometimes whether these matters are brought for any legitimate purpose.

Prosecutor: Your worship, we have a situation where we have a victim.

It is their property and they have laid the complaint and we are obliged to investigate and prosecute.

Popovic: I reckon it would be much cheaper to buy them a new flag.

Prosecutor: Your worship.

Popovic: One, two, three, four, five people to court over it.

Prosecutor: Your worship, the situation is (that) it is their property, they have the right to.

Popovic: Mr Mohammed, you repeatedly argue with me.

Prosecutor: Your worship.

Popovic: I am warning you now.

How outrageous to so bully a prosecutor for simply arguing the law must be upheld against demonstrators who destroy the property of others.

Once again, Chief Justice Gleeson sums up well the case against such behaviour, declaring: "Impartiality is a condition upon which judges are invested with authority."

He adds: "To deploy judicial authority in support of a cause risks undermining the foundation upon which such authority rests."

True, Ms Popovic may have a point -- maybe protesters shouldn't be prosecuted for arson. And maybe Mr Barrow is right -- maybe we shouldn't jail people who repeatedly drive while disqualified.

But that's for us to decide, not them. Right now we have clear laws on these matters, and we pay the Barrows and Popovics of this world very good money to uphold them.

If they refuse, why should we employ them for a day longer?