

No. 31 of 1985

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCILON APPEAL FROM THE SUPREME COURT
OF NEW SOUTH WALES COURT OF APPEALIN PROCEEDINGS 102 OF 1983BETWEEN:REGINALD AUSTIN

Appellant (Plaintiff)

AND:MIRROR NEWSPAPERS LIMITED

Respondent (Defendant)

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No. of

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT
OF NEW SOUTH WALES COURT OF APPEAL

IN PROCEEDINGS 102 OF 1983

BETWEEN:

REGINALD AUSTIN

Appellant (Plaintiff)

AND:

MIRROR NEWSPAPERS LIMITED

Respondent (Defendant)

TRANSCRIPT RECORD OF PROCEEDINGS

PART I

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCILON APPEAL FROM THE SUPREME COURT
OF NEW SOUTH WALES COURT OF APPEAL

IN PROCEEDINGS 102 OF 1983

BETWEEN:REGINALD AUSTIN

Appellant (Plaintiff)

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SUPREME COURT OF NSW.
FILED
22 MAY 1981
\$95-
REC. NO. 7207

IN THE SUPREME COURT OF NEW SOUTH WALES

COMMON LAW DIVISION
SYDNEY REGISTRY

No. S12521 of 1981

REGINALD AUSTIN

Plaintiff

MIRROR NEWSPAPERS
LIMITED

Defendant

STATEMENT OF
CLAIM.

1. The Defendant is a duly incorporated 10
Company and is liable to be sued in its
corporate name and style.

2. At all material times the Defendant
was the publisher of the "Daily Mirror" a
newspaper which has an extensive circula-
tion in the State of New South Wales and 20
in other States and Territories in
Australia.

3. On the 27th April 1981 the Defendant
published on page 36 of the said newspaper
in a section described as the "League
Lift Out", of and concerning the Plaintiff,
words set out in Schedule 1 herein. (L.S.)

4. The Plaintiff alleges that in their 30
natural and ordinary meaning the said
words contained the following imputations
all of which are defamatory of him:-

(i) That the Plaintiff directed physi-
cal conditioning and preparation
of the Manly Rugby League team in
a radically wrong manner.

(ii) That the Plaintiff trained the
members of the Manly Rugby League
team into the ground.

(iii) That the Plaintiff had hoodwinked
1.

the coach of the Manly Rugby League team.

- (iv) That the Plaintiff had directed the members of the Manly Rugby League team to undergo conditioning on three nights per week.
- (v) That the Plaintiff had made the members of the Manly Rugby League team physically stale.
- (vi) That the Plaintiff had directed the physical regimentation of the members of the Manly Rugby League team for the past three years. 10
- (vii) That the Plaintiff was a fitness fanatic.

J. Emmerson

2.

- (viii) That the Plaintiff had persecuted his own body.
- (ix) That the Plaintiff was partly responsible for the Manly Rugby League team declining from a very high standard to a very low standard.
- (x) That the Plaintiff had directed an international footballer to do sprints as a penance. 20
- (xi) That the Plaintiff directed grinding training.
- (xii) That the Plaintiff directed training with a whip.
- (xiii) That the Plaintiff was a fanatical, authoritarian, inhumane, bullying conditioner.
- (xiv) That the Plaintiff was so incompetent as a conditioner that he should be dismissed by the Manly club.
- (xv) That the Plaintiff was a fanatical, authoritarian, inhumane, bullying person.

5. The Plaintiff also alleges that the words contained the following imputation which is defamatory of him:- 30

That the Plaintiff was an unstable person. (L.S.)

PARTICULARS

6. _____ The Plaintiff has been for six (6) years a well known insurance and superannuation consultant operating from premises at North Sydney and Willoughby. In the course of his duties he travels widely throughout New South Wales and is well known both in Sydney and in country towns.

Stability of personality is a requirement for success as an insurance and superannuation consultant. 10

7. _____ By reason of the publication of the matter complained of, the Plaintiff has been greatly injured in his credit and reputation and held up to public hatred, ridicule and contempt.

AND THE PLAINTIFF CLAIMS

1. _____ Damages.

2. _____ Interest.

3. _____ Costs.

J. Emmerson 20

3.

TO THE DEFENDANT:

Mirror Newspapers Ltd. of
2-4 Holt Street, Surry Hills.

You are liable to suffer judgment or an order against you unless the prescribed form of notice of your appearance is received in the Registry on or before the date of hearing fixed by the Notice of Motion served on you with this Statement of Claim and you comply with the rules of Court.

NOMINATED PLACE FOR TRIAL: Sydney.

PLAINTIFF: Reginald Austin of 533 Willoughby Road, Willoughby, 2068. 30
(L.S.)

SOLICITOR: John Needham Emmerson of Emmerson & Emmerson, Solicitors, 449 Warringah Road, Frenchs Forest, 2086

3.

In the Supreme Court of New South
Wales, Common Law Division,
1. Statement of Claim, 22.5.1981

SOLICITOR'S AGENTS:

Booth & Boorman, 115 Pitt Street,
Sydney.

PLAINTIFF'S ADDRESS FOR
SERVICE:

C/- Booth & Boorman,
115 Pitt Street, Sydney.

ADDRESS FOR SERVICE AT DOCUMENT EXCHANGE:

The Plaintiff's address for service at the City Document
Exchange is:

10

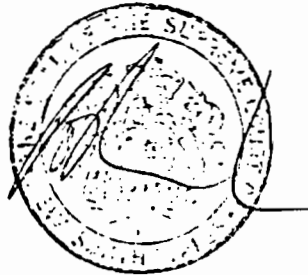
Emmerson & Emmerson, DX 9121 Dee
Why.

ADDRESS OF REGISTRY:

Supreme Court of New South Wales,
Queens Square, Sydney, 2000.

J. Emmerson
.....
Plaintiff's Solicitor

FILED:



4.

SCHEDULE 1.

"DAILY MIRROR LEAGUE LIFTOUT...LEAGUE LIFTOUT...

OUR STALE STARS

....

CASEY'S CORNER

COACHES PUSHING TOO HARD.

It hasn't been a good year for the big names of rugby league. In fact it has been something of a minor catastrophe the way Parramatta and Manly, along with Balmain, have flopped so badly. 10

North Sydney's three-try spree to snatch a win over Parramatta and Newtown's steamrolling of Manly emphasises that something is radically wrong with the preparation of major teams with undeniably talented players.

It's easy to blame Ray Ritchie and Jack Gibson or even Frank Stanton, but that would blame only those coaches while perhaps others will suffer the same fate later in the season.

I believe Sydney's top teams are being trained into the ground by over-zealous conditioners who have somehow hoodwinked coaches into believing that on top of a gruelling 80 minute match three nights of tortuous conditioning are also needed. 20

This means, in effect, Sydney footballers are pressing their bodies to the limit four nights a week.

While that might be acceptable in the boudoir, it is a short cut to physical staleness on the football field. (L.S.)

I've always believed once a man becomes an international he doesn't need to be guided all the time with his preparation for matches. 30

FAULT.

Manly has persisted for the past three years with the physical regimentation of its players by a fitness fanatic named Reg Austin.

From the little I know of Reg he is a magnificent man, and his persecution of his own body has made him the fastest runner in the world for his advanced age.

But since Austin has taken over the conditioning of Manly the records show it has gone from being a great side to being a tattered band of former champions. 40

Now this has not altogether been Austin's fault.

A certain lack of concentration and over-confidence on the part of players has contributed as much as some unimaginative coaching from Frank Stanton, Allan Thomson and Ray Ritchie.

5.

I question the wisdom of Austin when he tells an international footballer to do another six 400m sprints as some kind of penance.

League stars train very hard before the season starts.

But once they start playing - sometimes once and twice a week - is there a need for such a grinding training program under these whip-driving coaches?

10

The problem is Reg Austin and company think they are doing the right thing. My advice is to sack them."

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

COMMON LAW DIVISION

No. S12521 of 1981

REGINALD AUSTIN

Plaintiff

MIRROR NEWSPAPERS
LIMITED

Defendant

FINAL AMENDED
STATEMENT OF CLAIM

1. The Defendant is a duly incorporated Company and is liable to be sued in its corporate name and style.

2. At all material times the Defendant was the publisher of the "Daily Mirror" a newspaper which has an extensive circulation in the State of New South Wales and in other States and Territories in Australia.

3. On the 27th April 1981 the Defendant published on page 36 of the said newspaper in a section described as the "League Lift Out", of and concerning the Plaintiff, words set out in Schedule 1 herein.

4. The Plaintiff alleges that in their natural and ordinary meaning the said words contained the following imputations all of which are defamatory of him:

- (i) That the Plaintiff directed physical conditioning and preparation of the Manly Rugby League Team in such a wrong and incompetent manner that he was unfit to hold the position of trainer, and
- (ii) That the Plaintiff was an incompetent conditioner of the Manly Rugby League Team.

5. By reason of the publication of the

matter complained of, the Plaintiff has been greatly injured
in his credit and reputation and held up to public hatred,
ridicule and contempt.

AND THE PLAINTIFF CLAIMS

1. Damages.

2. Interest.

10

3. Costs.

TO THE DEFENDANT: Mirror Newspapers Limited of
2-4 Holt Street, Surry Hills.

You are liable to suffer judgment or an order against you

2.

unless the prescribed form of notice of your appearance is
received in the Registry on or before the date of hearing
fixed by the Notice of Motion served on you with this State-
ment of Claim and you comply with the rules of Court.

NOMINATED PLACE FOR TRIAL: Sydney.

20

PLAINTIFF: Reginald Austin of 533 Willoughby
Road, Willoughby, 2068.

SOLICITOR: John Needham Emmerson of
Emmerson & Emmerson, Solicitors,
698 Pittwater Road, Brookvale
2100.

SOLICITOR'S AGENT: Booth & Boorman, 115 Pitt Street,
Sydney 2000.

PLAINTIFF'S ADDRESS FOR
SERVICE: C/- Booth & Boorman,
115 Pitt Street, Sydney, 2000.

30

ADDRESS FOR SERVICE AT DOCUMENT EXCHANGE:

The Plaintiff's address for service at the City Document
Exchange is:

Emmerson & Emmerson, DX 9121 Dee
Why.

ADDRESS OF REGISTRY: Supreme Court of New South Wales,
Queens Square, Sydney, 2000.

FILED: 14th March 1983

.....
Plaintiff's Solicitor

8.

SCHEDULE 1.

"DAILY MIRROR LEAGUE LIFTOUT...LEAGUE LIFTOUT...

OUR STALE STARS

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CASEY'S CORNER

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and Newtown's steamrollering of Manly emphasises that some-
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Stanton, but that would blame only those coaches while perhaps
others will suffer the same fate later in the season. 20

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coaches into believing that on top of a gruelling 80 minute
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bodies to the limit four nights a week.

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part of players has contributed as much as some unimaginative
coaching from Frank Stanton, Allan Thomson and Ray Ritchie.

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League stars train very hard before the season starts.

4.

But once they start playing - sometimes once and twice a week - is there a need for such a grinding training program under these whip-driving coaches?

10

The problem is Reg Austin and company think they are doing the right thing. My advice is to sack them."

IN THE SUPREME COURT OF NEW SOUTH WALES

COMMON LAW DIVISION

SYDNEY REGISTRY

DEFAMATION LIST

S12521 of 1981

REGINALD AUSTIN

Plaintiff

MIRROR NEWSPAPERS
LIMITED

Defendant

AMENDED DEFENCE

SUPREME COURT
OF N.S.W.
FILED IN COURT
NO FEES PAID
14 MAR 1983
Associate

1. The Defendant does not admit the allegations contained in paragraphs 2 and 3 of the Amended Statement of Claim.

2. The Defendant denies the allegations contained in paragraphs 4 and 5 of the Amended Statement of Claim. 10

3. The Defendant denies that either the matter complained of in paragraph 3 of the Amended Statement of Claim in its natural and ordinary meaning or the imputations pleaded in paragraph 4 thereof was or were or was or were understood to be or is or are capable of being defamatory of the Plaintiff. 20

4. The Defendant denies that the matter complained of referred to in paragraph 3 of the Amended Statement of Claim bears or was understood to bear or is capable of bearing the imputations pleaded in paragraph 4 thereof.

5. Alternatively, the Defendant says 30 that insofar as and to the extent that it may be found that the said matter complained of was published of and concerning the Plaintiff and to be defamatory of him in its natural and ordinary meaning and as bearing the imputation pleaded in

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paragraph 4 of the Amended Statement of Claim (which is denied),
the said imputations:-

- (a) related to matters of public interest and were published contextually to the imputation that the plaintiff directed physical conditioning and preparation of the Manly Rugby League Team in a wrong or incompetent manner (which was a matter of substantial truth and related to matters of public interest) and by reason of the substantial truth of the contextual imputation the matter complained of in its natural and ordinary meaning and the said imputation in question did not further injure the reputation of the Plaintiff; 10
- (b) related to matters of public interest and was published contextually to the imputation referred to in sub-paragraph (a) hereof (which was a matter of substantial truth and published under qualified privilege) and by reason of the substantial truth of the said contextual imputation the matter complained of in its natural and ordinary meaning and the said imputation in question did not further injure the reputation of the Plaintiff; 20
- (c) was published under qualified privilege and contextually to the imputation referred to in sub-paragraph (a) hereof (which was a matter of substantial truth and related to matters of public interest) and by reason of the substantial truth of the said contextual imputation the matter complained of in its 30

-3-

natural and ordinary meaning and the said imputation in question did not further injure the reputation of the Plaintiff;

- (d) was published under qualified privilege and contextually to the imputation referred to in subparagraph (a) hereof (which was a matter of substantial truth and also published under qualified privilege) and by reason of the substantial truth of the said contextual imputation the matter complained of in its natural and ordinary meaning and the said imputation in question did not further injure the reputation of the Plaintiff.

6. Alternatively, the Defendant says that insofar as and to the extent that it may be found that the said matter complained of was published of and concerning the Plaintiff and to be defamatory of him in its natural and ordinary meaning or as bearing the imputations in question (which is denied), in addition to the foregoing, the matter complained of: 20

- (a) was published under qualified privilege;
(b) was published under such circumstances that the Plaintiff was not likely to suffer harm;

-4-

- (c) related to matters of public interest and amounted to comment based on proper material and upon no other material, and was the comment of the servant or agent of the Defendant; 30

- (d) related to matters of public interest and amounted to comment based to some extent on proper material

for comment and represented opinion which might reasonably be based on that material to the extent to which it was proper material for comment, and was the comment of the servant or agent of the Defendant.

7. Alternatively, the Defendant says that insofar as and to the extent that it may be found that the said matter complained of was published in the Australian Capital Territory, Victoria and South Australia of and concerning the Plaintiff and to be defamatory of him (which is denied), in addition to the foregoing, the same: 10

(a) insofar as it consisted of statements of fact, such statements are true in substance and in fact; and insofar as it consisted of expressions of opinion, such opinions were fair comment upon the said facts which were matters of public interest;

(b) was published upon an occasion of qualified privilege; 20

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(c) was fair comment on matters of public interest.

8. Alternatively, the Defendant says that insofar as and to the extent that it may be found that the said matter complained of was published in the Northern Territory of and concerning the Plaintiff and to be defamatory of him (which is denied), in addition to the foregoing, the same:-

(a) insofar as it consisted of statements of fact, such statements are true in substance and in fact; and 30 insofar as it consisted of expressions of opinion, such opinions were fair comment upon the said facts which were matters of public interest;

- (b) was published upon an occasion of qualified
privilege;
- (c) was fair comment in respect of the character of a
person taking part in public entertainment or
sports so far as his character appears from the
matter of the entertainment or sports, and/or the
manner of conducting the same.

10

9. Alternatively, the Defendant says that insofar as and
to the extent that it may be found that the said matter com-
plained of was published in the State of Queensland of and
concerning the Plaintiff and to be defamatory of him (which is
denied), in addition to the foregoing, the same:-

- (a) was published for the purpose of giving information
to the persons to whom the publication was made
with respect to subjects as to which those persons
had such an interest in knowing the truth as to
make the conduct of the Defendant in making the
publication reasonable under the circumstances;

20

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- (b) was published for the purpose of giving information
to the persons to whom the publication was made
with respect to subjects as to which those persons
were believed on reasonable grounds by the Defend-
ant to have had such an interest in knowing the
truth as to make its conduct in making the publica-
tion reasonable under the circumstances;
- (c) was published in the course of the discussion of
subjects of public interest, the public discussion
of which was for the public benefit, and insofar as

30

the defamatory matter consists of comment, the
comment is fair;

(d) was published for the purpose of the discussion of
subjects of public interest, the public discussion
of which was for the public benefit, and insofar as
the defamatory matter consists of comment, the
comment is fair;

10

(e) was fair comment in respect of the character of a
person taking part in public entertainment or sports
so far as his character appears from the matter of
the entertainment or sports, and/or the manner of
conducting the same;

(f) was published for the public good.

10. Alternatively, the Defendant says that insofar as and
to the extent that it may be found that the said matter com-
plained of was published in the State of Tasmania of and
concerning the Plaintiff and to be defamatory of him (which
is denied), in addition to the foregoing, the same:-

20

(a) was published for the purpose of giving information
to the persons to whom the publication was made

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with respect to subjects as to which those persons
had such an interest in knowing the truth as to make
the conduct of the Defendant in making the publica-
tion reasonable under the circumstances;

(b) was published for the purpose of giving information
to the persons to whom the publication was made

30

with respect to subjects as to which those persons
were believed on reasonable grounds by the Defendant

to have had such an interest in knowing the truth
as to make its conduct in making the publication
reasonable under the circumstances;

- (c) was published in the course of the discussion of
subjects of public interest, the public discussion
of which was for the public benefit;
- (d) was published for the purpose of the discussion of 10
subjects of public interest, the public discussion
of which was for the public benefit;
- (e) was fair comment in respect of the character of a
person taking part in public entertainment or sports
so far as his character appears from the matter of
the entertainment or sports, and/or the matter of
conducting the same;
- (f) was published for the public good.

PARTICULARS: S.C.R. PART 67

PURSUANT TO RULE 18(1)(a): PUBLIC INTEREST 20

- (i) The methods of coaching and training competition
Rugby League football teams;
- (ii) The Plaintiff's methods of coaching and training
members of the Manly Rugby League Football Club.

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PURSUANT TO RULE 18(1)(b): QUALIFIED PRIVILEGE

- (i) The matter complained of dealt directly with the
subjects specified above as particulars of public
interest;
- (ii) The plaintiff, at all material times, was the fit- 30
ness trainer of the first grade competition Manly
Rugby League team and a veteran sprint world record

holder with distinctive methods of coaching and training;

- (iii) The above matters were of substantial interest to sportsmen and followers in general, and to competitive Rugby League footballers in particular. The methods of coaching and training such footballers, and the Plaintiff's methods in particular, generated 10 discussion and concern amongst those persons who have a right to have ventilated discussion and comment concerning, and to be informed of, them;
- (iv) In respect of the above, the public has a substantial interest in knowing the truth and the Defendant had a social and/or moral duty in publishing the information contained in the matter complained of to its readers.

MATERIAL FOR COMMENT

The Defendant relies upon the facts stated in the matter complained of. 20

PURSUANT TO RULE 18(2)

The Defendant intends to rely upon the following facts and matters:


- (i) The circumstances in which it is proved by the

-9-

Plaintiff that the publication of the matter complained of was made;

- (ii) The truth or substantial truth of the imputation pleaded in paragraph 4(i) of the Amended Statement of Claim. 30

J F McDarra
by his partner



.....
Solicitor for Defendant

FILED: 14 March 1983

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

COMMON LAW DIVISION

NO. S.12521 of 1981.

REGINALD AUSTIN

Plaintiff

MIRROR NEWSPAPERS
LIMITED

Defendant

SUPREME COURT OF
N.S.W.

FILED IN COURT

NO FEES PAID

17 MAR 1983

Associate

SECOND AMENDED REPLY

1. The plaintiff joins issue on the
Defence save insofar as the same consists
of admissions.

2. In reply to paragraphs 7 (a), 8 (b)
and 9 (b) the plaintiff states that the
defendant was actuated by malice. 10

3. In reply to paragraphs 10 (a), (b),
(c), (d), (f), 11 (a), (b) (c) (d) (e)
and (f) the plaintiff states that the
matter complained of was published by the
defendant with an absence of good faith.

PARTICULARS

(a) The defendant published false
material or recklessly published
false material not caring whether
the said material was true or
false. 20

(b) The defendant published matter
which was false to its knowledge
or with reckless indifference to
the truth or falsity of the 30
matter.

(c) The defendant was actuated by
improper motive namely a desire
to prejudice the plaintiff in
the eyes of readers of its
newspaper.

2.

- (d) The defendant was actuated by improper motive namely a desire to make profit out of the sale of newspapers regardless of the truth or falsity of the matter published.
- (e) The defendant failed to enquire of the plaintiff whether he wished to comment on the proposed publication. 10
- (f) The defendant failed to apologise to the plaintiff for the publication.
- (g) The matter and extent of the publication were excessive in the circumstances.

4. _____ In reply to paragraphs 6 (c) and 6 (d) the plaintiff denies the matters alleged and also states that if the material was comment (which is not admitted) the said comment did not represent the opinion of the defendant or the servant or agent of the defendant.

FILED:

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.....

Solicitor for Plaintiff

IN THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION

)
) No. 12521 of 1981
)

CORAM: LUSHER, J.
and a jury of four.

MONDAY, 14th MARCH, 1983.

AUSTIN v. MIRROR NEWSPAPERS LIMITED

10

MR. TRAILL Q.C. with Mr. NEIL appeared for the plaintiff.
MR. NICHOLAS, Q.C., with Mr. SACKAR appeared for the defendant.

(Jury empanelled).

MR. TRAILL: At the outset I seek leave to amend the amended statement of claim which is before your Honour by reframing one of the imputations in par. 4.

(Amended statement of claim handed up to his Honour).

MR. NICHOLAS: We have been given plenty of notice in relation to this, your Honour. We wish, of course, to contend in due course that that imputation cannot and will not arise but that does not deal with the amendment, of course. We are happy with that but the amendment will necessitate us amending our defence. We seek leave to file in Court the amended defence which we propose to rely on. 20

There is one matter that we would wish to raise and that is in relation to the imputation pleaded in par. 4(ii) of the amended statement of claim we would wish to be heard that the matter complained of is incapable of bearing that imputation and it ought not to and could not arise and your Honour should take it away from the jury. I am content to have my friend open the matter but we would -- 30

HIS HONOUR: Do you mean by that he can open at his own risk?

MR. NICHOLAS: Yes. Your Honour will have to rule as a matter of law whether it is capable of going to the jury for them to decide as a matter of fact whether the matter complained of does bear it. We would be saying if it does not get to the first barrier. Your Honour appreciates, of course, that the imputations under the 1974 Act are, in effect, the causes of action so my friend is suing on two causes of action namely the two separate imputations which he pleads. 40

HIS HONOUR: You say they cannot arise.

MR. NICHOLAS: They cannot arise and thus that course of action should be struck out.

1.

21.

It may be convenient to deal with it at the outset. If we succeed my friend could not put to the jury that that was open to them. If we do not succeed your Honour would say that you allow it to go to the jury and it is for them to decide.

HIS HONOUR: It depends if the plaintiff wants to open that specifically.

MR. TRAILL: The plaintiff certainly wishes to open that imputation. 10

HIS HONOUR: It seems to me that if the plaintiff wants to open it prima facie he is entitled to, it seems to me the proper time to determine it is not necessarily now but later. If he has opened it and he has opened it wrongly there may be consequences which flow from that. It is really a verdict point, is it not?

MR. NICHOLAS: Yes, but it is one your Honour would deal with rather than the jury. The evidence in this case is just the matter complained of, the article and we would submit the proper time to deal with it is now, as a preliminary point. 20

MR. TRAILL: We are content for the matter to be put to the jury and if in the ultimate your Honour finds that the imputation cannot be founded in the material, the appropriate course can be taken in relation to that.

HIS HONOUR: It may lead to the discharge of the jury. That is one of the arguments.

MR. TRAILL: That is correct your Honour.

MR. NICHOLAS: That is what is troubling us, of course. It could lead the jury off into areas which could be influential. 30

MR. TRAILL: I am instructed we have no objection to your Honour dealing with this point before the opening to avoid any risk of the matter being prematurely brought to a head, we are confident it does arise.

MR. NICHOLAS: It will be necessary for your Honour to go to the whole of the article. The article says - and it is called Casey's Corner, by Mr. Ron Casey a sporting commentator, headed "Our Stale Stars":

"It hasn't been a good year for the big named rugby league. In fact it has been something of a minor catastrophe the way Parramatta and Manly, along with Balmain have flopped so badly. 40

North Sydney's three try spree to snatch a win over Parramatta and Newtown's steamrolling of Manly emphasises that something is radically wrong with the preparation of major teams with undeniably talented players.

It's easy to blame Ray Ritchie and Jack Gibson or even Frank Stanton, but that would blame only those coaches while perhaps others will suffer the same fate later in the season.

I believe Sydney's top teams are being trained into the ground by over-zealous conditioners who have somehow hoodwinked coaches into believing that on top of a gruelling 80 minute match three nights of tortuous conditioning are also needed.

10

This means, in effect, Sydney footballers are pressing their bodies to the limit four nights a week.

While that might be acceptable in the boudoir, it is a short cut to physical staleness on the football field.

I've always believed once a man becomes an international he doesn't need to be guided all the time with his preparation for matches.

FAULT:

Manly has persisted for the past three years with the physical regimentation of its players by a fitness fanatic named Reg Austin.

20

From the little I know of Reg he is a magnificent man, and his persecution of his own body has made him the fastest runner in the world for his advanced age.

But since Austin has taken over the conditioning of Manly the records show it has gone from being a great side to being a tattered band of former champions.

Now this has not altogether been Austin's fault.

30

A certain lack of concentration and over-confidence on the part of players has contributed as much as some unimaginative coaching from Frank Stanton, Allan Thomson and Ray Ritchie.

I question the wisdom of Austin when he tells an international footballer to do another six 400 metre sprints as some kind of penance.

League stars train very hard before the season starts.

3.

But once they start playing - sometimes once and twice a week - is there a need for such a grinding training programme under these whip-driving coaches?

40

The problem is Reg Austin and company think they are doing the right thing. My advice is to sack them."

23.

I should have read to your Honour the centre words: "Coaches pushing too hard". From that my friend contends in the natural and ordinary meaning of the words that appear in the article an imputation is available, namely 4(ii), that the plaintiff was an over-bearing bullying conditioner of the Manly Rugby League team." No doubt the disparaging essence of what is contended for would be conveyed by the words "over-bearing and bullying". We would submit that there is nothing that can be squeezed out of the words of this article which would convey a notion of bullying in the ordinary way in which that term is understood. Indeed, with respect, when one has in mind a football trainer, training a first grade side which consists of a number of internationals, it is indeed very hard to imagine how the concept of bullying could even come about. 10

Bullying seems to be a term commonly used to suggest some person who by means of threats - and I think threats is probably the real word - by threats or some outside forcible persuasion seeks to dominate people weaker than himself in some unacceptable way. It is the avenue of the coward in many respects, if one recalls ones school playground days; of course, bullies may be found no doubt post-school, but that is the concept which is sought to be argued for by this imputation. We would submit, with respect, that no way can this article be fairly read by the ordinary reader to come up with the imputation which suggests that Mr. Austin in his character and conduct as a trainer of this particular side at this standard, and with these individuals under his control is a bully in the ordinary sense, the ordinary unpleasant sense in which that is understood. That is not what this article says. 20 30

It is clear that it is a common thing from Mr. Casey, it is a review, it is a view he expresses having regard to some records he has seen and the conclusion which may be taken from them. What he is saying is that Manly, and the other three clubs as well, have had some recent upsets and a conclusion one can draw from looking at these records is that something is astray in the preparation of these teams for training and that something maybe found in the manner of approach to the task of training that some trainers, and particularly Mr. Austin, have embarked upon. He is pointing to what in his view is some erroneous line in that regard. That is what the article is about and that is the essence of it. 40

Thus we would submit that to introduce the notion of some personal characteristic such as bullying is quite foreign to the fair meaning that could be given to these words.

4.

We would say as a matter of law the imputation as it is pleaded in 4(ii) is incapable of arising and ought not to be permitted to remain. It ought, in effect, then be struck out. That is what we would seek.

HIS HONOUR: Has this point been argued elsewhere?

MR. NICHOLAS: I checked to see because often as your Honour knows the directions list deals with these things but as far as I could ascertain the answer to that is No. The original statement of claim had the number of imputations in it but I gather that although it came up from the directions list in the usual way the question of the imputations was not argued. The impression we have is that rather than there being an argument at the directions hearing the plaintiff chose to amend and took the stance which is now before you and there was nothing said about that by the Defendant. 10

HIS HONOUR: You do not read that as a concession by the defendant? 20

MR. NICHOLAS: No your Honour. There has never been any argument or determination about it. It is this notion of bullying this over-bearing bullying notion we are concerned about and we say it is a departure from what a fair reading of the article would convey. It is not what this article is about, with respect.

MR. TRAILL: If I might deal with the directions hearings: As I understood the position there were a number of imputations that were pleaded in the original statement of claim and they were reduced to two. No point was taken by the defendant at those subsequent directions hearings and there was no move to strike out this second implication at that time. It is fair to say it was not fully argued before the directions Judge other than to reduce the imputations. 30

We support the second imputation on this basis, that the allegations are what is to be found in this article, that the plaintiff was an over-bearing bullying conditioner of the Manly Rugby League Club. The plaintiff is the only conditioner whose name was mentioned. There are some coaches of teams who are mentioned but his is the only name of a conditioner and if one goes to the fourth paragraph, the last at the bottom of column one of the article here is the statement that appears: 40

"I believe Sydney's top teams are being trained into the ground by over-zealous conditioners who have somehow hoodwinked coaches into believing that on the top of a gruelling 80 minute match three nights of tortuous conditioning are also needed."

So there is immediately a class of persons identified and that is what is alleged against this class.

HIS HONOUR: At that point they are over-zealous and they have 50

fooled or hoodwinked the coaches. It does not categorise them apart from them being over-zealous.

5.

MR. TRAILL: It says that they have hoodwinked the coaches and what flows from that deception, having deceived the coaches, is that they believe then that in addition to the match there has to be three nights of tortuous conditioning. So having transferred that belief to the coaches they then put it into effect. That is what the next paragraph says: 10

"This means, in effect, Sydney footballers are pressing their bodies to the limit four nights a week".

At this stage the over bearing aspect is raised as being what follows, the coaches agree to it and these fellows are turned loose on the players and the result of that is that four nights a week the Sydney footballers are pressing their bodies to the limit.

HIS HONOUR: Is that not consistent with being over-zealous and over-keen with mistaken. The contention is that it is over bearing. It seems to me that it is consistent with the view that the men are quite happy to do it, they think it is all for their own good and makes them better footballers. 20

MR. TRAILL: It is put that there is no bullying here because there are no threats, but, of course, there is the implied situation of a player who says, "I am not going to be pressed into these four nights a week torturing of my body," and he does not get selected. That is the sanction. The article further along in the second last paragraph puts it beyond any doubt: 30

"But once they start playing - some times once and twice a week - is there a need for such a grinding training programme under these whip driving coaches."

HIS HONOUR: That is a complaint against the coaches.

MR. TRAILL: It says the regimentation, the physical regimentation of players which is really the effect of what follows from these conditioners who hoodwink the coaches and they then get their chance at the players.

Then under the word "Fault" it says: 40

"Manly has persisted for the past three years with the physical regimentation of its players by a fitness fanatic named Reg Austin."

The inference is that having hoodwinked the coaches the players are then given this tortuous conditioning and they are given the physical regimentation by a fitness fanatic.

HIS HONOUR: Where do we get the over-bearing manner or the bullying?

MR. TRAILL: The regimentation, the physical regimentation, the whip-driving coaches which seems to include the trainers.

6.

HIS HONOUR: There is a distinction made between trainers and coaches.

10

MR. TRAILL: Over zealous conditioners who hoodwink coaches, whip-driving coaches, we would submit applies to these conditioners as well because they are the ones, or more particularly Reg Austin is the one who is alleged to have dealt with Manly in the manner which we would submit entitles us to draw the inference that he is over-bearing and bullying.

HIS HONOUR: It seems to me that that goes to the nature or quality of the manner in which he does the activity. That activity which is complained of is the tortuous grind on the treadmill or whatever. The activity that is referred to is making them run too much or pressing their bodies too beyond limits. That is the activity. But the manner in which that is achieved is not given.

20

MR. TRAILL: Except there is one paragraph there:

"I question the wisdom of Austin when he tells an international footballer to do another six 400-metre sprints as some kind of penance."

HIS HONOUR: It does not give the circumstances of that.

MR. TRAILL: No.

HIS HONOUR: It is open to the view that the international footballer might have been slack, is it not?

30

MR. TRAILL: Yes, but if the facts are to be properly stated in the article and it has to be shown that he has given these international footballers six 400 metre sprints as some kind of penance, certainly to sustain any plea of comment. But in any event, on a fair reading of it we would say that the manner in which this conditioning is done in the article is presented as a grinding training programme.

HIS HONOUR: Assume he does say to a footballer, "I am not satisfied, I think you had better go around another six times," the fact he has ordered that, you say demonstrates an over bearing aspect and a bullying?

MR. TRAILL: If it is some kind of penance. "You have not satisfied me, so for your penance you have to take yourself around the 400 metre track six times."

HIS HONOUR: What I am really putting to you is that coaches constantly tell players to do something again - it is commonly done whether it is in a swimming pool or on the football field. You read into it that it is unnecessary or vindictive.

MR. TRAILL: It is punitive - penance. It is one thing to say "You have not satisfied me so do another lap around the track" --

HIS HONOUR: Yes, obviously it is a punishment, that is the whole basis of it. "You haven't satisfied me so you have to be punished and you have to go around again." 10

7.

MR. TRAILL: It is one thing to say, "You are not fit enough and to get you fit for this game on Saturday you have to do some more laps"; But once you take that notion, "for your penance, you have not satisfied me, it is six 400 metre laps" then in the next couple of paragraphs there is this whip driving notion which is mentioned - it goes much further than the mere guidance of the Manly players by the trainer. 20

There is in the whole of the article, we say, an element of domination of them through his position, of compulsion and of whip cracking and the sanction obviously is that if he says they are not fit or having persuaded the coach that this grueling and tortuous conditioning is necessary and a man does not perform that gruelling and tortuous conditioning to the satisfaction of the conditioner, we suggest the obvious inference is that he gets dropped. That is where the overbearing and bullying notion, we say, comes in. When you read that article as a whole, bearing in mind what he said about this over zealous conditioner hoodwinking the coaches and when you get to the players and the task of conditioning players by doing so in a way which is over bearing, whip driving and bullying, it is our submission that it does arise from that article. 30

MR. NICHOLAS: There is nothing said in this Article about torturing body. The use of the word "tortuous" is there, but of course any dictionary would tell your Honour that tortuous has got nothing whatever to do with torture or the inflicting of torture upon. What my friend is contending really is that the use of the word penance in this context necessarily and fairly results in the allegation that the plaintiff was as a matter of character, conduct and description, the overbearing, bullying conditioner of this team and charges the plaintiff with those general characteristics. But it is put in a general way rather than limited to a particular incident and we would submit that that aspect alone would be fatal in a fair reading of the article. 40

We would say, with respect, that my friend has really come down to this, that he has really asked your Honour to read the term penance in the context as carrying with it some notion of vindictiveness; it was spiteful that this man 50

should be sent around the field again, it was unmerited, a fit of pique which indicates this bullying characteristic that this man had. And this is this one example which is raised by: "I question the wisdom of Austin when he tells an international footballer some kind of penance." From the use of "as some kind of penance" my friend is really forced to suggest that the fair minded reader rather than one avid for scandal - 10 which is of course not the test - would extract from that that the charge being made in general terms is that this plaintiff was an overbearing bullying man. It just does not, with great respect, sustain it. It in terms is torturing the words themselves beyond what they could be fairly read to bear. That is how we would respond to that.

HIS HONOUR: The view which I have reached, and I will give my reasons for it later, is that I should withdraw par. 2 from the jury as not being open to the imputation that the plaintiff was 20

8.

an overbearing bullying conditioner, having regard to the tests to be applied and the totality of the article.

MR. TRAILL: In the light of your Honour's ruling I would seek leave to substitute for par. 4.(ii) the imputation that the plaintiff was an incompetent conditioner of the Manly Rugby League team. That is a different imputation from 4(i).

HIS HONOUR: That is substituting incompetent for overbearing and bullying.

MR. TRAILL: Yes. 30

MR. NICHOLAS: We oppose that for these reasons, your Honour: Firstly, if your Honour goes back to the pleadings, the amended statement of claim your Honour sees there that in 4(i) it says: (read). In the further amended statement of claim, that has been slightly changed. We would say, and no doubt my friend would embellish it, that that is perhaps a shift in emphasis but not a real change in substance, which brings us to the point of our objection to the amendment at this stage and I refer your Honour to provision Pt. 67 r.11(3) of the Supreme Court rules. 40

HIS HONOUR: I see a distinction between them. 4(i) it says that the conditioning and preparation he engaged in was done in a wrong and incompetent manner but they move from that in the second amendment in saying he was unfit to hold his position.

MR. NICHOLAS: The essence of it is still wrong and incompetent manner.

HIS HONOUR: But the essence there is that he was unfit to hold his position because of the incompetent manner. There is a difference.

MR. NICHOLAS: I appreciate that. But it is the question of degree of difference.

HIS HONOUR: The first one does not say anything about the fact that he could be wrong and incompetent but still not be unfit.

MR. NICHOLAS: We are contending that the two imputations, that is to say 4(i) in the further amendment to the statement of claim, and the proposal of my friend now, that the plaintiff was an incompetent conditioner of the team, that those two imputations in effect do not differ in substance one from the other. There is a rule which refers to that and it is that that I was referring to. 10

HIS HONOUR: Why do they not differ in substance? The second one is the question of his fitness to hold the job because of incompetence.

MR. NICHOLAS: Yes, but it is a matter of degree, we would say.

HIS HONOUR: The question of his fitness to hold the job does not arise under the first point at all. 20

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MR. NICHOLAS: We would say this, that the way in which the law approaches the question of substance has been looked at by the Court of Appeal in Morosi's case (1977 1 N.S.W.L.R.) Pt. 67, r.11(3) reads: (read). That is the basis for our objection to my friend's amendment. Morosi's case amongst other things considered the effect of that rule and I think I can summarise it reasonably accurately by saying this to your Honour, that that rule was designed to prevent what was the previous practice in the not so old days of pleaders drafting many imputations. Your Honour might from your Honour's experience be aware of some of the problems that flowed from that. It was sought to impose upon the pleader the necessity as far as could reasonably be done, of getting the essence or sting of the article and the court went on to say that plaintiff's counsel in making submissions and putting it to the jury etc., won't be precluded from commenting upon the shades or gradations of meaning that can flow from that, bearing in mind the defence through imputation is truth or substantial truth. So one is concerned with the essence of it rather than the verbal expression or dot by dot exercise as a matter of commonsense. 30 40

HIS HONOUR: The reason, of course, is that otherwise the imputations become similar to the particulars.

MR. NICHOLAS: Precisely and that was the vice that was sought to be cured and has been. Really what we are saying is that my friend will not be precluded from putting to the jury a consideration of his incompetence, the suggestion of incompetence - he would get the benefit of that - what we are saying really is that this is an article in which my friend would 50

seek to have from it a charge being made as to the wrong and incompetent manner in which the plaintiff directed the physical conditioning and preparation of this team. Thus we would be wanting, in due course, to contend that the imputation as pleaded in 4(i) does not arise.

We are saying nothing about him being unfit to hold the position of trainer. That is not for now. What we are saying 10
for now is that really that is saying in another way, raising this question of his incompetence, the incompetent manner in which he went about things. Really my friend is not putting for consideration charges which do in fact differ in substance, one to the other, and the courts look at this for the very reasons I put to your Honour a moment ago and my friend is really seeking to introduce a fresh cause of action of a manner which we say is encapsulated in any event.

We say the notion of the charge which he is complaining 20
of as made by this article in his proposed second imputation is already there in the first, thus there is no differing in substance and thus the addition ought not be permitted.

I think it is fair, with respect, to say that if your Honour took the view there was a difference in substance we still have the opportunity of contending to the jury that they must find it. Indeed, we may persuade your Honour in due course not to let it go;

10.

but this is no concession on our part, of course, if your Honour rules there is a distinction. 30

HIS HONOUR: It seems to be there is a distinction between saying a man is incompetent and saying that what he has done has been in an incompetent fashion or manner. He could be competent but nevertheless go about it in a wrong and incompetent fashion nevertheless he is still a competent operator. It is a different thing to say the man is incompetent. If you say he is incompetent that goes to the quality of the man altogether. He is limited to this article, is he not? It can only come out of the article.

MR. NICHOLAS: Yes. 40

HIS HONOUR: You say it is really a discussion as to manner?

MR. NICHOLAS: Yes, but I am also bound to recognise before your Honour that that ultimately may be a jury question.

HIS HONOUR: It is not a question of discussing with the jury the question of whether he was incompetent genuinely even on this amendment.

MR. NICHOLAS: He talks about "incompetent conditioner of the Manly Football Team". That is the new amendment.

31.

HIS HONOUR: As I apprehend it, and I may be wrong. That discussion or issue may be limited to what is in this article. That is your contention.

MR. NICHOLAS: Yes, indeed. If it was to get wider than that we would certainly have a problem meeting that.

HIS HONOUR: And that is another case and that is why I thought I should raise the matter. At the moment, and as presently 10 advised, I find it difficult to see how the plaintiff could make a case against you that he was an incompetent conditioner by seeking to prove he was incompetent because of A, B, and C, which are not mentioned in this article.

MR. NICHOLAS: Quite, but perhaps my friend could indicate that. In other words, we do not want to be caught in the position where we hear my friend opening to the jury, and indeed closing to the jury in due course, on a much wider basis than the article is going to serve and having the effect of 20 damning the plaintiff in the eyes of all who read it and of being the person with these characteristics. It is a very limited article and very limited situation he is talking about.

HIS HONOUR: It is not for me to offer amendments but as I read the article what is really being put is that it is a misconceived form of training.

MR. NICHOLAS: That is what we would be saying.
11.

HIS HONOUR: But that is a separate issue.

MR. NICHOLAS: Yes, and really it provokes the position, if we fail on the substance point, of inviting your Honour to consi- 30 der the capacity of the article to bear the imputation sought and to see whether it should be struck out. It makes one think the exercise has an air of futility about it, if I may respectfully say so.

MR. TRAILL: As I understand the pleading of an imputation under the new Act and as I understand what Samuels J.A. said in Petritis' case the plaintiff must plead either the quality of act or contention by which he is necessarily discredited or 40 disparaged or the charge or accusation against him and we say here that there is a difference between the first imputation in par. 4(i) which goes to the question of his fitness to hold the position, because of the way in which he carried out the training. In the proposed par. 4(ii) it really raises what is charged against him in the article, what is the accusation. The disparaging imputation will say is that he is an incompetent conditioner.

HIS HONOUR: You raise that as an imputation?

MR. TRAILL: Yes, as an imputation. It does set out what the

plaintiff contends the article means which will cause people to regard him the less highly. It is our submission that my learned friend in his amended defence seeks to raise the imputation by way of contextual defence.

HIS HONOUR: He has not got a defence on to this proposed amendment, as yet.

MR. TRAILL: No, but what he does is we having raised two imputations he then goes back to the former statement of claim and says "We do not justify that imputation but we justify your old one what you had before". He sets out what he contends is the imputation which is to be found in the article, but the plaintiff directed the physical conditioning and preparation of the Manly Rugby League Team and that contextual imputation is not different from, materially, what was in the first amended statement of claim. 10

HIS HONOUR: He has taken the words from your amended statement of claim, par. 4(i). 20

MR. TRAILL: Yes, of the first amended statement of claim, but my learned friend is, therefore, in the position of contending that our new statement of the imputation in par. 4(i) goes to the question of whether or not --

HIS HONOUR: He can argue you were acting in a wrong and incompetent manner.

MR. TRAILL: Yes, that goes simply to the manner but it does not touch the fitness.

HIS HONOUR: Yes it does. The fitness derived from manner. 12. 30

MR. TRAILL: He is not justifying it.

HIS HONOUR: He only justifies the manner.

MR. TRAILL: He justifies the manner but nothing further in that respect. We say, therefore, there is a difference in the nature of the case which is sought to be made by alleging that he is an improper conditioner. That is not the manner in which he does it, that goes to his capacity, which we say is distinguishable from the first imputation.

What I am saying is that the shades of meaning have been taken up in the pleadings as they now stand, on the question of the quality and the manner. 40

HIS HONOUR: At the present moment the question goes to the manner, the means he adopted at training.

MR. TRAILL: Yes. And we say pass again to the article. We would not seek to go outside the article. It bears the inference that he was an incompetent conditioner and the manner, we

say, comes from the very first headline: "Our stale stars." There are various other references to the way in which the Manly Rugby League Team, the players, have been trained in a radically wrong fashion.

HIS HONOUR: You say "Incompetent" is to be found in the article and you do not seek to go outside it?

MR. TRAILL: That is so, we do not seek to go outside it. 10

HIS HONOUR: We will adjourn and I will give my ruling at 2 p.m.

(Luncheon Adjournment).

UPON RESUMPTION:

(For his Honour's judgment see separate transcript).
12A.

(At 2.20 pm jury returned to court)

HIS HONOUR: Members of the jury, we have now disposed of and completed the business which has been occupying us all morning, and the matter will now start so far as you are concerned, and Mr. Traill of Queens Counsel will shortly open the case to you - that is, explain what the case is about. 20

MR. TRAILL: Members of the jury, this is an action for defamation, which is brought by my client Mr. Reginald Austin, the gentleman sitting here, and it is brought against Mirror Newspapers Ltd.; I appear with my learned friend Mr. Neil for the plaintiff. Mr. Nicholas of Queens Counsel and Mr. Sackar represent the defendant, which, as you are undoubtedly aware, publishes the Daily Mirror Newspaper, a Sydney Metropolitan daily, with a large extensive circulation.

The plaintiff is a prominent sporting figure in the Rugby League World, as a sprint trainer and conditioner with Manly Rugby League Football team, and also as an athlete himself. The plaintiff brings his action against Mirror Newspapers for publication of an article which appeared in the edition of the Daily Mirror on 27th April, 1981, under the name of Ron Casey, through which the plaintiff claims that he was defamed. Now you may think that the most serious allegations that could be made against a sports conditioner and trainer are that he so directed the physical conditioning and preparation of his football team in such wrong and incompetent manner that he was unfit to hold the position of trainer, or that the plaintiff was an incompetent conditioner of the Manly Rugby League team. 40

It is the plaintiff's contention that these imputations are to be found in the article which will shortly be before you. We submit that before the evidence has gone too far in this case, you will have little doubt that Mr. Austin is one of the best known sporting figures in Rugby League and

Athletics, as a conditioner and trainer, and that he has a widespread reputation in many circles. It is the plaintiff's submission to you that the charges which appeared in the Mirror against the plaintiff as a sporting trainer and conditioner were reckless and irresponsible.

As I told you, this is a defamation action; I will try and explain it to you as clearly as I can. You, members of the jury, together with his Honour make up the tribunal that tries the case. You have to be guided by his Honour, as the learned trial judge, who will direct you on what evidence is properly admissible in the case, the ingredients of the action, the issues of the case and the principles which are to apply in deciding the case. You will be the judges of facts; his Honour rules on the law you decide the facts. So that is your sphere and your role in this case, to decide the facts and to do so, in accordance with the rulings that his Honour gives you. Now if counsel for either party makes any statement about the law, you must understand it is subject to his Honour's direction to you.

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If I or my learned friend were to make any incorrect statement of the law, you will know that his Honour will correct the statement insofar as it needs correction. But "Defamation" means publication in newspapers, on television, orally or on radio, of an allegation against someone which causes him to be lowered in the esteem of right-thinking people in the community - something that causes his reputation in the community to be lowered, for decent people in the community to think less of him as a result of it. Now what is published or televised or spoken - in this case what was printed in the newspaper - is said to give rise to an imputation or charge or allegation against him which damages his reputation; so I do not want you to be troubled too much about the technical aspects of what "imputation is". A defamatory statement is simply a statement which is likely to injure a person in his personal reputation, in his personal life or professional life. Now the imputation, if you like, is the charge which is contained in the article; it is the cause of action, it is the sting in the libel that is to be found there, that does have this effect of injuring a person's reputation.

The article, as I say, it will be shown, was published in April of 1981; in N.S.W. the law which applied at that time, and today, is to be found in the Defamation Act, which provides the rules for the protection of the rights of people whose reputations come into question, when they are attacked. That provides the rules for the extent to which people - newspapers, television stations and the like - are protected in the publications they make; in other words the limits to which people can go when they want to publish material are laid down under that Act, so that if they go beyond the limits then they may be caused to compensate people whose reputation has been damaged by publication of defamatory material.

So defamation then can be summed up as the making of imputations or charges against a person - in this case the plaintiff - by which his reputation is likely to be injured, or by which he is likely to be injured in his profession or trade or calling; or which could result in persons who are likely to be induced to shun or avoid him or ridicule or disparage him. So that is an important element, that the material 10 must have that quality not only of injuring reputation but of causing other people to shun or avoid or ridicule or hold him in lower esteem. If the material published is considered by you, the jury, to have any of those effects, then in the eyes of the law it is regarded as defamatory.

The plaintiff claims that as the result of the publication of this particular article in the sporting supplement of the paper of 27th April 1981, his reputation was damaged, that the defendant went far beyond the protection which the law affords newspapers; and Mr. Austin took proceedings against 20 the defendant for defamation, and it will be our submission to you that this was a terrible attack on his reputation, and Mr. Austin was very much hurt and injured in his feelings when he saw this attack on him; and he, like everybody else, is concerned to protect his reputation.

Now judges have often said to juries, and I am sure his Honour will endorse this, that you do not leave your common sense

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outside the jury room when you come to court to try a defama- 30 tion action. This is important here, we suggest, because you will know that there are many thousands of people in the community who are interested in Rugby League, who follow it. You will also know that the reputation of a Rugby League trainer and sprint conditioner, such as the plaintiff, could be strongly affected by what the defendant published about him in its newspaper. So we suggest to you that the correct approach with which you ought to look at the article is whether or not, in the eyes of ordinary, decent members of the community, this statement would be likely to injure the reputation of the 40 plaintiff. Now that is one of the issues in this case: Whether or not, first of all, the article is capable of bearing the imputations which are contended for it by the plaintiff - and that is a matter for his Honour. But once that ruling is given, then it is a matter for you whether in fact the imputations arise, and whether they do injure or have the likelihood of injuring the reputation of the plaintiff.

The Defamation Act provides that the imputation - that is the message in the publication - may be expressed directly or by insinuation or indirectly; and you can see how that can 50 come about. You can say to somebody that he is a crook, and that is conveyed directly. But sometimes a message is conveyed by the whole tone of the article, which can contain derogatory meanings, whatever the precise words used are; that is

something that the Act has in mind, and we ask you to bear that in mind. So that you will read the article as a whole, and look at it and see whether, fairly, on a fair reading of the article, the imputations which the plaintiff says are there can be found in it; you may find them either in precise words, or in indirect fashion, whether it conveys that message. So that is one of the very first issues that you will be asked to deal with - whether that imputation can be found to arise in the article. 10

Now the publication is one of the elements which has to be proved by the plaintiff, and that can be done in various ways. The plaintiff has brought this action, as I have put to you, by reason of the article in the League Lift-Out segment of the Daily Mirror of 27th April 1981, and it appeared under the title of "Casey's Corner", next to a photograph of Ron Casey, the well known sports commentator. As you will learn, this particular edition was published throughout N.S.W., in metropolitan and country areas, the Australian Capital Territory and Queensland. It is proper for me to suggest to you that you will come to the conclusion that the Defamatory imputations, which we say are in the article, were conveyed to many thousands of readers, and that therefore there was a particularly wide circulation and area of circulation into which this matter went. 20

So the extent of the publication and the extent of the plaintiff's reputation are, we submit, important matters when you come to consider how serious the defamation is. Obviously, if the plaintiff had been defamed and was widely known to many people, we would suggest that that ultimately is relevant when you come to consider the question of compensatory damages 30

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to repair any injury done to the plaintiff and his reputation; but we will come back to that later. The plaintiff, as I say, has to prove that the publication took place, and that is not really an issue here, because interrogatories have been administered; they are simply questions which have to be answered on oath; but they have largely dealt with both the fact that it appeared in the paper, and the extent of the publication, and that will be before you in due course. The word "published" in the context of this case really refers to the communication of defamatory material through the areas in which the defendant's newspaper is circulated, and as I say, the libel here is the printed word, along with a picture of Ron Casey, and the essential aspects are there, of the communication to the readers of the newspaper, and of course not everybody will necessarily read the article, who buys the paper - it is a matter again for your own common sense - but of course there may well be more than one person, in a family or in a household, who reads the paper. So you have to balance one thing against another. Maybe not everybody is interested in Rugby League who takes the paper, but at least 40 50

that is where this newspaper went. Again, we would say it is a reasonable inference that not only was it published to the readership at large, but there would be key people in the Rugby League World, in various areas of the plaintiff's sporting or public life, who would be likely to see this. You may well think that that is the area where it could do him the greatest harm. 10

Before I take you to the article, I wanted to say a few words to you about the plaintiff, just so that you have got the context in which the article was published; and when you are considering the impact of this particular publication on Mr. Austin's reputation, it is important that you know something of the man himself and the way he has conducted his life and activities, and I just propose to give you a brief outline of his background, insofar as it is relevant to this publication.

There will be evidence placed before you that he is now 20
forty-six years of age, that he is a taxation superannuation consultant, and that he is well known in sporting circles throughout the Rugby League world, in N.S.W. and internationally because of his record both as an athlete himself and as a physical conditioner and trainer for Rugby League teams, including Manly, North Sydney and Canterbury; and we will be putting to you that he has had a distinguished career in his chosen fields; that while he is engaged in his work area in Sydney, he also has an extensive practice in the superannuation field, through the country areas of N.S.W. and into 30
Queensland, and that he is known in that respect extensively throughout the State.

In the sporting field, the plaintiff also has a widespread reputation, again which stems from the fact of his background as a player, as a professional Rugby League player for 13 years, playing with various teams in N.S.W. and also in New Zealand for some two seasons, and that he was captain/coach of various teams. Then in 1970, for the last 13 years,
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he took up conditioning and assisting in the training of Rugby 40
League Footballers in the N.S.W. Rugby League competition. He has been associated not only with the Rugby League teams as a conditioner, but more particularly as a sprint trainer. Now in addition to being a Rugby League player and trainer, he has been a professional athlete for many years, representing N.S.W. and competing in the Australian titles, and in fact holding world records for the 200 metres and the 400 metres, and also has continued that training and competing far beyond the age when sprinters usually give up competitions, so that 50
he has competed in world veteran titles and he has in that regard distinguished himself as a world champion, winning various titles at different ages, as he has competed; and winning 100 metres, 200 metres titles at the Gothenburg Games in Sweden, and other games; athletic meetings, of world

professional champions, in various parts of the world. And we say, with that background, that very high performance of his own, personally, as a sprinter, that that has fitted him in an unequalled fashion to become a sprint trainer for Rugby League football teams; and as you would be aware, there are occasions when a sudden burst of speed by the footballers can carry them through the opening, and tries are secured. 10

So his role in the training of footballers has been directed to putting that extra bit of speed on them, and skill, in sprinting for 20 or thirty yards, or whatever the game may require at that particular time.

So without taking you through it in great detail, we simply open to you that he does have this background of being a gold medalist in various world championships, and winning numerous other sprint prizes.

Now the plaintiff's reputation of course has to be looked at at the time when the publication occurred in the paper in 1981, and as I say, he had had a fair degree of success, both in his professional life and his sporting career and we put it to you that he was well respected by his fellow men, particularly in the sporting areas of his special interest, and in Rugby League circles particularly. Now a man is presumed to have a good reputation - that is what the law says - and we put him before you as a man who had a good reputation; it is in that context that we find this publication in the Daily Mirror. 20

Of course one way in which you can injure a man's reputation is to praise him on the one hand and then attack his reputation by applying various other adjectives to him, or to try and pull down the esteem that he has. In this particular instance, we say that the language which was used is such that you would more readily infer that, as a result of the libel, there was some change likely to occur in the attitude shown to the plaintiff by the person with whom he came into contact after the publication. 30

Now at this stage let me take you to the article itself. Your Honour, I would tender the article. I think the original is a yellow sheet, and I have four copies. 40

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MR. NICHOLAS: Your Honour, I would object; it is probably only a matter of form. In my submission the page on which the article appears should be the exhibit.

HIS HONOUR: You mean the whole sheet?

MR. NICHOLAS: Yes your Honour, the page so that it is seen in its context; and of course this will assist the jury to see the particular matter complained of. Certainly there is irrelevant matter, and my submission is that what ought to go in is the page, however it is done; because one of the matters, 50

and my friend has already referred to it, would be the nature and extent of the publication, and thus where it appears in the newspaper - its page and so on, its prominence - will be appropriate matters for the jury to make of what they will.

HIS HONOUR: You ask that p. 36 --

MR. NICHOLAS: Ought to go in.

HIS HONOUR: What about p. 35, which is on the back of p. 36? 10

MR. TRAILL: Your Honour, we would be content to tender just the one page on which the article appears; p.35 is not tendered.

(P.36 of Daily Mirror of Monday, 27th.4.81 yellow page, tendered and marked Ex.A1; copy tendered and marked Ex.A2; shown to jury)

Members of the jury, there is no difficulty in identifying the plaintiff as being the person referred to in this article because he is mentioned by name and his precise correct name of Austin, and a description of him is given. If you look at the paragraph under the word "fault" -- 20

HIS HONOUR: I think it should be read through first.

MR. TRAILL: Members of the jury, the article commences, "Our stale stars" - that is the banner headline which introduces it. (reads article) Now that is the article, and you may look at it from time to time. Do not forget this - the average reader does not pause and analyse an article such as this which appears in the sports page of a newspaper, but generally will take an impression from it - you will get some who read it carefully, you will get others who simply look at it and see, and an impression is given to them, and in this case about the plaintiff, which will remain with them forever. Now throughout this case this article will be put to you in various ways, by me, by my learned friend, and you will no doubt look at it under conditions that perhaps are a bit different from that of its readers on the night it appeared, or the days following. But let me say this about it: The article is, in our submission, factually wrong in a number of very significant ways. You can see the headline relates to "our stale stars", "The way Parramatta and Manly, along with Balmain, have flopped so badly", it is a "minor catastrophe", so you have got this sudden collapse of the teams. Now again, this is 27th April, very early in the season, and it is referring to this current season in 1981; if it related to the year before, it may or may not be what was meant. But it is very early in the season they are talking 40

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about these teams have flopped so badly. You can see that the emphasis which is placed on this article is that it is not so much the coaches who are to blame; in the paragraph at the bottom of the first column what is suggested is that it is the teams who "Are being trained into the ground by over-zealous conditioners who have somehow hood-winked coaches into believing that on top of a gruelling 80-minute match, three nights of tortuous conditioning are also needed". Now that is something that raises the question of this point of conditioners who are responsible for the state these teams are in, because the players have been improperly conditioned and trained, and that is why they have failed; and the author is making clear that these over-zealous conditioners have been pressing for three months of tortuous conditioning, on top of a gruelling 80 minute match and the effect of that is then set out in the next paragraph - "Sydney footballers are pressing their bodies to the limit four nights a week." It then goes on to say, "It is a short cut to physical staleness on the football field" - in other words, it is a wrong form of conditioning for these teams, and that the conditioners have put it all over the coaches by suggesting that an inappropriate and wrongful form of training, excessive training, is what is best for them and the result of that is physical staleness on the field and the flopping of the teams. 10 20

In the third column Mr. Casey writes that "I've always believed once a man becomes an international he doesn't need to be guided all the time with his preparation for matches". 30

HIS HONOUR: An international, I take it, is someone who has played for his country against another country?

MR. TRAILL: I would assume that is a fair description of a Rugby League International footballer. Then comes the second part of the article, under the word "fault". The position is set out in relation to Reg Austin in this next paragraph. "Manly has persisted for the past 3 years with the physical regimentation of its players by a fitness fanatic named Reg Austin". Well, the evidence which will be placed before you is this, that Mr. Austin first became involved with training Rugby League football players in 1970 when he was the trainer of North Sydney League team from 1970 to 1974, and that he subsequently trained Canterbury Rugby team in this sprint training area, and conditioning, and that he went to Manly and he was with the Manly club as a trainer for two years prior to this, and then the year immediately before this he was not so employed. 40

So when the article says that "Manly has persisted for the past 3 years with the physical regimentation of its players by a fitness fanatic named Reg Austin", it is simply not true. In 1980, the year before, Reg Austin had a year off. The Manly coach of that year was Allan Thomson, who conducted his own sprint training and conditioning. During the period that Mr. Austin was with Manly, Mr. Frank Stanton was the coach with Manly players; you will be hearing from him. In 50

1978/79 Reg Austin assisted him as a sprint trainer. Mr. Stanton has also been coach of the Australian International team on a number of occasions, and also secured Mr. Austin's assistance for sprint training of representative Australian international teams in 1978 against New Zealand, 1979 against Great Britain and

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and 1981 against France. Now he will tell you at first hand of the nature of the conditioning and the sprint training that was carried out by the plaintiff under his direction, and the evidence will show that the Manly team, prior to the publication of this article, except for the year when Mr. Austin had nothing to do with it, and cannot speak of that period, during the times he was associated with the club the training was on two nights a week, Tuesday and Thursday. Very, very rarely was it ever on a third night, a Friday, that he assisted - hardly ever held - and that once the initial conditioning was done, the evidence will be that the training was varied and not in any sense of the word could it be described as physical regimentation, nor could it ever be said that footballers and teams with which Mr. Austin was associated were pressed to the limit four nights a week. 20

The further statement which appears - as I say, the other coach of Manly who will be relevant for you was Mr. Ray Ritchie, who coached Manly's first grade side in 1981 and 1982 and was the coach at the time that the article was published. The further statement in the right hand column of the article we also submit to you is completely false. 30

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MR. TRAILL: "But since Austin has taken over the conditioning of Manly the records show it has gone from being a great side to being a tattered band of former champions".

The next paragraph raises an issue: "This has not altogether been Austin's fault". That word "altogether" is a matter of some significance. You may think that it, taken with the next paragraph, has given some of the sharing of the blame for this tattered band of former champions - part of it clearly is laid at the feet of Reg Austin. Then it is further suggested the lack of concentration and over-confidence on the part of players has contributed as much as some unimaginative coaching from Frank Stanton, Allan Thomson and Ray Ritchie. They are the three coaches of the first grade side. 40

So we submit that from that combination of statements you will draw the clear inference that what was charged against Reg Austin was that his training was such that his direction, the physical conditioning and preparation of the Manly Rugby League players, was wrong and carried out in an incompetent manner and had the results which were attributed. Now it may be, we say, indicative of the recklessness with 50

which the author approached this article that he was prepared to allege that these faults in preparation of the players leading to stale players and flop teams was attributable, if not completely, in a substantial part to Reg Austin.

The author then goes on to question the wisdom of Mr. Austin telling an international footballer to do another six by four hundred sprints as some kind of penance. Now that, we suggest, is clearly directed to some identifiable player, who is not identified, but some international that Mr. Austin is supposed to have given as a penance six 400 metre sprints to do. Now of course it is unexplained. You do not know what the circumstances were. You are not told that. You do not know whether it was because the player was unfit or because he failed to do something that he should have done and was not giving the full effort, or none of those circumstances. 10

But what is raised again, we say, when you read that together with the other suggestions which are made about these over-zealous conditioners and Reg Austin being a fitness fanatic and imposing some kind of penance on his players, that is the tone which runs throughout this article and which we suggest to you is directed towards demonstrating that the plaintiff was an incompetent conditioner with Manly Rugby League and directed to showing the way in which he prepared the team was wrong and incompetent. Now his wisdom is challenged in those circumstances and it goes on to say, "League stars train very hard before the football season starts. But once they start playing - sometimes once a week, once or twice a week - is there a need for such a grinding training programme under these whip-driving coaches?" It is a matter for you whether the coaches or the conditioners are embraced by that paragraph. There is a distinction earlier between conditioners and coaches but who is doing this grinding 20 30

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training programme? Is it the whip-driving coaches? Of course the next paragraph leaves you in no doubt about the message in this article. The author says, "The problem is Reg Austin and company think they are doing the right thing. My advice is to sack them". 40

You might think to say of your postman that he ought to be sacked is a pretty serious kind of a statement to make. But again in the competitive world of professional rugby league sport, to make an attack on the reputation of a conditioner of, we submit, high reputation and to say of him that he ought to be sacked is a very, very grave statement indeed. Now it may be put to you that really it is not a matter of any great significance. The error such as alleging three years when there were only two is neither here nor there. But when you take that article as a whole, it is our submission to you that you will have no difficulty just from the article itself in finding those imputations which I put to you earlier, and I am sure that when you look at them you will see they cannot help but damage the reputation of the plaintiff. 50

These then are the matters which are contended for by the plaintiff as arising from the article and you will hear, as I say, from the plaintiff, you will hear from the coaches with whom he has been associated - Ray Ritchie, Frank Stanton. You will hear from players who can also tell you of their knowledge of the matters which are in issue in these proceedings.

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Now let me move to the defences.

HIS HONOUR: Are you going to tell them what the actual imputations are in the plaintiff's case?

MR. TRAILL: Yes, I did read them to them. I will read them again. I do not want there to be any doubt about it. I think I have done it twice but I will do it again.

The imputations are simply set out in the document, the statement of claim. Now there have been in this case various interlocutory proceedings and the different imputations have been set out and they have been the subject of legal argument, and the imputations which fall to be decided by you in the manner I described earlier are these: (1) the plaintiff alleges that in their natural and ordinary meaning, of the words contained in the article, the following imputations arise (i) that the plaintiff directed physical conditioning and preparation of the Manly Rugby League team in such a wrong and incompetent manner that he was unfit to hold the position of trainer. That is the first one. The second is that the plaintiff was an incompetent conditioner of the Manly Rugby League team. So they are the two issues which you have to determine whether they arise from the material that has been published and whether or not, if you find they do arise, that they injured the plaintiff's reputation, or they are defamatory of him.

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Now the defences are contained in a similar document which is filed by the defendant in these proceedings, and the defence

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will tell you about it. I have told you what the plaintiff has said. Now it is relevant for you to consider what the defendant newspaper has said in reply and the defendant, of course, is entitled to file defences and did do so. We suggest that one of the defences on which they rely, and this may come as some surprise to you, is that they say that the article which you have before you was not defamatory of the plaintiff and was not capable of defaming him. Now his Honour has to rule on whether or not the imputations are capable of arising. But once they arise, we say they are clearly capable of defaming the plaintiff and have a gross defamatory effect on his reputation. But it is a matter for you to decide whether in fact on probabilities they injured his reputation. So that is one defence that, if you reach that conclusion and you find that there are no defences which are available to the defendant,

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then you will then proceed to deal with the question of damages.

But let me tell you what the other defences are. The plaintiff, having set out the imputations, the defendant also says that those imputations which we contend for do not arise but, if they do, which is denied, then there is a contextual imputation, namely that the plaintiff directed physical conditioning and preparation of the Manly Rugby League team in a wrong or incompetent manner, and they say that was a matter of substantial truth and related to matters of public interest, and because of the substantial truth of that imputation the plaintiff was not further injured in his reputation. 10

In other words the contextual imputation is simply this: that the plaintiff says the article means (A) and (B), the two imputations that we put. The defendant says, "Well, without conceding those imputations, but even if they are found, there is a contextual imputation" which they say is available, namely 20 that the plaintiff so directed physical conditioning and preparation of the Manly Rugby League team in a wrong and incompetent manner. They say that is true and it related to a matter of public interest; and by reason of the substantial truth of that contextual imputation, the matter complained of in its natural and ordinary meaning, the imputation in question, did not further injure the reputation of the plaintiff.

I do not know whether you understand that but his Honour will explain it to you in his final charge. But it really means that they say it means something different from what the plaintiff says; that was true, and because that was true, he suffered no further harm in his reputation. That is about the best I can do at this stage to give you some idea of what the issue on that is. But that contextual imputation has no relevance whatsoever to him being an incompetent conditioner. It says the manner in which he carried out his conditioning and training was wrong and incompetent. They say that was true and because of that he suffered no further harm. 30

Then the other matter which related to public interest, and was published contextually to the imputations referred to in that first paragraph I just read, matters of qualified 40
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privilege, are also raised, and that imputation is alleged to be contextual to each of the two imputations of the plaintiff. The defendant's imputation therefore, applies both as to the first and the second of the plaintiff's imputations. So further matters which are raised by way of defence are that, apart from qualified privilege, the defendant relied on a defence under the Defamation Act that those words published in the article in the Rugby League Lift-out supplement of 27th April to tens of thousands of readers in N.S.W. and elsewhere were published under such circumstances that the plaintiff was not likely to suffer harm. You may well think that is an extraordinary defence to raise in these proceedings, to say that if 50

a newspaper published allegations about a prominent sporting figure, such as the plaintiff, he is not likely to suffer harm. That is something for the defendant to establish if it can.

The other defence which is relied upon is that the article related to matters of public interest amounting to comments based on proper material and upon no other material. It was the comment of the servant or agent of the defendant. And 10 a further like defence based on, if it was comment upon proper material for comment, it represented opinion which might reasonably be based on that material to the extent to which it was proper material and was a comment of the servant or agent of the defendant.

Fair comment, of course, is a defence which is available in certain circumstances under the Defamation Act. But it has to be on proper material for comment. The defendant under this defence of fair comment has to prove that the defendant based 20 the comment on proper material, secondly that the comment related to a matter of public interest and the comment does represent his opinion. Now the defendant must prove the facts were true and that the opinion objectively considered was fair.

HIS HONOUR: You draw a distinction between six and seven, do you?

MR. TRAILL: Yes. The comment has to be fair. That is the point. Now the facts on which it is based here, we suggest, are wrong. But when you look at the article itself, at the conclusion of the evidence you will be left in no doubt that it was not based on proper material because it was untrue, and 30 it was either untrue to the knowledge of the defendant or was published, we say, recklessly indifferent to whether it was true or false.

Now there are certain other defences which are raised in respect of publication in other States. I leave those to one side for the moment because it may well be in the events which happen that the plaintiff will not seek to rely on the publication in some of those other States.

So the issues then are to be found in the pleadings and some of the matters are for you to determine and some of the 40 defences are matters for his Honour to determine as matters of law. So in any event when you come to consider what you regard as the true facts of the case you will have before you questions

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approved by his Honour left to you, setting out the matters that you have to consider one by one. Now if you find the imputations are there, if you find that those imputations are defamatory of the plaintiff and injured his reputation, if you find that the defendant has not made out any of the defences 50 that are left to you to consider apart from those ones which are matters for his Honour, and we are confident that you will

not find any of these defences are available to the defendant in the circumstances of this case, you will then have to go on to consider the question of damages.

Now the law, members of the jury, presumes that if you publish defamatory material about someone, that person will suffer injury or damage to his or her reputation. You may think, having regard to the language used here, that it does have a clear and strong tendency to do damage to Mr. Austin's reputation. But the law in New South Wales has this to say: Damages for defamation are compensatory and no jury charged with the task of assessing damages for a defamation action can allow any element of punishment to intrude into the verdict that may be awarded to a wronged plaintiff. So damages are to compensate the plaintiff for the hurt and injury that he has suffered personally and for the injury done to his reputation in the community. Of course, his Honour at the appropriate time will tell you about this when he comes to direct you on the law relating to damages. The law in this field provides that damages which fall to be assessed by you may include compensation for injured reputation arising from the publication of defamatory imputations, such as we suggest are to be found here, and also you can provide compensation for the hurt and pain to the plaintiff's feelings. Try and place yourself in the plaintiff's shoes. If this attack had been made on any one of you, what effect do you think that would have on your feelings, particularly if you knew that the so-called basis of it, the alleged facts, were false?

Now your feelings, the impact it has on you, are matters which you have to assess in so far as the plaintiff is concerned. Now damages are at large. There is no guide or yardstick that you can follow, and it is precisely because the real damage cannot be ascertained and established that damages are at large. It is impossible to track down the scandal, to know what quarters the poison has reached. It is impossible to weigh at all closely the compensation which will recompense a man or a woman for the result of injured reputation or false accusation. The injuries to the plaintiff's feelings here have been quite substantial. He has had to suffer the grief and distress of having his contribution to the physical preparation and conditioning of the rugby league team with which he is associated being disparaged and being spoken of in defamatory terms and being subjected to the high-handed insulting behaviour of the defendants which has increased the mental pain and suffering caused to him.

You may also be asked at the end of the case to consider the question of aggravated damages. Now all damages must be compensatory but you can consider whether, if you think the plaintiff is entitled to a verdict, you may take into account the

25. (Mr. Traill)

extent to which, if at all, the injury to the plaintiff's feelings has been aggravated by the way in which the defendant has conducted itself in relevant aspects after the publication. It can be a matter of aggravation that the defendant refused to

retract or apologise: because if you find that if that increased the wound to the plaintiff's feelings, it is a matter that you may take into account. As I say, I am raising the issues now. The ones that are finally left to you are those which his Honour will rule as a matter of law are available to you. So the plaintiff will tell you that he was particularly hurt because of the falsity of the libel in this case and the failure of the defendant or Ron Casey or anybody on behalf of the defendant to contact him or the Manly coach or club officials to check the accuracy of the article before it was published. The plaintiff's case is that the slightest inquiry of him or the relevant officials would have revealed not only that he was not there in 1980 but the other mis-statements about the conditioning. The way in which he conditioned the players was simply not true and it could have been corrected. 10

I think, members of the jury, that I have given you a brief outline of the case and the issues which you will have to determine and you will try the case, of course, not on what I say or what Mr. Nicholas or anybody else from the Bar table says to you but you will try the case on the evidence, and on the law as given to you by his Honour. 20

There is one further matter which I wish to raise for your consideration which is simply the question of malice in the case. Now the law provides, again subject to his Honour's ruling, that the hurt done to a plaintiff by the publication of libel can be increased if the defendant can be shown to have been actuated by malice. We say that you can look at the material itself, what is said in the article, to see whether or not there is malice to be read in the article. Again in the pleadings certain particulars have been set out as to the actions of good faith or malice. Again it will be an issue for you to determine whether or not in this case there has been any malice, and that is purely a question for you after you have heard the addresses and you have been charged by his Honour in the summing-up. 30

But we put it to you that people are entitled to live their lives without having the upset, the anguish the trauma of their reputations being attacked, lowered or sullied by a defamatory publication, and we ask you to listen to the evidence to see the effect that this publication has had on the plaintiff, the injury and hurt to his feelings and also to his reputation. 40

After the evidence has concluded you will hear further addresses from counsel for the plaintiff and counsel for the defendant, and his Honour will sum up to you. You will probably be given a list of questions to consider and at that stage you will then consider each of those matters, based on the evidence which is placed before you and no other. 50

26. (Mr. Traill)

PLAINTIFF

Sworn and examined:

MR. NEIL: Q. Mr. Austin, what is your full name?

A. Reginald Austin.

Q. You reside at 80 Rathowen Parade, Killarney Heights?

A. That is right.

10

Q. You are a superannuation and tax consultant, is that correct? A. Yes.

Q. And you are also a part-time physical trainer, is that so?

A. Yes.

Q. How old are you, Mr. Austin? A. 46.

Q. Just a little about your background. You have been I think associated with the Manly-Warringah Rugby League football team since when? A. 1978, the first year.

HIS HONOUR: Q. 1978 to when? A. 78, 79, I had a year out in 80, then 81 and 82.

20

MR. NEIL: Q. What about this year? A. I am on holidays.

Q. Do you mean on holidays from training or on holidays from all your business work? A. No, I am on holidays from football.

Q. Before that were you with any other rugby league club?

A. Yes, I had four years at North Sydney, then I had three years at Canterbury-Bankstown and then another year at North Sydney.

Q. What years were you at North Sydney? A. 70, 71, 72, 73.

I was at Canterbury 74, 75, 76 and back at North Sydney in 77. 30

Q. In general terms what was your role with the various clubs that you had been with? What did you do?

HIS HONOUR: Do you mean designation or actual activities?

MR. NEIL: Q. Firstly what was your designation? A. I was called trainer. That was the first designation.

Q. And what was your designation with Manly? Was it the same? A. Yes, in 78 and 79 I was the trainer. I was the only trainer they had. In 81 I was the only trainer. In 82 they brought on a fellow called Stephen Knight who was my assistant.

40

Q. Could you just tell his Honour and the jury what was meant by trainer? What role, what responsibilities did the trainer have, did you have in that position?

HIS HONOUR: With Manly?

MR. NEIL: Q. With Manly? A. I saw my role at Manly as a person who got the footballers fit. I could tell the coach if they were

27. Plaintiff x

fit. I could tell the coach if they should play football if they had an injury.

10

Q. Did you have any particular type of training that was a specialty of yours? A. Yes, I am a sprinter. My theories on training as far as football is concerned -

HIS HONOUR: Q. Your specialty is sprinting? A. Yes, I am a sprinter. My job as a trainer -

Q. No, your specialty as a trainer was teaching your players to sprint? A. That was part of my job, yes.

MR. NEIL: Q. And the other part of the job? A. Was to get them fit to play football.

Q. Your specialty, you say, was sprinting. How long had you been involved in sprinting? A. Oh, about 25 years.

20

Q. That was from about what age? A. I think I was 19 when I first turned - either 19 or 20 when I first turned professional as a professional athlete.

Q. And did you have a successful sprinting career as an amateur? A. I was barred when I was 18 because I ran against a professional footballer.

HIS HONOUR: Q. Did you have a successful career? A. No I didn't because I was barred before I was allowed to have any career at all.

30

Q. The answer is you didn't? A. Yes.

MR. NEIL: Q. So you became a professional at a very early age, is that right? A. Yes.

Q. I think you participate in professional running races, is that right? A. Yes.

Q. Without going into too much detail, for about how many years were you a professional sprinter in ordinary competition as against the veterans field? (objected to on the grounds of relevance).

Q. You ran in sprint races over a number of years, is that correct? A. Yes.

40

(Discussion on the extent of the question allowed by his Honour).

Q. Did you have some experience as a sprinter? A. Yes.

Q. Over how many years? A. About 25.

Q. Did you yourself do any sprint training? A. Yes.

Q. Over how many years?

28. Plaintiff x

HIS HONOUR: Q. You mean personally?

MR. NEIL: Personally, yes. (Objected to; rejected).

Q. Did anyone ever train you when you were a sprinter?

A. Yes.

10

Q. For how many years did you receive training as a sprinter?

A. 13 or 14 years.

Q. Did that training that you received assist you when you subsequently became yourself a sprint trainer? A. Yes.

Q. After you had been sprinting regularly in the non-veteran stages, did you become a sprinter in what is called the veterans events? (Objected to; rejected).

Q. Do you still sprint yourself (Objected to; rejected).

Q. So do you consider that your background in sprinting, the sprinting that you have done and the training you have had as a sprinter, has assisted you in your role as a trainer yourself? A. Yes.

20

Q. You first became a trainer for Rugby league teams or had you been training any other persons in sprint training before that? (Objected to on the ground that the case was only concerned with his training for rugby league; question withdrawn)

Q. Have you been involved in any training of other football teams other than rugby league teams? A. Yes, the Sydney Swans this summer, the Australian Rules team.

Q. If we go back to the rugby league training, could you just describe if there is any difference between the phrases "conditioned" and "trainer"? A. It is a very technical point. I don't think there really is.

30

HIS HONOUR: Q. When you talk about conditioning you talk about training, and when you talk about training you talk about conditioning? A. Yes.

Q. And you are a trainer or conditioner, either way it is?

A. I think the same thing applies to each case.

MR. NEIL: Q. When you went to Manly in 1978 did you work under a coach there? A. Yes, Frank Stanton.

40

Q. And what about in 1979? A. Frank Stanton.

Q. And 1981? A. Ray Ritchie.

Q. And what was your relationship with the coach? Were you

under his directions? A. Yes.

Q. If I could ask you this about the training that you undertook, when normally would training for the Manly team - and I now

29. Plaintiff x

ask you to consider the 1981 season - when was that normally conducted? What day or days of the week? 10

HIS HONOUR: At what time are you speaking of?

MR. NEIL: Q. In 1981? A. In 1981 we trained on an average of three nights a week; Monday - Tuesday, Thursday and Friday.

Q. And for what hours on Tuesday? A. From 6 till 7.30.

Q. Between the 6 and 7.30 time could you describe what happened on a typical training night and what was your part in that training night? A. Normally on a Tuesday night that was my night and I would take them for at least 45 minutes to an hour and give them exercises and I would run them and do the things that I generally thought would get them fit. 20

Q. What might that include? Could you give us an idea of a typical Tuesday night's exercise programme? A. We would get - we would do two to four laps of the oval to get warm, depending on the coldness of the night; 15 minutes of exercise and maybe run ten 200 metre runs, ten 50 metre runs, 6 40 metre runs, 6 30 metre runs and maybe finish off with 400 metres.

Q. And how many 400 metres? A. One, maybe two. That would be a relatively hard night.

Q. When that was completed what would you yourself do on a Tuesday night? A. Then the coach would take them and I would go home. 30

Q. And about what time would you normally go home on the Tuesday night? A. Probably 7.15, 7 o'clock, 7.15.

Q. Would you ever stay and wait until the whole session under the coach had finished? A. Oh yes, quite regularly.

Q. So you may go home, you may stay. Is that right? A. Yes, depending on what was happening. Mostly I would stay. If the coach wanted me to stay I would stay. If he didn't want me to stay I would go home. 40

(Witness stood down)

(Jury given usual warning)

(Adjourned for further hearing to 10 a.m. on Tuesday 15th March, 1983).

30. Plaintiff stood down

IN THE SUPREME COURT)
OF NEW SOUTH WALES)
COMMON LAW DIVISION)

No. 12521 of 1981

CORAM: LUSHER, J.

And a Jury of Four

AUSTIN v. MIRROR NEWSPAPERS LIMITED

10

SECOND DAY: TUESDAY, 15th MARCH 1983

** **

PLAINTIFF

On former oath:

MR. NEIL: Q. I had asked you about Tuesday nights. Could I take you to Thursday nights. How long was the overall session ordinarily on Thursday night? A. Between an hour and a half and two hours.

Q. How long would your part take? A. A lot depended on what the coach wanted to do. No more than 30 minutes any night and some nights he would say "We won't do any, we will only do ball work tonight. I don't need you", and I would come in on Friday night instead. 20

Q. What does ball work mean? A. Running moves and doing things I suppose that footballers are supposed to do. Teach them game plays. Mainly coach.

Q. On a typical Thursday night what activities would you put the team through yourself? A. Thursday night was what I called the fast night. We would run no further than 100 metres; a series of 100 metres or a series of 70 metres or 60 metres or 40 metres and maybe 30 metres and maybe even 10 metres. Just half an hour of sharpening up, teaching the fellows to run and sharpening them up for Sunday's game. 30

Q. On a Friday night, about how often would you attend?
A. Probably one in every three I would say would be reasonable for a Friday.

Q. Overall a Friday night would take how long? A. About an hour, an hour and a quarter.

Q. Your part would take about how long? A. Twenty minutes.

31.

Q. You would do what? A. Probably the same as I do on Thursday nights, but less of them.

Q. Did you do the same things every Tuesday night or different things? A. I did a series of --

HIS HONOUR: Q. The question is, did you do the same or different? A. Different. 10

MR. NEIL: Q. To what extent were there differences on Thursday nights? A. We never did the same thing on any Tuesday night of the year.

Q. What about Thursdays? A. There wasn't as much variety on Thursdays.

Q. What about Fridays? A. The same would apply; not as much variety on Friday as there would be on Tuesday.

Q. I have been asking you about the 1981 season. If we could go back about a year to 1980, were you with the Manly Club then? A. No. 20

Q. Going back to 1979, were you with the Manly Club? A. Yes.

Q. Who was the coach that year? A. Frank Stanton.

Q. 1978, were you with the Manly Club then? A. Yes.

Q. Who was the coach that year? A. Frank Stanton.

Q. In 1978 and 1979 were your programmes similar to those that I have asked you about in 1981? A. Yes, very similar.

Q. The same nights, Tuesday, Thursday and sometimes Friday? A. Yes.

Q. The same hours? A. Yes.

Q. The same types of programme, is that correct? 30
A. Basically the same.

Q. I think I have asked you this, but who was the coach in 1981? A. Ray Ritchie.

Q. Have you yourself played the game of rugby league?
A. Yes.

Q. For how many years? A. Professionally for about 13.

Q. Had you ever been the coach of a rugby league team?
A. Yes.

Q. Could you just tell his Honour and the members of the jury the teams of whom you were the coach and if you were a player as well as a coach? A. I was player/coach at Tully in North Queensland in 1970 I think - either 1970 or 1971. I was 40

player/coach at Taree United the following year and I was
player/coach at Cootamundra the following two years.

Q. Any other times you have been a coach? A. I was the
coach of Manly when Frank Stanton was away with the represen-
tative sides.

Q. On 27th April 1981 were you shown the Daily Mirror of that 10
date? A. Yes.

32. Plaintiff x

Q. (Witness shown Ex.A1) Where were you when you saw that
publication? A. In my office.

Q. Where was that? A. 533 Willoughby Road, Willoughby.

Q. How did the publication come to your notice? A. My wife
showed it to me.

Q. Was there anyone else present? A. Not at that time, no.

Q. Did you read the article that appears in the league lift-
out under "Our stale Stars" heading? A. Yes. 20

Q. Can you recall about how long it took you to read it?
A. Not very long.

Q. When you read that article can you tell his Honour and
the members of the jury what you felt when you read it? A. I
was disappointed personally, that an article like that would be
written about me. I was hurt ~~that-it-was-written-in-such-a
manner-when-obviously-it-wasn't-true.~~ (Portion of answer
struck out by direction of his Honour)

HIS HONOUR: Q. You are just asked to say how you felt. You
felt disappointment and you felt hurt? A. Yes. 30

MR. NEIL: Q. Anything else you felt? A. Then I felt
terribly angry.

Q. Did you feel anything else? A. Just absolute disappoint-
ment and anger was all I felt. What else could you feel?

Q. How long did you feel hurt? A. For quite a long time.

Q. What about to date? A. I am still angry about it and
hurt about it, yes.

Q. For how long did you feel disappointed? A. I am not
sure, but it was a while.

Q. What about to date? A. Yes, I am still disappointed in
the article. 40

Q. Following the publication and your reading that article,
did you go back to the Manly Club for your ordinary training
sessions? A. Yes.

Q. Did you go about your ordinary business? A. Yes.

Q. Whereabouts do you normally travel in your ordinary weekly business activities? (Objected to; rejected)

Q. Did any people raise the article with you and talk to you about it? A. Yes.

Q. Can you remember any specific instance? A. Yes. 10

Q. If you take one that you can remember, can you tell his Honour and the members of the jury where it was and what happened? A. ~~The first one was the article was pinned to the notice board in the Manly dressing room with big letters underneath - "This is our hero"~~. (Answer struck out by direction of his Honour)

HIS HONOUR: Q. You are not asked about anything that was on the wall of a dressing room, you are asked did somebody raise it with you? A. Yes.

33. Plaintiff x 20

MR. NEIL: Q. Who raised it with you and where was this when it happened? A. Ray Ritchie raised it with me, the coach, in the dressing room.

Q. Did you see anything in the dressing room when he raised it with you? (Objected to; rejected)

Q. What did he say to you? (Objected to; allowed) A. He said, "Did you read the paper?"

Q. Did you receive any reaction from other people? A. Most of the players who read the article.

Q. Can you recall any particular reaction by any particular player? 30

HIS HONOUR: By "reaction" do you mean what was said?

MR. NEIL: Yes.

WITNESS: No, not really, they just - (objected to)

MR. NEIL: Q. Can you remember anything that was said - even if you cannot remember exactly what was said - can you remember anything that was said by any particular player?

A. Yes, I think one player said to me --

HIS HONOUR: Q. Who? A. Fred Teasdale, said "Casey certainly got you this week. It is your turn". (Objected to; allowed) 40

MR. NEIL: Q. Did you receive any reaction from any persons outside the club, not part of the club itself? A. Yes.

- Q. Can you remember any particular person or persons? A. Yes.
- Q. Who? A. A fellow called John Burns in Coonamble who is a client of mine.
- Q. What did he say to you? A. He said, "I read this story in the paper and it wasn't a very nice story".
- Q. Any reaction from any other persons that you can remember? A. I had several telephone calls from people. 10
- Q. Can you recall who they were or did they not say who they were? A. Yes. Ken O'Brien who is an accountant client of mine.
- Q. What did he say to you? A. He just said "It's a good thing I know you".
- Q. Anybody else who rang you? Can you remember who they were and what they said? A. Other people rang me but I just can't remember now exactly what they said.
- Q. When people raised the question of the article with you or rang you up what did you feel? A. I was hurt. 20
- Q. Can you recall about how long, what period of time it was, that people raised the article, gave a reaction or telephoned you - over what time? A. Over a period of about three months.
- Q. How did you feel when it was raised with you? A. The same thing came back. I was hurt again and I thought "Gee".
34. Plaintiff x
- Q. Did anybody from, firstly, the Daily Mirror contact you at all before this article was published? A. No.
- Q. Mr. Casey did not contact you? A. No. 30
- Q. I think you have instructed your solicitors at various times to ask for an apology, is that correct? A. Yes.
- Q. Did you ever receive an apology? A. No.
- Q. I think you have read the defences of the defendant, is that correct? A. Yes.
- Q. You are aware the defendant claims you carried out your coaching in a wrong manner and in an incompetent manner, are you aware of that? A. Yes.
- Q. How did you feel when you learnt of that defence? A. I just felt that he obviously didn't know what he was talking about. 40
- Q. I would like to ask you some questions about the article: firstly, the first two paragraphs of the article deals with

Parramatta, Manly and Balmain. Was this early in the season, late in the season or the middle of the season? A. Very early in the season.

Q. It says that there was something radically wrong with the preparation of major teams, including Manly. What do you say about that as at the time this article was published? 10

HIS HONOUR: You mean about Manly?

MR. NEIL: Q. About Manly? A. We weren't playing that well.

Q. What about the preparation of the team, was it radically wrong? A. No.

Q. Is there any difference between the preparation that you provide for the team early in the season as against later in the season? A. A great deal of difference.

Q. In what way? A. The training earlier in the season is much harder than it is later in the year.

Q. Why? A. You must get your players fit to play the game, and when you get them fit all you have to do is keep them fit and football does half that for them. 20

Q. Is there any relationship between being fit and the level of injuries? A. Enormous. A fit player very rarely gets injured.

Q. If I could just ask you this: in 1978 when you were a trainer what was the result of the Manly team's performance that year? A. We won the premiership.

Q. In 1979? A. We were seventh.

Q. And in 1981, when this article was written, what happened? 30
A. We were finalists.

Q. Does that mean the semi-final or what? A. We won the major semi-final and we were beaten in the final.

Q. The article in the last paragraph in the first column says that Mr. Casey believes that Sydney's top teams are being trained
35. Plaintiff x

into the ground. What do you say about that as far as your training of the Manly team was concerned at that time? A. I disagree.

Q. He says you were an over-zealous conditioner, what can you say about that? A. I say that he --

HIS HONOUR: Q. What do you say about that? A. That it is wrong.

Q. You mean you are not an over-zealous conditioner? A. No.

MR. NEIL: Q. It is said that trainers hoodwinked coaches.
Did you ever hoodwink your coaches? A. No.

HIS HONOUR: It says in the article "somehow".

MR. NICHOLAS: Your Honour, I think my friend ought to put the
context properly to the witness. The article goes on a bit 10
further than that.

HIS HONOUR: Yes, Mr. Neil. What you put to him first was
that he hoodwinked coaches and that is a totally different
thing to what this article says.

MR. NEIL: Q. I want you to read the paragraph commencing "I
believe Sydney's top teams are being trained ..."

HIS HONOUR: What is your question?

MR. NEIL: Q. What do you say about that paragraph?

HIS HONOUR: You will have to put that in the form of a ques- 20
tion.

MR. NEIL: He is entitled to deal with the paragraph. I have
taken him through some of it and I will take him through the
remainder of it.

Q. Did you give the team three nights of tortuous condition-
ing per week? A. No.

Q. Did you ever suggest to the coach that three nights of
tortuous conditioning per week was needed for the team? A. No.

Q. If I could take you to the next two paragraphs in about
the centre of the second column. Just read the next two para- 30
graphs which say that if footballers press their bodies to the
limit four nights a week it is a shortcut to physical stale-
ness on the football field? Do you agree with that? A. If
they did that four nights a week, yes, I would agree.

Q. Did you direct conditioning in such a way as to produce
staleness? A. No.

Q. What was the situation with your players as at April 1981?
Were they stale or not? A. No, they were almost fit at that
stage.

Q. What do you mean by almost fit? A. They were about 80
percent of the fitness that I wanted them to be to play the 40
game.

Q. What do you understand by the meaning of the word "stale"?
A. Being stale is a mental process. When you get sick of
doing what you are doing.

36. Plaintiff x

Q. Does that mean sick of training or sick of football?

A. Probably both. It is an attitude. It is not the physical thing.

Q. In the next paragraph Mr. Casey believes that once a man becomes an international he does not need to be coached all the time with his preparation for matches. Firstly, were there any internationals in the Manly team in 1981? A. About eleven I think. 10

Q. Were there internationals in the Manly team in 1979?

A. Yes.

Q. And in 1978? A. Yes.

Q. I think there was an overseas Kangaroo Tour in 1978, is that right? A. Yes.

Q. How many of the Manly team were chosen for that overseas tour? A. Seven or eight. I think it was seven.

Q. Have you had any experience in assisting to train international teams as well as the Manly team? A. Yes. 20

Q. Does an international need any guidance with regards to his preparation for matches? A. Yes.

Q. Why is that?

HIS HONOUR: Mr. Neil, I notice that the article does not say that internationals do not need to be guided.

MR. NEIL: I appreciate that.

HIS HONOUR: That is guided in their preparation. It says that that is Mr. Casey's belief.

MR. NEIL: Yes. 30

HIS HONOUR: That is a totally different thing, is it not?

MR. NEIL: There are two factors involved, your Honour. One is the degree of guidance and, secondly, whether it is a proper matter for comment.

HIS HONOUR: The first matter is that he has stated his belief.

MR. NEIL: But he has to be stating that belief on proper material.

HIS HONOUR: What do you say the material is?

MR. NEIL: The material is the statement that internationals do not need to be guided all the time in their preparation of matches. 40

HIS HONOUR: I would not have thought that that was material, I would have thought that that is what he was saying his belief was.

MR. NEIL: The two obviously become intertwined, but his belief must be based on material.

HIS HONOUR: The first thing is, what is his belief. His belief is that he does not think they need to be guided all the time in their preparation. That is his belief. Then the question is what is the support for that belief.

10

37. Plaintiff x

MR. NEIL: That is right. I am seeking, and no doubt Mr. Casey will have his own version in due course, to ask this witness what his view is for the underlying basis for such a matter, to what extent internationals do need some guidance.

HIS HONOUR: That is a challenge to the belief.

MR. NEIL: No, your Honour, with respect, it is a challenge to the basis of the belief. It is a challenge to Mr. Casey supporting material for his belief.

HIS HONOUR: I would have thought there was a difference between 20 what you believe and what supports what you believe.

MR. NEIL: That is right.

HIS HONOUR: And what he believes is that there is not this need for guidance in relation to internationals.

MR. NEIL: Yes, all the time. What Mr. Casey is saying is they do not need it all the time.

HIS HONOUR: That is his belief. He is saying "I believe" something.

MR. NEIL: He says that he believes that an international does not need guidance all the time and implicit in that your Honour is the statement that it is supportive of his belief, namely that internationals do not need guidance all the time. In other words it goes further than his belief.

30

MR. NICHOLAS: What I was going to object to, with respect, was the way in which the question was put. It goes back to the question and from my recollection the question that was put to this witness was "Does an international need guidance with his preparation". Apart from the question of the assertion of a belief, what the belief is asserted to be is guidance all the time and it is not the same issue. It is not raised at all in this article, the fact that they do not require anything at all.

40

HIS HONOUR: What do you say about the belief question?

MR. NICHOLAS: It is clearly an expression of the view of Mr. Casey.

HIS HONOUR: It is the expression of a belief.

MR. NICHOLAS: Exactly, and it is not put as an assertion of fact. There is no assertion of fact in this article which says that internationals do not need to be trained, and anyone who trains them is making a big mistake. That is not what is said in this article and that is not what the expression of Mr. Casey's belief is. If it was expressed that way my friend may 10
be able to explore it.

HIS HONOUR: I see your point and I reject the question.

MR. NEIL: Q. Do internationals need four nights of tortuous conditioning? (Objected to; rejected)

Q. If you look at the paragraph headed "Fault" it says that Manly has persisted for the past three years with the physical regimentation of its players by a fitness fanatic named Reg Austin. Were you

38. Plaintiff x

with the Manly Club for the past three years as at April 1981? 20
A. No.

Q. Was your conditioning carried out in a regimented fashion? (Objected to; rejected)

Q. Can you describe in detail how you went about a Tuesday night? A. There were three types of session for a Tuesday night. There was early in the year, there was the middle of the year and then the end of the year. If you take a Tuesday night early in the year the session would go for an hour and a half and it would be quite hard. We would run them. As I said yesterday we would do 100 metre runs, 200 metre runs, 30
sometimes 300 metre runs and sometimes even 400 metre runs and that would go for an hour to an hour and a half. Midway through the season - (objected to; rejected)

Q. Would you understand that I am putting this to you in relation to the past three years. How did you go about training on Tuesday nights, other than 1980, in the three years prior to this article? A. As I said, there were three separate areas that I had; early in the year, the middle of the season and I had the end of the season and they were all quite different. Early in the year we trained hard. We did things like maybe 10 40
100 metre runs, ten 200 metre runs, five 300 metre runs and maybe two, three or even four 400 metre runs and that would take between an hour and an hour and a half. We would run up hills and have fellows holding hands running across the paddock and back. That all took about an hour and a half.

HIS HONOUR: Q. By the "paddock" do you mean the football field? A. Yes. Everything was done on Brookvale Oval. When we went to Brookvale Oval I never left Brookvale Oval. We did not run on roads or things like that. In the middle of the season I would go to the games and watch the players play. 50

Q. We are talking about Tuesday nights? A. Yes, so that on

Tuesday nights I could pick out --

Q. The question is what you did on Tuesday nights? A. Yes. In the middle of the season, Tuesday nights weren't as hard. We would do maybe six 100 metre runs but do them a lot faster. We might do four or five 200 metre runs, but a lot faster. More recovery time and more speed. Everything halfway through the year revolved around recovery time and speed; cardiovascular recovery and speed. 10

Towards the end of the year I would even do things like walk them around the Oval instead of running them around, and do exercises in the corner, purely to give them nights when you knew they didn't need much work because they had played so many games. We may train for an hour and in that hour maybe only run ten 50 metre runs or ten 40 metre runs and then jog a lap of the oval.

MR. NEIL: Q. Can you provide for his Honour and the jury some outline in respect of Thursday nights prior to the article being written? A. Again I broke it into three areas. A Thursday night early in the year was basically the same as Tuesday nights; it was hard. Thursday night later in the year consisted of sprints no further than 70 metres - maybe six 70 metre sprints or six 50 metre sprints or six 40 metre sprints or six 30 metre sprints and that would be about it. 20

39. Plaintiff x

Q. And Friday nights prior to the article being written? A. Friday night was probably the easier night than Thursday night because we had to play 48 hours later so we would do maybe six 50 metre runs, six 40 metre runs, or six 30 metre runs and that would be it. That would take 20 minutes. 30

Q. I take you to the next two paragraphs of the article. There is a statement about you persecuting your own body to become the fastest runner in the world for your own age. Would you describe your own training programme prior to the article, what you did yourself? (Objected to; rejected)

Q. There is a statement that at the time of the article the Manly side was a tattered band of former champions. Do you agree with that? (Objected to; rejected) 40

Q. You have read that paragraph, have you Mr. Austin? A. Yes.

Q. Do you agree that at the time of this article the Manly side was a tattered band of former champions? (Objected to; rejected)

Q. Did you agree that your conditioning at the time of the writing of this article was such as to produce any staleness in the team? (Objected to; rejected)

Q. Do you agree that the performance of the team as of the time of the article had been in any way impaired by your training? A. No. 50

Q. If we go down a further three paragraphs and would you read the paragraph which says there had been 400 metre sprints involved. Would you read that paragraph? A. Yes.

Q. Did you at any time tell an international footballer to do another six 400 metre sprints? I am just taking it that far as this stage. Have you ever done that to an international 10 footballer? A. No.

Q. Have you ever told any footballers to do additional sprints for penance? (Objected to; rejected)

Q. Did you ever punish any - (objected to; rejected)

Q. What would you do when training if a footballer was not keeping up with the training you required him to do? (Objected to; allowed) A. Two things. I would talk to the coach about it, if it was persisting I would talk to the coach about it and perhaps we would give him extra work on another night.

Q. What may that extra work consist of? A. Depending where he was not keeping up. If he was not keeping up with the harder work we might say "tomorrow night we want you to run ten 200 metres on your own or you can come and run ten 200s with me". Quite often I take the fellows who weren't as fit as the others with me to my own training session. 20

HIS HONOUR: Q. We are talking about the chaps who did not keep up. You see, he might have been fit even though he was not keeping up, might he not? A. Yes.

Q. We are talking about the chaps who are not keeping up?
A. Yes. 30

40. Plaintiff x

MR. NEIL: Q. At this time of the year you say if a person was not keeping up you would give him extra work? A. Yes.

Q. What would you do with a person who was not as fit as he should have been? A. I would give him extra work on the other nights.

Q. Could you describe that? A. Depending on whether he was a forward or a back. If he was a forward I would suggest he goes for a run, maybe six, eight or even ten 200 metre runs along the beach because we are near the beach there. If he was a back, I would suggest he goes and runs a series of 50 metre runs, maybe up to 20 of those. 40

Q. Did anybody from the Mirror contact you at all after this article? A. No.

CROSS-EXAMINATION

MR. NICHOLAS: Q. Mr. Austin, the article came out in the Monday edition of the Mirror, didn't it? Do you recall that?

A. I think so.

Q. 27th April. A. Yes.

Q. Either on the afternoon of that day or indeed the very next day did a Mr. Sutcliffe from Channel 9 come out and see you? (Objected to; allowed) 10

Q. You recall Mr. Sutcliffe coming out, don't you? A. Yes.

Q. And Mr. Sutcliffe introduced himself to you as a person from Ron Casey's World of Sport Programme which was then tele-cast on Channel 9, didn't he? A. That's right.

Q. Mr. Sutcliffe taped an interview with you concerning your training methods and your views of training football players, didn't he? A. Yes.

Q. That interview was included in Mr. Casey's World of Sport programme the following Sunday morning, namely 3rd May 1981, wasn't it? (Objected to; allowed) A. I don't know. 20

Q. Didn't you see it? (Objected to; allowed) A. No.

Q. But you knew it was on the next Sunday, didn't you?
A. No.

Q. Didn't anyone tell you it was going to be on the next Sunday? A. Ken Sutcliffe said he thought it would go to air next Sunday.

Q. Did you not make any further enquiries out of your own interest to see when it would be on? A. No. I hoped to get home to see it, but we played that day so I couldn't. 30

Q. So the reason that you did not see it is because you had other commitments, is that right? A. Yes.

Q. And they were commitments with the Manly team? A. Yes.

Q. In any event, you have seen the Ron Casey World of Sport programme before that date, have you not? A. Yes.

Q. You would agree with me it goes to a very wide audience, doesn't it. (Objected to) A. I don't know.

41. Plaintiff x, xx

Q. But you watch it from time to time don't you? A. Yes, occasionally. 40

Q. You know that others in rugby league circles and sporting circles watch it from time to time, don't they? A. Yes.

Q. And it is clear to you that it has a considerable following in sporting circles, doesn't it? That is obvious, isn't it? A. I think so.

Q. This Mr. Sutcliffe made it clear to you when he came and interviewed you that he wished to ask you about your philosophies and approach to training rugby league footballers, didn't he? A. Yes. 10

Q. And that is what you talked about in the programme, wasn't it? A. Yes.

Q. That was put to you by Mr. Sutcliffe - your participation in this programme - as an opportunity of responding to Mr. Casey's column? (objected to) A. No.

Q. He did not raise that with you? A. No.

Q. Are you certain about that? A. I'm not sure. It is a long time ago now.

Q. You remember the article though, don't you? A. Yes. 20

Q. And you, I imagine, on the day the article was published were pretty sensitive about it? A. Yes.

Q. You would be alerted to the fact that Mr. Sutcliffe was coming out from Ron Casey's show wouldn't you? A. No, he was coming from Channel 9.

Q. He told you it was to be included in the Ron Casey show, didn't he? A. Yes.

Q. Didn't you say anything to him about what Mr. Casey had to say about you? Didn't you say to him, "What about what Mr. Casey had to say about me yesterday?" A. He came out -- 30

Q. Didn't you say anything to Mr. Sutcliffe about that?
A. Yes.

Q. What did you say about it? A. He said --

Q. What did you say about it? A. I said, "Is it to do with Ron Casey?" and he said "No, it's for the World of Sport. The Casey show is only part of the World of Sport."

Q. Are you seriously suggesting to his Honour and the members of the jury that he did not make it clear to you that it was being included in a segment of Ron Casey's World of Sport? Is that what you are suggesting? A. He made it clear to me that it would be on the Channel 9 World of Sport show of which Casey's show is a part. 40

Q. Just to be clear about it, you knew the programme goes to air as Ron Casey's World of Sport, didn't you? That is how it is known, isn't it? A. I don't know.

Q. Look, you knew for all intents and purposes it was Mr. Casey's programme; he was the host, wasn't he? A. Yes.

42. Plaintiff xx

Q. And when you are talking about the World of Sport programme you link it up in your mind with Mr. Casey being the host, don't you? A. I suppose so.

10

Q. Well, you had seen it before - you have told us that?
A. Yes.

Q. It was as plain as could be that Mr. Casey was the host of the programme and introduced the segments, wasn't it?

A. I think so.

Q. Look, really Mr. Austin all I am endeavouring to get from you is this, that when Mr. Sutcliffe came out and said to you, "Right, we want to do something for the World of Sport on the Sunday programme", you knew that it was a segment that was likely to be included in Mr. Casey's show? A. Yes.

20

Q. You knew that, didn't you? A. Yes.

Q. That is all I am endeavouring to get from you. What I now want to ask you is, did you not take up with Mr. Sutcliffe - knowing as you did it was Mr. Casey's show you were going on - did you not take up with Mr. Sutcliffe what Mr. Casey had to say about you, the way you read it, in the newspaper article?
A. I probably did.

Q. You probably did? You certainly did, didn't you? A. To be quite honest, I don't remember.

Q. But if you were as concerned about the article as you have so recently told the jury wouldn't that have been uppermost in your mind - what Mr. Casey had said about you? A. Yes.

30

Q. It would be at the forefront of your mind, wouldn't it?
A. Yes.

Q. And that is what you are endeavouring to persuade the jury was your concern, isn't it? A. Yes.

Q. Can't you recall, although it was as you say now a long time ago - can't you recall whether you took this up with the very representative of Mr. Casey the very next day? Can't you recall that? A. It wasn't quite like that. Ken Sutcliffe --

40

Q. You can't recall it, is that what you are saying? A. Ken Sutcliffe came around from the World of Sport.

HIS HONOUR: You are only asked, can you recall. A. Yes.

Q. You say you cannot recall? That is what you have said, is it not? A. Yes.

MR. NICHOLAS: Q. You didn't say anything to Mr. Sutcliffe, did you, to the effect that what Mr. Casey "has said about me is false", did you? You didn't say that to Mr. Sutcliffe, did you? A. I'm not sure.

Q. Wouldn't you remember saying that to Mr. Sutcliffe when he came out? Saying, "Look we want you on Mr. Casey's show"? 10
A. He never said that.

Q. "We want you on the World of Sport" - that is what he said? A. Yes.

Q. Which you knew to be Mr. Casey's show, didn't you? You have already told us that? A. Yes.
43. Plaintiff xx

Q. What I am asking you - and the answer I imagine is either Yes or No, - didn't you say to Mr. Sutcliffe, "Look, Mr. Casey (it is his show) - what he said about me was false". You didn't say that, did you? A. I said something. I didn't say -- 20

Q. No, you didn't say that, did you? Did you? A. No, I don't think I did.

Q. Well, you are certain you didn't are you not? A. No, I'm not sure.

Q. You are not sure? A. No.

Q. Wouldn't that be something that you would remember? You were pretty angry about this, weren't you? (rejected)

Q. Were you angry about this article at the time that Mr. Sutcliffe came around? 30

HIS HONOUR: He has already said that he was.

MR. NICHOLAS: Q. You have already told us that you were angry about this article, following it being brought to your attention, right? A. Yes.

Q. Were you still angry about it the next day? A. Yes.

Q. And for a few days after that? A. Yes.

Q. Were you angry about it when Mr. Sutcliffe came to tape the programme? A. Yes.

Q. Did you tell Mr. Sutcliffe that you were angry about the article? A. Could I have that question again, please? 40

Q. Did you tell Mr. Sutcliffe that you were angry about the article? A. Yes, I think I did.

Q. What is your best recollection of what you said to him on

that subject matter? A. I said to him, "Casey didn't miss me yesterday", ~~and he said "Mate, I am doing a television show. All I want to do is to get"~~ -- (struck out by direction of his Honour)

HIS HONOUR: Q. You are only asked what you said? A. Yes.

Q. You said, "Casey didn't miss me yesterday"? A. Yes. 10

MR. NICHOLAS: Q. Did Mr. Sutcliffe make any reply? A. Yes. He said, "I am doing a television show" - he said "We are television people and I am doing a television show. I want to talk to you about the training of football teams". And I said "Okay".

Q. You didn't say to Mr. Sutcliffe, did you, that what Mr. Casey had said about you was unfair? You didn't say that did you? A. I didn't think it warranted any --

Q. You didn't say it, did you? A. No.

Q. Nor did you say to Mr. Sutcliffe that you had been hurt by 20 what you had read in the article, did you? A. I don't think so.

Q. The segment which we will see in a moment was on the subject matter of your methods of coaching rugby league footballers, wasn't it? A. Yes.

44. Plaintiff xx

Q. Training and conditioning? A. Yes.

Q. I think I took the question on coaching and then I came back and put training. I asked you about coaching and that maybe not quite fair to you. Training and conditioning was 30 the subject matter of the segment, wasn't it? A. Yes.

*Q. You would agree with me, wouldn't you, knowing as you did that it was intended to be shown on the following Sunday in the Casey programme, that you had every opportunity of correcting any false impressions as you perceived them to be which Mr. Casey's article might have conveyed? (objected to; allowed) A. No.

Q. Are you serious about that? A. Well, I --

HIS HONOUR: Q. The question is, are you serious in your answer? A. Could I have the question again? 40

(Question marked * read)

WITNESS: I might say Yes but I don't think it's quite right.

MR. NICHOLAS: Q. You might say yes? A. Yes.

Q. Well, do you say Yes? A. Could I have the question again please?

(Question marked * read)

WITNESS: The answer is probably Yes.

MR. NICHOLAS: Q. The answer is probably Yes. The answer is Yes, isn't it? A. No.

Q. Probably Yes is as far as you will go is it? A. How can you --

10

Q. No, probably yes is as far as you will go is it?
(rejected)

Q. No mention whatever was made in the course of your interview with Sutcliffe about the contents of Mr. Casey's article, was there? A. (objected to; rejected)

Q. Mr. Austin, may I take it that when Mr. Sutcliffe came out to you he came out with a television cameraman there and a sound recording man? A. Yes.

Q. I think it was at your house? A. Office.

Q. At your office - thank you. You knew they were coming? They had arranged for a time? A. Yes.

20

Q. And no doubt when Mr. Sutcliffe came in he introduced himself to you and indicated the identity of the cameraman and the sound man? A. Yes.

Q. Was there some preliminary talk between you and Mr. Sutcliffe before he indicated the conversation that was going to be recorded? A. Yes.

Q. After he indicated to you the conversation that was going to be recorded between you and him it was obvious to you, wasn't it, that the cameras were rolling? A. Yes.

30

45. Plaintiff xx

Q. In relation to that part, to the interview with Sutcliffe and the conversation you had with him while the cameras were rolling, was there any mention made by you of the Casey article? (Objected to; allowed) A. I don't think so.

Q. In the introductory material which was not going to air --

HIS HONOUR: You mean the introductory material in the segment?

MR. NICHOLAS: No, I said "which was not going to air".

Q. When Sutcliffe came and introduced himself to you and before it was indicated to you that the cameras were rolling - right? That is the preliminary bit? A. Yes.

40

Q. Was there anything said by you about the Casey article?

A. Only the first part. I don't remember saying anything else about it. I didn't think it had anything to do with Sutcliffe.

Q. That is the bit you have told us about? A. Yes.

HIS HONOUR: Q. He has already said he said that "Casey didn't miss me", that is the earlier conversation. 10

MR. NICHOLAS: Q. This is in this introductory conversation?

A. He was there 15 minutes before and we had a cup of coffee and we talked because we know each other quite well.

Q. Can I take it then that all you said about the Casey article to him during this 15 minute period that you were having this cup of coffee was what you have already told us?

A. Basically.

Q. Basically? A. Yes.

Q. Then that suggests there was some more said? A. I think so. 20

Q. Did Sutcliffe say anything to you about the article, that you recall, in this introductory bit? A. No, I don't think so. He just said "I am from Channel 9" and divorced himself from --

Q. Well, he said he was from Channel 9? A. Yes.

Q. He had also said he was from the World of Sport? A. I knew that.

Q. And you knew it was the Casey show? A. No, I knew it was the World of Sport.

Q. Just so I understand the aspect of your complaint about Mr. Casey's article, Mr. Austin: I understood you to answer my friend this way when he was taking you to the article and he asked you a question as to whether in your view the performance of your team had been impaired in any way by your training - do you recall him asking you that? A. I think so, yes. 30

Q. Do you recall you saying to my learned friend, in answer to that question, "No"? A. That's right.

Q. May I take it that when you say "No" to that you are saying "Well, in my view the performance of the team had not been impaired by my training"; correct? A. Yes. 40

46. Plaintiff xx

Q. And necessarily you will agree with me, won't you, that that is your view about the results of your training methods?
A. Yes.

Q. You would also agree in fairness, would you not, with me,

that other people may have different views about whether or not your training methods impaired the performance of the team?

A. Yes.

Q. And indeed it is true to say, is it not, that methods of training of first grade rugby league players is something about which many experienced people hold many and widely different views? A. Yes. 10

Q. And indeed, there is no doubt, the beginning and end of a season will illustrate the methods of training of a particular team and may often result in the expression of pretty controversial views? A. I would think so.

Q. You would think so? A. Yes.

Q. There is no doubt that is a truism, isn't it? A. That's right.

Q. I suppose it is stating the obvious to say that coaches come and go from teams with frequency, do they not? A. Yes. 20

Q. They may move from one club to another depending on the club's view as to whether or not the particular coach's methods are appropriate for what they are trying to achieve, what the club is trying to achieve, right? A. Yes, I would say so.

Q. I suppose it is also true to say that whatever the methods of training and coaching might be the object is one shared by all, namely the winning of the competition; that is right, isn't it? A. Yes. That's everything.

Q. That is everything? A. Yes.

Q. What is the subject matter of widely different views is the methods and means by which you get to that dominant objective, correct? A. To a point. 30

Q. Well, for example, the Balmain people may have a coach and a trainer who are out to achieve the dominant objective - winning the competition with their club, is that right? A. Yes.

Q. And similarly the Manly team has a coach and a conditioner, trainer, with the same objective? A. Yes.

Q. And another club and another club - the same set-up; correct? A. Yes. 40

Q. It would be fair to say, wouldn't it - and one would expect it - that the Balmain coach and conditioner may have a substantially different approach in technique and method to the Manly coach and conditioner? A. No, I wouldn't agree with that.

Q. You wouldn't agree with that? A. No.

Q. But you would agree with me, wouldn't you, that it is quite common to find differences in method and approach to training and conditioning, that is so, isn't it? A. No, not really.

Q. Not really? A. No.

47. Plaintiff xx

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Q. You are not suggesting that all the clubs set about their training and coaching and conditioning programmes in the same way, are you? A. Basically it is very similar.

HIS HONOUR: Q. Does that mean that any conditioner could condition any team just as well as any other? A. The principles are exactly the same. Then you come back to individuals. He has got to then get on with his players. That is probably about the most important thing about being a player or a coach. The fundamentals of the game are the same no matter what you do.

20

MR. NICHOLAS: Q. The fundamental aim, no doubt, of the conditioner and trainer, is to get his men fit? A. Yes.

Q. If he gets his men fit he hopes they are better suited to go out there and win the match, is that right? A. Yes.

Q. What I am suggesting to you is that a particular trainer, an individual trainer - for example Mr. Jones for Balmain, if it is Mr. Jones, and Mr. Smith for North Sydney, if it is Mr. Smith - would have a different individual approach to securing the fitness of the men you are looking after?

A. Yes that would be true.

30

Q. And you would be the first to say, wouldn't you, that you have a particular philosophy and method which is your individual thing, when it comes to training the players?

A. Yes. To a point, yes.

Q. And that no doubt made you attractive to the Manly people to go over and be engaged as trainer and coach, wouldn't you agree? A. Yes.

Q. They want to try your methods, correct? A. Yes.

Q. Similarly with the Balmain people, they want to try their particular man and the North Sydney team their man and so on, that is how it works, isn't it? A. Yes.

40

Q. What I want to come back to is this, Mr. Austin: there are different approaches, methods, of getting individuals match fit? A. Yes.

Q. And there being different methods for the achieving of that object, there are also many different views about the

merits of a particular method. Would you not agree with that?
(Objected to; allowed) A. Yes.

(Short adjournment)

48. Plaintiff xx

(Mr. Neil made an umbrella objection to the line of
questioning)

10

(Mr. Nicholas requested that the video tape be shown in
the absence of the jury: objected to: discussion ensued:
video tape shown in the absence of the jury)

(Objection withdrawn by Mr. Neil)

(Transcript of video tape handed to his Honour)

(In the presence of the jury video tape shown without
objection)

(Video tape m.f.i. 1)

MR. NICHOLAS: Q. Mr. Austin, the tape that you have just
seen, that was a segment recorded with you and Mr. Sutcliffe?
A. Yes. 20

HIS HONOUR: Q. Is that Mr. Sutcliffe in the film? A. Yes.

Q. The other man apart from yourself? A. Yes.

MR. NICHOLAS: Q. And that was the one that you understood to
be broadcast over Mr. Casey's show the next Sunday? A. Yes,
the World of Sport.

Q. You have told us that a number of people spoke to you
from time to time about the article? A. Yes.

Q. Did anyone tell you that they had seen you on the tele-
vision programme? A. Some of the footballers saw it. 30

Q. They said that to you? A. Yes.

Q. Were they your club footballers or footballers from other
clubs as well? A. Other clubs' footballers.

Q. The essence of what Mr. Casey was saying in his article,
I suggest to you, is that players become physically stale
because they have been overtrained; that was his view, would
you agree with that? A. Yes.

Q. And of course the very first thing that was put to you in
that interview, if I have got it right, was Mr. Sutcliffe say-
ing, "Reg, are footballers overtrained?" and he is putting to
you what the article was dealing with; you have heard it? 40
A. Yes.

Q. And he said, "Reg, are footballers overtrained". Do you remember him asking you that? A. Yes.

Q. And you came back, "No, I don't think they are, Ken". "I don't think they are fit enough." Do you remember saying that? A. Yes.

Q. It would be fair to say that you were getting across your view of the fact that footballers were not overtrained? (Objected to; question allowed) A. Yes. 10

Q. And in your evidence, in answer to some questions by my learned friend to you, he asked you some questions about staleness; do you recall that? A. Yes.

49. Plaintiff xx

Q. And you said to my friend, "Well, staleness is a mental process, an attitude"? A. Yes.

Q. I think you indicated that again in the course of your interview with Mr. Sutcliffe and your view that staleness is a lack of interest? A. Yes. 20

Q. And do you recall it being put to you in the article by the interviewer in the segment, "Do you get to a stage where they're so fit and they're a lot fitter than what they were, that they're losing interest in the game"? A. Yes.

Q. And you were responding to that and you said, "It is a professional sport and if you play for money and you lose interest, there is always somebody else who wants to take your place"? A. Yes.

Q. Would it be fair to you to say that what you are saying there is that a player just cannot afford to lose interest, he cannot afford the luxury of losing interest if he wants to earn at the higher rate of a first-grade match, otherwise somebody else will replace him? A. Yes. 30

Q. The fact is, of course, that whether or not they put themselves at risk, players do lose interest, don't they, from time to time? And they do become stale, don't they?
A. Probably.

Q. You are training them and dealing with them. Some players do certainly become stale, don't they? A. It is a very few in our club. 40

Q. Yes, but they do? A. Yes.

Q. A few do in your club and I suppose from time to time that a number of other players in other clubs do become stale? Correct? A. Yes.

Q. And it is your view that, as you have said before, staleness is a mental thing; correct? A. Yes.

Q. You would appreciate, would you not, that lack of interest would manifest itself by the player not getting stuck into his tackle or running in a match as hard as you might expect him to? A. Yes.

Q. He is not playing up to scratch, would you say? A. Yes.

Q. Not picking the moment to run hard when perhaps he should; 10 right? A. Yes.

Q. Missing a tackle when he could have got it? A. Yes.

Q. And shortly stated, would it be fair to say that an indication of staleness on the field would be the lack of top performance by the individual players? A. Probably.

Q. You as a trainer experienced in observing this thing, would you not agree? A. Yes, to a point.

Q. Of course, lack of purpose on the field in the course of a competition match might have other explanations than merely the mental attitude, mightn't it? A. Yes. 20

Q. And one of those explanations could very well be that the particular player was failing to perform to the expectation of his trainer is because he is fatigued; that could be one explanation, couldn't it be? A. Yes.

50. Plaintiff xx

Q. And that he is fatigued for some physical reason, because his muscles are tired or something of that sort? A. It would be very unusual.

Q. But it happens? A. No, I can't remember a case of that happening. 30

Q. Are you suggesting that players, that some players who play under the expectations may not be physically tired?
A. Yes.

Q. You agreed with me a moment ago that fatigue could be an explanation of a player's lack of performance? A. Yes.

Q. What I am suggesting to you is that the explanation of fatigue, tiredness, may very well be a physical explanation?
A. Yes.

Q. And a physical explanation would be found, for example, in tired muscles? A. If you say so. 40

Q. I am asking you. A. I do not agree. I do not know what tired muscles mean.

Q. Can you suggest to me a physical reason for someone being fatigued. You have already agreed with me that there can be physical reasons for being fatigued? A. Yes.

Q. Can you indicate to the jury an example? A. Yes.

Q. Of a physical problem which would lead to fatigue?
A. Any footballer who plays football at this time of the
year, at 3 o'clock in the afternoon, that could cause fatigue.

HIS HONOUR: Q. But that is comparatively unusual? A. Yes,
that is right. 10

Q. We are talking about 1981; they were not playing at 3
o'clock in the afternoon then? A. Yes.

Q. What is the physical reason that could cause it? A. If
a player carries a small injury in a game hoping to hold his
place.

MR. NICHOLAS: Q. In addition to that, it would be fair to
say, would it not, that some players who are physically tired
become tired because they have been working too hard; that
would be one reason for that, wouldn't it be? A. It could be
a reason. 20

Q. And that is what happens in everyday life apart from the
football field, you become tired because you are overworked;
don't you agree with that? A. I think again you come back to
my point that it is more mental than physical.

HIS HONOUR: Q. We are talking about the physical position?
A. Yes, it is possible.

MR. NICHOLAS: Q. Turning to everyday life, it is possible
that if one does hard work in the garden, for example, one can
become fatigued or tired? A. Yes.

Q. Because your back aches and your legs are sore and the
rest of it? A. Yes. 30

Q. And that is a direct result of doing too much or other
physical exertion? A. Yes.

51. Plaintiff xx

Q. If you translate that to everyday domestic scenes - that
everyday domestic scene onto the competition football field,
it is to be expected, is it not, that some players become
physically fatigued and tired because they are doing too much
physical athletic work? A. Yes.

Q. It must be so, must it not? A. It could possibly be so,
but in very few cases. 40

Q. And that a manifestation of such physical tiredness is
the lack of performance? A. Yes.

HIS HONOUR: Q. When you say fatigue, you are not speaking
of a person carrying an injury, are you? A. No.

Q. You are talking about fatigue due to tiredness; that is what fatigue means? A. Yes.

Q. Tiredness can be through effort? A. It always does for a footballer.

MR. NICHOLAS: Q. You agreed with me before that the overriding importance to the club is to win these matches? A. Yes. 10

Q. And it is the match result each week that counts above all else? A. It is to win the premierships that counts above everything. You have to win enough matches to get into the five.

HIS HONOUR: Q. You have to win the matches to win the premiership? A. No.

MR. NICHOLAS: Q. You do not want to let too many go too quickly? A. No.

Q. You do not suggest that players run out without the intention to play to win? A. Yes, we always play to win. 20

Q. The points on the board tells the story? A. Yes.

Q. And there is no second prize? A. Yes, there is no second prize.

Q. You will agree that the interested follower of the sport who reads the match results each weekend would be expected to draw the conclusion about the particular team's performance from those results? A. Yes.

Q. And where it appears, for example, that a particular team had had, over the proceeding few weeks, a succession of upset losses, would you understand him to come to the conclusion that maybe something is astray with the performance of that team? (Objected to; question allowed) A. Yes. 30

Q. And of course the team is only made up of individual members, is it not? A. Yes.

Q. And so the poor performance of a team would obviously reflect upon the performance of some or all of the team members? A. Yes.

Q. And thus if a player was performing below the mark by reason of him being stale, that could reflect in the result of that team in a particular match, could it not? A. Yes. 40

52. Plaintiff xx

Q. This article, Mr. Casey's article, you have it in front of you? A. Yes.

Q. Opens by referring to the fact that there had been something of a minor catastrophe the way Parramatta and Manly

along with Balmain had flopped so badly. "North Sydney's three try spree to snatch a win over Parramatta and Newtown's steam-rolling of Manly emphasises that something is radically wrong with the preparation of major teams with undeniably talented players". I want to take you to some matters that I have read to you? A. Yes.

10

Q. Of course, as at 27th April 1981, when the article was written, Manly in the first grade competition - had there been five matches played, had there not? A. I think so.

Q. If you are not sure, I will hand to you a copy - would you look at this document? It is a copy of the 1981 premier-ship first grade table for Manly. (handed)

HIS HONOUR: Q. You would be familiar with that? A. Yes.

MR. NICHOLAS: Q. You know that the article came out on Monday, 27th April, don't you? A. Yes.

Q. And do you see from the table that on 26th April, the day before Manly had played Newtown and lost to Newtown? A. Yes. 20

Q. And I am trying to get the scores there? It lost 20-8 against Newtown? A. Yes.

Q. And the week before, on 18th April, they played Penrith and they had lost 28-10 and the week before on 10th April they had played Eastern Suburbs and lost 16-10? A. Yes.

Q. And the week before that they played Balmain and won 19-12? And similarly the first match of the competition, 29th March, they had played Western Suburbs and won 24-12? A. Yes.

Q. So that by the time the article had been written, of the five matches of the competition against them, they had won the first two and lost the next three in a row? A. Yes, correct. 30

Q. And it would not be unfair to describe that as a minor catastrophe the way Mr. Casey had put it? A. I would not agree with that.

Q. You as a trainer of Manly at that time would not agree that a succession of losses were, in rugby league terms, a minor catastrophe? A. No.

Q. Not a problem at all? A. We lost 6 games in the previous 40 year before we won the premiership.

HIS HONOUR: Q. You were not happy? A. No. I am never happy unless we win.

MR. NICHOLAS: Q. The Parramatta result - of course, Parramatta is mentioned in the article? A. Yes.

Q. If I can show you the Parramatta Club report for 1981

(shown). If you look at the 1981 results (objected to;
question allowed).

Q. You have in front of you the Parramatta record? A. Yes.
53. Plaintiff xx

Q. You remember that the article refers to North Sydney's
3-try spree to snatch a win over Parramatta? A. Yes. 10

Q. And you say that the North Sydney match appeared to be
fifth in the competition? A. Yes.

Q. And from the results it appears that Parramatta lost to
North Sydney on this day, 15-13? A. Yes.

Q. And the week before Parramatta lost to Cronulla Suther-
land 23-12? A. Yes.

Q. And then for the first three matches, the preceding three
matches of the competition, they had three wins in a row?
A. Yes.

Q. And by the time the article was written, Parramatta had 20
the first three matches won and the last two, including the
one against North Sydney referred to in the article, they lost?
A. Yes.

Q. And Parramatta then was regarded as one of the top clubs
in the league? A. Yes.

Q. Would you now look at the record of the first grade match
for 1981 for the Balmain Club which I show you from the Bal-
main Annual Report for 1981. (shown) If I can take you to
the - through a similar exercise; Balmain was referred to in
the article? A. Yes. 30

Q. And if you go down the column, you see 26th April, the day
before the article actually had come out, Balmain against South
Sydney lost 27-12; right? A. Yes.

Q. And of course at that point of the competition Balmain
was one of the top teams in the competition? A. No.

Q. Where did you place them? A. They were last previous year.

Q. The next match, the preceding week, 20th April, lost
against Canterbury Bankstown? A. Yes.

Q. 52-13? A. Yes.

Q. The next one, the preceding week, 12th April, lost against 40
Newtown 21-13? A. Yes.

Q. And the next one, 5th April, lost against Manly 19-12?
A. Yes.

Q. And then they secured a win in the very first match of the competition against Eastern Suburbs on 28th March, 12-11?
A. Yes.

Q. So the Balmain record up to 26th April 1981 was the first match was a win and four losses in a row; correct? A. Yes.

Q. And that was, would you not describe it as a trainer of a 10
rugby league team, at least from the players' point of view, a
minor catastrophe? A. Yes.

(Annual reports from Manly, Balmain and Parramatta for
year 1981 m.f.i. 2, 3 and 4 respectively)

54. Plaintiff xx

Q. These competition matches are 80 minutes in duration?
A. Yes.

Q. That is two halves, each of forty? A. Yes.

HIS HONOUR: Q. What is the half-time period? A. Ten minutes. 20

MR. NICHOLAS: Q. And in the Manly Club - you might have indicated this earlier in answer to my learned friend - but as at that time you had about 12 international players, did you not? A. Eleven or twelve.

Q. And similarly Parramatta had some international players?
A. Yes.

Q. And Balmain also? A. I do not think Balmain - they may have had one, I think.

Q. But nevertheless they were experienced footballers?
A. Yes. 30

Q. And footballers of considerable distinction? A. In the Balmain case I would not say that, but in our case it was.

Q. But he was, nevertheless, an international player?
A. Yes, they had one but that does not make a team.

Q. I suggest that individuals - they were all international players of football? A. Yes.

Q. In any event would you agree with me that someone looking at the records of those first five competition matches, the ones which I have just put to you, would you expect to conclude that there was something astray with their performance? 40
(objected to; question allowed)

Q. Would you expect that someone reading those records might conclude that there is something astray in the performance?
A. If you look at the competition table, Parramatta was third and we were sixth. You must look at it in two ways. How far up the ladder you were. If you were a Manly supporter,

you would say that there has got to be something wrong, we have got beaten; but for the average person in the street, I do not think.

Q. As far as the Manly supporters are concerned, something has got to be wrong? A. If you lose one game for Manly something has got to be wrong.

10

Q. But these were three? A. Yes, we lost three in a row.

Q. And something has got to be wrong? A. There was nothing wrong.

Q. You said yourself that something has got to be wrong; these were your own words? A. That is a supporter's words, not mine; that is what a supporter would say.

Q. And no doubt you heard the supporters say it, did you not? A. No; but that is how the supporters think.

Q. There would be some pretty shrewd assessors in the supporters? A. Yes, most of them think through their pockets.

20

Q. Like the players? A. No, the players are out to win. Supporters take their time and they get beaten and no matter what happens the team is wrong.

55. Plaintiff xx

Q. To shorten it a little bit, would you not agree with me that whether you were involved in the coaching or training of Manly, it was a matter for concern that you had these losses? A. Yes.

Q. And it was a matter for concern because the team was not performing to expectation, was it? A. No.

30

Q. And because it was not performing to expectation would suggest, would it not, that something was astray somewhere? A. Yes.

Q. Something has got to be wrong? A. Yes.

Q. And that of course it is the task of the coach and the trainer to identify what the problem is and then to set about remedying it? A. Yes.

Q. And that is what your job is? A. Yes, that is correct.

Q. And no doubt in this case, with these losses, that is what you as a trainer set about to do? A. Yes.

40

Q. To identify the problem; right? A. Yes.

Q. Because there was a problem, wasn't there? A. Some in the eyes of the spectators, it is not ours.

Q. But you have already said that you recognise that this

succession of losses was a matter of concern because of the lack of performance of the team? A. Yes, that is correct.

Q. Now, that is a problem? A. Yes, but I don't know whether it is a point - at that stage it was not the conditioner's problem.

Q. And you would not know what sort of problem it was until it had been investigated? A. Yes, you would not. 10

Q. You are faced with the problem of losses? A. Yes.

Q. And you cannot get away from that because the points on the board tells the story? A. Yes.

Q. And that is what you were faced with? A. Yes.

Q. And you have to set about identifying what has gone wrong to bring about these poor results? A. Yes.

Q. And so you have to investigate, you have to undertake an investigation of the team? A. Yes.

Q. And check the players? A. Yes. 20

Q. And on you checking the players you came to the view that there was nothing wrong in their training? A. As it turned out, yes.

56. Plaintiff. xx.

Q. But you had to undertake an enquiry process before coming to that view? A. Perhaps; that was not a major problem.

Q. But it was a problem? A. Everything is a problem until you solve it.

Q. And before you can identify a problem and solve it, you have to investigate it? A. Yes. 30

Q. And one of the things that you would be concerned about to identify would be were those players playing under their capacity as you observed it? A. Yes.

Q. And there were some individuals who fell within that category? A. Yes.

Q. And would it be right to say that some of the players were playing under capacity because they did not have the right mental attitude to the game? A. That could be probably right.

Q. Was that what you found? A. That was not my job, that was the coach's job. 40

Q. And you are the trainer and conditioner? And they get to the stage of mental staleness? A. It is very difficult to

have mental staleness after five games of competition - foot-
ball.

HIS HONOUR: Q. Do you understand the question? A. Yes.

Q. Is it in your area? A. Only a small part. I am only
asked if the coach wants me to help. It is the coach's
department, he runs the club. 10

Q. What has been put to you is whether or not the point of
staleness reached consequent upon playing and conditioning, is
whether that is within your province to say? A. Yes, it is.
It is within my province to point that out to the coach.

MR. NICHOLAS: Q. The existence of mental staleness, wrong
attitude, is something which is investigated in your individ-
ual players to see whether something was astray in what they
did? A. There is a very big difference in staleness of men-
tal attitude. You have a wrong mental attitude.

Q. But I thought you equated the same - correct me if I am 20
wrong -

HIS HONOUR: He said that staleness is a mental attitude.

MR. NICHOLAS: Q. Just to understand the terminology, stale-
ness in your view is a mental attitude? A. Yes.

HIS HONOUR: Q. Talking about Balmain's one international,
who was that? A. Olsen Filipaina.

Q. What about McMahon? A. Was he with them then? I think
he was in union. I think maybe Corowa was an international.
Steve Martin, he went there in 1982.

57. Plaintiff. xx.

30

Q. No, from Queensland? A. Oliphant, I think he had gone
back before - I don't know much about Balmain.

(Luncheon adjournment.)

MR. NICHOLAS: Q. Just before the adjournment I asked you
whether staleness in your view was a mental attitude and you
agreed with that? A. Yes.

Q. You said "Yes, it was"? A. Yes.

Q. And the term physical staleness is common enough, is it
not? A. No.

Q. It is used by Mr. Casey in his article? A. Yes, 40

Q. Do you understand that phrase to mean that someone who is
suffering from physical staleness, was somebody who had been
over-trained? A. Probably.

Q. What do you understand physical staleness to mean as Mr. Casey was using it when you read those words in the article?

A. I never heard them before.

Q. You never heard of them? A. Yes.

Q. Really? A. Yes.

Q. Have you not heard in sporting circles the use of the term 10
staleness as relating to a person's - contrasting with a per-
son's freshness and vigor in a game? A. Yes.

Q. You have heard it and it is common enough for people to
say, "I saw so and so play together and he appeared to be
stale"? A. Yes.

Q. You have heard of that? A. Yes.

Q. You do not suggest that everybody who uses that term is
using it in the way you use it? A. I never heard it used in
any other way.

Q. Would you not agree with me that the word stale when 20
applied as an adjective to describe an athlete or a footballer's
condition is used to describe something, his physical state?

A. No.

Q. Particularly to put beyond doubt, when the word physical
is used as an adjective in front of the noun staleness, as in
this article? A. That is his opinion.

Q. His opinion as it came through this article was that
players, that the members of this team which he picked out
have suffered from physical staleness; that is his opinion?

A. Yes.

30

Q. And that is what he is expressing in that article? In
his article? A. Yes.

58. Plaintiff. xx.

Q. And that appears to you to be the conclusion drawn from
Mr. Casey's survey of the recent match results of Parramatta,
Balmain and Manly, does it not? (Objected to; question
pressed; question allowed) A. Yes.

Q. And would you agree with me that what Mr. Casey is saying,
whether or not it accords with your view as to cause and effect,
that he is saying - what he is saying is that these people 40
seem to be physically stale, they are over-trained and that is
what brought about these results; that is what he is saying?
A. Yes, after five matches of football.

Q. That is what he is saying? A. Yes.

Q. You, of course, as you are perfectly entitled to do, have
thought about as to why the results - and I take it you have?

A. Yes.

Q. But as far as you are concerned it was your view that it was not any over-training that brought about that result?

A. Yes.

HIS HONOUR: Q. That is your belief? A. Yes.

MR. NICHOLAS: Q. And you have agreed with me that your belief is that viewers and commentators may hold a different view? 10

A. It is a democracy, yes.

Q. Of course it is a democracy? A. Yes.

Q. You have got one view about the cause of Manly having a succession of losses and you would expect the next bloke to have another view of it? A. Yes, probably.

Q. You would expect it? A. Yes.

Q. Because it is a democracy? A. Yes.

Q. And one of the great features of a democracy is that different people can hold different views about things, can't they? A. Yes. 20

Q. And express them, right? A. I suppose so.

Q. You are one of them? A. Yes.

Q. And you value the right to express your views, don't you? A. Yes.

Q. And you would be pretty upset if that right was taken away from you? A. Yes.

Q. I think you have agreed with me before lunch that the results of the teams to which we have referred indicate that there was something astray, insofar as the teams performance goes to bring about those results? A. I think I did. 30

Q. And the something that was astray would relate to the preparation and the coaching and training of those teams and the individual players, would it not? A. Not necessarily.

59. Plaintiff. xx.

Q. But it certainly would be possible? A. It would be part of it.

Q. Thus the part of the explanation that the lack of performance illustrated by the scores to which you have been referred, you would expect it to be in the preparation and training of those teams and their members; that would be so, would it not? A. Yes. 40

Q. And when one comes to consider the state of preparation and coaching - take the Manly team as it was on 27th April, 1981, when one comes to consider that, one of the things

that - one of the possible explanations may be the mental attitude of some or all of the players, might it not be?

A. It could be.

Q. And similarly a possible explanation and certainly something to explore, to investigate would be the physical tiredness of a particular player or players? A. It could be. 10

Q. It would be certainly something that had to be considered?
A. Yes.

Q. You could not cross out that without looking at it?
A. It would be difficult to bring it back to that point so early in the year. It is something you look at, physical tiredness you get from the end of the season.

Q. But that depends very much on what sort of programme the players or the individual player had been subjected to prior to between 27th April, 1981? A. Yes, to a point.

Q. But it certainly would, would it not - you would not say that a player could be physically fatigued because it is now the end of the season. You could not look at it like that? 20
A. You have to take that into consideration.

Q. But one very important thing you take into consideration would be what was the programme the player had been subjected to prior to the writing of this article? A. Yes.

Q. And obviously playing a match on 26th April, 1981, if he was playing for Manly and got beaten by the Newtown team, one of the things that would be relevant for you to consider as a trainer would be the training programme coupled with his regular weekly matches? A. Yes. 30

Q. Because a combination of those events over the week or indeed over several weeks might, not necessarily would, but might bring about the state of tiredness or fatigue in the particular individual, might it not? A. Yes.

Q. And that would be one of the things you would have to watch for? A. Yes.

Q. And would you agree with me that if it were found that a player, on say the afternoon of 26th April playing Newtown did not perform up to expectation, and it was found that he had not because he had been, his play was impaired or hindered by 40

60. Plaintiff. xx.

previous over-work, that would suggest that something may be inappropriate in his training programme, might it not?

A. That could be right.

Q. That could be right? A. Yes, it could be.

Q. And it would suggest, would it not, that as a possibility that something in his training programme or indeed the team's training programme might at that point of time be wrong?

A. Yes.

Q. And unsuitable for the player or players? A. That could happen.

10

Q. It is certainly a possibility? A. Not a very big one, but it could be, it could happen.

Q. But you would have to take that into account as a trainer?

A. Yes.

Q. It would be true to say that one of the things which trainers are concerned to examine in the light of a particular team's performance in a competition match is whether the particular training programme is appropriate for the individuals of the team? A. That is correct.

Q. And it is perhaps stating the obvious for someone of your experience, but it would be right to say that trainers such as yourself constantly keep training programmes of teams to be made on the players constantly under review? A. Yes.

20

Q. Because if you did not keep them under review and flexible you may very well with the very best will in the world send a player onto the field wrongly prepared? A. That could happen.

Q. That could happen? A. Yes.

Q. And that is something you guard against all the time?

A. Yes.

30

Q. And sometimes you achieve that and sometimes players are sent wrongly onto the field? A. The only way that they would be wrongly prepared is if they do carry an injury we do not know about.

Q. And an injury in this context would be brought about because the player was not properly fit? A. He had been hurt the week before, it would not be because of his training. It would be because he would have injured himself and nobody knew about it.

Q. Nevertheless, it would be right to say that a player becoming fatigued during the match may very well be demonstrating that he had undertaken an unsuitable training programme prior to the running on to the field, might it not? A. It could happen.

40

Q. And if it was unsuitable to that extent, it would be fair to say that the training programme in which he was involved, was the wrong one? A. Yes, that could happen.

Q. So the training programme can go wrong? A. Yes, of course.

Q. And I suggest to you again, to clear it up, that the term staleness or stale in a football training context also commonly conveys the notion of physical tiredness? A. No.

61. Plaintiff. xx.

Q. You will not agree? A. No. It has never been used. Staleness, as far as the physical thing, has never been used in any sporting thing I have been involved in. 10

Q. When you say that it is - as it is in Mr. Casey's article written clearly, physical staleness, then it is putting beyond doubt that he is talking of physical condition? A. Yes.

Q. Because he says so? A. Yes.

Q. And did you read him to be referring to the physical state of fatigue brought about through over-training? A. Yes.

Q. Because that is what his article says? A. Yes.

Q. Would you agree with his suggestion that if a player was involved in a grueling 80 minutes of competition match - because that is what they are? A. Yes. 20

Q. And you describe them yourself as grueling? A. No.

Q. They are pretty hard, aren't they, first grade competition matches? A. To the average person in the street they are probably but these people are professional footballers and it is part of their - if you ask them, they do not consider it hard.

Q. They would not consider it hard? A. No.

Q. Your boys would not consider it hard? A. I do not think any of them consider it hard. It is a sport that they get paid for and they enjoy it. There are gruelling matches which you read about more in the papers than anywhere else. Grueling is probably a wrong word, I think. 30

Q. You can fully understand how Mr. Casey sitting in his desk and writing an article can call it grueling? A. Yes, it tends to be flowery, it flowers the word.

Q. Is tough a better description? A. Probably.

Q. They are not picnics? A. No.

Q. Mr. Casey has chosen to use the adjective grueling? A. Yes. 40

Q. And let's assume someone playing that game for 80 minutes and he has three training nights during the rest of the week? A. Yes.

Q. That sort of programme unless it was carefully regulated

and supervised by training may very well result in the production of physical staleness in a player, might it not? A. It could do.

Q. And that sort of result, a combination of those activities, the competition match and the training programme three nights a week may very well be shown in the next match by way of the individual's lack of performance; that is how it would come up? A. Yes, it could happen. 10

62. Plaintiff. xx.

Q. That could happen, could it not? A. If you do not monitor it carefully.

Q. I suppose it is a matter of the individual trainer and each trainer has perhaps a different view of the thing, as to the sufficiency of the monitoring? A. Yes.

Q. It is in his hands really? A. It depends upon the attitude of the club - the club coach may talk it over and say, you do what I ask you to. In my case, it was basically my affair. 20

Q. You have already told us that your responsibility was to hand over these men to the coach fit? A. Yes.

Q. So it was your affair? A. Yes.

Q. So any shortcomings attributable to the lack of training and condition would be your responsibility, would it not? A. Yes.

Q. And any lack of performance due to that would come home to you? A. Yes. 30

Q. And you would be expected to be accountable for that? A. Yes.

Q. And you would expect to attract some criticism and comment if there were shortcomings to your team? A. Yes.

Q. And rightly so? A. Yes.

HIS HONOUR: Q. I suppose you get it from a lot of quarters? A. We get criticism. We get some criticism whether you are right or wrong, but the proof of the pudding is when you win the premiership or become a finalist or grand finalist.

Q. That is right at the end? A. That is all that matters. 40

MR. NICHOLAS: Q. All that matters week by week are those points on the board. They are all straws which go to eventually getting the final goal? A. Yes.

Q. And you cannot let any go past because you may not get them again? A. Yes.

Q. So be it Saturday or Sunday you are out there to win?
A. We never go out there to lose.

Q. You go out to win? A. Yes.

Q. Can I ask you a couple of more things. Would you expect that somebody such as yourself in a prominent position with a highly prominent rugby league team, to attract comment and criticism from those who are interested in the game as to the results you achieve? A. Yes. 10

Q. And coaches do? A. Yes.

Q. And captains? A. Yes.

62A. Plaintiff. xx.

Q. And people who put themselves into the public arena would expect that? A. Yes.

Q. And as his Honour has suggested, with respect, that from time to time the journalists in their columns criticise the performance of coaches and trainers? A. Yes. 20

Q. Including yourself, no doubt, from time to time? A. Yes.

Q. And that sort of exposure in the media is part and parcel of the job? A. Yes.

Q. Because you are in the public arena, you would expect there to be some differing views about how you perform your work? A. Yes.

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MR. NICHOLAS: Q. You would not react unhappily to criticism if you felt that it was warranted, would you? A. No.

Q. And your concern about this article, of course, is that it is unwarranted because in your view, as you have already told us, your boys' condition was not impaired as a result of the training programme that you had given them, that is right, isn't it? A. To a point. 30

Q. Well, that is it, isn't it? A. If you are referring to the article.

Q. Yes I am? A. There is points in it which are not true.

Q. I will come to them in a moment. But your concern about what it says about the manner in which you trained the team is because in your view their lack of performance was not attributable to your training programme? A. No. 40

HIS HONOUR: Q. You say that is not your point? A. No, I said no. If you go to the Newtown game, we had two broken legs in the game which meant we lost two of our star players

that day. So you could not attribute that to training. Or even playing the game.

MR. NICHOLAS: Q. This is what I am asking. It was your view that the results of Manly's performance which are referred to in this article were not brought about as a result of something astray in the training programme? A. No.

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Q. You are quite convinced about that, aren't you? A. Yes I am.

Q. Although you recognise there was certainly something astray that had to be investigated? A. Oh yes. If you get beat you always investigate it. Every time you get beaten. Every time you win you make sure you are still doing the right thing. You can be lucky to win.

Q. You are complaining about this article, apart from some of the errors you have referred, that Mr. Casey is suggesting that a reason for the failure is attributable to overtraining and you reckon it is not, that is what it comes down to, isn't it? A. I suppose so.

20

Q. That is right, isn't it? A. Yes.

Q. That is the difference in views. He says it is and you say, "Well, I am the trainer. I don't think it is"? A. Yes, that's part of it.

Q. Well, that is it, isn't it? That is the essence of it, isn't it? A. Yes. He also said I was there one year when I wasn't.

Q. But the essence of what Mr. Casey is saying about you that you are concerned about is that your manner of training was wrong because the players went on to the field and didn't give of their best because they were physically stale, right? A. Yes.

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63. Plaintiff xx

Q. That is what he is essentially saying? A. Yes.

Q. And you are saying "Well I am upset about that because I am the trainer and in my view, forget about what anyone else says but in my view that is not so", right? A. Yes.

Q. And it comes down to this, you have a view about the achievements of your training programme up until 26th April, 1981 and Mr. Casey clearly has another view. That is what it gets down to? A. Yes. It looks that way.

40

Q. The three years you are concerned about, aren't you, there is an error there about three years? A. Yes.

Q. The truth is you were there for three years, weren't you? Indeed you were there for four, for 1982 but that was after

he wrote the article? A. That is right.

Q. And Mr. Casey's error is that he has put it for the past three years when in fact it was for 1978, 1979, miss 1980, and go to 1981, correct? A. That is right.

Q. And in 1978 Manly - and no doubt you played a considerable part in it - had a great achievement in becoming the grand finalists, did they not? A. They won the premiership. 10

Q. And in 1979 they did not? A. No, they were seventh.

Q. And in 1980, I am sorry you were not involved with it there? A. No.

Q. And then in 1981 up until the time the article was written we have heard the results to that point of time, the first five matches? A. Yes.

Q. One of the things you were concerned about was this business about, as it appears in the article, it says:

"I question the wisdom of Austin when he tells an international footballer to do another six 400m sprints as some kind of penance". 20

Correct? A. Yes.

Q. Was there not published about you in the Sun Herald on 26th April, 1981, that is to say the day before the article that you complain about was published, an article featuring your photograph and Mr. Les Boyd's photograph by journalist Dorothy Goodwin? A. Yes.

Q. Do you remember seeing that article in the Sun Herald (shown)? A. Yes. 30

HIS HONOUR: When you say "by Dorothy Goodwin", is she a photographer?

MR. NICHOLAS: She is a journalist.

Q. Her name appears in the by-line there? A. Yes.
64. Plaintiff xx

HIS HONOUR: There is mention of Mr. Boyd.

MR. NICHOLAS: Q. Mr. Boyd was an international footballer then, wasn't he? A. Yes.

Q. He was a player participating in your training programme?

HIS HONOUR: He is a Manly player, is he? A. Yes. 40

Q. That is in 1981? A. Yes.

MR. NICHOLAS: Q. Would you be good enough to read the article and indicate to us when you have finished. (Witness complied)

Q. You see the article refers to your training programme and to the subjecting of team members to six 400 m runs to round off the session, the first three paragraphs? A. Yes.

Q. Just to be clear about it, it appears under the heading 10
"The time when 'Fatty' Boyd threatened the trainer".

"It's lucky Manly's sprint coach Reg Austin knows how to duck and weave as well as run because six players threatened to punch him after training recently.

'One of them was Fatty Boyd. He hates training' said Austin, totally unafraid. 'Let's face it, all footballers hate training. And I gave them six 400m runs just to round off the session. That they wanted to fight me suggested they still had enough breath left for another couple of laps which shut them up' said Austin who re- 20
lished hard work himself. 'You can dob in Les Boyd. He's more beautiful when he's angry ha. ha'."

That is attributed to you in quotes, isn't it? A. Yes.

Q. Do you see the quotes around that? A. Yes.

Q. That is what you said to Dorothy Goodwin in the interview over the 'phone, isn't it? A. That is right.

Q. And it is referring to an occasion when you gave Mr. Boyd and some others some extra six 400m runs to round off a session, doesn't it? A. That would be right.

HIS HONOUR: Q. Under the circumstances as there reported? 30
A. No, not quite like that your Honour.

Q. That is what you said, as that is reported? A. On the night in question -

Q. Is that what you said as reported? A. To the players?

Q. Is that what you said to the lady who reported it?
A. Yes.

65. Plaintiff xx

MR. NICHOLAS: Q. And that was published in the Sun Herald on that day and you saw it on that day, did you not? A. Yes.

Q. And it went on to deal with other matter. 40

(Above article dated 26th April, 1981 m.f.i. 5)

Q. In answer to my friend earlier this morning I think he put this question to you when taking you through the article,

"Were they (meaning the Manly rugby players) stale in
April, 1981?"

A. No.

Q. That was the question he put to you and your answer was,
as I have recorded it,

"No. They were almost fit at that stage. Eighty per cent
of what I wanted them to be". 10

Is that the answer you gave? A. That's about right, yes.

Q. Is that about right? A. Yes.

Q. May I take it from your answer that as at the end of the
fifth competition match 26th April, 1981 your players you re-
garded as almost fit at that stage? A. Yes.

Q. Another twenty per cent to go? A. Yes.

Q. It was the implementation of your programme which brought
them to an eighty per cent fitness stage by the end of the
fifth match? A. Yes. 20

Q. So they still had another twenty per cent to go before
they peaked? A. That is correct.

Q. That is the term for it, isn't it? A. Yes. Loosely, yes.

Q. Shall we say when they peaked, when they were fully fit
for competition matches? A. No, when they were fully fit
when others were not.

Q. But they were only being trained for competition matches,
weren't they? A. Yes.

Q. So when you say fully fit, that they were being fully fit
for competition matches or do you demand a higher degree of
them than that? A. You can't have a fully fit footballer for
twenty-six weeks. It is just impossible. 30

Q. Why, because they become overworked? A. Yes.

Q. And if they became overworked they become physically
stale? A. That is right.

Q. And they would not be able to perform? A. That is right.
66. Plaintiff xx

Q. So the concepts are connected, aren't they? A. To a
point I suppose you are right.

Q. Well, one after the other? A. Yes. 40

Q. They are completely linked; too much training results in

physical staleness, which results in diminished performance?

A. That is right.

Q. They are like links in a chain? A. To a point.

Q. That is the point, isn't it? That is what happens?

A. Yes.

Q. The consequence of overtraining results in a lack of performance? A. Yes. 10

Q. What I have asked you and what I am asking you is if by the end of the 5th competition match they were 80 per cent fit in 1981 with 20 percent to go to full fitness, when were you aiming to have them 100 per cent fit in a competition Rugby league term? A. After about 8 or 9 games.

Q. That would be about the middle of the season, would it not? A. No, about a third of the way through the season.

Q. And that is your approach to the game is it not? A. Yes.

Q. And that is a philosophy which you hold? A. It is more than a philosophy. It is worked on looking over the years of teams that started very well and finished very badly because they were too fit early and could not hold it. 20

Q. And of course you would expect other coaches I suppose to have different aims to get their men fit at the beginning or some later stage of the competition? A. Yes.

Q. Because different trainers and coaches have different methods in securing the object? A. Yes.

Q. And they might be proved to be wrong in the method they select or you might be proved to be wrong in the method you select? A. Yes. 30

Q. And the match results will be the determining factor, won't they? A. Yes.

Q. Are you familiar with the publication Australian Rugby League National Coaching Scheme The Booklet The Level 2 Grade III (Advanced) Coaching Certificate Course? A. Yes.

Q. That is a publication under the auspices of the Australian Rugby League to Coaches, isn't it? A. Yes.

Q. To some extent it is the standard coaching manual issued by the National Coaching Scheme of the Rugby League? A. Yes. 40

Q. I take it with respect to the people who are responsible for compiling this you have your own methods which may vary to some extent from those people? A. Yes, that could be correct.

Q. You would not pay much regard to this at all, would you?
A. I helped write it.

Q. Then if you helped write it you probably recall this passage at page 57 in par. 2 that talks about the pre-season training programme? A. Yes.

Q. And the approach to that and it goes on to say: 10

"At this time (pre-season time) comes the intensive preparation the part that is responsible for recovery of specific fitness and skills. The components of fitness need to be specifically dealt with and combined with the skills of the game and the techniques of running".

Will you agree with that as a general approach? A. Yes.

Q. And that is acceptable to you I take it? A. Yes.

Q. "It will comprise six to eight weeks of graded work resulting in the player being confident to play trials with little chance of injury during this early stage of the season" 20

Will you agree with that? A. That is basically fundamentally right.

Q. Fundamentally right? A. Yes.

Q. I want you to pay particular attention to this next sentence:

"A fallacy exists in the statement that the player needs to reach his peak of fitness at the middle of the competitive season. For the following reasons this approach could be disastrous". 30

Now you would disagree with that, would you not? A. To a point, yes.

Q. Totally, wouldn't you? A. No. I said one third of the way through the season. Not halfway.

Q. After about nine matches you put it? A. Yes, eight to nine matches.

Q. Eight or nine matches, and of course, halfway through the season and using the phrase in this manual "Middle of the competitive season" would be 11 matches, wouldn't it?

A. About that. 40

Q. Well, that is right, isn't it? A. Yes.

Q. And what I suggest to you that what is being said in this passage of the coaching manual which you helped to write in the clearest of terms is dead against the approach which you were then adopting with the Manly team and its preparation,

would you agree with that (Objected to; allowed) A. No, I don't agree with that.

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Q. Because your approach was to have them at 80 percent fitness by the end of the 5th match, wasn't it? A. That is right.

Q. And they were not going to get one hundred percent fit under your scheme until the 8th or 9th match? A. That is right. 10

Q. Not too far away from being the middle of the competitive season is it really? A fortnight? A. No. That book is written --

Q. No, no. It is not too far away, the eighth or ninth match is not too far away from the middle of the competitive season is it? A. No.

Q. In which case your philosophy and the approach that you adopted was one which aimed to get the player reaching his peak of fitness close to the middle of the competitive season, wasn't it? That must be right? A. No, a third of the way through the competitive season. 20

Q. But that is not right? Half is 11 isn't it? By the 11th match they are halfway through the season, aren't they?

HIS HONOUR: Q. That is so, is it not? A. Yes.

MR. NICHOLAS: Q. Well, the 8th or 9th match is not a third of the way through the season is it? A. Yes. The 8th match is a third of the way through the season. 7 to 8 matches.

Q. That is the way you deal with my question is it? You see, this manual, and I gather you contributed to it, says in the clearest of terms a fallacy, a mistake, exists in the statement that the player needs to reach his peak of fitness at the middle of the competitive season. For the following reasons this approach could be disastrous. You would agree with me that is putting it in strong terms, isn't it? A. Yes. 30

Q. Warning coaches not to leave their run until the middle of the season to get the teams fit, isn't it? A. Yes.

HIS HONOUR: Q. You say you do agree with that? A. I agree with what he is reading out of the manual. I agree with the manual. 40

Q. You agree with that; do you follow it? A. I follow what he is saying. I agree I follow what he is saying.

Q. You follow that instruction? A. No.

MR. NICHOLAS: Q. You don't follow that instruction at all? A. No. I said one third of the way through the season which would be the 7th or 8th game.

Q. You are really saying "Look, it is a matter for judgment for the coach or the trainer"? A. Yes.

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Q. So you would disagree, and that is all I am seeking to get, with the manual when it says in the clearest of terms that a fallacy exists in the statement that the player needs to reach his peak of fitness at the middle of the competitive season. For the following reasons this approach could be disastrous. Disastrous to get there at that stage. You disagree with that, don't you? A. No, I don't disagree with that. I disagree with your point. 10

Q. You don't agree with it, do you? A. I don't?

Q. You don't agree with it, do you? A. I don't agree with you. Not the book. You.

Q. In your own training programme you do not get the men fit until they are into the 8th or 9th match? A. No. I said one third of the way through the season and it is the worst at the 8th match. 20

Q. Now, you qualify. Before you said the 9th match?

A. No I didn't.

Q. You are coming back - A. No, you said the 9th match. I said the 8th match.

Q. And I suggest to you not very long ago you said the 8th or 9th match? A. Well, if you divide the season by three --

Q. No, I was going back to your answer in cross-examination a few moments ago which was the 8th or 9th match, you said you were aiming to get them fit for, wasn't it? A. I said one third of the way through the season. 30

Q. You remember a big distinction between a third of the season whether it be the 7th, 8th or 9th match? A. Yes.

Q. And the middle, two matches later? A. Yes.

Q. A big distinction? A fortnight between them? A. No, a month. That is a long time.

Q. Would you agree with this, that the manual then having distinguished pre-season competition then goes on to deal with the competitive season at page 58: 40

"During this period of time the coach plays an important role in maintaining harmony and will see the necessity for variation of the approach to fitness. At this stage the player should be close to his top level of fitness so that the emphasis in training will not be on maintaining this standard but shift to a greater development of tactics with more emphasis on skills

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and team training. To maintain the endurance of fitness of individual players keep in mind the benefits of speed work and interval running".

What do you say about that? Does that accord with your approach? A. That is basically, fundamentally that is right.

Q. It can't be, can it? 10

HIS HONOUR: Q. The question is, does that accord with your approach? A. Yes, well, basically, yes.

Q. You claim to follow that? A. I think I do.

Q. You claim to follow that? A. Can I have it again?

MR. NICHOLAS: Q. It is talking about the competitive season as opposed to the pre-season. Do you understand that? A. Yes.

Q. I have put to you as page 58 dealing with the competitive season, right? A. Yes.

Q. And the competitive season you would understand, again being a contributor to this manual, that that relates to the competitive season, right? A. Yes. 20

Q. I will read it again:

"During this period of time the coach plays an important role in maintaining harmony and will see the necessity for variation of the approach to fitness. At this stage the player should be close to his top level of fitness so that the emphasis in training will not be on maintaining this standard but shift to a greater development of tactics with more emphasis on skills and team training"

That is what is said in the book? A. Yes. 30

Q. Does that accord with your particular approach during 1981 until April 1981? A. Yes.

Q. It does does it? Now, how can that be so when you have already told us that by the end of the 5th match in the competitive season your people are only 80 percent fit? How does that accord with the proposition in the manual that at this stage the player should be close to his top level of his fitness? A. He is. He is 80 percent fit.

Q. He is 80 percent fit under your scheme by the end of the 5th match? A. Yes. 40

Q. With 20 percent more to go? A. Yes.
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Q. And you are putting to his Honour and this jury that at that point of time into the season, five matches 80 percent fit, that he is close to his top level of fitness. That can't be right, can it? Can it? A. Yes.

Q. You are serious about that, are you? A. Yes. If a man is 80 percent, that is where you would want him. He can't maintain a fitness for a whole year. The manual is written for school children - 10

HIS HONOUR: You are not asked about that.

MR. NICHOLAS: Q. But the object is, isn't it, to have those people fit for the first competition match so that thereafter you top them up as it were? You don't drive them into the ground, you top them up so that they are fresh and fit for the remaining matches. That is how it should be shouldn't it? A. I would like to think on that.

Q. Well, -- A. I would like to think it was that easy. 20

Q. I am not suggesting it is easy for one moment, but that is the desired result, isn't it? A. Probably the desired -

Q. And that is what this book is saying, isn't it? A. Yes. It is the desired result in the book.

Q. That is what the book is saying? A. Yes, in the book.

Q. And the book to which you have contributed, that is what it is saying? A. Yes.

Q. That is not what you have been practicing is it? A. Yes.

Q. Come now Mr. Austin, that is not what you were practicing, is it, when you were aiming to get your men fit by the 8th or 9th match, by the end of the 5th match they were 80 percent fit. That is not in accordance with what the book says, is it? A. It is not too far away from it. 30

Q. It is not in accordance with it, is it? A. It probably isn't.

Q. It probably isn't. You know jolly well it is not, don't you? A. But it isn't very far away from it.

(Pages 57 and 58 of coaching manual m.f.i. 6)

Q. And I suppose if it does nothing else your view about how to get the people fit and when and a consideration of what is said in the Rugby League Coaching Manual just indicates how widely divergent views might be as to how to get to that Premiership win objective, doesn't it? A. Yes. 40

Q. And of course this whole training question is one in which people have strongly held but very different views, don't they? A. Yes, I suppose so.

Q. And the reasons for teams losing matches, whether or not they are prepared properly and so on, whether or not trainers are doing their job, is a matter which you as a trainer know to be the weekly subject of debate argument and controversy?

A. Yes.

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Q. And that is what you expect to be involved in as a trainer of a top line rugby league team, don't you? A. Fair criticism, yes.

Q. After this article was published, you continued on with Manly as its trainer/conditioner, didn't you? A. Yes.

Q. Continued on implementing your programme? A. Yes.

Q. And you continued on throughout 1982 doing just the same thing, did you not? A. Yes.

Q. With the Manly side? A. Yes.

RE-EXAMINATION

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MR. NEIL: Q. My learned friend asked you did you have different views as to the reasons for the losses that the Manly team had early in 1981 and I think you said you did have different views. What are the reasons for the losses (Objected to; pressed; allowed)

Q. What were your views as to the reasons for the losses?

A. In one game we had two broken legs which you can't do much about and that was the day we were beaten by Newtown.

HIS HONOUR: Q. By that you mean broken legs by your players?

A. Two of our players broke legs. Two of our international players broke legs, which didn't help our cause. Against Penrith, they beat us fair and square, and the other game was won by the odd point. 30

MR. NEIL: Q. Of course did the other teams have anything to do with Manly losing? A. Yes. They like winning too. Newtown incidentally, if I may, Newtown that year were grand finalists (Objected to).

Q. My learned friend asked you some questions about a book that relates to Level 2, Grade III (Advanced) Coaching Course. What level is that? What does that mean Level 2, Grade III (Advanced)? Firstly, how many levels are there? A. There are 3 levels. Level 3, Grade II is about 2 from the bottom. It is a level for coaches which train kiddies and junior, kids that were here a minute ago, and junior teams. 40

Q. What is level 2 Grade III (Advanced) A. It is about 2 from the top. It would be for a coach who was going to train children under 16, under 17 type of thing.

Q. Is there any manual for first grade rugby league in Sydney? A. I don't think so. I think every first grade coach thinks he wrote the manual.

HIS HONOUR: Q. Is there any difference in principle between how you train kids or juniors and how you train grown men?

A. Very much so.

10

Q. You say there is a difference? A. Major difference.

Q. I am not talking about the difference in the skill, I am talking about the difference in principle as to when they reach fitness and so on? A. Major difference. Much less emphasis is placed on fitness in children and more on team spirit and harmony and ball skills. We want the kids to enjoy the game.

Q. Do you not want the first graders to enjoy the game too?

A. Oh yes. I think they do. The first graders, if they make it, but I think it plays a child's character to be involved -

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MR. NEIL: Q. My learned friend asked you about the parts of the article that you said were untrue. He asked you about the three years at Manly and he said he would come back and ask you about the other parts that were untrue, but I don't think he did. Would you look at the article (shown) A. Yes. (Objected to)

Q. Do you still say the parts that you told his Honour and the members of the jury were not true -- (Objected to; rejected.)

30

Q. Did you understand any of Mr. Nicholas' questions to involve the suggestion to you that you trained the Manly Rugby League team in an incompetent manner (Objected to; pressed; rejected).

Q. I think you told my friend you did conduct some investigation after these losses in April and just before the article to see if there were any problems with the physical condition of the team, is that right? A. Yes.

Q. Did you find anything wrong with the physical conditioning of the team when you conducted your investigation? A. I felt that two or three of the players were not quite fit enough. In spite of Mr. Casey I felt they were not quite fit enough at that time. They were new players we bought that year.

40

Q. Did you find any players overtrained at that time?

A. No.

(Witness retired)

MAXIM JACK KRILICH
Sworn and examined

MR. NEIL: Q. Is your full name Maxim Jack Krilich?
A. That is correct.

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Q. Do you live at 26 Kywong Road, Elanora Heights? 10
A. Correct.

Q. You are a plumber and a professional footballer by occupa-
tions, is that correct? A. Yes, that is right.

Q. I think you have been with the Manly Warringah Rugby
League Team since when? A. 1969.

Q. During periods of your service with the club have you
been the captain of the team? A. Yes for approximately 5 years.

Q. And have you also played for Sydney teams? A. Sydney
and New South Wales, and Australia.

Q. How many times have you represented Australia? A. It is 20
thirteen times.

Q. Were you captain of the recent touring team overseas?
A. That is right, yes.

Q. I think that was the most successful touring team we have
sent away is that correct? A. Well, yes it was. On perfor-
mance.

Q. Your position is that of hooker? A. That is right.

Q. Do you know Mr. Reg. Austin who is before the court?
A. Yes.

Q. When did you first meet Mr. Austin? A. In 1978 I would 30
say it was.

Q. What was his role, I think he was a trainer of the club?
A. A trainer, that is right. Trainer/conditioner.

Q. Have you seen him involved as a trainer with any of the
representative teams you have been involved in? A. Yes.
He trained myself, I think, in the civic games and New South
Wales games and Australian teams as well.

Q. Have you observed him when he has carried out his train-
ing? A. Oh yes.

Q. Have you worked under other trainers? A. Yes. 40

Q. The team in 1978 and 1979 and I think 1981 had Mr. Austin
as the trainer, is that correct? A. That is correct, yes.

Q. 1978 and 1979 Mr. Stanton was the coach? A. That is right.

Q. And 1981 Mr. Ritchie? A. That is correct.

Q. On what nights of the week did you observe Mr. Austin involved with training of the teams, firstly in 1978? A. In 1978 the usual procedure would be a Tuesday night, a Thursday night and a Friday night. 10

Q. Was Mr. Austin always involved on all of those nights?
A. Well, I would say 90 percent, yes.

Q. Was any night longer or harder than any other particular night? A. Tuesday night was the hard night.

75 M.J. Krilich. x

Q. For about how long on a Tuesday night would he have the team? A. Well, it was in the vicinity between, it is very rough to say but it is between, say, an hour and a half or two hours, or an hour and two hours. 20

Q. Did that include the whole of the night's training?
A. That included the whole of the night's training.

Q. What part of it would be directed by Mr. Austin as against directed by the coach? A. Well, the coach tried to stay out of it, particularly when in 1978, and Reg. used to do most of the training.

Q. Now on a Thursday night how much would Mr. Austin be involved in 1978? A. 20 minutes to half an hour, if that.

Q. Is there any particular specialty that Mr. Austin concentrated on when training? A. Well yes. It was sprint work of course, you know. Your style, particularly to make you run faster. That was his profession, and to make us run faster. 30

Q. What did you observe as to Mr. Austin's competence or otherwise as a trainer (Objected to; pressed; allowed)?
A. Well, his competence I found him to my way of liking because he used, he taught me at a stage how to run better and that is what I found very good, for me at my age, being made to run faster.

Q. (Ex. A 1 shown) Would you look at that article. I would direct your mind to the second paragraph that states: 40

".... that something is radically wrong with the preparation of major teams with undeniably talented players".

There are three teams mentioned. The article was written, you will see from the bottom of the newspaper, 26th April 1981. Was there anything radically wrong with the preparation of the Manly team at that time? A. Well, in my way of thinking,

no. But of course I enjoyed the Tuesday nights, because it gets --

HIS HONOUR: Q. You are just asked you say there was nothing radically wrong to your way of thinking? A. No, I would not think so.

MR. NEIL: Q. If you look further down it says Mr. Casey believed that Sydney's top teams were being trained into the ground. Was your team being trained into the ground at that time? A. I would say no. 10

Q. If I took you back to 1978, were you trained into the ground? A. Oh no. No way in the world.

Q. 1979? A. No.

Q. I think the team won the Premiership in 1978; was there any particular reason that related to Mr. Austin for that? A. Well, I would say when we won the competition we were placed in a position where no-one expected us to win because of our heavy programme and we used to get to training and Mr. Austin 20

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was on a very light preparation in that semi final series and people were amazed at our good -- (Objected to).

Q. You say at the time of the semi finals his preparation was light? A. Very light, yes.

Q. Did that contribute to the success of the team? A. Yes.

Q. What about 1979? A. Well, it was the same procedure as in 1978. Exactly the same. 30

Q. The results were not as good but the same procedure, is that right? A. Exactly.

Q. Was there a gradation of training throughout the year, hard sometimes not so hard at other times? A. Yes. Hard sometimes, and sometimes hardly anything at all.

Q. If you compared the beginning with the end of the year, what was the gradation of the level of the training? A. Well, the beginning of the year has always been very hard and towards the end you taper right off.

Q. If you see par. 4 there is a statement, it talks about conditioners who have "Somehow hoodwinked coaches into believing that on top of a gruelling 80 minute match 3 nights of tortuous conditioning are also needed". Did Mr. Austin ever give you and the team 3 nights of tortuous conditioning? A. No. 40

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MR. NEIL: Q. Then there is the paragraph in the third column under the word "fault": "Manly has persisted for the past three years with the physical regimentation of its players by a fitness fanatic named Reg Austin". Was the training programme the same every night or different? A. No, there would be a range to keep you interested in the training. 10

Q. A varied programme? A. A varied programme.

Q. Would you describe it in any way as regimented? A. No, not at all.

Q. Then there is the paragraph at the beginning of the right-hand column "But since Austin has taken over the conditioning of Manly, the records show it has gone from being a great side to being a tattered band of former champions". Were there champions in the team in April 1981? A. Yes.

Q. How many? A. Well, it is very hard to say.

HIS HONOUR: Q. I suppose you would say the whole 13, would you? A. Yes, of course. 20

MR. NEIL: Q. Were you still champions then? A. No, we weren't the champions then.

Q. But as individuals, were you still champion players?
A. Yes, I think so.

Q. Then there is a statement, I think par. 13, in about the centre of the right-hand column suggesting that Mr. Austin had told an international footballer to do another six 400 metre sprints as some kind of penance. Did he ever give you any kind of penance? (Objected to; question withdrawn) 30

Q. Were you captain in 1978? A. Yes.

Q. Have you ever seen an international player given penance by Mr. Austin? A. No. Well, yes, you did get a certain amount but not that.

Q. Why do you say "not that"? A. Well, no-one would ask you to do something like that.

Q. What would happen? What would Mr. Austin do if a player was not up to the mark in his fitness? A. Well, he might ask him, say, to do a little bit extra by himself, to push himself in his own time and do training maybe. 40

HIS HONOUR: Q. You mean on that night or after he left the ground? A. In his own time, if he wanted to stay in the side.

Q. You mean at home or somewhere else? A. Yes, "look after yourself". You might have to look after yourself a bit better or something of that nature.

Q. The Manly team at the time this article was written had

played five games in 1981, - they had won the first two and lost the next three. Were any of those losses attributable to anything you observed about the training methods of Mr. Austin? A. Well, now that is three years ago, two years ago, 10 and it is very hard to say

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exactly what I thought. The only person you can blame is the players themselves.

Q. Did you see anything about the activities of Mr. Austin that indicated to you that he should be sacked? A. No, not at all.

CROSS-EXAMINATION

MR. NICHOLAS: Q. The only persons you can blame, you loyally say to Mr. Austin, understandably, are the players themselves, 20 is that right, for the losses? A. Yes.

Q. That is how you put it? A. Yes.

Q. Of course, it gets down to the individual performances of a player on the field in a particular match, doesn't it?

A. That's right.

Q. One thing is for sure that by the end of the fifth match in 1981, with three losses in a row, there is something astray with the performances, is there not? A. Yes.

Q. And you, in fairness, as the captain of the team, would be the first to say so wouldn't you? A. Yes. 30

Q. The real thing that was astray in the team's performance to that point of time in the competition related to the preparation and training of the individual members, didn't it?

A. Are you saying ... could you rephrase that again, I'm sorry?

Q. The real thing that was astray related to the preparation and training of the individual players who made up the team, didn't it? A. I don't think that was astray, no. We would have been training as a team all the time.

Q. Yes, but let me put it this way: You agreed with me 40 that something was astray or you would not have got those results, would you? A. We were not performing on the field as a team.

Q. You were not performing as a team? A. Correct.

Q. And the team is made up of individuals, isn't it? A. Yes.

Q. And some individuals were not performing as expected,

were they? A. They were not performing as a team member.

Q. And indeed there were various reasons why a particular individual was not performing up to the mark, wasn't there?

A. I would say so.

Q. You would agree with that, would you not? A. There is always a reason, yes. 10

Q. That is so, there is always a reason is there not?

A. Yes.

Q. I suggest to you that in some cases one of the possible reasons was a particular player's attitude towards the game on the particular day? A. That is always a chance, yes.

Q. He was not driving himself as hard as he might? A. Yes, that is always on.

Q. That is always on? A. Yes.

80. M.J. Krilich x, xx 20

Q. That is a mental thing on one side of things? A. Yes.

Q. And there is a physical explanation too, in some cases, is there not? A. Well, he might have an injury.

Q. Exactly; he might have an injury? A. Yes.

Q. And he may be tired, might he not? A. Not at that time of the year. Tired physically or tired mentally?

Q. Physically? A. Physically? If he had an injury he should not have been playing on that weekend.

Q. Exactly. If he had an injury he would not have been fit to go on the field? A. Well, it depends on the extent of the injury. 30

Q. If he had an injury which impaired his performance on the field in a match, it would normally indicate that he should not have gone on? A. He shouldn't have gone on.

Q. And he wouldn't have been on the field, would he?
A. Well, if he had a broken leg or something he shouldn't have gone on. Some people try and get away with anything.

Q. Of course, this was at the early part of the season, wasn't it? A. Sure.

Q. It was during the early part of the season, the pre-season work? A. Yes. 40

Q. When the training is at its hardest, isn't it? A. Yes.

Q. Because the object is to get the players match-fit?
A. Match-fit, that's right.

Q. Ready to start the competition, fit? A. Well, match-
fitness makes you fit for the games and the matches get you
actually fit but your training helps you along that way. 10

Q. You would not suggest that you at that period of time
would be running onto the field, at the start of the compe-
tition, other than 100 percent fit, would you? A. Well,
hopefully, but I don't think you are 100 percent fit until
after a few games.

Q. But certainly by the fifth match you ought to be 100 per-
cent fit, shouldn't you? A. You would be match-fit, yes.

Q. I suppose that the training programme leading up to the
commencement of the competition season would be a hard one,
would it? A. It is quite hard. It has to be. 20

Q. It has to be, doesn't it? A. Yes.

Q. And no doubt the burden of the training requirements
would affect individual players differently? A. Well,
individually, yes.

Q. That must be so, must it not? A. Yes. The same with
everything, yes.

Q. That's right. Some players can handle the hard training
programme differently to others? A. Yes, I would say.

81. M.J. Krilich xx

Q. In the initial stages, this is in the pre-season stage,
to get fit for the competition, some players you would expect,
in your experience, to feel the weight of what is required
of them in that pre-season lead-up? A. Well, yes, you would. 30

Q. Some of them would get fatigued; some of them would?
A. I do not think they do particularly, no.

Q. But some do, don't they? A. Well, of course, some do.

Q. So that when they go onto the field to play these first
couple of competition matches you would expect, would you not,
some of the individuals - not all of them but some of them -
to become fatigued during the course of the game because they
are not fully fit? A. Any person who went on to the football
field and did not get fatigued isn't doing a good job. 40

Q. Exactly, and that is, of course, what happened in some
of these earlier matches? They weren't doing the work to the
fullest extent? A. Well, it is hard to say.

Q. But you were the captain when you were playing? A. Yes,

but it might have been our teamwork that wasn't up to scratch.

Q. But, of course, the teamwork - and you know very well, don't you, and I think you answered my question a little earlier this afternoon - some of the individuals, and do not worry I am not pointing the finger at any particular named players? A. I hope it's not me. 10

Q. There will be no names, Mr. Krilich. No packdrills. But some of the individuals were not performing up to the standard that you as their captain expected them to perform at that stage? A. Well, individually, in individual games it is possibly right.

Q. It is right of Manly to 26th April 1981, is it not?
A. They might not have had good games on that particular day, yes.

Q. Yes, that is what I am coming to. Some of the players did not have good games on the particular day and that would have contributed to the failure of the team to win? A. Of course it must have, yes. 20

Q. What I am suggesting to you is that a possible reason for that lack of performance was that an individual player was still suffering from the effects of the pre-season training programme so that he was still fatigued or stale? A. I doubt that very much.

Q. You doubt that but it would be possible, wouldn't it?
A. I wouldn't think so. You would be jumping out of your skin at this time of the year. 30

Q. But you have already agreed with me that some of the players were not performing up to scratch? A. Yes, but it is like everything; you can't play well in every game you play in. Say, if you are playing cricket you don't always bowl well or you don't always bat well.

Q. It is a contributing factor - not the only one but a contributing factor - the lack of performance on a particular day may very well be of physical tiredness, might it not?
A. Not at this time of the year, no. 40

82. M.J. Krilich xx

Q. You would rule that out, would you? A. Right out.

Q. You say, would you, that by the fifth match of the competition back in 1981 - and you had had three losses in a row - it just could not be that one of the contributing factors for the individual player's lack of performance would be that he was physically tired? A. No, not at all.

Q. You say you would rule that right out, do you? A. Yes, right out.

Q. And similarly you would rule out the suggestion that his mental attitude may not have been right? A. Well, who knows what the mental attitude of a certain player is on the football field?

Q. Exactly. You wouldn't know about that, would you? A. No. 10

Q. Nor, indeed, would you know about the particular physical capacity of an individual, would you? A. You would know about the physical capacity of an individual player.

Q. How would you know that? A. We all have a meeting and we know what injuries each other has got.

Q. I am not talking about injuries, I am talking about fatigue? A. You would not have fatigue.

Q. Why would you not have fatigue? Why would you rule that out? A. Well, at this time of the year, honestly, it doesn't matter how hot it is or anything, you don't get fatigued. 20

Q. You don't? A. Well, you might at the end of the game but it is not going to rule against you.

Q. Is that your view, quite seriously? No matter how hot it is at this time of the year you do not get fatigued?

A. Well, yes, you get fatigued of course.

Q. What about last weekend? There were a few fatigued people around at that stage? A. I personally enjoy playing in the heat.

Q. But what about the other 25 or 26, or whatever the number is, on the field? Do they enjoy it to the same extent? A. I would say that they possibly didn't. 30

Q. Well, we know a lot of them didn't; a lot of them needed medical attention? A. Yes, and a lot of guys like the publicity too, you know.

Q. What, having that bucket of ice cubes tipped over them, is that what you mean? A. They like to be shown to be heroes all the time.

Q. You tell this jury, do you, that in your view there would be no possibility for suggestion that a contributing factor to an individual's lack of performance in the team which was resulting in a succession of losses - where something was going astray - may very well be because that individual during the course of that match became physically stale? A. I wouldn't think so, not at that time of the year. 40

Q. It would be open to doubt though, wouldn't it? A. It depends if you are calling it mental staleness.

Q. No, I said physical staleness? A. Physical staleness, no.

Q. You would not rule it right out, would you? A. No.
Well, it depends on the situation.

Q. Of course it does. It depends on the individual, doesn't
it? A. On the individual, yes. 10

Q. And it gets back to what we were saying a few moments ago
that an individual will handle a training programme differently
to the next bloke? A. Everyone does, yes.

Q. Of course. So somebody may become overtired and others
may not be affected at all? A. You all become tired at
training.

Q. You all become tired? A. On a Tuesday night, yes. I do,
personally.

Q. Certainly. Sometimes some individuals and not others can
be expected to manifest that tiredness during the course of
their performance in the match at the end of the week; that
happens doesn't it? A. What do you mean by that, I'm sorry? 20

Q. It demonstrates, by some lack of performance, that that
may be very well the result of them being tired? A. Not fit.
Tired, no, I don't think so.

Q. Well, not fit. I will use your term? A. Not at that
time of the year. You are fit - you are match-fit after five
games but you are not going to lose a game because you are not
match-fit. I think it is teamwork.

Q. Could I ask you this: You as captain, back during the
time when Mr. Austin was training the men, was it your view
that as a matter of preparation, they should have reached
match-fitness by the commencement of the competition? A. No. 30

Q. When do you see them getting to the stage of being match-
fit? A. I would say you don't become match-fit for up to
half a dozen games at least. It still takes you quite a while.
It takes a while.

Q. But you are not suggesting you would be 80 percent fit
when you run on for the first match, would you? A. You are
as fit as your conditioner can make you. Only match-fitness 40
will make you fit for a match.

HIS HONOUR: Q. By match-fitness do you include the bumps?
A. Yes, that is the hardest part. That is the hardest part.

Q. That is not simulating it at training? A. No. You have
injury problems if you do that at training.

MR. NICHOLAS: Q. One other thing I wanted to ask you is
this: I think you talked to my friend about the 1978 result

when you won the Grand Final? A. That's right.

Q. And I think you went on to say, "No-one expected us to win because of the hard programme that we had had"? A. Yes.

Q. By that were you referring to the hard training programme you had had? A. Not at all. 10

Q. What were you referring to? You said, "No-one expected us to win because of the hard programme"; what did you mean by that? A. Well, I don't know if you follow rugby league but in 1978 we

84. M.J. Krilich xx

played an unprecedented number of games which have never been done before. We had to play-off twice in replays I think two days after the game we played on the Sunday and when we got to the final situation people didn't expect us to even be running but we were still running at that time. 20

Q. And they didn't expect you to still be running because you had had a fair bit of work, hadn't you? A. Yes, hard football, yes.

Q. Hard football? A. Yes.

Q. And a hard football season? A. Yes. It was the preparation - not the preparation - there was really a lot of games at that time of the year - semi-final time - and we had to play I think something like six games in 18 days or something - that's how it turned out, and that is one every three days which is unheard of. 30

Q. And it is unheard of because it is a truly exhausting programme? A. Yes.

Q. And people didn't expect you to win? A. No, that's right.

Q. Because they expected you all to be dead on your feet? A. Exactly.

Q. Exhausted? A. Exactly.

Q. And exhausted because you had been overworked, is that right? A. Overplayed, 40

Q. Overplayed, which is overworked - the same thing? A. Yes, that's right.

Q. Because, of course, hard rugby league can result in fatigue, can't it? A. Yes, that's right.

Q. It can result in exhaustion? A. That is correct.

Q. When you are taxing your bodies to the limit, time after time? A. Of course.

Q. And that brings about a staleness, doesn't it? A. Yes.

Q. Which brings about a lack of performance, doesn't it?
A. Yes. 10

Q. And that, of course, is what overwork in rugby league terms - overplaying, overtraining at any point in time - can result in; it can result in fatigue and staleness, can't it?
A. That's right.

Q. And fatigue and staleness can result in a poor performance in a match, can't it? A. Yes.

Q. One other thing, Mr. Krilich: My learned friend took you to the article and he read to you the paragraph: "I believe Sydney's top teams are being trained into the ground by over-zealous conditioners who have somehow hoodwinked coaches into believing that on top of a gruelling 80 minute match three nights of tortuous conditioning are also needed"?
A. That is right. 20

Q. These 80 minute matches, that is the time spent for a competition match, isn't it? A. Approximately 80 minutes.

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Q. And most of them would be gruelling, wouldn't they?
A. Quite hard, yes.

Q. Gruelling, I suggest to you? A. It depends on the situation of the game. They are all different. 30

Q. But they are pretty hard, are they not? A. They are hard work, yes.

Q. You do not understand "tortuous" to suggest torture or the inflicting of pain do you? A. Sorry?

Q. You see the word "tortuous" there? A. Yes, that's right, "tortuous conditioning".

Q. Tortuous does not mean anything to do with torture, does it, to your way of thinking? A. Torturing someone or somebody gets tortured, it is like with a spear or something, isn't it? 40

Q. You don't really know what tortuous means, do you?
A. Well, if you torture someone you are going to do them grievous bodily harm, aren't you?

Q. I am asking you. Do you know what the word "tortuous" means? A. I would say it is to hurt somebody. Is that the word?

Q. I am asking you? A. I would say tortuous means you are hurting someone.

Q. The final thing I wish to ask you is this: It was read to you from the article this: "But since Austin has taken over the conditioning of Manly the records show it has gone from being a great side to being a tattered band of former champions", right? A. Yes. 10

Q. You made it very clear to his Honour that in your view they are still a band of champions, right? A. Hopefully.

Q. And in 1978 they were in truth, in rugby league terms, real champions, weren't they? A. Yes.

Q. They had won the championship in the rigorous conditions you have told us about? A. Yes.

Q. In 1979 they were about seventh in the competition? A. I think it was sixth. 20

Q. Did you get to the finals? A. No.

Q. Similarly in 1981? A. About the same again. 1980? Did you miss a year then?

Q. I asked you about 1981? A. 1981, yes, I'm sorry.

Q. Because that is when Mr. Austin was there - in 1981? A. Yes, sure.

Q. What was the situation in 1980, just to complete the record, can you tell us that? A. We came sixth, I think it was.

Q. Sixth in 1979, and sixth in 1980, is that right? A. Well, I have played a thousand games, I can't remember. 30

Q. In any case you were somewhere down the ladder? A. In the middle somewhere, I remember that.

(No re-examination)

(Witness ret'd)

86. M.J. Krilich ret'd

ALLAN STEPHEN THOMPSON
Sworn and examined:

MR. NEIL: Q. Is your full name Allan Stephen Thompson?

A. That is correct.

Q. Do you reside at 53 Lantana Avenue, Collaroy Plateau?

A. Yes.

10

Q. Are you a salesman and also a professional footballer?

A. That is right.

Q. Are you a player with the Manly Warringah Rugby League Team? A. Yes.

Q. Have you at times, including I think last weekend, been the captain of the team? A. Yes, I have.

Q. Have you played also in representative matches? A. Yes, I have.

Q. For Sydney, New South Wales, and also for Australia?

A. Yes, that's right.

20

Q. How many times have you played for Australia? A. Eight tests, I think.

Q. Have you played under a number of coaches? A. I have played under a few, yes.

Q. Have you played under a number of trainers or conditioners?

A. Yes, probably several.

Q. Was one of those Mr. Reg Austin who is before the court?

A. Yes.

Q. How long have you known Mr. Austin? A. Probably since about 1978.

30

Q. I want to ask you about 1978, 1979 and 1981. Did you attend training sessions of the Manly Rugby League team in those years? A. Yes, I did.

Q. Did you come under the direction of Mr. Stanton and Mr. Ritchie as coaches in those years? A. Yes, that is correct.

Q. And Mr. Austin as the conditioner, underneath the coaches?

A. That's right.

Q. In the time that you have observed Mr. Austin in his role as trainer, what have you observed as to his competence or otherwise as a trainer? A. He is very good. He is mainly a sprint coach, not so much a conditioner as some of the other ones are. But he's very good and he is there as a sprint coach.

40

Q. I would like you to look at the article dated 27th April 1981. (witness shown Ex.A1) I direct your attention to the

second paragraph that suggests that as at that time there was something radically wrong with the preparation of the major teams, including Manly. Do you agree with the statement "something radically wrong with the preparation" of the team?
A. No, I don't think so.

Q. Further, the fourth paragraph where the statement says, amongst other things, that the teams were being trained into the ground. Firstly, were you being trained into the ground as of April 1981? A. No, I don't agree with that. 10
87. A.S. Thompson x

Q. Did you notice any other team members being trained into the ground? A. No.

Q. The paragraph continues, if you have a look at it, and says something about coaches being hoodwinked into believing that on top of a gruelling 80 minute match three nights of tortuous conditioning are also needed. Did you ever receive three nights of tortuous training from Mr. Austin? A. Not three nights. We might have one hard night, usually the first night of the week, but it is up to the particular coach to decide. It is up to him if it is going to be hard or to have an easy night. 20

Q. But Mr. Austin would then apply the coach's decision?
A. That was his job. He was under the coach; whatever the coach said it was his job to do it.

Q. There is the statement under the heading "fault": "Manly has persisted for the past three years with the physical regimentation of its players by a fitness fanatic". Was Mr. Austin's programme always the same or was it varied? A. No, it was pretty well varied because being rugby league, as a professional game, it is not always so much the physical side but it is the mental thing too. You just can't be doing the same thing; you would just go mentally stale. 30

Q. Would you say the word "regimentation" is the correct word to use in regard to Mr. Austin's methods? A. No, I wouldn't say regimentation. It is not my word there, no.

Q. Do you agree that regimentation is a description of Mr. Austin's methods? A. No. 40

Q. There is a paragraph questioning what is called the wisdom of Mr. Austin telling an international footballer to do another six 400 metre sprints as some kind of penance. Did Mr. Austin ever tell you to do another six 400 metre sprints?
A. As a penance?

Q. Well, as a penance? A. No.

Q. Has he ever asked you to do extra work? A. Extra work, no.

Q. Have you seen him ask other players to do extra work?
A. Not to my knowledge.

Q. There is a part which says, if you look at the top right-hand corner of the page: "But since Austin has taken over the conditioning of Manly the records show it has gone from being a great side to being a tattered band of former champions".
Would you agree that you were former champions as of April 1981? A. I certainly do not, no. 10

Q. Did the team still contain many champions at that time?
A. Well, there were good footballers playing for Manly at that stage.

Q. Shortly before the article was written, Manly had played five games that year and had won the first two but lost the next three; was there anything that you observed in 1981 about Mr. Austin's training methods that indicated that his methods had anything to do with the losses? A. No, I couldn't say that, no. 20

Q. What about in the years 1978 and 1979? As and when the team may have lost games did you observe anything about Mr. Austin's

88. A.S. Thompson x

activities which contributed to the losses? A. No.

Q. If you would look at the last paragraph, did you observe anything about Mr. Austin's methods that would indicate to you that he should be sacked or dismissed from the club? A. Well, it wasn't up to me anyway. I mean, I couldn't agree with that, no. 30

CROSS-EXAMINATION

MR. NICHOLAS: Q. Of course, the preparation of the team is one of the reasons why teams lose, isn't it? The lack of preparation? A. It must have something to do with it, yes.

Q. It must have a big part to do with it, must it not?
A. Yes.

Q. Of course, preparation consists partly of training, conditioning and skilled coaching, doesn't it? A. Yes. Ball skills, yes. 40

Q. Just on the training methods adopted by Mr. Austin while you were playing and he was the trainer, prior to this article being written, he would carry out his Tuesday, Thursday and Friday sessions with the team as a group, wouldn't he?
A. Usually, yes.

Q. And you were usually organised and trained by him as a team,

in a group? A. Not for the whole session, no.

Q. But for a large part of them, weren't you? A. Not necessarily.

Q. He was training the team, wasn't he? A. He was not training. He was the conditioner. He might do an hour or an hour and a half on a Tuesday and maybe half an hour only on a Friday. 10

Q. But during the time he was doing it, the team was with him as a group, wasn't it? You were all there, the members of the team? A. Yes, the team was there.

Q. And he would train you or condition you, whatever the word is, as a group? A. Yes, as a group.

Q. Of course, regimentation is a term used for training or organising as a group, isn't it? That is what regimentation means, doesn't it? Or don't you know? A. I can't agree with it being regimentation, no. 20

Q. You do not know that that is the meaning for regimentation? A. It is not what I think the meaning of regimentation is, no.

Q. In any event, whatever regimentation means, your team was being trained or conditioned by Mr. Austin as a group, wasn't it? A. As a group.

Q. I want to take you to the 1981 season. This article was written on 27th April 1981. I think my friend reminded you that at that time you had played five competition matches? 30
A. Yes.

Q. Of which the last three had been lost by Manly, correct?
A. Yes.

Q. Does that bring it back to you? A. Yes.

Q. Of course, during the pre-season training and conditioning, the team members, including yourself, were training very hard to get fit for the competition, weren't you? A. Is this before the competition?

89. A.S. Thompson x, xx

Q. Yes. Do you agree with that? A. Yes. 40

Q. And indeed that is what the pre-season period is for, to undertake a period of hard training to get you fit for the competition? A. That is right, yes.

Q. During this pre-season period the individuals, and I imagine yourself included, are pressing themselves to the limits to get fit? A. That's right, yes.

In the Supreme Court of New South
Wales, Common Law Division,
Plaintiff's Evidence,
5 (vii) A.S. Thompson, cross-
examination
(viii) A.S. Thompson, re-examination
(ix) R.J. Ritchie, examination

Q. Thus you enter the competition fit to engage in the pre-
miership matches? A. That's right, yes.

Q. Of course, you will be first to say, so I imagine, that 10
during the running of these competition matches you press
yourself to the limit to contribute to the performance of the
team? A. That is correct.

Q. These are gruelling matches, are they not, the competition
matches? A. Yes; hard.

Q. They are hard? A. Yes.

Q. These three losses that you had had within the first five
games of the competition of that year indicated, did they not,
that something radically or otherwise was wrong; something 20
was going astray, wasn't it? A. Well, yes, I would have to
agree with that.

Q. And that the main likely reason for something going wrong
was the state of preparation and training that the individual
members had achieved by that point of time? A. Preparation?

Q. Yes. A. Yes.

RE-EXAMINATION

MR. NEIL: Q. When you use the word "preparation", do you
mean that to include - (objected to; rejected)

Q. What do you mean by the word preparation in that last an- 30
swer you gave to my learned friend? A. Well, preparation is
not just conditioning, it is all skills, it is teamwork and it
is the mental thing as well. I just was not really sure that
that is what he was talking about; just the conditioning, or
was it the whole preparation?

(Witness ret'd)

RAYMOND JOSEPH RITCHIE
Sworn and examined:

MR. NEIL: Q. Is your full name Raymond Joseph Ritchie and do
you reside at 12 Oceanview Road, Harbord? A. Yes.

Q. You are a taxi driver? A. That's right. 40

(Witness stood down)

(His Honour gave the jury the usual warning)
(Further hearing adjourned to 10 am on Wednesday,
16th March 1983)

A.S. Thompson
90. R.J. Ritchie stood down

IN THE SUPREME COURT)
OF NEW SOUTH WALES) No. 12521 of 1981
COMMON LAW DIVISION)

CORAM: LUSHER, J.
AND a Jury of Four

AUSTIN v. MIRROR NEWSPAPERS LIMITED

10

THIRD DAY: WEDNESDAY, 16th March, 1983.

RAYMOND JOSEPH RITCHIE

On former oath

MR. NEIL: Q. Mr. Ritchie, in 1981 were you the coach of the Manly-Warringah Rugby League Football team? A. Yes.

Q. You yourself had been a former player, is that correct?
A. Correct.

Q. You represented Manly over many years in 1st grade football, is that correct? A. That is correct.

Q. You played for Australia in the World Cup in 1957, is that correct? A. That is correct. 20

Q. I think you had been a coach with Manly starting in about 1973, is that correct? A. About 1973, 1974, yes.

Q. You coached the lower grade teams before working up to coaching the 1st grade team in 1981, is that correct?
A. That is correct.

Q. Was Mr. Reg Austin the conditioner or trainer in 1981 of the team? A. Yes.

Q. Can you describe for his Honour and the members of the jury the relationship between the coach and the conditioner, as to functions? A. Well, Mr. Austin, the main purpose of me having Reg Austin was his ability to handle men and that he could get more speed out of men. He is a professional sprint runner himself and he was to get that extra yard out of the men which is so important in rugby league, to start over the first 20 or 30 yards. That was the main reason. The reputation that Reg had - (Objected to; rejected.) 30

Q. You need not tell us about that matter. Did you ask him to join the club? A. I asked Reg to join the club, yes.

Q. Could you just describe firstly what your function as coach was with the team? What does a coach do? A. Mine is to bring them together as a team, to get them fit, to get them fit to play the game of rugby league. 40

Q. Does that involve tactical matters? A. It involves a lot of tactical matters.

Q. Did Mr. Austin work under your directions? A. Mr. Austin did work under my directions.

Q. Did you have a close opportunity to observe him in the work he did with the team? A. No one could have had a closer opportunity. 10

Q. According to your observations was Mr. Austin a competent trainer? A. The most competent I have ever had.

HIS HONOUR: Q. The question is not is he the most competent, the question is is he a competent trainer? A. A very competent trainer.

MR. NEIL: Q. There has been evidence given about the hours which the team was coached. I think it was Tuesdays, Thursdays and sometimes Fridays, is that right? A. That is correct.

Q. Mr. Austin had the team for parts of those evenings, is that correct? A. That is correct. 20

Q. Would he have been under your directions during those times? A. That is correct.

Q. (Witness shown Ex.A1.) Would you look at the article which is before you and if you look at par.2 there is a statement which said that something was radically wrong with the preparation of major teams, including Manly. At the time of the article in April 1981, 27th April, 1981, would you agree there was something radically wrong with the preparation of the Manly team? A. No way. 30

Q. Paragraph 4 says that Mr. Casey believes that Sydney's top teams were being trained into the ground; was the Manly team trained into the ground at that time? A. No.

Q. It continues: "By over-zealous conditioners who have somehow hoodwinked coaches into believing that on top of a gruelling 80-minute match three nights of tortuous conditioning are also needed". Did the Manly team receive three nights of tortuous conditioning? A. No.

Q. How would you describe the conditioning that Mr. Austin provided to the team? A. Normal conditioning. 40

Q. There is a paragraph headed 'fault' and under that there is a statement that there has been physical regimentation of the players. Would you agree with that description of Mr. Austin's work? A. No.

Q. Was his work varied or what? A. It varied. We had a variety. We done it always the way I wanted it done. I asked Reg to do certain things and they were done the way I wanted them done.

Q. In par.10, in the top right-hand column it says that the side had gone to being a tattered band of former champions. As at April 1981 did the Manly team contain a number of champions? A. I am sorry, I was trying to find the paragraph.

Q. The top right-hand paragraph. Do you see that? A. Yes.

Q. Under the photograph? A. Yes. That's not right. 10

Q. Was the team a tattered band of former champions at that time? A. No they were not, no. Far from it.

Q. Were there still current champions in the team? A. In the team, a lot of them went on to play for Australia at a later date.

HIS HONOUR: Q. The point is at that time, not what they did later. At that time? A. They certainly weren't a tattered team of champions.

MR. NEIL: Q. Were there in April 1981 players in the team who had already played international football? A. Yes, there was in the team. 20

Q. If you go to the centre of the right-hand column, there is a paragraph with a statement about six 400-metre sprints as some kind of penance. Did you ever see Mr. Austin give any of the footballers extra sprints by way of any punishment or penance? A. Nothing was ever put on for any penance.

Q. Who would make the decision as to whether a player should have to undertake any additional work? A. I would.

Q. And would you communicate that to the player through Mr. Austin? A. I would. 30

Q. If I could just ask this: are six 400-metre sprints ordinarily something which you would do in normal training? A. Yes, very ordinary.

Q. If you go to the second last paragraph there is a reference to a grinding training programme. Was the training grinding? A. No, it was not grinding.

Q. How would you describe it, the training programme? A. It was normal to what I have been associated with and I have been associated with football since 1952 and trained under a lot of coaches, international coaches and club coaches and it was no different. No more harder than what was normal. 40

Q. The team as of that date, 27th April, 1981, had won the first two premierships round matches but had lost the next three? A. Yes.

Q. Was there anything about the activities of Mr. Austin that you noticed that indicated that he was responsible in any way for the performances? A. No, there wasn't.

Q. Are you able to give any reasons for these losses?
A. There could be a culmination of things; players not just 10
being on their game; dropped balls. There are just a culmina-
tion. In the game of rugby league this sort of thing can
happen. If I could go further and say we lost those three
games but I think later that year we won - (Objected to;
rejected.)

Q. Was the team at that time in the season undergoing a hard training programme? A. We were going along normally, as I say going along in the normal way. There was nothing harder about it. We were doing what I thought was the right thing, what I was sure was the right thing and what I thought was the 20 right thing and going along the best way I thought.

Q. Was there anything you noticed about Mr. Austin's activities that indicated to you that he should be sacked? A. No.

Q. Was there anything about his conduct that indicated to you that he was unfit to be the trainer of the team? A. Nothing.

CROSS EXAMINATION

MR. NICHOLAS: Q. So that I can understand it, Mr. Ritchie, Mr. Austin was engaged by you as a trainer and conditioner of the team, wasn't he? A. That is correct.

Q. His responsibilities were to train and condition the men, 30 to get them fit to hand over to you for coaching, wasn't it?
A. No, that is not exactly right. Reg was mainly brought to the club as a sprint man to try and get extra yardage on the men.

Q. Wasn't Mr. Austin's role at Manly as a person who could get footballers fit? A. Mr. Austin's main --

Q. Was that his role or not? A. No.

Q. It was not his role, is that what you are saying?
A. That is correct.

Q. It was not his role? A. It was shared. 40

HIS HONOUR: That is what he has said, Mr. Nicholas, as I understand his answer. He said it was not his role.

MR. NICHOLAS: Q. Was it part of his job as trainer to get them fit to play the game of football? A. Part of his job.

Q. What was the other part of his job? A. Sprinting. Mainly sprinting.

Q. But the two would go together; wouldn't they? A. I did most of the conditioning. His part was with the sprinting. That is what I wanted from Reg, that extra yard off the mark. The sprinting part was Mr. Austin's job, that was Reg Austin's job -

94. R.J. Ritchie, x.xx.

10

his main job; he had other jobs there but that was his main job. That is the main reason I asked for Reg to come to Manly.

Q. But the purpose for him being there was to contribute in getting the players fit overall, wasn't it? A. To contribute, but I was the main contributor for getting them fit.

HIS HONOUR: Q. Mr. Ritchie, what we are concerned with is what he did, not what you did? A. I am trying to explain that he was not the principal --

Q. We all understand that. We have to have some precision about these matters. The question is did he contribute to getting them fit? A. Yes. 20

MR. NICHOLAS: Q. It was part of his function, wasn't it, to draw your attention to whether or not a player should play football - if they had an injury, for example? A. No, not so much.

Q. Not at all do you suggest? A. In what way do you mean, I am sorry?

Q. I am suggesting to you it was part of his function to draw your attention, as the coach, to the existence of an injury in relation to any particular individual? A. We had physio- 30 therapists and that there.

Q. Was that part of Mr. Austin's function? A. No.

Q. Not at all? A. No.

Q. Not at all? A. No.

Q. I see. What part was it which you say he had in getting the men fit to play football? What were his duties, to be precise? A. His duties mainly were the sprinting and to put some variety into the training, through me. To give me some ideas and to give a variety, to bring variety into the training and that. That was the main part that Reg had in the training. 40

Q. Wasn't it the situation, for example - and I am talking about up until April 1981, in that period - on Tuesdays there was a training programme controlled by Mr. Austin, wasn't there? A. There was a training programme controlled by me on Tuesdays.

Q. May I take it from that that you gave the directions to Mr. Austin as to how the team should be trained? A. Yes.

Q. Mr. Austin then set about carrying out your directions -
is that how it worked? A. That is correct.

95. R.J. Ritchie, xx.

Q. And in carrying out your directions he would take the
team as a group and train them, wouldn't he? A. We would
break them up into groups, three groups.

10

Q. The first grade team would be broken up into three groups?
A. We had three grades of a Tuesday night.

Q. I am just asking you about what Mr. Austin was doing on a
typical Tuesday night. You would have a group of players,
would you not? A. Yes.

Q. He would have a group of players? A. Yes.

Q. And he would be training them as part of the fitness pro-
cess? A. That is right.

Q. And when you say that they were being trained under your
direction do you mean to convey you were the person in the club
ultimately responsible, as the coach, for the training pro-
gramme? A. That is correct.

20

Q. You were the captain and Mr. Austin was the lieutenant,
is that how it is? A. Yes, that's right.

Q. It was left to Mr. Austin's experience and discretion to
work out the particular programme that these players would be
put through under him on a Tuesday evening, wasn't it?

A. It was mainly left to me. I conveyed what sort of train-
ing programme I wanted.

HIS HONOUR: Q. Was it left to him? A. No.

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MR. NICHOLAS: A. So that we do understand it, did he have any
say in that at all? A. Oh, he had a say, yes.

Q. He had a big say, didn't he? A. I had the final say.

Q. You had the final say; you would override him, would you,
if there was a particular programme or series of exercises
which you disapproved of for one reason or another? A. Yes.

Q. Is that how it worked? A. Yes.

Q. But by and large you did not disapprove of the exercises
that he proposed to put the men through, did he? A. Depend-
ing on what they were.

40

Q. By and large you did not disapprove of them, did you?
A. No, not by and large.

Q. Can you think of any occasion when you did disapprove of
any exercises he proposed to put the men through? A. We
have had our differences.

Q. Can you think of any occasion when you came up to Mr. Austin and said, "Look, Reg, I don't want you to do it that way"? A. No.

96. R.J. Ritchie, xx.

Q. So what you are really telling us is that theoretically you had the authority to impose the programme that you saw fit to put the players through, if you wished? A. That is right. 10

Q. But as it turned out the matter in fact was left to Mr. Austin because you approved of the way he went about things? A. Well, no.

Q. You are not suggesting you did not approve of the way he went about things, are you? A. Could I just --

Q. You are not suggesting you did not approve of the way he went about things, are you? A. The way we went about things? We would have a discussion and I would say what we wanted and Reg would say what he wanted and if I agreed we went ahead that way. 20

Q. There is no occasion you can think of when you did not approve of the way he went about things? A. Reg and I have sat down and argued, where he has said 'No, I won't have that', or I have said, "We won't have that and we will do this and do that".

Q. But as it turned out it was pretty well left to him with your approval, wasn't it? A. I was always there. It was always up to me to organise and do everything.

Q. You could interfere if you wanted to but practically speaking it was left to him, wasn't it? A. It was always up to me with everything. 30

*Q. When the players were on the field on a Tuesday evening going through their paces, for the group that Mr. Austin was taking, he told them how to go about it and what to do and when to do it, didn't he? A. What we would do --

Q. Is the answer Yes or No? A. We would change --

Q. Is the answer Yes or No? (Objected to; question marked asterisk read.)

WITNESS: Yes. 40

MR. NICHOLAS: Q. On Tuesdays, for example, the pattern was that you would train from about 6 p.m. to 7.30 p.m. wouldn't you? A. Yes.

HIS HONOUR: Q. We are talking about the physical training as opposed to the ball work. Obviously you do understand the difference? A. Yes.

Q. That is what he is talking about, you do understand?
A. Yes.

MR. NICHOLAS: Q. Would it be a fair description to say that normally on a Tuesday night it was Mr. Austin's night and he would take over the players for at least 45 minutes to an hour and give them exercises and he would run them and do the things that he generally thought would get them fit. Is that a fair description of what happened on Tuesdays? A. It is a fair description that before Mr. Austin took the team to the field there was a discussion of what the training was going to be. 10
97. R.J. Ritchie, xx.

HIS HONOUR: Q. Would you be on the field while he put them through this training? A. Yes, all the time.

MR. NICHOLAS: Q. So subject to the qualification that you put, that you were the overall controller, as it were, is that a fair description of what Mr. Austin's activities were, on a Tuesday night? A. Yes.

Q. The players were under him for at least 45 minutes to an hour? A. That would be right. 20

Q. Right? A. Yes.

Q. Then would he hand them over to you to take over for the last bit of the training session on a Tuesday evening? A. Yes, that would be right.

Q. That is right, isn't it? A. Yes.

Q. There would be little doubt about it, would there not, that the Tuesday night session was an important training session in which Mr. Austin was involved? A. They were all important. 30

Q. But Tuesday was particularly so, wasn't it? A. No, not particularly, one from the other.

Q. It was about an hour and a half? A. Yes.

Q. Of which Mr. Austin had the players for 45 minutes to an hour? A. The times would vary. It would be less than that at other times.

Q. And could be more at other times? A. Never been more.

Q. Never been more than what? A. Never been more than an hour that we trained.

Q. Mr. Austin never had them for more than an hour or an hour and a half? A. As I said, his times varied. He could have them for 45 minutes and at other times for 50 minutes. It just varied over the season. 40

Q. I am talking about the season up till 26th April, 1981. Do you recall how many competition matches had been played up to that point of time? A. From the article I think there was five games.

Q. So you know where we are in relation to the season, OK?
A. Yes.

Q. What I am suggesting to you is that the Tuesday night programme could be fairly described as a hard training session under Mr. Austin, couldn't it? A. A hard training session, yes.

Q. And on Thursdays there was a training session involving Mr. Austin as well, wasn't there? A. Yes. Only at times. 10
98. R.J. Ritchie, xx.

Q. Only at times? A. Yes, that varied and depended on whether I would call Mr. Austin in or not.

Q. Wasn't it a typical Thursday night commitment directly involving Mr. Austin which went on for an hour or an hour and a half? A. No.

Q. You laugh at that. That is ridiculous, is it? A. On Thursday night we are getting ready for our game.

Q. Whether or not you are getting ready for your game would it be right to describe the overall sessions on Thursday nights as lasting between one and a half and two hours? A. Thursday night would be about an hour and a half. 20

Q. And two hours? Between one and a half and two hours?
A. No, it is an hour and a half, about an hour and a half.

HIS HONOUR: Q. Is that the total session in which the footballers are engaged or are you just talking about the physical part of it or the ball work? A. I am talking about the ball work and the physical part.

Q. The whole training programme? A. Yes. We would spend about an hour and a half in the physical part. We might go to two hours but in that time we would be sitting down and just doing a lot of talking. 30

MR. NICHOLAS: Q. How much of the one hour to an hour and a half, as you put it, was involved in physical activity?

HIS HONOUR: It is physical activity all the time Mr. Nicholas.

Q. The distinction we are making is between the exercise training, or the running training, as opposed to engaging in the activity of ball work or tactical methods or practising the game itself. Do you follow the distinction? A. I follow, but it is hard to define physical. We would break off and do something apart and then come back together. 40

MR. NICHOLAS: Q. Would it be fair to describe Mr. Austin's activities on a typical Thursday night as requiring him to train the men, condition them, for about thirty minutes on a Thursday? A. Mr. Austin would be very lucky if he got thirty minutes on Thursday night. Mainly it is the team work that I go into.

Q. What I have asked you is would it be an accurate

description that on a typical Thursday night he was engaged for thirty minutes training the men? That is for thirty minutes on a Thursday? A. No.

Q. Would that be accurate? A. No.
99. R.J. Ritchie, xx.

Q. It would be inaccurate, would it? 10

HIS HONOUR: He has said it is not accurate, Mr. Nicholas.

MR. NICHOLAS: Q. How would you put it? A. I believe that on Thursdays when I would ask him to come in on a Thursday night -

HIS HONOUR: Q. We are talking about up to April 1981?
A. Yes. I believe he probably got around about 20 minutes or so on Thursday night, considering we are into the fifth premiership game.

MR. NICHOLAS: Q. What about on Fridays? Would it be right to say that he would attend probably one in every three Friday nights? Would that be right? A. I would say about - I am trying to think back to the times when I needed Reg and if I was wondering they needed spring training or not and I would ask Reg to come in and finish the sprints off on Friday night. 20

Q. About one in every three Friday nights? A. It could be about one in two.

HIS HONOUR: Q. How long would that involve? A. The sprints?

Q. How long would all that involve? A. The sprints would involve no longer than a quarter of an hour.

MR. NICHOLAS: Q. The training sessions would take about an hour on a Friday night, an hour to an hour and a quarter? 30
A. I tried to keep it down to an hour if I could, yes.

Q. Of course, the aim of the trainer, the conditioner, and the coach was to get the players fit for the competition wasn't it? A. That is correct.

Q. So they would be fit to ultimately win the competition, that is the object, isn't it? A. That is the object.

Q. And it is important, is it not, to endeavour to win each competition match? A. Every game.

Q. And it is important that the players should be trained to a fitness to enable them to win the first competition match, isn't it? A. Every competition match. 40

Q. Yes, indeed, every competition match? A. Yes.

Q. So by the first competition match you would expect them to be one hundred percent fit, wouldn't you? A. It would

vary with different men, the way they have approached the training and that. I would expect them to be eighty percent, probably, hoping they would be one hundred percent but I think it is asking a bit much by then.

Q. But the aim of the coach with the responsibility such as you had would be to have those men one hundred percent fit by the first competition match, wouldn't it? A. As fit as I could get them, yes. 10

100. R.J. Ritchie, xx.

Q. As fit as you could get them? A. Yes.

Q. And of course, fitness depends very much on the individual, doesn't it, in the end? A. The player?

Q. Yes. A. It does. It depends a lot on the player.

Q. A lot on the player? A. Yes.

Q. And an individual player will respond differently to the particular training programme he is put through, won't he? A. Yes. 20

Q. And it is obvious to suggest, is it not, that in the pre-season training programme hard training is required of the team members; right? A. Right.

Q. To get them fit for these first matches? A. For all the matches.

Q. But the pre-season training sessions are hard ones, are they not? A. Training is hard all year, by any term.

Q. But in the pre-season part they are training particularly hard to get to a state of fitness to enter the competition, are they not? A. You are not playing any games early and when you start you start early in the competition and naturally you are not getting the knocks and bumps you need to get match fitness. 30

Q. But you have to work them hard to get them fit, haven't you? A. Yes, you have to, yes.

Q. And individual players will react differently to that hard work involved in pre-season training, won't they? A. That is in any sport.

Q. In any sport, isn't it? A. Yes. 40

Q. The principles of training in relation to getting players fit for the competition in rugby league do not differ from grade to grade, do they? A. No, they don't, each coach takes his side; I will take a squad and the third grade coach might take his squad and the training is done. It is very similar, yes.

- Q. The training is very similar, isn't it? A. Yes.
- Q. The approach to it is very similar? A. Yes.
- Q. And the object is the same? A. Yes.
- Q. To win matches? A. Yes.
- Q. Are you familiar with this book published by the Australian Rugby League called National Coaching Scheme Level 2 Grade III (Advanced) coaching certificate course? A. No. 10
101. R.J. Ritchie, xx.
- Q. Never seen it before? A. No.
- Q. You don't know anything about that at all? A. No.
- Q. As at 26th April, 1981, Manly had played five competition matches, had they not? A. Yes.
- Q. And they had lost the match on 26th April, do you recall?
A. Do you know who the game was against?
- Q. Yes, I will put it to you precisely. Was it Newtown?
A. Yes. 20
- Q. Do you recall them losing against Newtown 20 to 8 on 26th April? A. Yes.
- Q. (Witness shown m.f.i. 2.) If you would look at p.19 do you see there the table for the 1981 premiership? A. Yes.
- Q. Is it right to say that the first competition match on 29th March was against Western Suburbs and Manly won that match? A. Yes.
- Q. The next one was against Balmain on 5th April and Manly won that? A. Yes.
- Q. The third match was against Eastern Suburbs and Manly lost that 16 to 10, correct? A. Yes. 30
- Q. Next match was on the next week, on 18th April, against Penrith and Manly lost that 28 to 10, right? A. Correct.
- Q. The next was against Newtown on 26th April which they lost 20 to 8? A. Correct.
- Q. The succession of losses up to that point in time indicated to you that something was astray in the preparation of the team for the competition football at that stage? A. No, not in the preparation of the team, no.
- Q. It is true to say, isn't it, that some of the individual players were not performing to expectations? A. Yes. 40

Q. And as a result of their lack of performances matches were lost, correct? A. Correct.

Q. And it was part of your responsibility, as coach to investigate the reasons for those lack of performances, I suppose? A. Correct.

Q. And you did just that, I imagine? A. Yes. 10

Q. Pretty enthusiastically I suppose? A. No. I sat down and thought about it and I was pretty level-headed, the way I went about it, I think.

102. R.J. Ritchie, xx.

Q. I am not suggesting there is anything wrong with an enthusiastic approach to your job, Mr. Ritchie? I suppose there could be a number of explanations for a player's lack of performance on a day on which the team loses. A. Yes.

Q. Would there not be? A. Yes.

Q. And you as an experienced coach would expect there to be a number of possible explanations for that lack of performance? A. Yes. 20

Q. May I take it that the lack of performance in a player can be indicated by a number of things during the course of a match? A. Numerous.

Q. Numerous things? A. Yes.

Q. Missing tackles, would that be one of them? A. Yes.

Q. Would fumbling the ball be another? A. Yes.

Q. Failing to go the extra 3 or 4 yards to get to a point? A. Yes. Out of position; not getting back into position. Numerous things. 30

Q. Numerous ones? A. Yes.

Q. All of which require some effort on the part of the player if he is coming up to expectations, correct? A. Correct.

Q. A reason why a player might not be performing well may be because he is tired, might it not? A. No.

Q. No? A. No, I don't believe that, no.

Q. You don't believe that? A. No.

Q. You don't believe that a player would fail to perform well because he was fatigued? A. No. 40

Q. During the course of a match? A. No.

Q. You would regard that as a ridiculous suggestion, would

you? A. Yes. Look, on reflection - we are talking about these games, you are referring to these games, these games in particular?

Q. No, I am talking about in general terms at the moment.

A. Are we talking about these games here? Are we talking about these games here, like with Newtown or Rugby League in general? Some fellow might go out on to the field that I have no say over, that I am not coaching, he could be on the field tired and he could be tired, but I don't know. But it was no one in my team on that field tired.

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103. R.J. Ritchie, xx.

Q. Let us stick to the Manly team playing in these first five competition matches. You have already told us that some individuals in your team did not perform and their lack of performance contributed to the team's losses on these occasions, right? A. Yes.

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Q. You have agreed with me I think that there are a number of explanations as to why an individual would not perform?

A. Yes.

Q. I am suggesting to you that one of these explanations may very well be that he became fatigued or tired in a physical sense during the course of the match; would you agree with that or not? A. No.

Q. What explanations do you suggest may be available as to a player's lack of performance in these matters? A. Not applying himself, not going out in the right frame of mind, just having an off day. As I said before, not concentrating on his job. Missing tackles, dropping balls and as you have bad days these things can occur and they can react with the rest of the team.

30

HIS HONOUR: Q. Sometimes I suppose there are days where you can only do as well as the other team lets you? A. That's it. Spot on.

MR. NICHOLAS: Q. You have already told us that some of these individuals in your team were not performing well, have you not? A. I just didn't say they were, I said they had bad days. They dropped the ball and they missed tackles and that sort of thing. You could say they weren't performing well.

40

Q. I am suggesting to you that a possible reason for their lack of performance was that they were over-stressed? A. No.

Q. At that point of time? A. No, no way.

Q. No way? A. No.

Q. Are you familiar with the term 'stale' or 'staleness' used in the context of training? A. A player being stale, yes.

Q. What does it convey to you? A. Stale?

Q. Yes. A. Well, I have heard it said that if a man is over-trained he is stale.

Q. That is what it conveys to you? A. Yes.

Q. If you hear someone say that 'he is stale', speaking of a 1st grade rugby league player, it would suggest to you that he had been over-trained? A. I wouldn't say over-trained, he is just stale; sick of football or something like that. 10

104. R.J. Ritchie, xx.

Q. Didn't you say a moment ago that 'stale' means over-trained? A. I said it is an interpretation, it is a meaning. It is one meaning, in that way. It could mean like a stale piece of bread, stale like a bit of bread.

Q. You know we are talking about in the context of a 1st grade rugby league player, in the context of him becoming fit, don't you? A. Yes.

Q. And I think you have told us that stale, the term stale -- 20
A. Is a reference.

Q. Has the meaning of over-trained, correct? That is your understanding of the term? A. Yes, like I mentioned, yes.

Q. Over-training of course, brings about over-stressing, doesn't it? A. I wouldn't know. I don't think you can over-train.

Q. But you have heard people describe players as being stale, haven't you? A. I have heard people say that, yes.

Q. And I suppose you as the coach would be concerned to ensure that your players did not become stale, wouldn't you? 30
A. That is correct.

Q. Because you wouldn't want them to be over-trained, would you? A. No, I wouldn't.

Q. Because if they became stale through over-training it would impair their performances, wouldn't it? A. But we never got to the stage at that stage where we were going to become stale. We had only played five games.

Q. That is what I am asking you, if you would be good enough to listen to the question. You, as the coach, would be careful to see that your players did not become stale, wouldn't you? A. Yes. 40

Q. And you would guard against that, I take it? A. Yes.

Q. You guarded against them becoming over-trained? A. Yes.

Q. Because you know, don't you, that if they do become stale their performances will be impaired? A. Yes.

Q. And that would be a bad thing, wouldn't it? A. Yes.

Q. And if they do get to a stage where their performances in a match were impaired it would suggest that something had been wrong with their training programme, wouldn't it? A. Yes.

Q. And that would be something which would be unacceptable to you as a coach, wouldn't it? A. But we had -- 10

Q. Would you answer my question? A. But we had played only five games up to that time and you are talking about staleness.
105. R.J. Ritchie, xx.

HIS HONOUR: Q. He is putting this to you on the supposition that if this happened? A. Oh, if it happened? Theory?

MR. NICHOLAS: Q. Yes. Because if a player had become over-trained it would suggest that there was something wrong with his particular training programme, wouldn't it? A. I suppose so.

Q. Because he should never have been allowed to get into that state, should he? A. As I told you before, I don't go much along with this over-training, along this line. 20

Q. You have already told us you guarded against that happening, right, correct? A. Yes.

Q. What I am asking you is this, if a player was not performing well because he had become over-trained or stale, it would indicate that something was wrong with his training programme, wouldn't it? A. Possibly.

Q. That is the answer, isn't it? A. It is possible. I don't know whether it is the answer or not. It is possible. 30

Q. How would he become over-trained if something wasn't wrong with his training programme? A. Look, I told you before, I don't go along with this staleness part.

Q. It is something you watch for - over-training - isn't it?
A. Yes.

Q. You have agreed with me there would be something wrong with his training programme if he became over-trained? A. Yes.

Q. I think in your evidence a moment ago, to my learned friend, when he asked you about you observing Mr. Austin requiring players to do some sort of penance in the course of their training - do you remember him asking you that? A. Yes. 40

Q. Your answer was that you never saw that happen, wasn't it?
A. My answer was that no one ever done penance.

Q. They get put through a bit of extra work if they are not coming up to scratch, is that it? A. If I believed they need a bit more training, they will have an extra bit of

training. They will have what I see fit to give them and what I think is needed.

Q. Would you look at this document m.f.i. 5. Do you see that it is a copy of an article in the Sun-Herald 26th April, 1981? A. Yes.

Q. Do you remember reading that article? Just have a look at it? A. Can I read it? 10

Q. Yes, please do. Have you read that article? A. Yes.

Q. Back in April 1981 do you remember seeing that? A. No, I can't remember seeing it.

106. R.J. Ritchie, xx.

Q. You haven't seen it before? A. I possibly did but I can't remember seeing it.

Q. You see there in the fourth paragraph the words attributed to Mr. Austin in quotes? Do you see the paragraph beginning with, "They wanted to fight me ...". Do you see that passage there? A. I am trying to find it. 20

Q. Do you see the headline, the reference to 'Fatty Boyd'? A. Yes.

Q. "They still had enough breath left for another couple of laps which shut them up". Do you see that? A. Yes.

Q. If these players were given another couple of laps to shut them up because they had a bit of breath left, would that be the appropriate way of carrying on their training, in your view? A. I think it just shows good team spirit between the players and the trainer, having a bit of cheek there. I think it was said with tongue in mouth. Naturally it is a hard run and they have had a hard run but I think it is said in good spirits, a good team spirit. 30

Q. Of course, these jokes aside, requiring players to do a bit of extra work to get this extra breath out of them and to shut them up, that would not be consistent with sensible standards of training, would it? A. Well, plenty of blokes want to go home after half an hour or so --

Q. Putting extra work on them, just to shut them up?

A. Look, I think that was said in a joke -- 40

Q. I am asking you to forget the article and to put the jokes aside. To require a player or players to do extra work to get the breath out of them, to shut them up, would not be consistent with a proper approach to training, would it?

A. No, it wouldn't.

Q. These matches, these competition matches, they are 80 minutes in duration? A. Yes.

Q. They are hard matches, are they not? A. Yes.

Q. Gruelling matches, are they not? A. Yes they are.

(No re-examination.)

(Witness retd. & excused.)

LESLIE WILLIAM BOYD
Sworn and examined

MR. NEIL: Q. Is your full name Leslie William Boyd? A. It is. 10

Q. Do you reside at unit 4/397 Liverpool Road, Strathfield?

A. That's right.

107. R.J. Ritchie, retd.

L.W. Boyd, x.

Q. You are a sports promotions officer and a professional footballer? A. Yes.

Q. Have you played 1st grade rugby league for the Manly-Warringah Rugby League team since 1980? A. I have.

Q. Before that time did you play for the Western Suburbs Team? A. Yes. 20

Q. Did you play for the country as well? A. I have played for country teams, yes.

Q. Have you also played representative football for Sydney, New South Wales and Australia? A. I have.

Q. About how many times have you played for Australia?

A. I couldn't be sure but approximately eighteen times.

Q. You were a member of the recent Kangaroo touring team of England and France? A. I was.

Q. Have you played, in your early days, as a centre and for most of your career as a second row forward and sometimes as a front row forward? A. That is correct. 30

Q. Do you know Mr. Reg Austin? A. I do.

Q. Was he the trainer of the Manly-Warringah rugby league team in 1981 when you played with the club? A. Yes.

Q. Have you played under more than one trainer in your career? A. I have, yes.

Q. Did you have an opportunity to closely observe Mr. Austin's training methods? A. Yes I did.

Q. Was he a competent trainer? A. In my opinion, yes. 40

Q. (Witness shown Ex.A1.) I would like you to look at the

article which appeared in the Daily Mirror of 27th April, 1981, and I draw your attention to the second paragraph. At that time Manly had played five games, five competition games of which they had won the first two and lost the next three?
A. Yes.

Q. Do you see the phrase, "something is radically wrong with the preparation of major teams", which includes Manly? A. Yes. 10

Q. Do you agree there was something radically wrong with the preparation of the team? A. No I don't.

Q. If you would look at par.4, the statement that top teams were being trained into the ground. Were you yourself trained into the ground as at 27th April, 1981? A. No I wasn't.
108. L.W. Boyd, x.

Q. Did you see any other team members who could be described as trained into the ground? A. No.

Q. In the same paragraph there is a reference to three nights of tortuous conditioning? Did you ever receive three nights of tortuous conditioning? A. No we didn't. 20

Q. How would you describe the conditioning you received from Mr. Austin? A. Well, I would describe it as conditioning that was essential for us to play 1st grade rugby league.

Q. There there is a paragraph headed 'fault' and it refers to physical regimentation. Was there any variety in the training? A. Yes, our training consisted of a lot of variety.

Q. Would you describe it as regimented training? A. It all depends what regimented is, but we trained as a group but as such we had plenty of variety in our training. 30

Q. If you would look at the top right-hand column, the top paragraph there. Firstly, when did you first play for Australia? A. 1978.

Q. Did you go on the Kangaroo tour in 1978? A. Yes I did.

Q. As at April 1981 were you over the hill? A. I don't believe so, no.

Q. Are you still playing well? A. Yes.

Q. Are you able to agree that the side was a tattered band of former champions at that time? A. No. 40

Q. If you would look further down that column there is a paragraph with reference to 'six 400-metre sprints'? A. Yes.

Q. Firstly, I would ask you this: 400 metre sprints are they a usual part of your training programme? A. Very regular. I think all conditioners at some stage throughout the year give the players some kind of 400 metre sprint.

Q. Is six 400-metre sprints regular and acceptable? A. It is acceptable, yes, and it is fairly regular.

Q. Is it something you have done yourself? A. Yes, I have done it then and I have done it since then.

HIS HONOUR: Q. Do you mean as part of the night's work?

A. Yes, just a regular part of our training, nothing out of the usual. 10

Q. What about as an extra? A. I don't think it is put on anyone as an extra, it is something that is incorporated --

Q. I am talking about having done your training, having done your six sprints? A. It is not unusual.

109. L.W. Boyd, x.

Q. What about doing it again, another six 400-metre sprints?

A. Well, I think that would become a bit too much but it has never been, I have never been made to do 12 400-metre sprints. 20

MR. NEIL: Q. Have you ever been asked to do any extra 400-metre sprints as penance? A. No, never.

Q. Did you observe anything about Mr. Austin's training methods or programme or activities that indicated to you that he was unfit to be a trainer? A. No I didn't.

Q. Did you ever threaten to punch him? (Objected to; rejected.)

CROSS EXAMINATION

MR. NICHOLAS: Q. Mr. Boyd, by the time the article was written on 27th April, 1981, the team, as my learned friend put to you, had suffered three losses in a row, hadn't it? A. Yes. 30

Q. The team wasn't performing to expectation at that point of time, was it? A. Well, three losses in a row is not good for any team and I don't think it would be performing to expectations if it had three losses in a row.

Q. And that is what happened in this case, didn't it?
A. Yes.

Q. Would you agree with me the reason for that is that some individual players during the course of these matches - their performances were impaired in some way? A. Well, no, I wouldn't agree with that. I can't remember back that far but what I would say is that it was a combination of us not playing to the best of our ability and also the other teams playing to the best of their ability. 40

Q. A contributing factor to those losses would be that some or all of the members of the Manly team were not playing to the best of their ability? A. No, this is a matter of opinion, really.

Q. Of course, but in your opinion? A. No, I wouldn't say that. I would say possibly in different matches some of the players didn't play up to what they could but I wouldn't say that the majority were. It varied in every game.

Q. Is it fair to say that a contributing factor to these losses is the fact that some individual players on the day were 10 not performing up to expectation? A. That could have been a factor, yes. It could be some players didn't play as well as they could.

Q. Didn't play as well as they could? A. It is a possibility, yes.

Q. And by not playing as well as they could would suggest their performance was impaired or hampered in some way, wouldn't it? A. Not really. It may not be that.

110. L.W. Boyd. x. xx.

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It could mean that for some reason they may have been effectively contained by the opposition. It could mean anything.

Q. But they could still be contained by their opposition but nevertheless be giving of their best and playing as well as they could? A. Yes. I mean they may be giving of their best but maybe they weren't playing as well as they could. But this could be, as I said, for many reasons.

Q. They didn't reach the high standards they might have been able to reach? A. Yes.

Q. And their performance was lacking in some respects on the 30 day. That is so, isn't it? A. Well, that again depends, you know.

Q. I am putting to you from your observations and participation in these losing matches. You were there? A. Yes I was.

Q. It was your view that some individuals - and I won't be asking you to name them so don't worry about it. A. That's all right.

Q. Some individuals were not playing to expectations, were they? A. That is a possibility, yes.

Q. That is what you observed, isn't it? A. I would say 40 some players didn't play to the best of their ability.

Q. And that contributed to the losses? A. That is only natural, if the players do not play to the best of their ability.

Q. There could be a number of explanations for a player not playing to the best of his ability, could there not? A. Yes, that is right.

Q. One of the explanations could be his mental attitude on the day? A. That is right. That's certainly right.

Q. That's certainly right, isn't it? A. Yes.

Q. And another explanation could be some physical impairment?
A. That's right, it could be.

Q. Do you know the term 'stale'? A. Yes, I have. I know
what it means.

Q. What does it mean to you? A. It means that a player may 10
not have a mental and physical approach to the game. Maybe his
mental attitude to the game is not right and maybe his physi-
cal attitude to the game is not right.

Q. His physical performance, and no doubt his mental perfor-
mance, would be impaired as a result of becoming stale,
wouldn't it? A. Yes, it would.

111. L.W. Boyd, xx.

Q. Do you agree with me that one of the factors which causes
staleness in a player is overwork? A. Yes, I would say that 20
would be one major reason, yes.

Q. Could I ask you this: you see in the article - and my
friend has taken you to it - a reference to the Manly side, as
at the time of writing the article, since Austin had taken
over the conditioning of Manly, the records show it has gone
from being a great side to being a tattered band of former
champions; right? A. Yes, I see it.

Q. You know Austin took over the training of Manly in 1978?
A. Yes. As far as I know he was with the club then. I
wasn't with the club in 1978.

Q. But you know that Manly won the Grand Final, don't you? 30
A. Yes.

Q. In 1978? A. Yes I do.

Q. And they were the champions then, weren't they? A. Yes.

Q. In the succeeding years they weren't the champions, were
they? A. No, that was their last premiership.

Q. It would not be inaccurate to describe the team in 1981 as
former champions in that sense, would it? A. In the sense of
not being premiers, yes, it wouldn't be inaccurate because
they weren't the premiers.

Q. That's right. I think they had been a few years ago? 40
A. Yes.

Q. Would you be good enough to look at the document m.f.i. 5.
Do you see that is an article published by the Sun-Herald on
26th April, 1981? A. I do.

Q. Would you be good enough to read it just to yourself?
A. Yes.

Q. The Sun-Herald is a publication of John Fairfax & Son, is it not? A. Yes.

Q. You are employed by John Fairfax & Son as a journalist, are you not? A. No.

Q. In what capacity are you employed by John Fairfax & Sons?
A. Sports promotions officer. 10

Q. You know Dorothy Goodwin? A. Yes.

Q. Were you employed by John Fairfax & Son back in 1981?
A. Yes I was.

Q. You knew Dorothy Goodwin then? A. No, I didn't know her then.

Q. Had you spoken to her? A. Then?
112. L.W. Boyd, xx.

Q. Yes? A. Yes I had.

Q. You see, there are some words attributed to you in quotes?
A. Yes I do. 20

Q. That is an accurate account of what you said to her, isn't it? A. It possibly is, yes.

Q. You do not disagree with it, do you? A. No.

Q. Do you remember reading the article at the time? A. Yes I do actually.

Q. You did not disagree with what it said, did you? A. No I didn't.

RE EXAMINATION

MR. NEIL: Q. Have a look again at m.f.i. 5. The article says that you were one of a number of - (Objected to; rejected.) 30

Q. Have you at any time had any physical altercation or argument with Mr. Austin - (Objected to; question withdrawn.)

(Witness retired & excused.)

FRANCIS ROBERT STANTON
Sworn and examined

MR. NEIL: Q. Is your full name Francis Robert Stanton?

A. Yes.

Q. Do you reside at 18 Suffolk Avenue, Collaroy? A. That is correct.

10

Q. You are the manager of a firm? A. That is correct.

Q. You are also the coach at present of the Balmain Rugby League football team? A. Yes.

Q. You have in the past been the coach of Manly-Warringah Rugby League football team, is that correct? A. Yes.

Q. For what years? A. For the seasons 1975 through 1979.

Q. Can I ask you which team you were coaching in 1981?

A. The Balmain Rugby League Team.

Q. You had also been the coach of a lot of teams, including the Australian team, is that correct? A. Yes.

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Q. In respect of about how many matches have you been the coach of the Australian team? A. Somewhere in the vicinity of 21.

Q. And I think you were the coach for the Kangaroo tour in 1978, is that correct? A. Yes.

113 L.W. Boyd, retd.
F.R. Stanton, x.

Q. And of the recent one last year? A. That is correct.

Q. Do you know Mr. Reg Austin? A. I do.

Q. Was he the trainer with Manly Rugby League Football Club in 1978 and 1979 when you were the coach? A. Yes, he was.

30

Q. Firstly, is it correct that the team won the competition in 1978? A. That is correct.

Q. Can you recall about where in the competition table the team finished in 1979? It was sixth or seventh, was it?

A. Yes.

Q. Can you describe when Mr. Austin was working at the club your function in relation to his function? What was your function and what was his function? A. Well, Reg was employed by the club during my term as coach, primarily as a sprint coach, a sprint training coach. His function was to improve the players' performance in that area and some general conditioning as required.

40

Q. Required by whom? A. By myself.

Q. Did he work under your directions? A. Yes.

Q. To the extent he did give general conditioning as well as sprint conditioning was it as laid down by you? A. Yes.

HIS HONOUR: Q. This is in 1978? And 1979, was it? A. Yes. 10

MR. NEIL: Q. Was Mr. Austin a competent trainer? A. Yes.

Q. (Witness shown Ex.A1.) Would you look at the centre of the article at the paragraph which is headed 'fault' where there is reference to, "Manly has persisted for the past three years with the physical regimentation of its players by a fitness fanatic named Reg Austin". How did the actual programme that was given to the members of the team - how was that derived? (Objected to; question withdrawn.)

Q. Mr. Stanton, at Manly, whilst you were the coach, who made the decision as to what trainers should be used by the club? (Objected to; rejected.) 20

Q. During the years that you were the coach and Mr. Austin was the trainer, would you describe his training as being regimented? A. No.

Q. How would you describe it? A. I would describe it as being very well organised and very professional.

Q. Whilst you were with the club did you notice anything about Mr. Austin's conduct that would indicate to you that he was unfit to be the trainer? (Objected to; rejected.)

114. F.R. Stanton, x. 30

Q. In 1978 and 1979 did you notice anything about Mr. Austin's conduct that indicated to you that he was unfit to be the trainer? (Rejected.)

Q. In those years, 1978 and 1979, was there anything about Mr. Austin's conduct which in your opinion indicated he was unfit to be the trainer? A. No.

Q. Had there been occasions when Mr. Austin assisted you with the training of Australian teams? (Objected to; question withdrawn.)

CROSS EXAMINATION

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MR. NICHOLAS: Q. Mr. Stanton, you were the Manly coach for 1975 to 1979? A. Yes.

Q. In 1980 were you coaching? A. Yes I was.

Q. Where were you coaching then? A. In Queensland at the Redcliffe Club.

Q. And in 1981, at Balmain? A. Yes.

Q. Have you been coaching since then? A. Yes, 1982 and 1983 at Balmain.

Q. In 1981 Balmain was regarded as a good team, wasn't it?
A. At the beginning of the year or the end of 1981?

Q. When this article was being written, April 1981, 26th April, 1981? A. Yes, they were. 10

Q. You regarded your team as one of the good teams in the competition, didn't you? A. That is correct.

Q. Of course, by 26th April, 1981, five competition matches had been played, hadn't they? A. Yes.

Q. Balmain won the first one on 28th March against Eastern Suburbs, do you recall that? A. I do.

Q. And they lost the next four in a row, didn't they?
A. Yes.

Q. Would you look at the report of the Balmain Club of 1981, the document m.f.i. 3, and at the 1981 results which are marked there. Do you see the entry for 26th April, 1981, down the bottom of the page? Do you see the table of matches? A. Yes. 20

Q. That was at Redfern and your club lost 27 to 12 against South Sydney on that day, did they not? A. Yes.

Q. And the week before there was a loss of 52 to 13 against Canterbury-Bankstown? A. Yes.

Q. The week before that a loss of 21 to 13 against Newtown?
A. That is correct.

115. F.R. Stanton, x.xx. 30

Q. And the week before that, the second match of the competition, a loss to Manly 19 to 12, right? A. Correct.

Q. That succession of losses indeed was a matter of considerable concern to you as a coach, wasn't it? A. Undoubtedly.

Q. And I think it would be fair to describe the record of the club up to that point of time, with the succession of losses, as a minor catastrophe, wouldn't it? A. It wouldn't be the term I would use, 'minor catastrophe'. It would certainly have been better if it had been a succession of wins.

Q. It is fairly catastrophic up to that point of time in the competition, isn't it, to have four losses in a row like that? (No answer.) 40

Q. Is that right? A. Are you asking me a question?

Q. Yes. A. I am sorry.

Q. Did you get my question? A. I heard you ask the first question - it was a minor catastrophe.

Q. It would be fair to describe the record of your club to that point as a minor catastrophe? And it is fairly catastrophic up to that point in time in the competition, isn't it, to have four losses in a row like that? A. I object to the use of the word 'catastrophic'. 10

Q. Is disaster a better word? A. Yes, disaster will do, yes.

Q. That history suggested to you that there was something wrong with the preparation of the team at training, I take it? A. No.

Q. It didn't? A. It didn't suggest there was something wrong with the preparation of the team for training.

Q. Something was wrong, wasn't it, to get these results? A. Yes. 20

Q. And the error was being shown by the match results, wasn't it? A. Yes.

Q. May I take it that a number of players were not performing to expectation? A. Yes.

Q. There would be a number of explanations for that, I take it? A. Yes.

Q. And one of the explanations, I suggest to you, as a coach would be that there may well have been something wrong with the preparation of the players for the matches? That would be the most obvious thing, wouldn't it? A. That could have been one of the considerations. 30

116. F.R. Stanton, xx.

Q. It was certainly one of the things that concerned you, wasn't it, as the coach? A. Yes.

Q. That there may have been something wrong with the preparation of the team? A. Yes.

Q. And indeed, it would have been a most important thing for you to look at? A. Providing the team was intact. We had a lot of injuries in that period, as I recall. 40

Q. Players were playing, uninjured players were playing below expectation, weren't they? A. Yes.

Q. And that would suggest that they were perhaps undertaking an unsuitable training programme up to that point of time, wouldn't it? A. No, I disagree with that.

Q. That would be one of the matters that you would have to

look at, wouldn't it? A. We would look at the preparation of them, yes, the areas where they were falling down and we would take steps to correct them.

Q. They would be matters for training, conditioning and coaching, wouldn't they? A. Yes. 10

Q. It is fair to say, isn't it, that the results indicated that there were matters astray in the training, conditioning and coaching of the various individual players? A. There could have been.

Q. That was the case, wasn't it? A. Perhaps the players may not have had the ability to achieve the sorts of results we were looking for.

Q. But that was a matter for training, conditioning and coaching, wasn't it? A. Yes.

Q. So that is where you would turn to first, to look for remedies, wouldn't you? A. Yes. 20

Q. Because if an individual player was not playing up to the mark, assuming he was uninjured, then it may very well be that his training programme was inappropriate for him? A. I wouldn't say his training programme was inappropriate. He may not have had the ability to absorb the training programme.

Q. Or alternatively he may have become stale, might he not? A. I would not have thought he would be stale at that stage of the season.

Q. What does stale mean to you? A. To me? 30

Q. Yes, as a coach? A. It means primarily the state of mind a player gets into when he no longer enjoys training and playing and he needs a complete break away from that sort of involvement to freshen himself up.

117. F.R. Stanton, xx.

Q. Because he has become overworked, I take it? A. He thinks in his mind that he is overworked.

Q. That is the mental process but it also involves some physical impairment, doesn't it? A. It does when it occurs but I doubt that it occurs at such an early stage in the season. 40

Q. I am just talking generally now, staleness is a condition which is brought about by overwork in the training sense, isn't it? A. It could be brought about by overwork at training.

Q. And if one has been overworked as a first grade football player as a result of too much training, one's performance on

the field would be impaired, wouldn't it. Handicapped? A. It could be.

Q. You have been coaching for many years as you have told us, right? A. Yes.

Q. Are you aware of a book which is m.f.i. 6 in these proceedings, the Australian Rugby League National Coaching Scheme Level 2 Grade III (Advanced) Coaching Certificate Course? 10

A. I am aware of the book, yes; I have never read it.

Q. You have never read it? A. No.

Q. Do you know it to be the Australian Rugby League publication relating to coaching?

HIS HONOUR: That is what it says, does it not?

MR. NICHOLAS: Q. Published by the Rothmans National Sports Foundation - did you know that? A. Yes.

Q. But you have never read it? A. I have read an earlier version of it; that is an up to date version. 20

Q. You do not need to revert to that in carrying out your coaching programme? A. I had to study that to achieve the certificates that are issued under the coaching system that the New South Wales Rugby League operates under.

Q. I take it that the principles for coaching set out in that manual are the fundamental principles accepted as a guide to coaching by people such as yourself? A. Yes.

Q. For coaching 1st grade teams? A. Yes.

Q. And the principles set out in that book are the ones which 1st grade coaches would be expected to follow? A. Yes, with their own innovations attached. 30

Q. But they are the fundamentals? A. Agreed, yes.

Q. When you were at Manly in 1978 and 1979 and Mr. Austin was your trainer and conditioner, it was his practice to take the men, the team as a group, wasn't it? A. Yes.

118. F.R. Stanton, xx.

Q. And they would be trained as a group? A. Yes.

Q. And as a team? A. Yes.

Q. And for the best results it is necessary to do that, isn't it? A. Yes. 40

(No re-examination.)

(Witness retired and excused.)

(Short adjournment.)

118A. R.J. Stanton, retd.

LUCY JANE AUSTIN
Sworn and examined:

- MR. NEIL: Q. What is your full name? A. Lucy Jane Austin.
- Q. Where do you live? A. 80 Rathowens Parade, Killarney Heights.
- Q. Do you work? A. No, I am home duties. 10
- Q. You are the wife of Mr. Reg Austin? A. I am.
- Q. On 27th April, 1981 did you purchase a copy of the Sydney "Daily Mirror"? A. I did.
- Q. How did it come about that you went to purchase that paper? (Objection: question pressed: question rejected).
- Q. Did you have any 'phone calls from anyone about that article that day? (Objected to: Question rejected).
- Q. Look at Ex. A1. When you purchased the "Mirror" did you see that article in it? A. I did.
- Q. When you saw that article what did you do with it (Objected to) 20
- Q. Did you give it to your husband? A. Yes, I did, when he came back into the office.
- Q. That was in the office where? A. In Willoughby.
- Q. What did your husband do when you handed it to him?
A. Well I obviously gave it to him for the purpose of reading - (Objected to)
- Q. You gave it to him? A. Yes.
- Q. What did your husband do? A. He read the article.
- Q. Did you notice anything about him when he read it? (Objected to: question pressed: question allowed). 30
- Q. Did you notice anything about your husband when he read it? A. Yes, I did. He looked totally devastated. (objected to: evidence allowed).
- Q. Did he say anything? (Objected to)
- Q. Did he say anything to you? (Objected to: question rejected).
- Q. When you say he looked completely devastated, on what is that answer based? What did you observe about him? (objected to: allowed). 40
- Q. What in particular indicated to you that he was devastated?

A. He looked, I could see from the look of disbelief on his face, the dropping of his head - (objected to: answer rejected).

HIS HONOUR: (To Jury) You must not take any notice of that.

MR. NEIL: Q. Did he do anything physically? A. Drop his head.

(Witness retired).

119. L.J. Austin, x retd.

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MR. NEIL: I tender the original interrogatories.

MR. NICHOLAS: There was a supplementary verified statement in relation to the interrogatories and I seek leave to hand those up in lieu of the other ones.

MR. NEIL: I am tendering all the original interrogatories, the ones of May, 1982 which have been filed.

MR. NICHOLAS: We object to that course because there has been a fresh set of answers. I am seeking to hand up the ones sworn in March 1983.

20

IN THE ABSENCE OF JURY

(Discussion ensued and Mr. Neil agreed to the substitution of the second set for the first set of answers)

(Further discussion ensued in relation to answer No. 11).

(Luncheon adjournment)

(Mr. Neil tendered some letters which were objected to by Mr. Nicholas and further discussion ensued).

HIS HONOUR: The plaintiff has tendered a number of letters dated 11th May, 1981, 19th May, 1981, 4th September, 1981, 7th September, 1981, 11th September, 1981 and 22nd October, 1981 and 4th March, 1983. I admit the first letter of 11th May, 1981 and I admit the reply thereto. I reject the remaining letters for reasons which were advanced in argument and which, shortly, are that the requisitions there made refer to subsequent performances. The parties have agreed however that the letters of 11th May and 19th May are to go in, with some excisions.

30

IN THE PRESENCE OF JURY

MR. NEIL: I seek to tender a letter of 11th May, 1981 from the plaintiff's solicitors to the solicitors for the Daily Mirror and a letter of 19th May, 1981 in reply thereto. (objected to by Mr. Nicholas: admitted, subject to excisions and marked Ex. B)

40

(Letters of 4th September, 7th September, 22nd October, 1982 and 4th March, 1983, m.f.i. 7).

HIS HONOUR: Members of the jury, these are some letters
which passed between the advisers about this matter and Mr. Neil
120.

will read them to you. You will later have them before you in
the jury room.

(It was agreed between the parties that the matter of
the interrogatories to be tendered by Mr. Nicholas later 10
in the afternoon would be held over for the time being).

MR. NEIL: Subject to any matters arising from that which I
will need to put to your Honour, that is my case.

IN THE ABSENCE OF JURY

MR. NICHOLAS: I hand up to your Honour the up-to-date interro-
gatories and answers thereto filed consequent upon the
amendments.

MR. NEIL: I have no objection to the fact that they are not as
yet sworn and I tender Answers 1 - 6 and 9 - 11.

(Tender not objected to but unable to be admitted as an 20
exhibit until sworn. Mr. Nicholas indicated he could
continue his case on the basis they would be sworn and
would be admitted and Mr. Neil accepted that).

MR. NEIL: We are not pressing causes of action in respect of
other States or Territories than New South Wales and the
A.C.T.

MR. NICHOLAS: In the light of that it will be necessary for
us to take something out of the interrogatories that have been
tendered.

MR. NEIL: The tender will now be 1 and 2, 3A(a) and (b), 3B 30
(a) and (b), 4A in respect of only 3(a) and 3(b), 4B(a) and
(b), 5 and 6 and 9 to 11.

I ask your Honour to strike out the defence of comment
contained in paras. 6C and 6D on p.4 in respect of both
imputations. I rely on Questions 11A and 11B for that sub-
mission.

(Mr. Neil made application to amend reply: no objection:
application granted).

HIS HONOUR: I reject the application to strike out.

IN THE PRESENCE OF THE JURY:

(Close of case for plaintiff subject to papers concerning
interrogatories)

CASE FOR THE DEFENDANT:

RONALD ARTHUR CASEY
Sworn and examined:

10

MR. NICHOLAS: Q. Would you state your full name? A. Ronald
Arthur Casey.

Q. And your present address? A. 82 Springdale Road,
Killara.

Q. Is your occupation that of a television and press journal-
ist? A. Yes.

Q. Your present activities include that of a televisions
sporting commentator for United Telecasters, Channel 10?
A. Yes.

20

Q. And you participate in the regular news programme with
that channel? A. That is my only obligation to Channel 10 -
news programmes.

Q. You write a column in the "Daily Mirror" newspaper?

HIS HONOUR: Are you speaking of then or now?

MR. NICHOLAS: I am speaking of the present time.

WITNESS: Three a week.

MR. NICHOLAS: Q. Is that the column known as "Casey's
Corner"? A. It was at the time.

Q. Back in 1981? A. Yes.

30

Q. What is it known as now? A. It does not have a name now.
It is a story, or series of small stories, by myself.

Q. I want to take you back in time. Were you a State school
boy swimming champion back in 1943? A. Yes.

Q. Were you the official coach at the North Sydney Olympic
Pool for 1957 to 1966? A. Yes. (objected to; allowed)

Q. During the time that you were the coach at the Olympic
Pool did you coach each year, in your class, squads of 80
swimmers of all ages? A. Yes.

Q. Three of those swimmers were included in the 1964 Olympic
squad? A. Yes. (objected to; allowed)

40

Q. Included in that Olympic squad - from it emerged your former pupils who became Australian and New South Wales champions. Is that so? A. Yes.

122. R.A. Casey x

Q. At about the age of seventeen did you become a cadet sporting journalist? A. Yes.

10

Q. Since 1948 have you been continuously engaged as a journalist observing and commenting upon all sports? A. Yes.

Q. Particularly rugby league football. (objected to; allowed)

Q. Is that so? A. Yes.

Q. During the fifties and sixties at the same time as you were carrying out your journalist career, were you managing a number of top line boxers in their career? A. Yes.

Q. Were you also involved in the publishing and editing of the boxing magazine known as "Boxing Digest"? A. "The Ring Digest".

20

Q. From about 1957, the advent of television in this country, were you engaged by a television station as its sports commentator? A. As one of the sports commentators, yes.

Q. Was that Channel 9? A. Yes.

Q. As one of the sports commentators can you briefly describe to his Honour and the jury the range of sports that you, particularly, covered in those early days? A. Rugby league, swimming, boxing - whatever sport was being covered I would handle - but by 1964/1965 I found that I was more narrowly being channelled to commenting on rugby league. By 1966 rugby league was the dominant sport I was covering.

30

Q. When you say "covering" what do you mean by that? Did you go to the games? A. In those days I would go to the games, watch them, make reports about teams, do reports on the news about the various matches they were playing, having daily contact five working days a week with the sport.

Q. With the sport? A. Reporting.

Q. Did your contract include contact with players? A. At this stage, yes, I would be talking to players, going to matches, watching the games, filing reports.

40

Q. And discussing games with coaches? A. Not particularly with coaches, no.

Q. Did you include, in your contact with the sport, discussions with them? A. Yes.

Q. It would be inevitable, wouldn't it? A. Yes.

Q. During the period 1967 to 1972 were you continuously engaged as a commentator for Channel 9 doing, what is in the trade known as, "Calling" rugby league with the channel?

A. Yes.

Q. Did that mean you go out to the game and describe it yard by yard, blow by blow, as the match is being played?

10

A. Yes.

Q. At the end of the day - the Saturday for example - did you have a spot on the sporting section of the news programme when you reviewed the day's play? A. Yes, and again for the programme on Sunday morning.

123. R.A. Casey x

Q. In the course of your review was it part of your duties to express views and comment upon the performance of the people playing and so on? A. Yes.

Q. In 1972 did you go to France to call the World Cup series -20 Rugby League Series - for Channel 9? A. Yes.

Q. Would it be fair to say that since about 1967 to the present time, about 90 percent of your journalist and television work would be involved with rugby league? A. Yes.

Q. And observing the game as it is played week by week in Sydney? A. Yes.

Q. One other thing - have you, as part of your journalist career, been involved in visiting and calling Olympic Games programmes? A. Yes, I was with a combined Australian team that covered the 1976 Olympic Games in Montreal.

30

Q. What particular sports did you cover during that series? A. Swimming, athletics and boxing.

Q. Would you be good enough to look at Ex. A1. You see that appears to be a publication in the "Daily Mirror" of 27th April 1981. (shown) Right? A. Yes.

Q. Do you see the heading "Our stale stars - Casey's Corner"? A. Yes.

Q. Is that a photograph of you? A. Yes.

Q. With the exception of the words, and I will read them to you, "Our stale stars", "Casey's Corner", "Coaches pushing too hard", and the word "fault", were you the author of the material in the exhibit? A. Yes.

40

Q. Did you write that some time during 26th April 1981, the preceding Sunday? A. Yes, it would have been written on Sunday night, on the night of the 26th.

Q. On the night of the 26th.

HIS HONOUR: Q. Is it a Saturday game we are talking about?

A. I think it was a Sunday game. I am not sure of that.

MR. NICHOLAS: They were Sunday games.

Q. You refer to - if I could continue to the article --

(Copy of above-mentioned article handed to each member
of the jury)

10

MR. NICHOLAS: Q. Mr. Casey, at the time you came to write
this article had you had to hand the competition results of
the various rugby league teams in the Sydney competition?

A. Yes, I had an indexing system whereby on each separate
page is each team's performance for that season. I can see
their win and loss performance at a glance.

Q. That is something you maintain yourself? A. Yes.

Q. Did that index as you describe it as at 26th April 1981
include the results of the matches played in the competition
to that point of time? A. Yes.

20

124. R.A. Casey x

Q. Coming to the first paragraph you say, in the second sen-
tence, "In fact it has been something of a minor catastrophe
the way Parramatta and Manly, along with Balmain, have flopp-
ed so badly"? A. Yes.

Q. You go on to say "North Sydney's three-try spree to
snatch a win over Parramatta and Newtown's steamrolling of
Manly emphasises that something is radically wrong with the
preparation of major teams with undeniably talented players"?

A. Yes.

30

Q. You refer to "undeniably talented players". Were there
some international players in each of those teams you refer-
red to? A. Yes, in - particularly - Parramatta and Manly.
Manly had nine, ten internationals and Parramatta had been a
strong team since 1976. They were the two strongest teams in
the competition.

Q. What about Balmain? A. To a lesser degree but in the
same vein.

Q. And Balmain also, in your view, had "undeniably talented
players" in the team? A. Yes, but not quite as strongly as
Parramatta and Manly.

40

Q. Without refreshing your memory from the league tables
are you able to tell us what the result of each of the teams
that you referred to were at the time you came to write this
article? I do not want you to guess. A. Well, it would be -
from memory I think Parramatta had lost two matches in succes-
sion to lowly rated teams. Manly had lost three matches to
teams that were poor teams by comparison with the talents

Manly had available, and Balmain had lost two matches in succession. Each of the teams were on losing runs.

Q. You say Balmain had lost, to the best of your recollection, two in succession. Could it have been more? A. It could. It is only from memory I am going.

Q. Would it assist your memory if you were able to look at the actual result? A. Of course. 10

HIS HONOUR: Q. Mr. Casey, as at the time you wrote it you would then have known what the actual results of each team were? A. Yes.

MR. NICHOLAS: Q. Would you look at the Manly-Warringah report for 1981 season, the results of the 1981 --

HIS HONOUR: There is not much dispute about this. Can't you ask him what the facts are? Have you any objection, Mr. Neil?

MR. NEIL: No.

MR. NICHOLAS: Q. As at 26th April 1981 was it the situation there had been five competition matches played? A. Yes there was. 20

Q. Manly had won the first two and lost the next three?
A. Correct.

Q. Is it the situation that, as at the same date, Parramatta had won the first three of the competition and lost the next two? A. Yes.

Q. And that Balmain for the same period had won the first match against Eastern Suburbs of the competition and had lost the next 30

125. R.A. Casey x

four, namely to Manly-Warringah, to Newtown, to Canterbury-Bankstown and to South Sydney on 26th April? A. Yes.

Q. You described in the second sentence of the article the results for Manly, Parramatta and Balmain as being something of a "minor catastrophe"? A. Yes.

Q. And the results I put to you were the results to which you referred? A. Yes.

Q. Was that the view that you held? A. Yes. (objected to; disallowed) 40

Q. Having considered the results of each of the teams to which you refer did you come to the view that they had "flopped badly"? A. Yes.

Q. Did you come to a view that such results for each team

respectively amounted to "a minor catastrophe"? A. Yes, on the basis that each (objected to)

HIS HONOUR: Q. At that time, that is to say in that year, were Manly-Warringah and Parramatta as it were glamour teams of the competition? A. Very much so, your Honour.

MR. NICHOLAS: Q. You went on in the next paragraph to say, "North Sydney's three-try spree to snatch a win over Parramatta and Newtown's steamrolling of Manly emphasises that something is radically wrong with the preparation of major teams with undeniably talented players". Was that your view? A. Yes, that was my view. 10

Q. What was your view based on? A. The fact that Parramatta and Manly had long lists of star players, internationals etc., and they were both not only favoured teams but well supported teams and, to use a word, "glamorous teams". North Sydney and Newtown were at the opposite end of the spectrum. They were unfashionable, without anywhere near the same number of internationals, or top class players. For Newtown and North Sydney to score wins over the likes of Parramatta and Manly was something quite unique. 20

Q. Did that suggest something to you? A. Yes.

Q. What did it suggest to you? A. That there was something radically wrong with the manner in which those teams were being prepared for their matches.

Q. How did you come to that view, apart from looking at the results themselves? A. As part of my job I have video tape equipment similar to this. I look at games. I see them two or three times. If I am interested I can study the games. I am looking at the play, complement of the various teams. I came to the conclusion that Manly and Parramatta were too advanced in their preparation for that time of year. 30

Q. What were the consequences you could observe of that? A. I thought they were playing below their potential.

Q. There were individual members playing below their potential? A. Yes. I observed there were members in the team that were not playing to their true potential. 40

126. R.A. Casey x

Q. As at that point of time? A. Yes.

Q. You then went on in the next paragraph to say that, "It's easy to blame Ray Ritchie and Jack Gibson or even Frank Stanton ..." Are those individuals you named the coaches of the particular teams to which you have referred? A. Yes.

Q. Then you went on to say this, "I believe Sydney's top teams are being trained into the ground by over-zealous conditioners who have somehow hoodwinked coaches into believing

that on top of a gruelling 80-minute match three nights of tortuous conditioning are also needed". That was the belief that you held at the time you wrote the article? A. Yes.

Q. You honestly held that belief? A. Yes.

Q. The match to which you specifically referred in the paragraph, what match was that? A. The first premierships game each weekend. 10

Q. Is that an 80-minute match? A. Yes. It is full 80-minute premierships game of, perhaps, the most vigorous bodily contact sport in the world.

Q. Is that how you came to describe it as "gruelling"?
A. Yes.

Q. You refer to "three nights of tortuous conditioning" being also needed? A. Yes.

Q. Did you have something specifically in mind in relation to those teams when you wrote those words? A. Yes, I thought it was highly probable that the reason for those teams with good players in them poor performances might well be that they were being over-trained. 20

Q. You went on to say, "This means, in effect, Sydney footballers are pressing their bodies to the limit four nights a week"? A. Yes.

Q. Where did you get the "four nights a week" from? A. I should have said, four days a week. There would be three nights of training and then one match - one match on the weekend, premierships game, making a total of four occasions - or four days - a week in which they are stretching right out. 30

(Witness stood down)

(Further hearing adjourned to 10 am on Thursday, 17th March 1983)

IN THE SUPREME COURT)
OF NEW SOUTH WALES) No. 12521 of 1981
COMMON LAW DIVISION)

CORAM: LUSHER, J.
And a jury of four.

AUSTIN V. MIRROR NEWSPAPERS LIMITED

FOURTH DAY: THURSDAY, 17TH MARCH, 1983.

10

(In the absence of the jury)

(Mr. Neil sought leave to file in court a document titled "Second amended reply"; there being no objection leave was granted)

(Mr. Nicholas handed up to his Honour a document entitled "Further supplementary verified statement in answer to interrogatories"; not objected to)

MR. NEIL: Before the jury returns I wish to mention something to your Honour. I would ask your Honour to at some stage, when the jury does return, to give the jury what might be the customary direction with regard to ignoring what appears in newspapers because in The Sydney Morning Herald this morning there appeared a report which totally misquoted Mr. Frank Stanton and it may have been misleading to the jury. The report says: 20

"Earlier Mr. Frank Stanton, the coach of the Manly team at the time, said he would use the word 'disaster' rather than the word 'catastrophe' when describing the three losses Manly had had that season.

'The succession of losses was a matter of considerable concern?' Mr. W.H. Nicholas, Q.C. for The Mirror asked. 30

'Certainly,' Mr. Stanton replied.

Mr. Nicholas asked him if he would describe them as catastrophic and Mr. Stanton said no. Mr. Nicholas then asked if it wasn't catastrophic to have three losses in a row.

Mr. Stanton said he objected to the word catastrophe: 'would the word disaster do?' Mr. Nicholas asked.

'Yes', Mr. Stanton replied.

Mr. Nicholas asked if something was wrong to get these results, and if some error in preparation was being shown by the match results. Mr. Stanton answered yes to both questions." 40

In fact, as your Honour knows, Mr. Stanton in 1981 was the coach of Balmain and he was asked these questions about Balmain's performance. He said that "disaster" was the better word to use as to the losses by Balmain.

HIS HONOUR: Yes, what you say is right, he was not the coach of Manly and he was not speaking of Manly, he was speaking of Balmain.

10

MR. NEIL: Yes, and he was not describing the Manly situation as a disaster.

MR. NICHOLAS: I understand what my friend is saying with respect but there is not, if I may say so, very much your Honour can do about it.

MR. NEIL: Other than to tell the jury that what they read in the newspapers should be disregarded, that is if they read anything at all.

HIS HONOUR: They may not have read it and if they had read it they may have realised themselves it was wrong. On the other hand, they may be misled as you say. Do you think it would be over-emphasising the problem to say anything to them, or is it best to just be quiet about it? Do you want me to say something to them?

20

MR. NEIL: I would ask your Honour to tell the jury that if they read anything in the newspapers about this case it is not to effect their consideration of this case, it is only what occurs in the court room that they should consider. I ask your Honour to direct them that they should disregard anything appearing in any newspaper about this case.

30

HIS HONOUR: And say nothing about this particular report?

MR. NEIL: Yes, just leave it at large and not refer to any particular report. I think that would solve the problem.

(Jury returned to court)

HIS HONOUR: Members of the jury, I meant to tell you this when the matter first commenced but I did not and I tell you now. You try this case, of course, on the evidence that you hear in this court. Sometimes cases attract reports in the newspapers, or any other form of the media, and sometimes it is correct, sometimes it is not. Sometimes it is condensed to a point where it may or may not convey the complete picture or a completely accurate one. So you are requested by me to keep your mind free of any media material; it is the material you hear in this court that you decide the case on.

40

RONALD ARTHUR CASEY
On former oath:

MR. NICHOLAS: Q. Mr. Casey, last evening you were asked by me about your observations of the Manly, Parramatta and Balmain teams over the first five competition matches; do you recall?

A. Yes.

10

129. R.A. Casey x

Q. I take you to your evidence yesterday it appears at the bottom of p.126 of the transcript where you observed that there were members in the team that were not playing to their true potential do you recall that? A. Yes.

Q. Can you tell us what you recollect observing about team members which indicated to you that in the matches that you observed they were not playing to their true potentials?

A. They would miss tackles, they would not come on to the ball strongly when it was passed to them. Various aspects of Rugby League that need to be played vigorously and well to execute the game.

20

Q. Was there some failure in a player that you observed, not to perform vigorously? A. Yes. I observed players in the team that had good reputations and I knew were capable of playing well who were not playing up to my expectations.

Q. Was that something you observed about team members in each of the games to which you have referred? A. Yes.

Q. If I could bring you back to your article. You have the article there? A. Yes.

30

Q. Just picking it up where we were last night: In the second column from the right under the heading "Coaches pushing too hard" there is this paragraph: "This means, in effect, Sydney footballers are pressing their bodies to the limit four nights a week". I asked you about where you got the four nights a week from? A. Yes, and I said it was four times a week.

Q. I want to take you to the next paragraph which says: "While that might be acceptable in the boudoir, it is a short cut to physical staleness on the football field". What do you mean by the term "physical staleness on the football field"?

40

A. A mental and physical condition whereby a player is not performing to his true potential; jadedness in athletic performance.

Q. What would bring about that condition in a player? (objected to; allowed) What brings about physical staleness in the way in which you have referred to it? A. Stress. And stress can take a number of forms, either stress in every day life, but usually it is aggravated by over-training, by putting too much in the way of physical demands upon your body.

Q. Were the observations which you made of the players in the matches to which you have referred in this article, which you have described in evidence, were they consistent in your view with the condition of physical staleness on the football field? A. Yes. I thought some members of the Manly team were suffering from staleness.

10

Q. If I could go down to the next paragraph: "I've always believed once a man becomes an international he doesn't need to be guided all the time with his preparation for matches". Is that a belief that you held then? A. Yes, based on the fact that a man - (objected to; rejected) Yes, I believe, yes.

130 R.A. Casey x

Q. That was a belief you honestly held? A. Yes.

Q. And you still do I take it? A. I do.

Q. Then the next paragraph: "Manly has persisted for the past 3 years with the physical regimentation of its players by a fitness fanatic named Reg Austin". You see that you make reference to the past 3 years, right? A. Yes.

20

Q. Do you know or can you recall now the actual years up to the time of writing that article that Mr. Austin was training the Manly team? A. Yes. I subsequently checked and found that he was not trainer for one of the three years preceding.

Q. Do you know which years he was in fact? A. I think 1978 and 1979 then he missed 1980 and came back in 1981. I think that is correct.

30

Q. Then you go on to say: "From the little I know of Reg he is a magnificent man, and his persecution of his own body has made him the fastest runner in the world for his advanced age"? A. Yes.

Q. And you knew that to be the fact? A. Yes.

Q. You go on to say: "But since Austin has taken over the conditioning of Manly the records show it has gone from being a great side to being a tattered band of former champions"; right? A. Yes.

Q. What record did you have in mind? A. Manly were - (objected to; question withdrawn).

40

Q. To what records were you referring in your article?
A. The fact they had won the premiership and they were indeed champions but here they were with this lapse in form. The measure of a champion side is having won the Grand Final.

Q. And that is what you were referring to? A. Yes.

Q. When were they the former champions, can you remember

that? A. I think their last premiership was won in 1979.
From memory that is - I'm not sure.

Q. About that time? A. Yes, about that.

Q. Then you went on to say: "Now this has not altogether
been Austin's fault. A certain lack of concentration and
over-confidence on the part of players has contributed as much 10
as some unimaginative coaching from Frank Stanton, Allan
Thomson and Ray Ritchie". You refer to a certain lack of con-
centration and over-confidence on the part of players; was
that a contributing factor as you observed it, to the losses
that you have reported on? A. I don't know what players are
thinking. I can only observe what I see - I can only see what
I see on the television screen etc. and make assumptions from
that. It was my assumption that perhaps part of the problem
Manly had

131 R.A. Casey x

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was that they had a lot of champions and they were not think-
ing cohesively as a team.

Q. I take you the next paragraph: "I question the wisdom of
Austin when he tells an international footballer to do another
six 400 metre sprints as some kind of penance." Do you see
that? A. Yes.

Q. Where did you get that from? A. From an article in the
Sun Herald written by Dorothy Goodwin which quoted Austin and
Boyd in conversations - (objected to)

Q. You had seen the Manly match that afternoon had you not? 30
A. Yes. And I wrote this article that night.

Q. Did you read Dorothy Goodwin's article in the Sun Herald
during the course of the Sunday? A. Yes, the Sunday morning.

Q. 26th April, of course, was a Sunday? A. Yes.

Q. You had read Dorothy Goodwin's article in the morning
and you had seen the Manly match that afternoon? A. Yes.

Q. You wrote your article when? A. Sunday night, for
publication on Monday.

Q. Would you look at the document m.f.i. 5. Is that the
article that you looked at in the Sun Herald on Sunday morning? 40
A. Yes.

Q. You read it, of course, then? A. Yes.

Q. You see there certain words attributed to Mr. Austin in
quotes? A. Yes.

Q. Do you see also certain words in the article attributed
to Mr. Les Boyd in quotes? A. Yes.

(Document previously m.f.i. 5 tendered; without objection admitted and marked Ex. 1)

HIS HONOUR: Q. Just so that I am clear on the sequence: Is this correct, Mr. Casey, that you have read this article before the game was played? A. Yes.

Q. And you wrote your article after, of course, the game was played? A. That is correct. 10

Q. And having read the article, as far as you were concerned, it would follow that the interview, if there was one, between Austin and Dorothy Goodwin, must have taken place obviously before that article was written? A. Yes. Probably at training on Tuesday or one of the other nights.

(The document Ex. 1 was read to the jury)

MR. NICHOLAS: Q. Mr. Casey, the contents of Ex. 1 were in your mind

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when you wrote the paragraph to which I have drawn your attention? A. Yes.

Q. You went on to say: "League stars train very hard before the season starts". A. Yes. Some teams start training as early as November and do light training through December and heavy training in January/February and on into March.

Q. Is the pre-season period before the main competition starts a time of the year when teams, to your knowledge, undergo hard training? A. Yes.

Q. What is the object of that period and that type of training? A. Well, earlier on the pre-season competition was to prepare the players for the season but the prize money became so lucrative that it became a competition in its own right and by the time the competition proper commenced the players had already reached a certain stage of fitness. The pre-season competition was conducted as a competition in its own right. 30

HIS HONOUR: Q. It was operating in 1981? A. Yes.

MR. NICHOLAS: Q. So that they had a pre-season competition as well as the premiership competition? A. Yes.

Q. And their training programmes on top of that? A. Yes. 40 They are not run simultaneously - I might have misled you. There is the pre-season, then that finishes and then you start the premiership. That is unlike the KB cup which is run at the same time as the premiership games.

HIS HONOUR: Q. They are two separate competitions, one following the other, but the Giltinam Shield competition, as they call it, is the main premiership competition? A. Yes.

Q. Before that there was a pre-season competition played as well? A. Yes.

MR. NICHOLAS: Q. What I want to ask you is in this pre-season period are the players subjected to a heavy work load as far as training is concerned? A. Yes.

HIS HONOUR: And playing, Mr. Nicholas. 10

MR. NICHOLAS: Q. Yes, and playing? A. Yes.

Q. In 1981 were you the host of a television programme?
A. Yes.

Q. What was the name of that programme? A. World of Sport.

Q. For how long had you been the host of that programme?
A. There have been intermittent lapses of 6 months when the show was taken off the air by Channel 9 but I had been the compere of World of Sport for something like 18 or 20 years; but I'm not sure. It was a very long time.

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Q. Is it shown on Sundays? A. It was. It is not any more. It was at that stage, yes.

Q. It was Channel 9? A. Yes.

Q. I am talking about April/May 1981 particularly? A. Right.

Q. What time of the day on Sundays did it come on? A. It has had a lot of different time spots.

Q. In April/May 1981? A. I think it was on between 11 and 12 o'clock, I'm not sure.

Q. It was of an hour's duration? A. Yes.

Q. Could you indicate briefly to the jury what the programme consisted of? How it was put together? A. I was the producer of it and the compere and it would have Rugby League for the first 40 minutes and the final 20 minutes would be racing, horse racing. 30

Q. Did it consist of segments? A. Yes.

Q. Taped interviews? A. Yes. We would have the highlights of matches and comments by the panel and then there would be various interviews regarding items of news during the week and perhaps some forecasts about the matches to be played that afternoon by the panel. 40

Q. Would you participate in them? A. Yes, I was the compere and I would initiate discussion and control it.

HIS HONOUR: Q. Who was the panel? I do not mean individual

names but were they footballers or ex-footballers? A. Ex-footballers and football writers.

Q. How many would be in the panel? A. It would vary between 3 and 4.

Q. It would take the form of a general discussion about the game or a player or some event that has taken place? A. Yes, 10 that's right.

MR. NICHOLAS: Q. Did you in your programme in April/May 1981 have a wide viewing audience? A. Yes, especially in Rugby League circles I would say it had a good audience.

Q. Would it be a part of the programme from time to time to interview players? A. Yes.

Q. Coaches? A. Yes.

Q. Trainers? A. Occasionally trainers.

Q. Speaking of trainers, did you cause Mr. Sutcliffe to go out and see Mr. Austin shortly after the article involved in these proceedings was published? A. Yes. 20

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Q. Just pausing there, who was Mr. Sutcliffe? A. Ken Sutcliffe is a journalist and television reader at Channel 9 who works on news programmes and was assisting me preparing the World of Sport.

Q. He came back from Mr. Austin with a taped interview did he not? A. Yes.

Q. Did you include that taped interview as part of your programme on the following Sunday morning? A. Yes. 30

Q. Was that Sunday 3rd May 1981? A. Yes.

HIS HONOUR: Q. It was visual as well as sound, was it? A. Yes.

MR. NICHOLAS: Q. I wonder if you would be good enough to look at the tape that is about to be played to you. What is about to be played is the tape which is m.f.i. 1 and I am going to ask you some questions about it after you have seen it? A. Okay.

(Tape previously m.f.i. 1 tendered; without objection admitted and marked Ex.2.)

(Mr. Nicholas sought leave to tender along with Ex. 2 a transcript of the taped interview; objected to; his Honour's decision on the tender was deferred) 40

Q. Immediately before that segment went to air did you introduce it? A. Yes.

Q. Did you say something by way of introduction of the segment on camera and on air, immediately before Ex. 2 was played? A. Yes.

Q. Can you recall, doing the best you can, what it was that you said on air by way of introduction? (objected to; allowed)

10

Q. Can you tell us what you said in the introduction? A. Not verbatim but I can recall in general text what I said.

Q. Just do the best you can? A. "During the week I had some strong words to say about Sydney football trainers, in particular Les Austin (sic) of Manly. Ken Sutcliffe talked to Austin and got his side of the argument." Then up came the tape.

Q. Between the time the article came out and the time you showed that segment on your programme had Mr. Austin had any discussion with you about what was in the article? A. No. I had no idea that litigation was pending or that anyone was even upset about it.

20

HIS HONOUR: Q. Were you readily available yourself during that period with people who wanted to get in touch with you? A. Yes I was at Channel 9 6 days a week and I am very easy to contact if anyone wants to contact me.

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Q. Were there other columns of "Casey's Corner" published during the week in The Mirror? A. Yes, I was writing at that stage 3 columns a week.

Q. That is what I wanted to ask you, as at April 1981 how long had you been writing "Casey's Corner" for Mirror Newspapers Ltd.? A. I had been writing for the Mirror for probably 2 or 3 years before that.

30

Q. You were remunerated for that, of course? A. Yes.

Q. Your column "Casey's Corner" had been a three times a week column for some considerable time prior to 1981? A. I'm not sure that it was 3 times a week but I was a regular columnist for the Mirror; at least once a week. I'm not sure it was 3 times a week at that stage.

HIS HONOUR: Q. You wrote about football only in the football season I suppose? A. Yes.

40

MR. NICHOLAS: Q. Was your column limited to only football or did you touch on other subjects as well? A. In the football season it would be a rare occurrence if I wrote about anything else but Rugby League.

CROSS-EXAMINATION

MR. NEIL: Q. So, Mr. Casey you read the Dorothy Goodwin article on 26th April is that right? A. Yes.

Q. Do you remember where you were when you read it? A. I would imagine - no, I don't, particularly. No. 10

Q. Any idea of the time it was when you read it? A. Probably 7 o'clock in the morning.

Q. You saw the Manly Newtown game that afternoon is that correct? A. Yes.

Q. About what time did you see the game? A. 3 o'clock to 4.30.

HIS HONOUR: Q. You were actually at the game were you?
A. No, I was in Channel 9 studios watching it live.

MR. NEIL: Q. Was it the match of the day? A. I don't recall.

Q. Wasn't the Canterbury/East match the match of the day that 20 day? A. Possibly.

Q. At that time in April 1981 the Rugby League gave contracts to certain stations to broadcast Rugby League games is that right? A. Yes.

Q. Channel 9 did not have a contract to broadcast the actual games did they? A. Correct.

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Q. You were limited I think to about 3 minutes a week that you could show on television, show Rugby League on your station, isn't that right? A. No. 30

Q. How much were you limited to? A. Three minutes in any news bulletin.

Q. So that all you could provide would be small segments of the games is that correct? A. That is all I could put to air, yes.

Q. What procedure was adopted to video tape games?

A. Because Channel 9 didn't have any television rights we worked all the harder in our news service to give a comprehensive coverage, within the 3 minutes we have just discussed. We had a mechanical rights agreement with Channel 7 who was telecasting in toto the whole match and it would be recorded by us and if I chose and that was the match I wanted to see I would watch that match and we would have what we call our video tape back pack and it would go to another game and there would be another game on top of that. So in fact on any Sunday afternoon I could sit in a room and if I had eyes in the 40

back of my head I could watch 3 games as they were being played.

Q. Because you would link into the Channel 7 video is that right? A. Yes.

Q. And you had two systems at other games? A. Yes. 10

Q. Doing a video of them? A. That is correct.

Q. You would sit in the studio of a Saturday or Sunday and you would turn all 3 on, is that correct? A. If I chose to, but it is confusing to do it that way.

Q. You can't remember which was the match of the day on the 26th? A. No I can't.

Q. Can you remember whereabouts it was that you watched the Manly/Newtown game? A. No.

Q. Can't remember whether it was in what studio or what room?
A. I was in one of the News room booths watching the match. 20

Q. Can you remember it? A. The recording booths.

Q. Can you remember it as you sit there in the witness box?
A. No.

Q. Why not? A. Because I see probably 5 football matches a week.

Q. Then how do you know you saw this one? A. Because I wrote about it.

Q. You wrote about a number of games in your article didn't you? You wrote about North Sydney's three try spree to snatch a win over Parramatta, didn't you? A. Yes. 30

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Q. Did you observe that three try spree? Did you observe those tries being scored? A. I don't recall.

Q. Isn't this the fact that you may well have been watching the Norths/Parramatta game that day isn't that right? A. No, that's not right.

Q. Why not? A. Because I would have written about the Norths/Parramatta match as the only subject in my article, other than I had here. I always make the main thrust of my article in relation to something I have seen.

Q. Where is it in the article that there is any reference to the Newtown/Manly game other than Newtown's steamrolling of Manly? Where is there any reference to the Newtown/Manly game as a game in your article other than the words "Newtown's 40

steamrolling of Manly"? A. There isn't any.

Q. Right. The other reference to a game is a reference to North Sydney's three try spree to snatch a win over Parramatta, isn't that correct? A. Yes.

Q. As you sit there trying to recall I want to ask you do you recall ever watching the North Sydney game against Parramatta on that Sunday? A. No. 10

Q. Was it on a Sunday, I suppose I should ask you? A. Well, if it was a Saturday game I certainly would have seen it.

Q. You don't know whether it was a Saturday or a Sunday game? A. No I don't.

Q. You see 5 games a week don't you? A. Yes.

Q. The fact is you just cannot remember, as you sit there - you can't recall watching the Manly/Newtown game, can you? As you sit there in the witness box you cannot recall the actual event of watching the Newtown/Manly game can you? A. No, I can't remember. 20

HIS HONOUR: Q. You mean you can remember you watched it but you can't remember watching it? A. I can't remember the details of it, that long ago and there is no reason to remember it.

MR. NEIL: Q. The only reason you can give for saying you thought you saw the game - (rejected)

Q. The only reason you can give for saying you saw that game is that you wrote about it in that article, is that correct? A. Yes. Could I add something else please? 30

Q. Have you any other reason? A. Yes, because the Sun Herald article that morning I found very interesting and it gave me a clue as Manly was in a form slump that there might be a story there.

Q. It also gave you a clue about Reg Austin, didn't it? It gave you something to think about? A. Yes, I would say so.

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Q. I think you have told his Honour and the members of the jury you found out after you had written your article, you subsequently checked and found out that Austin had not been the trainer at Manly 1980, is that correct? A. Yes. 40

Q. Doesn't the Dorothy Goodwin article say: "Austin had the speed of Manly in his hands for the 1978 and 79 season. Last year he took a year off to take more interest in his son's football career. Tony Austin, 13 kg heavier than his father, plays for Manly under 23's as a second rower". Doesn't it say that in the Goodwin article? A. Yes.

Q. You knew on the Sunday morning, from this article, that Austin had not been with Manly in 1980 didn't you? A. No, that was not important to me.

Q. I see. It wasn't important to you at all what Goodwin said about him being away in 1980 is that right? A. No, that's not right. 10

Q. Why did you subsequently check to find out whether he had been there in 1980? A. Because of the people I mixed with the following week, at any time of the following week, they would say to you "Hey, you made a slip with some of your facts in that article".

Q. Did you ring Dorothy Goodwin and talk to her about that article to check to see that what she had in her article was correct? A. No.

Q. It would have been a simple enough thing to do wouldn't it to ring up Dorothy Goodwin and ask her if it was true that Austin wasn't with Manly in 1980? A. That wasn't an important factor to me at that stage. It wasn't one that registered at the time. 20

Q. The fact is you wrote that Manly had persisted for the past 3 years with Austin and you wrote that intending the readers to believe that he had been there for the past 3 years didn't you? A. No, I didn't. I wrote it with an honest intent.

Q. What, of honestly telling the public that Austin had been for the past 3 years at Manly? Was that your honest intent? A. No, it was my honest intent to tell the facts as they were and I made a mistake, which sometimes happens. 30

Q. What I am suggesting to you is that that mistake was not a reasonable mistake because part of the material on which you based your article was the Goodwin article which specifically said you had not been there the year before? (objected to; allowed) A. I don't quite understand the question.

HIS HONOUR: Q. He is putting to you that your mistake was not reasonable? A. Not reasonable or a calculated mistake?

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Q. Your mistake was not a reasonable thing? A. I will admit that, yes. It was a mistake I should not have made but it wasn't a mistake made in a calculating and conniving fashion.

Q. You do not admit it was unreasonable to make it, do you? A. I should have checked. I don't like to make mistakes.

MR. NEIL: Q. Where was the Manly/Newtown game played, do you know? A. No, I don't know.

Q. Of course, whether a team has the home advantage or not

would be important, wouldn't it, in assessing a team's performance? A. Possibly, yes, it would be.

Q. Did any of the Manly team sustain any serious injuries in the Manly/Newtown game that you saw? A. I didn't have any reason - I wouldn't have had any clue that litigation was pending and I had no reason to take that particular game and memorise it. That is the point. 10

Q. You were basing your article on the fact that Manly had won the first 2 games of the competition and lost the next 3 is that right? A. Yes.

Q. One of the games they lost was the Newtown game - the game before your article which was the day you wrote it? A. Yes.

Q. If Manly had suffered some serious accidental casualties, such as a good player having a broken leg, that would be a matter to take into account in considering whether or not Manly had performed badly against Newtown, isn't that right? 20
A. Correct.

Q. Do you remember when you saw the game seeing anyone injured with a broken leg or carried off for a broken leg? A. No, I don't recall and even if they did they would have been replaced.

Q. I suggest to you that if a very good player is taken off with a broken leg - an international star - then that will have some effect on the team, even if they had put on a replacement? 30
A. Possibly.

Q. It would disjoint the teamwork would it not? A. Yes, it would to a point but I don't know to what degree. It is a matter of degree.

Q. Exactly. It might well disjoint the teamwork particularly at an early stage of the year? A. Well, it had a lot of disjointedness.

Q. And if two men had suffered serious injuries and had to leave the field, that would disjoint the team even more, wouldn't it? (objected to)

Q. Mr. Casey, let me ask you this: You wrote this article which is before you about what time on the Sunday? A. It would be after 6 o'clock at night. 40

Q. Where did you write it? A. At Channel 9.
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- Q. Have you got any notes or any proofs of the article? A. No.
- Q. How did you write it, by hand or typing or what?
A. Sometimes I make the notes and then I dictate it over the phone. Other times I might write it and alter it as I am dictating it. 10
- Q. Who would you dictate it to? A. A copy taker at the Mirror.
- Q. Can you recall with this article what procedure you adopted? A. No I can't.
- Q. It may have been given to someone over the phone at The Mirror is that right? A. Yes.
- Q. What else might have happened?
- HIS HONOUR: He has just told us that.
- MR. NEIL: Q. It may have been another method is that right?
- HIS HONOUR: Yes, he has told us what that method was. He might have given it to a copy taker. 20
- MR. NEIL: Q. What I want to ask you is this: If you were at Channel 9 what was the most convenient way of conveying this article to The Mirror? (objected to; rejected)
- Q. Mr. Casey, you have said that you wrote this article is that right? A. Yes.
- Q. You have said you wrote it but you did not write the heading which says "Our Stale Stars" is that correct? A. That is correct.
- Q. You say you didn't write the words "Casey's Corner" is that correct? A. Correct. 30
- Q. You didn't write the words "Coaches pushing too hard"?
A. Correct.
- Q. And you didn't write the word "Fault"? A. Correct.
- Q. Did you put, yourself, a heading on the article you would write? A. No.
- Q. So you just wrote only the words that appear in the article - except these ones? A. That is correct.
- Q. You were the author of them? A. Yes.
- Q. How do you know that? A. I don't understand. 40
- Q. You have got no material or notes or proofs or copies of what you wrote to show that is that right?

HIS HONOUR: He may not have written it. He said he might have even changed it over the phone.

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MR. NEIL: That is what I am asking him.

Q. You have got no material to assist you with that answer, 10
have you? A. No I haven't.

Q. You are going on your memory is that correct? A. Yes I
am.

Q. You are going on your memory of what you say you wrote in
the article, correct? A. Yes. (Objected to)

Q. That you authored and the Mirror published, correct?
A. Yes.

Q. Did you contact Mr. Austin before you authored the article?
A. No.

Q. Did you know that Mr. Austin was the trainer of the Manly 20
team? A. Yes.

Q. Was there any difficulty in your way preventing you from
contacting him? A. No difficulty at all - if I had wanted to.

Q. You also, in the article, attributed difficulties, by way
of training, to the Parramatta team is that right? (objected
to)

Q. You said something was radically wrong with Parramatta as
well as Manly isn't that correct (objected to)

Q. There are references in your article to the Parramatta
Club is that right? A. Yes. 30

Q. Did you contact anyone at Parramatta before you wrote the
article? (objected to, rejected)

Q. Did you attempt to contact anybody from the Balmain Club?
(objected to; rejected)

Q. Did you discuss the matter with any of the experts on
your panel? (objected to)

HIS HONOUR: On what day?

MR. NEIL: Q. Before you authored this article? (objected to;
rejected)

Q. Who were the members on your panel? (objected to; 40
rejected)

Q. Did you ask anybody at all for any advice or views or
discuss in any way with any other person this article, prior

to the time that you authored the article? (objected to)

Q. Firstly, after having seen the Manly/Newtown game?
(objected to; allowed) Can you answer that question?

HIS HONOUR: Q. That is to say after the game and before the
authorship of the article did you discuss it with anybody 10
else? A. I may have. I'm sorry, I don't recall.

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MR. NEIL: Q. As of 27th April 1981 Manly had had some losses
including a loss to Eastern Suburbs is that right? A. Yes.

Q. I want to suggest to you that after 5 rounds of the com-
petition in 1981 Eastern Suburbs was leading the competition
by 8 points do you agree with that? (objected to; rejected)

Q. Have you any idea yourself of the performances of Manly
in 1980? A. That is the year before?

Q. The year before? A. I don't recall immediately. 20

Q. Do you know who the trainer was that year? A. No I
don't.

Q. In 1981, who was the trainer of Balmain? A. I don't know.

Q. In 1981 who was the trainer of Parramatta? A. I can't
recall. Jack Gibson has his own training staff and he has a
constant trainer of his own all the time. I don't recall his
name immediately.

Q. Was there a trainer at Balmain? A. Yes, they would have
a trainer.

Q. Are you sure of that? A. Yes. 30

Q. But you don't know who he was? A. No.

Q. You would agree, would you not, that there is a difference
in viewing games on the video as compared with being at the
ground? A. Most certainly.

Q. There are advantages in being at the ground which you do
not have when viewing the video is that right? A. Quite the
reverse.

Q. What are the advantages you get from the video that you
do not get from going to the ground? A. Well, you can analyse
the game much better if there is something that you think you 40
have seen and you want to go back over it again, you can, and
you can study it as many times as you like. Coaches do not
believe their own eyes at some matches and they study video
tapes before making the selections of any teams. The video
taping of football matches is quite an accepted thing in Rugby
League these days.

Q. Certainly, but do you say there are any advantages in live watching as against video? A. There are advantages.

Q. What are the advantages? A. The advantages are the atmosphere and having people around you who may make various comments, but that's all. I would rather, myself, sit and watch it on the video to be able to study it to my own content. 10

Q. There would be people around you that you could talk to, for example, the trainers of the team? A. The press do not sit with the trainers, sir.

Q. But you could talk with them after the game couldn't you, if you wanted to? A. You could, I suppose. You talk to players not trainers.

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Q. You didn't go to any Manly games in 1981 did you? A. No I didn't. 20

Q. Do you know whether you went to any in 1980? A. I may have I don't recall.

Q. Of course, you had had some arguments with the Manly club in late 1980 hadn't you? (objected to)

Q. In about August 1980 were you banned from the Manly premises? (objected to; rejected; question pressed)

(In the absence of the jury Mr. Neil submitted that the matters put to the witness were proper matters in cross-examination and could be put both as to malice and as to credit. Mr. Neil informed his Honour that he had received instructions in relation to the point only that morning) 30

(Mr. Nicholas made an application for the discharge of the jury in the light of the last two questions asked of the witness by Mr. Neil and further submitted that the questions were not admissible as even if the defendant had been supplied with particulars of the matter the questions could not conceivably touch any relevant issue in the case. Mr. Nicholas handed up to his Honour a letter to the plaintiff's solicitors of 10th May 1982 and reply thereto of 28th May 1982 and submitted that the matter involved in the questioning had come as a complete surprise to the defendant who had not had the opportunity to investigate the question and was not in a position at that stage to deal with the matter.) 40

(Short adjournment)

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(In the absence of the jury Mr. Nicholas made an applica-
tion for discharge of the jury or alternatively that Mr.
Neil should make a short statement to the jury in rela-
tion to the matter. Following discussion between counsel,
Mr. Neil agreed to make a statement to the jury) 10

IN THE PRESENCE OF THE JURY

MR. NEIL: I should like to make a statement to the jury.

HIS HONOUR: In relation to the case?

MR. NEIL: Yes, your Honour. Members of the jury, you should
disregard any suggestion that Mr. Casey had an argument with
the Manly club or was banned from the club. The suggestion is
wrong and without basis, and the plaintiff regrets it was rais-
ed at all and the suggestion is unequivocally withdrawn.

HIS HONOUR: Members of the jury, you have heard what Mr. Neil
said. You put out of your minds any suggestion that there was 20
anything of that nature.

RONALD ARTHUR CASEY
CROSS-EXAMINATION CONTINUED:

MR. NEIL: Q. Prior to the publication of the article in 1981
did you attend any of the Manly team training sessions?

A. I might have gone down to interview someone.

Q. Can you recall seeing Mr. Austin train the team at any
time? A. If I had gone down I would have seen him, yes.

Q. There would have been no more than one occasion. Is that
right? A. I would have seen them training in 1978 and 1979 30
because I was doing interviews in those years, and I would
have seen the team training with Austin then.

Q. Did you ever discuss with Mr. Austin his training methods?

A. We didn't know each other.

Q. When did you come to know him? A. I don't.

Q. You don't? A. No. I know of him by reputation, but I
don't know him personally.

Q. On the occasions when you did attend training sessions do
you recall seeing him involved? A. Well if I watched the
training at all I had to see Mr. Austin but I can't say, you 40
know, that I could name the night or anything like that. I
just know he was training them physically.

Q. You can't recall any occasion on which you discussed his
training methods with him? A. No. I could be corrected, but
I don't think I have ever spoken directly to him.

Q. What? Never? A. No, I don't think so.

Q. Did you ever discuss with Mr. Austin any training in relation to any of the Manly team members? A. No but I can't recall exactly but I can remember discussing Austin's methods with the players.

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Q. With Mr. Austin, was my question? A. No. I would have had to talk to him.

Q. You can't recall any occasion when you might have talked to him say about any of the team members, himself? A. No.

Q. Were any of these discussions you had with Mr. Austin's team members that you recollect, were any of those in 1981 before the article was published? A. Oh, I couldn't be specific.

Q. You just wouldn't know? A. No.

Q. Have a look at the article please. Look at the part where you say in par. 2 that something was radically wrong with the preparation of the teams, that is based is it not upon your observations of the game on video? A. Yes.

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Q. How many of the five games up to April the 27th of that year had you seen? A. I wouldn't recall. I would have no reason to remember, I think.

Q. You just don't recall how many if any of the games between Manly and the other teams prior to the 27th April 1981 you saw? A. No. I can't remember exactly but as Manly was a leading team I would imagine I would have seen a majority of their matches.

30

Q. What about the ones that they won? Did you see anything wrong about their preparation then? A. My conclusions were drawn after their losses. Not in the very early part of the season when they won.

Q. To the extent you can remember seeing any of the games that they won, what conclusions did you draw, if any, about their preparation? A. I can't recall.

Q. In par. 3, have a look at par.3. You say, "It's easy to blame Ray Ritchie and Jack Gibson or even Frank Stanton but that would blame only those coaches while perhaps others will suffer the same fate later in the season". What fate did you mean? A. Well, that the record of losses to those teams can be sheeted home to the coaches. That would be an easy thing to say but other cases when they go into a losing run have to look at themselves.

40

Q. Were you aware or not of the practice in Rugby League of coaches being in overall charge of the coaching and training of the team? A. That is the concept, yes.

Q. You were aware that the coach directed the overall system?
A. Yes.

Q. And that trainers would work under the directions of coaches. Is that right? A. At most times. Not all.

Q. Did you know the case in respect of Mr. Austin? A. I 10
didn't know his particular field, no, his particular field of
instructions in the case. The trainer of the team was left to
the training.

Q. Nonetheless the training would be in accordance with the
overall requirements of the coach. Is that right? A. I
would imagine so, yes.

Q. But you do not know in fact what the situation was at
Manly as far as the relationship between coach and trainer was
concerned? A. No.

Q. What did you mean by "blame". The word "blame", that 20
appears twice in the paragraph. What does that mean? A. Well,
when teams lose matches in succession you do have to sheet
home some blame.

Q. What you were seeking to do was sheet home the blame for
the Manly losses to Mr. Austin is that right? A. No. I think
the paragraph infers that I am saying it would be easy to blame
the coaches but there were probably other factors to be con-
sidered as well.

Q. I suggest if you look at the article in the right hand
column part of those factors were "lack of concentration and 30
over confidence on the part of the players" is that correct?
A. It might have been, yes.

Q. You said "It has not altogether been Austin's fault". Is
that correct? A. Yes, definitely.

Q. On the left hand side of the page, in par. 4. you have
said that conditioners have somehow hoodwinked coaches. Is
that correct? A. Yes.

Q. What you were meaning to convey is that the coaches in
some way or another have been misled by the trainers as to
what was occurring with the training of the team. Is that 40
right? A. No.

Q. What did you mean by "hoodwinked"? A. Well, they have
exercised influence over the coaches thoughts about how much
training should be done. It is the exercise of influence I
am talking about there.

HIS HONOUR: Q. You used "hoodwinked" in the sense of
persuade? A. Yes.

MR. NEIL: Q. Have you really meant that when you wrote the
word "hoodwinked" rather than the suggestion that the coaches

were in some way being misled by the trainers. You mean that
the trainers

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were opening exerting influence over the coaches to have their
way against the coaches' way? A. I am suggesting it is a
possibility. 10

Q. When you wrote the article were you saying that the train-
ers were duping the coaches or not? A. It is my opinion that
some trainers could be duping coaches.

Q. Including Mr. Austin? A. He was on the list.

Q. He was duping the coaches by in some way or another mis-
leading them. Isn't that what you are saying? A. No. I
didn't say duping. I have explained it was exerting an influ-
ence.

Q. By the use of the word "hoodwinked" did you mean to convey 20
that the trainers were opening exerting an influence and having
their views imposed upon the coaches as against in some way
misleading the coaches into thinking that the trainer's methods
were proper? A. No. In their enthusiasm they may have
unintentionally swayed the coaches.

Q. You were saying they were in fact going to the coaches and
getting the coaches to agree to a wrong programme? A. I am
pointing out it was possible.

Q. Rather than in some way carrying out a wrong programme
without letting the coaches know what was really happening. Is 30
that what you say? A. Yes. I did not wish to infer that the
coaches would be oblivious as to what was going on.

Q. Well why did you use the word hoodwinked? A. Because I
think it is a very apt word, easy to understand.

Q. You think "hoodwinked" is an apt word to describe the use
of open influence by a trainer over a coach? A. Yes.

HIS HONOUR: Hoodwinked into a belief.

MR. NEIL: Q. What did you mean by "hoodwinking the coaches
into believing something". Did you mean that the trainers were
openly exercising an influence or that they were misleading 40
the coaches into believing the programmes of the trainers were
proper (Objected to).

HIS HONOUR: What I was seeking to point out was that it was
not merely a question of hoodwinking but hoodwink the coach
into a belief, that is to say I understand Mr. Casey is saying
that it is a matter of them putting their point of view and
the coach accepting it and believing it.

Q. That is your point, isn't it Mr. Casey? A. Yes, it is.

MR. NEIL: Q. You say that what they were doing was hoodwink-
ing the coach into believing that on top of a gruelling 80
minute match three nights of tortuous conditioning was also
needed. Are some matches harder than others? A. Yes.

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Q. Some matches are one sided so that they do not involve a
great deal of effort to the winning team. Is that right?

A. No. That is an over-simplification. Sometimes even in
easy matches players get injured.

Q. You have used the word "gruelling". I want to suggest to
you that not all matches can be described as gruelling? A. I
used that word because Rugby League as it is played in Sydney
and at the standard it is played in Sydney is perhaps one of
the most gruelling, one of the toughest physical sports that
people undertake and even in an easy game, by other sporting
standards it is a very gruelling pastime.

20

Q. So with all the matches you would describe them as gruel-
ling? A. I would say all first grade matches would be
gruelling, yes.

HIS HONOUR: Q. You mean because of the nature of the game?

A. Yes.

MR. NEIL: Q. You would never get an easy game. Is that what
you say? A. I don't believe so.

Q. Is that because of the actual physical running on the
field or the bumps and knocks? A. More the bumps and knocks.

30

Q. "Three nights of tortuous conditioning". What did you
mean by the word "tortuous"? A. Weaving, wandering about.

Q. Wandering about? A. Weaving, running, stepping off each
foot.

Q. You mean what you were saying there was that the type of
conditioning you meant by "tortuous" was wandering about,
stepping off feet? A. Not wandering about, weaving about.

Q. Weaving about? A. Yes.

Q. Not grueling? A. I have said gruelling.

Q. The matches are gruelling mainly because of the physical
contact, and secondly because of the running effort involved.
Is that correct?

40

HIS HONOUR: He is talking about conditioning.

MR. NEIL: I am going back to the matches now.

Q. You have used the word "gruelling" in respect of matches

as I understand your answers to mean that the matches were gruelling firstly because of the physical knocks and subsidiarily because of the running about? A. Yes.

Q. So the main problem with the matches is the hard knocks. Is that right? A. Physical contact.

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Q. Didn't you mean when you said "Tortuous conditioning on top of gruelling matches" weren't you referring to physical contact such as for example throwing the medicine ball at each other or scrummaging against each other or tackling practice? A. I don't think so, no.

Q. That is part of the training programme of the team, isn't it?

HIS HONOUR: That has never been mentioned. This conditioning has never been mentioned. The conditioning so far is what I would have called "exercise".

20

MR. NEIL: I am asking the witness what he understood by the words "tortuous conditioning". I withdraw that.

Q. What do you understand by "conditioning"? A. Physical regimentation, physical exercise. A repetitive basis to build up strength and stamina.

Q. What do you mean by "regimentation"? A. Doing it as a group.

Q. In your mind it includes a repetitive aspect? A. Yes. Yes. It has to, by the nature of circuit training, yes.

30

Q. What does that mean, circuit training? What do you understand it means? A. A series of exercises progressing at particular intervals. It varies from sport to sport, from athletics to swimming. In athletics you might run say six one hundred metre sprints --

HIS HONOUR: Q. It is a particular cycle? A. It is a cycle of athletic activity.

MR. NEIL: Q. Rather than running around in a circle? A. Yes.

HIS HONOUR: Q. But it could be that? A. Yes, it could.

MR. NEIL: Q. So what did you mean by "tortuous conditioning"? Could you just tell us that again? A. Weaving, running, weaving around on the football field.

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Q. Well, what is wrong with that? A. Nothing.

Q. Why is Mr. Austin's training method wrong, and incompetent? (Objected to; question rejected.)

Q. Do you say that weaving and running about on a field as a form of conditioning is a wrong form of conditioning?
(Objected to: question pressed: Question rejected.)

Q. What you meant to convey by this was weaving and running about on the field as part of the conditioning? A. That is the dictionary definition of the word "tortuous". 10
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Q. Did you have a dictionary with you when you wrote the article? A. No.

Q. You are familiar with the word from the dictionary are you? A. Yes.

Q. Which dictionary? A. I don't remember particularly but there are many words that are in a journalist's vocabulary and a sports writer vocabulary and this is one of them.

Q. You didn't mean by "tortuous" physical activity including a gruelling element? You didn't mean that? A. No, not specifically. 20

Q. You say "This means in effect Sydney footballers are pressing their bodies to the limit four nights per week. What did you mean by "pressing their bodies to the limit"? A. For conditioning to have any effect it has got to hurt and they are pressing their bodies up into the pain barrier three nights per week and once more during the match. That is 4 times a week.

Q. How did you know they were pressing their bodies to the pain barrier 3 nights a week. What was your belief based on that led you to say "this means that Sydney footballers are pressing their bodies to the limit four nights a week"? A. Well I knew for a fact that they trained three nights a week and they played on Saturday or Sunday which made up four times a week. 30

Q. Did you know what nights a week they trained? A. No. They varied as to whether they had a Sunday or Saturday game, but usually the Tuesday, Thursday or Friday and perhaps Saturday morning or Sunday morning but coaches and officials would alter that. 40

But all upper grade coaching is usually three times a week, top grade coaching is usually three times a week.

Q. Did you know for how long on a Tuesday night the Manly team trained? A. From past experience and the people I spoke to, I had a fair idea.

Q. Do you know how long the training sessions would be over all under the coaches' guidance? A. I would say a couple of hours, two hours.

Q. Did you know how much of that time was under the training of Mr. Austin? A. I had a good idea, yes.

Q. How much? A. I would say an hour.

Q. On a Thursday did you know how much time was spent overall under the coach's overall direction by the Manly team? 10

A. I don't know. An hour and a half.

Q. Did you know how much of that time was under Mr. Austin?

A. No.

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Q. On the third day, whether it be a Friday or a Saturday did you know how long overall under the coaches' direction the Manly team was coached? A. No.

Q. On that third day, be it a Friday or Saturday, did you know for how long Mr. Austin directed the team? A. No.

Q. Did you know in fact whether Mr. Austin attended on two or three nights regularly? A. It is my understanding that he was there three nights of the week. 20

Q. That was based on what material? A. Players that I spoke to, reporters who went to the training ground.

Q. Did you know whether or not Mr. Austin -

HIS HONOUR: But this is based on "I believe". You are putting all this to him as being knowledge.

MR. NEIL: The questions are directed to the basis of his belief.

Q. Look at par. 4. That paragraph starts by saying you believe that amongst other things the conditioners have hoodwinked the coaches into believing that there should be an eighty minute match and three nights of tortuous conditioning. Is that right. A. Yes. 30

Q. Then you go on to say "this means in effect Sydney footballers are pressing their bodies to the limit four nights a week". Is that right? A. Yes.

Q. You didn't put that you believed they were pressing their bodies to the limit four nights a week did you (Objected to; question rejected) 40

Q. What did you mean by the statement "pressing their bodies to the limit four nights a week" (Objected to: question allowed.)

Q. What did you mean by that? A. I am sorry, I got lost.

Q. What did you mean by saying that the footballers were

pressing their bodies to the limit four nights a week?

A. That I believed because of the training routine and the matches, that they were pressing their bodies to the limit four times a week.

Q. On what material did you base any such belief in re- 10
spect of Mr. Austin's training methods? A. From what I
have been told by players and other people who had attended
training and I had observed it perhaps myself in 1978, 1979,
but I don't specifically claim that.

Q. That is the extent of the basis of that belief is it?

A. Yes.

Q. What did you mean by the next sentence, "While that might 20
be acceptable in the boudoir, it is a short cut to physical
staleness on the football field"? A. Oh, it was a frivolous
paragraph, to try and lighten the column up a bit. I think
the first part of the sentence explains itself but I turned
it around in the second part of the sentence to mean that a
football match plus three times a week training is a short
step to physical staleness."

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Q. Was that a belief that you were stating something that
was a fact? A. No. It is an opinion column. This is my
opinion, my belief.

Q. What was the basis of your belief as to physical stale- 30
ness in respect of Mr. Austin's methods?

HIS HONOUR: That is a reference back to a football match
plus three nights of training, that that leads to that conclu-
sion. That is what he said his opinion was.

MR. NEIL: Q. Your opinion in that paragraph is based upon
the preceding two paragraphs is it? A. Yes.

Q. Do you see the heading "Fault"? A. Yes.

Q. That is not yours? Is that right? You didn't compose
the word "fault"? A. No, I didn't, no.

Q. "Manly has persisted for the past three years with the 40
physical regimentation of its players". What was the basis of
your understanding that there was regimentation? A. Well
when you train a team, a group of men, it has to be regimented
for there to be any sense to it.

Q. What about variety? Isn't that valuable? A. Well, you
can have variety in regimentation.

HIS HONOUR: Q. When you have variety you still are regiment-
ed in that sense. A. That is right.

Q. But everyone exercises at the same time? A. Yes.

MR. NEIL: Q. Look at the paragraph at the top right of the page. You refer to records. You told my learned friend you had the records of the team's performances up to April 1981. Is that right? A. Yes.

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Q. How did you keep those records? A. I have a stenographer's notebook and I have a team to each page and the 26 or 22, whatever the case may be of matches that season are put in their order that they are played in and I put the results and at any moment I can turn over and see what a team has won or lost, whatever it may be.

Q. Do your records show who was the trainer of the team?
A. No.

Q. By "Records" in that paragraph were you referring only to the records in 1981? A. I have got them from 1976.

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Q. Did you consult the records for 1980? A. I may have. I don't think so.

Q. Did you consult the records for 1979? A. No. I don't think I would have.

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Q. Did you consult the records for 1978? A. No, I don't think I went back. I was talking about that season.

Q. So that paragraph is based in fact only on the five games?
A. Yes.

Q. The statement: "You question the wisdom of Austin when he tells an international footballer to do another six 400 metre sprints as some kind of penance". I think you told my learned friend you obtained that material from the Dorothy Goodwin article? A. Yes.

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Q. Was that the sole source in respect of that matter? A. Yes.

Q. Look at m.f.i. 5. Ex. 1. There is a sentence in the first column referring to 400 metre runs, saying "And I gave them six four hundred metre runs, just to round off the session"? A. Yes.

Q. Do you agree with that? A. What do you mean?

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Q. Do you agree that that is there? A. Yes.

Q. Rounding off the session with six four hundred metre runs is a lot different from doing "another six 400 metres", isn't it? (Objected to; question pressed; question allowed.)

Q. Can you answer that question? A. My assumption was that Boyd and some other players wanted to fight Austin over that

but Boyd and the others felt it was an additional imposition and therefore some form of penance.

Q. So you made that assumption from the Dorothy Goodwin article? A. Yes.

(In the Absence of the Jury)

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MR. NICHOLAS: My learned junior has prepared some questions and we will discuss them with my learned friend during the adjournment.

MR. NEIL: May I indicate to your Honour that I will be asking your Honour for a general verdict.

(LUNCHEON ADJOURNMENT)

ON RESUMPTION:

MR. NEIL: Q. Look at the top right hand corner of the article, at the paragraph which refers to the Manly team having gone from being a great side to being a tattered band of former champions? A. Yes. 20

Q. Did you earlier today describe the team as of 27th April 1981 as being a leading team? A. Yes.

Q. It is a fact that they were at that time a good team with good players? A. Yes.

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Q. When you wrote "tattered band of former champions" did you mean former winners of the Premiership? A. Yes.

Q. Wasn't that in 1978? A. Yes.

Q. You say you didn't mean the phrase "Band of former champions" to be intending to convey the meaning that the players themselves who had been champions were no longer champions? A. No. 30

Q. Are you serious about that answer? A. Yes, in the context of that being my opinion of their form in their previous three matches.

Q. In fact, Manly won the grand final in 1978 and not in 1979, as I think you said? A. I didn't say. I think I said to you from my recollection. I am not good at particular dates and times, at remembering them. 40

Q. Do you say that the members of the team who can be described as a band are no longer champions if they are not the current holders of the Premiership (Objected to; question rejected).

Q. Did you mean to convey in the article by the words

"former champions" that they were no longer holders of the
Premiership shield? A. Yes.

Q. And you did not mean to convey that they were champion
players who as players were no longer champions. A. Correct.

Q. And you are serious about that answer? A. Yes. 10

Q. Can you recall whether or not the Tooth Cup was being
played in early 1981 prior to your article? A. Yes. It be-
came the Amco Cup, to the Tooth Cup, to the KB Cup and the
years it changed, I am not sure.

Q. Did Manly play a game on the Wednesday night prior to
your article against the New Zealand South Island team?
A. They might have, I don't know.

Q. I suggest they did play a game and won 51 to 2 (Objected
to; question pressed; question rejected).

Q. I want to ask you a few questions about the video system. 20
What is a video back track system that you said you used?
A. It is a portable camera that has the capacity to record
with its own unit on the video tape or else at the same time
to beam the picture back to the studio.

HIS HONOUR: Q. Is that like that there (indicating set in
court room). A. No. That is a recorder player that you
record something off.

MR. NEIL: Q. You can record in the back track equipment at
the same time as it sends the image back? A. Yes.

Q. I refer you also to the article in the right hand column. 30
What did you mean by "grinding" in "grinding training programme"?
A. As the words imply, physically demanding.

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Q. What did you mean by "whip driving coaches"? A. Well,
they tell them to keep on training or give them an extra six
400 metre sprints, things like that.

Q. Have you got any facts, or any other facts upon which you
rely for your belief that Mr. Austin was giving someone six
more 400 metre sprints (Objected to)? A. I relied on that
article, and anything other than that was conversations I had 40
with players or other journalists.

Q. Did these conversations ever include any conversations
with Max Krilich? A. This was long ago. I don't remember who
the conversations were with.

Q. You could not name anyone? A. No.

Q. The television programme that included the segment that
we have seen was the next Sunday? A. Yes.

Q. Do you recall if you said anything else on that programme in addition to what you have told his Honour and the jury that you said at the introduction of the segment? A. I don't recall anything other than that. My memory only goes to recalling that because I know why I did it and what I wanted to express. That is why I said earlier it was just the thought that I was trying to convey. 10

Q. What did you mean, that you had said strong words about Reg. Austin? A. Well I was referring to the article in the Monday "Mirror" newspaper and as my opinion, I expressed it forcefully and that was my way of giving Austin a right of reply.

Q. Did you ever talk to Austin about it yourself? A. No. I didn't think it was necessary.

Q. Did you ask the gentleman Sutcliffe to deliver any form of letter from you to Austin? A. No. It wasn't done on a legal basis but on the basis that I had said something, and I thought he should have the right of reply. 20

Q. Was there any reason why you did not include his right of reply in one of your columns in the "Mirror"? A. It just doesn't work that way.

Q. Why do you say it doesn't work that way? A. I don't think it would supply me with a good column if I said one thing one week and the other week said I had changed my opinion because I had talked to Mr. Austin. I don't think people would read the column. 30

Q. If you were prepared to let him have a word on television to a certain audience why weren't you prepared to publish his views on that matter or ask "the Mirror" to publish them in your column so that the newspaper audience could have his side of it? A. Because at that stage I had not even heard that Austin was even upset by it. I didn't know on the following Sunday that there was any reason to do anything.

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Q. Why did you think he needed a right of reply on the television show (Objected to). 40

Q. Why did you think you ought to give him a right of reply (Objected to)

Q. You never offered him anything in the newspaper, did you?
A. No I didn't, because it was not asked for, to me.

Q. Had you been made aware of any request by Mr. Austin or his solicitor to "the Mirror" seeking an apology in "the Mirror" (Objected to; question pressed).

Q. When you heard that he was complaining about the article in "The Mirror" why didn't you offer him some word in your

column, some opportunity to reply? (Objected to; question rejected.)

Q. You determine the subject matter of your column, don't you? A. After talking to the sporting editor, yes. 10

Q. You are entitled to submit material to the paper for publication. Is that right? A. Once I have had a preliminary talk to the sporting editor. If he doesn't like the line I am taking or if he doesn't think it is a good column, he can in consultation with me veto the idea.

Q. When you heard that Austin was upset, did you ever discuss with the sporting editor the possibility of including Austin's views in the column? A. I would never have suggested the idea because it was so late after the event. It is just not the way newspapers work, to write an article about something six months before. It just doesn't work that way. 20

Q. Do you recall when it was that you learned that Mr. Austin was upset about the article? A. I don't know exactly how long but it was a considerable time afterwards, and it was through the legal officers of "The Mirror".

Q. If you could just think on the matter, was it shortly after the 11th May 1981? A. I think a period of six weeks would make it a very peculiar column to write.

Q. What I asked you was, was it shortly after 11th May 1981. Can you recall that? A. I can't, no. (Objected to: question allowed.) 30

Q. I want to show you a copy of a letter which is an exhibit in the case. Would you look at that letter. I think you will be able to see most of the wording on the letter? A. Yes, I have read that.

Q. Have you been shown that letter before? A. I think I saw this letter in Mr. Hogden's office some time in mid - or late 1981. But I can't remember exactly when.

Q. Mr. Hogden is who? A. One of the "Mirror" editorial executives. 40

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Q. Do you say by the time you saw that letter in your view it was just too late to suggest to the sub-editor that anything should be done about -- A. It was not my decision (Objected to).

RE-EXAMINATION

MR. NICHOLAS: Q. My learned friend asked you about this paragraph referring to the Manly records showing that it had

gone from being a great side to being a tattered band of former champions? A. Yes.

Q. Do you recall in your answers to my learned friend you said that at the time that you wrote it you had considered the record of the first five matches of the competition. Is that right? A. Yes.

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MR. NICHOLAS: Q. At the time that you were writing this article had you references going back to the time when Manly were Grand Champions in 1978? A. Yes.

Q. You had knowledge of that fact, I take it? A. Yes.

Q. Was that knowledge availed of by you when you were writing this article? A. It was somewhere in my mind. I did not refer to it but I knew as a Rugby League writer that they won the Premiership in rather remarkable circumstances in that year.

20

Q. That is what "band of former champions" referred to? A. Yes.

Q. On this television segment which Mr. Austin appeared when you sent Mr. Sutcliffe out to see him either on the day the article appeared or the next day, was that the first available opportunity that you had to make the offer to Mr. Austin?

A. I am not sure it was either the Monday or the Tuesday. It was perhaps the Thursday or the Friday of that week, after the Monday and prior to the Sunday show. That is all.

Q. And that was your programme on the Sunday, 3rd May, was the first opportunity that you could have put Mr. Austin on television, I take it? A. Yes.

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(Witness retired.)

(Transcript of tape admitted and marked Ex. C.)

(Close of case for defendant.)

(No case in reply.)

HIS HONOUR: (To jury) These are what we call interrogatories. An interrogatory is a question. These are questions which are asked out of court by the plaintiff of the defendant and he gets an answer to it. That answer is given on oath and some- times - not always - sometimes that saves a lot of evidence in court. This is one of them. These are the questions and these are the answers which have been put out of court but they are part of the evidence in this case and you can rely upon them.

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(Exhibit C read to the jury.)

IN THE ABSENCE OF THE JURY:

(Counsel addressed on the question of public interest.)

HIS HONOUR: I think that on all the material before me I should find and I do find that there is a public interest here within the section.

(Counsel addressed on s.22 and s.23 matters of qualified privilege.)

159. R.A. Casey re-x, retired.

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(Further hearing adjourned to 9.30 am on Friday, 18th March, 1983.)

* * * * *

160.

AUSTIN v MIRROR NEWSPAPERS LTD.

No.S12521 of 1981

1. Has the plaintiff proved that the matter complained of conveyed the imputations (or any imputations not substantially different from)
- (a) The plaintiff directed physical conditioning and preparation of the Manly Rugby League Team in such a wrong and incompetent manner that he was unfit to hold the position of trainer. 10
- P D
Yes/~~Yes~~
- (b) The plaintiff was an incompetent conditioner of the Manly Rugby League Team. 10
- P D
Yes/~~Yes~~

NOTE:

or both

If the answer to (a) or (b)/is "Yes" and only then proceed to Question 2. 20

2. (a) Was imputation 1(a) defamatory of the plaintiff? P D
Yes/~~Yes~~
- (b) Was imputation 1(b) defamatory of the plaintiff? P D
Yes/~~Yes~~

NOTE:

or both

If the answer to 2(a) and/or 2(b)/is "Yes" and only then proceed to answer question 3.

3. Has the defendant satisfied you that the matter complained of conveyed the imputation (or any imputation not substantially different from) 30
- "That the plaintiff directed physical conditioning and preparation of the

- 2 -

Manly Rugby League Team in a wrong
or incompetent manner."

D P
Yes/~~No~~

NOTE:

If the answer to question 3 is "Yes", proceed
to question 4. If the answer to question 3 is
"No" proceed to question 6.

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4. Has the defendant satisfied you that the
imputation in question 3 is substantially
true?

D P
Yes/~~No~~

NOTE:

If you answer this question "Yes" proceed to
question 5.

5. Has the defendant satisfied you that the
plaintiff's reputation was not further
injured by:

20

- imputation 1(a) if you have found it
to be defamatory in question 2 and/or
- imputation 1(b) if you have found it
to be defamatory in question 2 by reason
of the imputation found to be true in
question 4?

D P
Yes/~~No~~

6. Has the defendant satisfied you that the
circumstances of the publication of the
matter complained of were such that the
plaintiff defamed was not likely to suffer
harm?

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D P
Yes/~~No~~

7. Has the defendant satisfied you that any
comment was based upon proper material for
such comment and was the comment of a ser-
vant or agent of the defendant?

D P
Yes/~~No~~

In the Supreme Court of New South
Wales, Common Law Division

6. Form of Written Questions
left with Jury

3.

8. If you find none of the defences established
what damages do you find?

\$60000.
.....

AUSTIN v. MIRROR NEWSPAPERS

SUBMISSIONS OF PLAINTIFF ON QUALIFIED PRIVILEGE (Para. 6 (a))

The defendant states that the defence is based on Section 22.

"Interest" in Sec. 22 (1) (a) has the same meaning as at common law i.e. a legal, social, or moral duty to receive the information. See ADAM v. WARD (1917) S.C. 309 at 334 per Lord Atkinson.

10

In this case there is no legal, social or moral duty to receive the information. Even if "interest" is wider than at common law, there is no financial, legal, social or moral matter in the publication which affects the ordinary member of the public. His interests are in no way affected by Mr. Austin's training methods which was the subject.

No evidence has been called by the defendant to show that any member of the public had any relevant interest.

Section 22 (1) (b) requires the matter to be published in the course of giving information to the recipient, in this case the public. It therefore does not relate to comment or opinion, only fact.

20

The defendant claims that almost all of the article is comment (see particulars) and that the imputations are comment (para. 6 (c) and (d)). Therefore the Sec. 22 defence or the defendant's own argument should be struck out in so far as it relates to comment and the imputations i.e. for practical purposes the whole of the article.

2.

Therefore, the defence should be rejected because it does not give information to persons who have a relevant interest.

Section 22 (1) (c) requires the conduct of the publisher in publishing the matter to be reasonable in the circumstances.

The onus is on the defendant. The onus cannot and has not been discharged.

10

There are many matters to be considered by the Judge. Where he may be assisted by jury findings he should wait for those findings before making a decision.

See WRIGHT v. A.B.C. (1977) 1 N.S.W.L.R. 697 per Reynolds J.A.C., at 711/2.

"Sec. 22 (1) (c) calls for the consideration of a wide range of matters. Some are to be found in the published material itself and the manner and extent of its publication, and others from the whole of the surrounding circumstances. The connection between the subject and the defamatory imputation remains relevant. It may be tenuous, or it may be real and substantial. If what was said includes comment, it is relevant to consider whether it is fair and whether it followed logically from facts known or stated. Questions of the exercise of care before the defamatory utterance are also relevant, and questions as to whether the maker of the statement knew whether he was likely to convey a misleading impression In this case, the defendants offered no evidence tending to support the reasonableness of their conduct. They did not assert any belief in the truth of the imputation."

20

30

3.

See also MOROSI v. MIRROR NEWSPAPERS LTD. (1977) 2 N.S.W.L.R.
749

The Court (Moffitt, P., Hope, Reynolds J.J.A.) stated at 797. Newspaper publications are made to the public at large, and the conduct of a publisher publishing defamatory matter in a newspaper must be reasonable having regard inter alia, to that wide publication. Any person publishing defamatory matter should be careful to ensure that it is proper for him to make the publication no matter how limited in extent it is. 10

Since Section 22 provides a defence, the onus is upon the publisher to show that he is entitled to its protection. To satisfy this onus, a newspaper publisher must establish circumstances, or point to proven circumstances which make it reasonable to publish the defamatory matter to the world at large. It is rarely, if ever, that this onus would be satisfied by the terms of the publication alone - see WRIGHT. It is possible that in some cases, it would be satisfied by the evidence of witnesses called by the plaintiff, but commonly its satisfaction would require the publisher to call evidence to establish what care he had taken. In satisfying this onus, a newspaper publisher is in no different position to a private citizen in possession of the same information. 20

The fact that the publisher has sources for his information, and that he has made the best check possible in the time to ensure that the defamatory matter is accurate.

See ILLAWARA NEWSPAPERS PTY. LIMITED v. BUTLER (1981) 2 N.S.W.L.R. 502. 30

The onus of establishing the defence of qualified privilege under Section 22 (1) (c) rests upon the defendant asserting its defence.

4.

Samuels J. A. at 507/8 said:

"As to Section 22 we will assume that the proceedings constituted a relevant subject, and that the whole of the matter, including the imputation, was published in the course of giving information to the public on the subject. It is, moreover, conceded that the defendant is 10 bound to approach this defence on the footing of the imputation which the jury found, which as the publication referred to, constitutes the subject matter upon which s. 22 operates. We do not consider, however, that it was reasonable to publish a serious imputation, that of racism in a judicial officer, which as the evidence shows, the defendant's servants did not intend to make and in which, it must be presumed, they had no belief.

We make the finding of fact for ourselves, and endorse His Honour's findings to the same effect although, we 20 should add, not his reasoning to it, nor, in particular, his view of s. 22 (1) (a). Reference was made to WRIGHT v. AUSTRALIAN BROADCASTING COMMISSION (1977) 1 N.S.W.L.R. 697 in particular at pp. 705 and 712. We respectfully agree that the onus of establishing the ingredients of s. 22 (1) (c) rests upon the defendant asserting the defence. The question whether malice is available to rebut a defence under the section did not strictly arise in Wright, does not arise here, and we reserve our opinion upon it. This submission therefore fails. 30

We make this general observation: we do not see our conclusions concerning the defences of comment and qualified privilege as placing any intolerable or unreasonable

5.

shackles upon the freedom of a newspaper to criticize what it believes to be defects or unfairness in the administration of justice. But, if it exercises this privilege, its comments must be defended according to the general law. There is no law of privilege special to newspapers. The present case turns upon its own facts, 10 and in particular upon the fact that the defendant did not seek to defend the imputation which the jury found and which as we think was that which the matter intended to, and did, convey."

POINTS

The plaintiff relies, inter alia, on the following matters arising out of these authorities:

- (a) The defendant has not discharged its onus.
- (b) The section applies to fact, not opinion or comment.
- (c) The manner and extent of the publication. There is a 20 prominent leading, coaches are blamed "fault" is prominent. It is in a prominent position. Extravagant language is used, e.g. minor catastrophe", "over-zealous", "hoodwinked", "gruelling", "tortuous", "acceptable in the bondoir", "regimentation", "fitness fanatic", "persecution", "tattered band of former champions", "penance" "grinding" "whip-driving" and "sack them".

6.

- (d) There is a close connection between the article and the imputations.
- (e) The defendant did not mean to convey the imputations. See Interrogatory 11 and Illawara Newspapers.
- (f) The comment was not fair or based on proper material e.g. 3 losses in a row is not proper material on which to base paragraph 10; The errors of "past three years", "another six 400 m. sprints as some kind of penance"; the unacceptable alleged meanings given by Mr. Casey as to "hoodwinked" "tortuous" "former champions", "regimented". 10
- (g) Lack of contact with the plaintiff or other persons by Mr. Casey and more particularly by the defendant.
- (h) No evidence by the defendant as distinct from Mr. Casey regarding publication by the defendant, or regarding any belief of the defendant.
- (i) The defendant does not assert any belief in the ^{truth} ~~trash~~ of the imputations nor does it assert the actual truth of them. It specifically does not seek to justify them. 20
- (j) It is not reasonable to publish serious imputations, e.g. unfitness for the position and incompetence which the defendant or its servants, did not intend to make and in which it must be presumed, they had no belief, to a circulation of 348, 192 - the world at large.
- (k) The terms of the publication alone do not satisfy the onus.

7.

- (l) No evidence by the defendant as to care taken.

- (m) The onus is on the defendant to produce any case in which the Section 22 defence has been successfully raised by a newspaper with a large and extensive circulation. The plaintiff's researches reveal no such case. Recently, in the similar case of *Boyd v. Mirror Newspapers* Mr. Justice Lee rejected the defence. 10

In the Supreme Court of New South
Wales, Common Law Division,
8. Reasons for Judgment of
Lusher, J., re further amendment
to Statement of Claim, 14.3.1983

IN THE SUPREME COURT)
OF NEW SOUTH WALES) No. 12521 of 1981
COMMON LAW DIVISION)

CORAM: LUSHER, J.

14th MARCH 1983

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AUSTIN v. MIRROR NEWSPAPERS LIMITED

JUDGMENT

HIS HONOUR: At the outset of this case, after the jury was struck but before the opening, senior counsel for the defendant made an application that par.4(2) of the further amended statement of claim, being one of the imputations alleged, should be struck out on the ground that the material published does not bear that imputation.

Paragraph 4(2) states the imputation as being,

"that the plaintiff was an overbearing bullying conditioner of the Manly Rugby League Team." 20

The article in question contained as a headline,

"Our stale stars."

It has an internal headline blocked in,

"coaches pushing too hard."

It refers to,

"minor catastrophe. The way Parramatta and Manly, along with Balmain have flopped so badly."

It continues that "something is radically wrong with the preparation of major teams", that the author believes "top teams 30 are being trained into the ground by over-zealous conditioners who hoodwink the coaches into believing that on top of a match three nights tortuous conditioning are also needed", which means footballers

1.

are pressing their bodies to the limit four nights a week, that this is a short-cut to physical staleness. The word "fault" then appears as a sub-headline and refers to the plaintiff as a fitness fanatic, that since he has taken over conditioning Manly rugby league team, it has gone from a great side to a 10 tattered band of former champions. It says this has not altogether been his fault, that other matters contributed. The wisdom of the plaintiff is questioned when he tells an international to do another six 400 metre sprints as some kind of penance. It asks whether there is a need for such a grinding training programme under whip driving coaches and concludes by saying that the plaintiff and company think they are doing the right thing, and the author's advice is to sack them.

The plaintiff is not a coach but a conditioner or trainer.

In my opinion there is nothing in the article which says 20 or suggests that the plaintiff was an overbearing, bullying conditioner. There was reference to the manner which he chose as a conditioner, and to the programme, but there is nothing to suggest that he was overbearing or bullying in that capacity. The plaintiff relied upon the reference to telling an international to do further sprints as some kind of penance, suggesting that this was a form of punishment. Whether this be so or not, it is not open to the view that he was an overbearing, bullying conditioner. The reason for the additional sprints is not mentioned. There are a variety of possibilities open. It may 30 be because the footballer was slack and out of condition or any number of reasons which might be proper or improper, however this is not to say he was overbearing and bullying.

In the Supreme Court of New South
Wales, Common Law Division,
8. Reasons for Judgment of
Lusher, J., re further amendment
to Statement of Claim, 14.3.1983

For these reasons, I grant the application and strike out
par.4(2) of the further amended statement of claim.

** ** *

2.

IN THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION

)
) No. 12521 of 1981
)

CORAM: LUSHER, J.

Monday, 14th March, 1983

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AUSTIN v. MIRROR NEWSPAPERS LIMITED

JUDGMENT

(Further amendment to the Statement of Claim)

HIS HONOUR: In this matter early this morning an application was made by learned senior counsel appearing for the defendant to strike out what was then the imputation complained of in par. 4(ii) of the amended statement of claim and I acceded to that submission and struck it out. I indicated I would deliver my reasons later which I will subsequently do. Following upon that the plaintiff, through learned senior counsel, 20 made an application to insert a fresh paragraph 4(ii) being in the same words as that which was immediately before struck out but with the deletion of the words "overbearing, bullying" and the insertion in lieu thereof the word "incompetent" so that par.4(ii) would then read: "That the plaintiff was the incompetent conditioner of the Manly Rugby League team."

The matter arises out of the publication of an article which is before me from a newspaper apparently published by the defendant. The view I have reached is that I should allow the amendment and the reasons for that are as follows: It is 30 true that Pt.67,r.11(3) provides that imputations should differ in substance but, although not without some doubt, which I will later express, it seems to me there is a difference in

substance, subtle and elusive in one sense though that may be.

The article starts off by making a headline reference to "Our Stale Stars" and thereafter makes reference to training programmes of the team in question. Before I go further I 10 should mention the substance of par 4(i) is, "that the plaintiff directed physical conditioning and preparation of the Manly Rugby League team in such a wrong and incompetent manner that he was unfit to hold the position of trainer." As I understand it the imputation there is that first the plaintiff did direct, secondly that his manner of direction was wrong and incompetent and, thirdly, that by virtue of those two circumstances he was unfit to hold the position which he held. Under the proposed amendment the imputation claimed is simply that he was an incompetent conditioner so that what is involved 20 here, apart from whether or not he was the conditioner which seems to be somewhat outside the point in one sense, as it seems to be clear that he was from what I am told, the real question is was he incompetent. It seems to me that there are therefore two separate issues; the first going to whether he was really fit for holding his job because of the wrongfulness and incompetence of the manner of his conditioning; the second simply going to his competence as a conditioner. In one sense - and it is for this reason that I have hesitated for the moment in reaching my decision - the issue of incompetence in the second is also involved, of course in the first 30 and if one's incompetence is established under the second it might be argued that it follows he is also unfit. This is the burden of the first imputation.

Whilst there is something to be said for this view I
suppose the reality is, and it is in my view a jury question,
2
there are incompetent people who do hold positions whose in-
competence may be such that even so they are still not unfit 10
to hold the position. As I say, the point is fine but I never-
theless think that the areas of distinction are sufficient to
enable me to say there is a difference in substance and I
allow the amendment.

Mr. Nicholas of Queen's Counsel who appeared for the de-
fendant advised that in the event of the application to amend
being allowed he would move to have the imputation struck out
on the ground that the article did not support the imputation.
This was argued at the same time. The view that I have reach-
ed on that is that there is room for the imputation to be 20
accepted and that it should go to the jury. My reason for
saying this is, first that the article in the newspaper starts
off "our stale stars" and then proceeds to say that there is
something wrong with the preparation of major teams with
talented players and reference is later made to the team in
question. It is then said that it was believed the top teams
were being trained into the ground by over-zealous conditioners.
There was reference to the conditioners hoodwinking coaches in
the belief that on top of a match, during the course of a
week, there should be three nights of tortuous conditioning 30
needed. To my mind this suggests that the inference to be drawn
is that they are not needed or at least not that number of
nights. However neutral this may be in itself it follows with
the statement, which is irrelevant for present purposes, that

this is a short cut to physical staleness on the football
field. It is then followed by the

3

sub-headline, the word "fault" where it says "the Manly team
has persisted with physical regimentation by a fitness fana- 10
tic", being the plaintiff. This is, of course, open to two con-
structions, as to whether Manly has persisted with the regimen-
tation and has done so through Austin or may mean that Manly
has persisted with the regimentation being brought about by
Austin. It says, "Since Austin took over the conditioning of
the team in question it has gone from being a great side to
being a tattered band of former champions." It seems to me
that it is open to a connection between this statement and
earlier comments concerning the plaintiff. However it says it
is not altogether his fault and I suppose some emphasis can be 20
placed on the word "altogether" particularly as the following
paragraph proceeds to say that other persons have contributed.
The word "contributed" I suppose, taken with the word "altoge-
ther", does have some significance from the plaintiff's point
of view. The author of the article then questions the wisdom
of Austin in telling an apparently unidentifiable footballer
to do certain sprint distances. It seems to me that this is a
challenge certainly to his wisdom and I feel that this is also
a jury issue.

In my opinion, taking an overall view of the article, 30
there is room for the view that the imputation is open as sug-
gested by the amendment which I have allowed and I therefore
reject the application to strike out that imputation.

During the course of the argument I did make an inquiry

as to whether the defendant was in a position to proceed in
the event the amendment was allowed and I was informed it was,
so no problem emerges on that score. There may, however, be
a question of an application which I would readily grant to
amend the defences and if that is so they can be amended dur- 10
ing the course of the trial.

IN THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION

)
) No. 12521 of 1981
)

CORAM: LUSHER, J.

And a Jury of Four

10

MONDAY, 21st MARCH, 1983.

AUSTIN v. MIRROR NEWSPAPERS LIMITED

SUMMING-UP

HIS HONOUR: Members of the jury, this is an action, as you now know, which is being brought by the plaintiff whose name is Reginald Austin against Mirror Newspapers Limited who is the defendant. He is suing in what we call an action for defamation.

I would ask you at the outset to put out of your minds whatever you might think or have thought in the past defamation is, because very often people have completely erroneous ideas as to what defamation really is. So if you had some ideas about it in the past I do ask you to put it out of your minds. It is for me to explain to you as the judge what it is that you are dealing with and it would be very wrong for you to deal with something that is not defamation. 20

There is a section of an Act of Parliament that says that where a person publishes to another or to others an article - in this case it is called a report - by means of which he makes an imputation of that person, and the imputation is defamatory, then that person has a cause of action. That is to say, he is entitled to sue for defamation. I will explain it more adequately to you as I go along, but at the beginning we can see what is necessary and we can see what you do not have to worry about at all. The first thing is that it has 30

got to be something in writing. There is no problem about that - we have seen the paper and there is no problem about it and it is not disputed. Secondly, it has to be published. What that means or what it does not mean you need not worry about because there is no argument in this case about the fact it has been published. So you forget about that. The third 10 thing is that it must be an imputation, and there is a big dispute about that. Finally, the imputation must itself be defamatory and there is a big issue about that.

So the two matters for you are the imputation and the defamation. I would also say at the outset of the case that an action for defamation such as this is not brought, so far as the law is concerned, to punish anybody. It is not brought to punish the person who publishes it. Its purpose is, and it is brought, in order to vindicate the reputation of the person who brings the action, if he has one. And that is one of the 20 matters here. It is not suggested he has not got a reputation - you must not think that - but that is the purpose of it.

Before I proceed to tell you something about these interesting matters let me tell you first what you are here for and what I am here for. You probably think you are going to decide the case. You probably think that I am going to decide the case. You are probably wondering why we are both here. You and I have totally different functions. It is my task, and only my task in this courtroom, to explain to you what the law is and what the law is that you have to apply. That is all I 30 am concerned about. That means this that when I tell you what the law is, it is your task and it is your duty to do what I tell you. You must not say, "Well, the judge says that is

the law but, you know, it sounds a bit strange to us - it might even sound a bit silly - and we do not think that is the way to go about it". If anybody was to say that in the juryroom, one or others of you should say that "That is not the way we have been asked to approach the matter". You have to approach this case in accordance with the law. It is very important. The 10 rule of the law in the community is very important, so we have to follow the law and I am here to tell you what the law is so that you know what the law is and you apply it to your deliberation. That is what I do.

What you do, and what your task is, is that having heard what the law is and having applied it you decide the matters of fact. Anything that touches on the facts in the matter. You decide that and I have nothing to do with that at all - nothing. I am entitled, if I want to - I should not think I will - to express an opinion about a matter of fact to you, 20 but you are not bound to take any notice of what I say about the facts. I make that clear to you. You take no notice of what I say to you about matters of fact. If what I say to you about the facts agrees with what you think about the facts - then that is a matter for you.

You will hear frequently as we go along in this case that I will say to you, "That is a matter for you", meaning thereby that that is a question you have to decide. We all know what a fact is and a fact is something whether this happened or not. Taking something that is a long way away from this case, 30 if somebody said an incident took place at six o'clock and somebody said it did not, that it happened at seven o'clock, there is an argument on fact as to whether it occurred at six

or seven o'clock and you would decide that question about whether it was six o'clock or seven o'clock if that was an important fact in the case. So that where the facts are concerned, it is your task and your task alone to decide those facts and I have nothing whatever to do with them.

How do you go about these matters? You go about them in 10
this case as all jurymen and jurywomen do in these courts,
remembering always you are a part of this court as of last
week. You are now sitting as part of judges of the Supreme
Court of New South Wales. It is a very great privilege and a
very great honour and it is a very great obligation and responsibility. You are actually sitting in judgment on a dispute
between two members of the community. That is what you are
here to do. The result of that is that being judges you do
not look at and approach the matter other than as judges should
and do, and that is quite impartially, without any fear or 20
favour to one or the other, and fairly and honestly. It would
be very wrong to look at a case and say, "Well, what does it
really matter?" It is important to both these people, this
company and the plaintiff. It would be very wrong to decide
it on the basis of some prejudice or some favourable view that
you had about somebody or some unfavourable view you had about
somebody. You do not approach it on the basis of prejudice
or bias or anything of that sort. You push all that from your
minds and in the best way you can you have to, and I have to,
approach it fairly and justly. You remember all the time - 30
and this is not meant to lecture you but just to remind you -
what our task is, and that is that we are all engaged in the
very high task in this community of the administration of

justice and it is very important that both parties should feel that this matter has been approached in that way. So it is not a task that should be approached lightly or anything of that sort and that is why cases take time, and take a lot of time.

Counsel put their points of view to you from both sides 10
and seek to persuade you to one view or the other. It is your task to ultimately come to conclusions. Having said that, let me come to the first matter of law which you must follow, and it has been mentioned, and that is what we call the onus. Two people come into a courtroom and somebody has to prove something. The plaintiff in this case comes into this courtroom first - he starts the case - and the law says "Well, he started it now he has got to prove it". It is his job, his task, to satisfy you that his case is the better case. The way in which that is done is that we say he carries the burden 20
of proving it; he carries the onus of proving it. You may have heard about the onus in criminal cases but we are not in a criminal court here, it is a civil case. He does not have to prove his case to you beyond reasonable doubt. What he has to do is to satisfy you on what we call the probabilities. He has to satisfy you of what you think is probably what happened, probably the better view, what you think on the probabilities is the more likely to be what took place. So that on all the various matters where there be an argument on fact, if you have got a view about it one way or the other, there is no 30
difficulty, in which case you say "I believe this" or "I believe that". You say to yourselves that he carries the onus and you ask yourselves "Has he satisfied me?" If he has not,

he loses on that point. On the initial part of the case, that is the plaintiff's case, the defendant does not have to prove anything. If you do not pay your milk bill and the milkman sues you for the money in that he says that you owed it to him, the milkman has to prove that. He has to prove you received the milk and that he gave it to you and you did not pay him. 10
He has to prove that. The defendant does not have to prove anything. That is the way the law is.

In this case there are points where, depending on the view you take of the plaintiff's case, the defendant, - and only then - may have to prove something. But on the plaintiff's case the defendant does not have to prove anything. Let us be clear about that.

To start with in this case there are three things that he has to prove. He has to prove the imputations - and I will deal with them separately. He has to prove the imputations 20
to your satisfaction and he has to prove that the imputation - and there are two - either one of them or both of them (and when I am speaking of "them" remember there are two and either one or both will do) is defamatory of him. Remember that proof of one is enough. Thirdly, he has to prove damages.

As to the last, damages, we can leave that until I finish. All these matters have to be established by the plaintiff to your satisfaction.

Let us come to the imputation. By now you have heard a lot about imputations. I tell you as a matter of law that an 30
imputation is a meaning. To impute something means to give meaning to and the imputation is another word for the meaning. You have been listening here to counsel and myself speaking

about imputations in the case and we are talking about meanings.

The way this case has been conducted the plaintiff has given you that news sheet containing that article and he has taken upon himself the burden, the onus of establishing to your satisfaction, on the probabilities, that that news article contains meanings or imputations against him. He says 10 there are two of them. You must be very clear about it, you just cannot go out into that jury room and say, "Well it means something else" or, "I think it means this, that or the other," that is not the point. The law requires him to say what that means against him. So it is not a question of it being some other meaning or you thinking, "Well, he has got the wrong meaning, what it really means is this". That has nothing to do with this case. You have to be satisfied that two meanings, or one of them, that he says is in that paper, is there. If 20 it is not, that is the end of this case and he loses it, and the defendant wins it because he has not established the imputation.

That is the very first thing. What he says is that article means that which is in question 1. He says (a) that it means that the plaintiff directed the physical conditioning and the preparation of the Manly team in such a wrong and incompetent manner that he was unfit to hold the position of trainer, and (b) the plaintiff was an incompetent conditioner of the Manly Rugby League team. Those are the two things that he says are in it. It is necessary for him, as I have 30 told you, to find either one or find both. If you find one you have to indicate which one. They are separately marked. If you find both you put both. If it is neither, you say it is neither.

In looking at that, and there is no real problem about this, you are entitled to take what we call a shade of meaning. That is to say it may not mean exactly that but it really has that meaning, that is really what the meaning is. To find what the shade of meaning is you have to go first to that imputation.

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The next thing is when you look at that and at the meaning you are not concerned in any way to establish or confirm whether those meanings are true or not. What you are looking for is, is it there? You are not worried about whether it is true at all. Forget about that. The question for you to decide is has he proved that the matter complained of (that is the article) contained the imputation, that it means those two things. That is all it means.

The next matter of law for me to tell you of is what is the test, how do you find out whether this piece of paper that you have, which has the article in it, does mean that.

It is a matter for you to make a decision but you must apply the test which I give you as a matter of law and the test is this; you look at it, that is to say as to what the ordinary reasonable reader who would be reading that article would take it to mean. You take what the ordinary reasonable reader who is reading that piece of paper would take it to mean. It is not what you yourself personally think it means. You have to put yourself in the position of being the ordinary reader, as best you can, looking at that as the ordinary reasonable reader would in regard to (a) and (b). That is the test you apply, the ordinary reader, and I tell you that is a matter of law, that, applying this test, is not somebody

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who just picks it up and skips quickly through it, reads the first line and the last line. We are talking about the reader who is somebody who reads it. He does not read it to mull it over for a week, it means he reads it and that is the way you look at it, the ordinary reasonable person reading that article in that fashion. 10

I tell you again as a matter of law that the ordinary reasonable reader is a sensible person. He is not a scandal monger, he is not there nitpicking, taking currants out of the cake, as it were, he is a person who reads it properly and fairly. He is not suspicious-minded nor a person who sees bad or ill in everything he reads. He would not be the ordinary reasonable reader. So you approach it in the way I have indicated, the ordinary reader being an average sort of person reading that article, what he thought of it. If you come up with the view that that would be right, that he would think that then you would say, "Yes." If you do not think he would, you would say, "No." It is a matter of fact for you and I say nothing about it. 20

That does not mean you have to find the actual par.(a) or the actual par.(b) printed there but looking at the article, does it carry that meaning; the way all those words are printed. The question is is that the meaning the plaintiff sees in it and says is in it and that the defendant says is not in it at all.

The second matter is if you come to the view that the newspaper sheet does not contain those meanings then it is your duty to say, "No it does not" and that is the end of the case, that is the finish of it because if the imputations are 30

not there there is no more to be talked about, that is the end and you say, "No" and come back with your verdict. Because if it is not there it could not be defamatory so that is the end of the case.

On the other hand, if you were to take the view, and this is why it is so expressed that if the answer to (a) or (b) is 10 yes, and it is only if you say "Yes", then you proceed to question 2.

This question as to what is defamatory is a matter of law. It is defamatory, the meaning or imputation is defamatory if the meaning or imputation is one which lowers the plaintiff in the eyes or estimation of his fellow man, people in the community. If it is likely to cause the ordinary reasonable folk in the community to think less of him then it is defamatory. If it does not do that, it is not defamatory. So that when you are looking at defamation, what is defamatory, you simply look 20 at that question. Is it defamatory, and you ask yourself the question is what is said in (a) or (b) the sort of imputation which lowers him in the estimation of his fellow man in the community, is it likely to cause ordinary people in this community, taking it by and large and in general, to think less of him? If your answer to that is "No, it is not", it is not defamatory and you would say it is not defamatory.

If you find, if you say it does so lower him then you say, "Yes, it is defamatory" bearing in mind the plaintiff it is who has to satisfy you on the balance of probabilities that 30 that is defamatory. The defendant does not have to establish it is not defamatory.

There is one other aspect as a matter of law and you

approach it in this way because the case has been approached
in this way. Is it defamatory of him in relation to him being
a trainer and conditioner of a football team? We are not con-
cerned about his reputation as a golfer or a husband or a man-
about-town or anything else, we are concerned about his posi-
tion as a trainer and conditioner of a football team called 10
the Manly-Warringah Rugby League team. I only touch on this
point at this time because I will deal with it more later on
another aspect.

You will remember that people who are in the public eye
are open to public discussion. It is part of the area in which
they move and is part of the aspects of being a person in the
public eye. As I told you these matters are purely matters
for you to determine and that means this, that if the plain-
tiff has satisfied you as to imputation (a) or (b), or one of 20
them or both of them arises and that one or other of them is
defamatory, then the plaintiff is entitled to a verdict in this
case.

That is subject to the defences which are raised, and
that takes me now to deal with the defences. The defences in
this matter involve those from number three onwards, with the
exception of number eight. You will remember, of course, that
in one sense when the defendant says that the imputations are
not to be found in the document, in the paper, and that they
are not defamatory, they also are defences in one sense but
they are really answers to what the plaintiff is saying and it 30
is a question as to whether you are satisfied by the plaintiff.
However, leaving those aside, I now come to what I would call
the defences proper.

The defences proper are matters raised by the defendant and because the defendant raises them the onus is on the defendant to establish them and it is his duty to establish them on the same basis as the plaintiff had to establish his case; namely, it has to establish it on the balance of probabilities. So that when you are looking at the defences you bear in mind 10 that it is already assumed that you have found the imputations are there in question 1, par. 1, and that they are defamatory as in par.2. If they are not, if you do not find par. 1 and you do not find par. 2 in favour of the plaintiff, you do not have to look at any of the defences at all - and you see the sense in that - because there is no imputation and there is no defamation. So you do not have to, in that case look at the defences at all. The defences only arise if there were the imputations and the imputations were defamatory. So it is all on that basis. 20

What does the defendant say? It has a number of defences and it is proper to tell you this that although it has a number of defences the law says that all those defences are available to it and it does not have to prove all of them. It might prove all of them; it can prove all of them; but it does not have to. It is enough for the defendant to win the case, or to succeed in it, if it proves any one of the defences. You must not think, "Well, they have everything under the sun here to wave at the plaintiff." In one sense that is true but this is because the law says so. The law says that if 30 somebody sues you for defamation you have a considerable number of defences at your disposal and you are entitled to raise them, and that is what the defendant does here. Any one

defence is enough for the defendant to succeed if you find that it has made out that defence.

Let us take the first defence. This comes under pars. 3, 4 and 5. They are broken up for you into separate matters but in reality it is all one defence but the defence has those three parts in it. I will now explain to you as a matter of law what the nature of that defence is. It is a little complicated but I hope to be able to put it so that you understand it. You will remember that we start off on the assumption that the plaintiff has proved the imputation and has proved that it is defamatory. In answer to that, by way of a defence, as a matter of law, the defendant says, and the law allows it, that there is another meaning, another and a different meaning in that article quite apart from what the plaintiff says. So it gives you a third one, because you have already found the first two. It says there is another meaning, and that is what we call another imputation. If you want a big word to play with, we call it here in the courts a contextual imputation. We call it that because it comes from the context of the article and it is something within that context and therefore we say it is a contextual imputation, which is not one of the plaintiff's. We will just call it "another meaning". The defendant says there is another meaning in that and it says that that meaning relates to a matter of public interest. You need not worry about that because that is a matter for me as a matter of law and I take the responsibility for that so you can forget all about it. You assume that it does and you forget it. It then says that that other imputation, which it says is there, is substantially true. That is the first time

I have said that to you and it is the first time that you need to look at whether anything is true.

Then it says that by reason of that other meaning being substantially true, the meaning of the plaintiff's imputations does not any further injure his reputation. That is the law on that and that is the way you approach this defence. 10

You will remember Mr. Nicholas gave you an illustration of a person about whom something was written which said that he had done this and he had done that - a number of things. The plaintiff then picks on one of those - to illustrate it - and says "You said that and because you have said that that defames me". The defendant says, "Yes, I did say that but it has also got this meaning here and that meaning is substantially true and because it is substantially true the result is that this meaning you are squabbling about disappears and that meaning does not affect your reputation or injure it at all". That is the sort of illustration he gave you and in one sense it is an illustration of how this operates. 20

I have already told you what an imputation is but I must say something to you about substantial truth. The defendant has to satisfy you that it is substantially true. That does not mean that he has to prove that it is absolutely true; it does not mean he has to prove it is 100 per cent true and to cross all the T's and dot all the I's and put in all the commas and everything. It means it has got to be substantially true. I do not want to say anything more about that. It is a matter for you to look at and doing the best you can, as you see it, decide "Is what he says substantially right, substantially true?" This is a matter of law that arises on this defence 30

and if we now look at it you can see the purpose of such defence being available. If the plaintiff says that that is what it means - apart from what the defendant has also said about it - it might be thought in some cases that the plaintiff, by just picking the one meaning, has an unfair advantage. If that is the way a case is fought - and no one says anything 10 about that here - that is why the defendant is entitled to say there is another meaning and the other meaning is substantially true and being substantially true the fact it has the other meaning, other than that of the plaintiffs, and it does not really injure any further what his reputation was. So that what he says, and when I say "he" I mean the defendant, is the other meaning is different to A and B. And do not forget those other ones, we have already A and B in and the defendant now says there is a third one. The defendant says that the plaintiff directed physical conditioning and preparation of the 20 Manly team in a wrong manner or in an incompetent manner. He does not say both. He does not say it was wrong and incompetent. He says it was in a wrong manner or in an incompetent manner. You can see the distinction between them. It is one thing to say of a man, as the plaintiff says that it means, that he was incompetent. That is what the plaintiff says it means. It is another thing to say that the manner or the way he did the conditioning was wrong and incompetent. You could be a first class mechanic, a very competent mechanic, but you could still go about repairing a motor vehicle in a wrong way. 30 That can happen. Or you might even do it incompetently. But that is a big difference - a lot different from saying "You are an incompetent mechanic". An incompetent mechanic is a totally different concept.

What the defendant says to you is that its meaning is that it went to the manner or the way. That is question 3. The next question is:

"Has the defendant satisfied you that that imputation is substantially true?"

That is a question of fact for you. That is why Mr. Nicholas 10
asked a lot of witnesses questions about preparation, the stage
which preparation had reached and matters of that sort. The
question is going to the manner of the preparation and that is
what we are concerned about in this particular defence: Was
it wrong or incompetent. You heard all the evidence about this
and it is a question of fact for you to decide.

Ladies and gentlemen, we were discussing No. 3, the first
question, where as a matter of fact you are satisfied, apply-
ing the test which I have given you that the material, that is
the article, contained either the imputation which the defendant 20
says it contained and if you answer that, "No" then you need
not worry about No. 4 or No. 5. If you answer, "Yes" and that
is what the note says, if it is "Yes" then you go to question
4. Question 4 is:

"Has the defendant satisfied you that the imputation in
question 3 is substantially true?"

The onus is on the defendant and you must bear in mind what it
is the defendant has to satisfy you is true, it is not whether
he is quite truthful, whether he has been completely truthful,
we are concerned about whether it is substantially true and 30
that he directed the physical conditioning and preparation of
that team in a wrong or incompetent fashion. That is what you
have to look at, nothing else. The fact that somebody says he
is a good trainer, a wonderful trainer, is not to the point.

The question is, is it substantially true that the manner in which he was doing then at that time was wrong or incompetent, that is the point. The defendant says it was substantially true but it does not have to be absolutely 100 percent true, it has to be substantially true and that is a question of fact for you. You know what substantially means. 10

The defendant said when you look at what he admits that he said to Dorothy Goodwin and that has been given a certain amount of reference in this case, that is hardly the way to be going about training a football team. That is what the defendant is putting and therefore what he was doing was wrong because the plaintiff admits he did say that which is an admission by him and an admission is in many ways the best way of proving something. A person admits something, well that is a very good way of proving that he said and did that. The plaintiff admits he says this and it is in this passage at p.65. 20
He was interviewed and you must bear in mind we are not talking about the year before or six months before but some short time before this happened:

"'It's lucky Manly's sprint coach Reg Austin knows how to duck and weave as well as run because six players threatened to punch him after training recently. One of them was Fatty Boyd.'"

Now that is in quotes as to what was said by Austin and he said it to the young lady:

"'One of them was Fatty Boyd. He hates training', said Austin, totally unafraid," 30

meaning he is not afraid of the situation:

"'Let's face it all footballers hate training and I gave them six 400m runs just to round off the session. That they wanted to fight me suggested they still had enough breath left for another couple of laps which shut them up,' said Austin, who relished hard work himself. 'You can dob in Les Boyd.'"

Whatever that means - whether that means you can dob him in in the sense of putting him into the article, that he is one of them -

"'He is more beautiful when he's angry . . . ha ha.'"

meaning he laughed.

"Q. That is what you said to Dorothy Goodwin in the inter- 10
view over the phone, isn't it? A. That is right.

Q. And it is referring to an occasion when you gave Mr.
Boyd and some other extra six 400m runs to round off a
session, doesn't it? A. That would be right."

The defendant's submission to you is that a trainer who is training a football team of this calibre - and we are not talking or dealing with a children's team - to treat his men in that fashion and getting them to the point where, at the end of the training, because he has given them six 400m runs just to round off the session, they want to fight him because they do 20
not like the training - that is what the argument is anyhow - to get them to that state and then when they start to want to fight him, give them a couple of more laps -

". . . they still had enough breath left for another couple of laps which shut them up."

The inference is, so says the defendant, "Well, they are prepared to have a fight with him and argue the toss about it and he sent them round for a few more laps, that will take the breath out of them." The defendant's point is that that shows, amongst other things, the truth, the substantial truth of what 30
they are saying is the other meaning, the other meaning being what he was doing by way of training was wrong or incompetent.

The defendant's second point is that the state of training of the team at that stage was not in accordance with, and I put this very shortly, not in accordance with what is said in the manual of training which is set up for coaches and that is

approved of by the New South Wales Rugby League. So they say because it is approved then it is fundamental and we have here people talking about it and that says that it is a fallacy that a player needs to reach his peak of fitness at the middle of the competitive season. That is wrong, that is not right and that a man should be fit before and that is important. The 10 way he was going about it could only get them to eighty percent of their fitness was wrong because it was not in accordance with the fundamentals laid down as to how coaches should train players and that means also how conditioners should train players in accordance with the manual. That is the second point.

You remember he says the team was up to eighty percent, he said he agreed with the manual but he said it is more likely to be eighty percent.

The third matter is whether or not going about it the way 20 he was and the sort of training he was giving produced staleness. They say that for those reasons the simple fact was that there was substantial truth in their suggestion as to what the other meaning was. Bear in mind we are dealing with the defence where we assume that the first two meanings are there as the plaintiff says. But the defendant says there is another meaning and tells you what the other meaning was, that he was wrong or incompetent in his manner. They say it has to be established by the defendant that that was substantially true. The defendant says that it is substantially true; 30 the plaintiff says it is not substantially true. You heard Mr. Neil's argument about that during the course of this morning and I do not want to go over it again. He says it was

not substantially true and if it is not substantially true that defence fails. If he does succeed on that point you then have to go to the next point and that is, assuming you find that and assuming it to be substantially true - question 5:

"Are you satisfied that his reputation was not further injured by what the plaintiff says the imputations were because of the substantial proof of what was in number 4." 10

If it does affect his reputation the truth in number 4 is sufficient to cover what he says and, therefore, in effect, that is a good defence. That is the way in which the defendant puts that defence. Bear in mind the plaintiff would have it that none of those matters have been established, you would say, and that you would not say there was that meaning; you would not say it was substantially true and you would not say that because it was not true the other imputations carried no further injury to his reputation. So much for that. 20

However, you will also bear in mind, if you find that defence for the defendant is a good defence, he is entitled to succeed in the whole action and if he fails on it he still has other defences which you will be required to look at. That brings me to the next defence and that is set out in par. 6.

I tell you this as a matter of law: It is a defence in law to a defamatory imputation - and you will remember you assume by this stage that you have already said it was an imputation and it was defamatory, that you believe the plaintiff on that - if the defendant satisfies you, the law says, that 30 the circumstances of the publication of the matter complained of was such that the plaintiff's reputation was not likely to suffer harm. Then there is a good defence. First of all, I

remind you that the defendant carries the onus of establishing that defence to you. You must bear in mind what it is that has to be established and what has to be established is, firstly, the circumstances of that publication and, secondly, that the matter complained of was not likely to suffer harm to the plaintiff. 10

What are the circumstances? The circumstances, according to the defendant in support of this defence, are that this is a column which has been running for a long time, and, secondly, it is a column which is directed towards people who are interested in the game of rugby league. As we all know different parts of the paper interests different people. If you are interested in household hints, you read the household hints column; if you are interested in cookery, you read the cookery column; if you are interested in football you read the football column; if you are interested in racing you read the racing column. If you are not interested in any of them you do not read any of them; if you are interested in them all you read them all. It is a question of what the circumstances are and the argument is that it is directed to people who are interested in the game of football - not soccer or Australian Rules or rugby union, but rugby league - to its followers and those interested in it and who are interested in team's performances. 20

You are dealing with people who are in some respects in the public eye. Remember all this is part of the circumstances. 30
The question that is put is why is it - this is the argument - that the team is performing in this way? It had lost matches. It is a commentator's view and bear in mind that the man who

wrote this is a commentator, he is a man who comments, expresses comments and opinions over games. He may also express other comments and he may express facts, but basically his job is as a commentator. That is another matter altogether.

Another circumstance is that it is in the context, published in the context where only a matter of a day or so before 10 Dorothy Goodwin had put into the public pipeline, as you may call it, a statement talking about "Fatty Boyd" and talking about how footballers want to fight Austin and how he said, "Well, they still had a bit of breath left - so a few more rounds". These are the circumstances in which it is published. One of the arguments is, I suppose, that by himself putting that material into the pipeline, the public pipeline, by his interview with Dorothy Goodwin, he has in effect made that subject matter a matter for discussion. You will remember what it was that he is said to have said. So it is in those 20 circumstances.

The defendant then says, in the circumstances of that publication, it was not published in cold blood on Christmas morning, it is published at the beginning of a season after they had played five competition matches and in those circumstances - and this is the way you look at it - they say the circumstances were such that he was not likely to suffer harm. You bear in mind all those circumstances.

The question is not did he suffer harm. That has nothing to do with it. The question is when that was published in 30 those circumstances was it likely? That is a matter for you. You might think it is completely nonsensical to think it could. I am not saying you should, it is not for me to decide

that matter. You might think, on the other hand, it was likely to do him harm. That is a matter for you. You will make your own minds up about that free of any suggestion one way or the other from me. You have heard the argument on it. In relation to that argument you bear in mind that in answer to question 6 the defendant says that it has satisfied you about that 10 and it asks you to answer that "Yes". If you answer that Yes the defendant succeeds in this case and that is a good defence to the whole case. The plaintiff asks you to answer it No. If you say No to it then again there are other defences you have to consider. On the question of the circumstances, the plaintiff, through his counsel, says that the circumstances are not really what has been put to you by the defendant. You have heard his argument on that this morning and I do not go over it again. He says that the circumstances were not such that the plaintiff was not likely to suffer harm. He says that the 20 circumstances were such that he would. That is a matter for you again.

That then brings me to the next defence which is the defence of comment. This is a matter with some few problems. When I say problems, I mean some few complexities and I would ask you to bear with me and follow my directions to you closely. This is a defence which, from the community point of view, is a very important matter. It is important because the law regards it as important and the law accepts that it is important; that in the sort of community in which we live the people 30 should be able to express their opinions and to make comments on facts or material which are based upon proper material and it is a matter of public interest that this should be so

otherwise everyone would be living and walking about, as it were, in blankets. The right to express opinion and comments is regarded as a very important aspect of a free society. I am not here to say anything about the society we live in but we have our pride about our world, I suppose, and you know it as well as I do. So that if somebody says to you that such and such happened, stating an event which happened, and then said to you, "What do you think?" and you say, "Well, I think this, I think that", you are expressing an opinion on that material, on those facts. Or, putting it another way, you are making a comment about those facts. You might be right, you may be wrong. The man next door might be right and he might be wrong on his argument. That is not the point. The fact is you are entitled to put your point of view. So far as the law is concerned on this particular matter it is not a question whether Mr. Austin was unfit to be the coach - that is not the point at all. The question is whether or not this article is comment. I will tell you now something about comment. We assume of course it has been published and we assume for this that the two allegations, the imputation which he says in (a) and (b) in question No. 1 have been found by you and you have also found them to be defamatory. Then there is the third question and that is as to this matter of comment.

I told you that as a direction of law you must follow it, that comment is another way of saying opinion. When you are making a comment on something you are making an opinion and you need to know what making a comment on something is. A child comes home with his examination results, twenty percent for mathematics, 100 percent for history, twenty-five percent

for science and you make the comment, "It is not very good."
That is what a comment is, it is your opinion. Nobody is
challenging the truth of these things, that is the material on
which you base your comment. In this case it is an expression
of opinion, an expression of comment and the law says that has
to be based upon the facts and the facts have to be substan- 10
tially true. The comment is advanced and it has to be based
upon proper material. You may recall that I interrupted Mr.
Neil while he was addressing you. When we say that comment
must be based on proper material that does not mean there are
a lot of other things you can go out and do in order to base
your comment, to go out and make all sorts of other enquiries -
what it requires is that you have to have facts and the facts,
if it be one or more, have to be substantially true on which
to base the comment. The argument being, so far as the law 20
is concerned, if you see what the facts are you can see what
the comment is based on and you can say, "I do not agree with
that" or, "I do agree" and, "I think that is right or wrong."
If you do not know what the material is you do not know what
to base your comment on or your opinion. As to comment you
have the facts, as I say, and they have to be substantially
true so you can draw an inference from the fact from which you
can get another fact and you can say, "That is a fact and that
fact leads me to another conclusion of fact." How do you
decide whether or not it is comment?

As a matter of law I tell you, if it is comment does it 30
indicate it is comment or opinion of the writer or is he sim-
ply alleging factual material? In other words, when you look
at it is it in your view a comment or is it not? This is

again a matter entirely for you, when you look at the documents as to comment, or not, you will see - and I do not propose to take you through all of it - you will see that he says on the bottom of that first paragraph, "I believe." He does not say as a fact that the players are being trained into the ground, what he is saying is, "I believe that they are" and that is a 10 matter for you but I do stress it upon you he is not saying the fact is they are being trained into the ground, "I believe they are being trained into the ground." That is the defendant's argument and that is only another way of saying, "My opinion is," or "My comment is" that these players are trained into the ground. That is comment.

The defendant's case to you is that that is a matter of comment and it is for the defendant to satisfy you that the reading of the whole of this article will show that it is comment on a factual situation and the factual situation is that 20 the team had lost matches. There is no argument about that, that is comment and nobody disputes that. That is the defendant's case put in very short terms, and it is a question for you to look at, looking at it all; is this article comment in that sense?

Secondly, is the material upon which it is based substantially true? There again it is not a question of being absolutely true, is it substantially true? The defendant's case is that when you look at the article, what is being put is that some teams which are top teams have lost matches and 30 that is a fact, nobody argues about that. In point of fact Manly have lost three out of five and they were said to be a good team - nobody argues about that. Putting it in a nutshell - I do not want to over-simplify it - putting it in a 238.

nutshell it comes to this, this team has lost some matches, my comment about that is, "I believe that it is because of these training methods, they are wrong." In very short terms that is the defendant's case, that this is comment.

The plaintiff would say that is not so. What the plaintiff says is that it is true they lost matches but that is not 10 the end of the world, they still have the rest of the season to go. We are looking at this article as at 26th April. The season has started. There have been pre-season games and training. We all know that it is common ground there have been five matches played and this team has lost three of them, lost three matches in a row and the defendant made a comment about it and the defendant says, "There is something radically wrong and that is what I believe to be wrong." And he says the training. You bear in mind that the comment is Mr. Casey's and Casey worked for and is employed by and is agent for the 20 defendant company so that as a matter of law, if it was shown that at the time he made that comment he did not believe what he said, that would destroy the comment but there is no suggestion he did not believe. He said he did believe it. He has sworn he honestly believed it and it is a matter for you. There is no evidence to the contrary that he did not believe it. He said that was his belief.

To remind you again, as a matter of law, comment is a statement of opinion based on facts. Of course you know it is a fact if you say what a man did and it is a comment to say 30 what you think about it. You say a man did so-and-so, that is a fact, and you say "I think about it that it is disgraceful", that is comment. It is as simple as that. If you state

a fact accurately it is as simple as that. If you state a fact inaccurately or you do not state it properly or your description was such that the fact is not substantially true then the reader has no real opportunity of making his own judgment about the matter because the basic factor is not stated correctly. Then the matter of the comment may be adversely 10 affected by the defendant. Sometimes all the facts will be in the document, and that is by no means necessary, sometimes he can point to facts outside the document because he can do that particularly where the facts are well known and in that sort of category and as we are dealing with people who are interested in footballers, the argument is they have a fair idea of what has happened, they follow teams and so on. I propose to read this to you and this is a statement of law, to make it plainer to you, that comment "can sometimes consist of a statement of fact which is stated or referred to by the author 20 in the common knowledge of the person speaking and those to whom the words are addressed from which his conclusion can reasonably be inferred so that they know what I am talking about what I am addressing them on if I have stated that as a fact and it is preceded or accompanied by such other facts and can be reasonably based upon them, that can be regarded as comment and comment only if it is honestly believed." That of course is entirely a matter for you, as to whether it is comment, whether the article is dealing with comment or whether it is dealing with fact is a matter entirely for you. 30

That brings me to another matter and that is on the question of comment. People who live in the public eye, people who are involved in public matters, are open to criticism in

comment. The law says that. The criticism can be searching and sometimes it can be hard and people in the public eye, it has been said, cannot be too thin skinned. It is different, of course, if you are not in it, if you are a private citizen. People who carry on before the public eye generally subject the manner and the way they do it to comment, and it is open 10 to comment in public. This applies to theatres, to films, books. It applies to public sport and so on. Not only that, such a person may invite comment by his own conduct and bear in mind here what took place in relation to Dorothy Goodwin.

It is all a question of fact as to how you see this article. The defendant says you will see it as comment based upon fact which is substantially true. The plaintiff urges you to the view that it is not comment at all. He says it is all fact, it is all defamatory in the sense that it has been explained to you. There again, it is a question of what you 20 feel, taking a broad view, of the whole of the document. You see, take the first paragraph: "It has not been a good year for the big names of rugby league". And it sets out the names of the teams who "have flopped badly". You may think that that is a comment on what has happened and the people reading this about what has happened to Manly and Balmain and Parramatta would know whether they have flopped badly. On the other hand, you may take it as a statement of fact, that it is a journalistic way of saying they have lost some matches - they have flopped. Then it says that because of the "North Sydney 30 try spree" and "Newtown's steamrollering of Manly", that emphasises something radically wrong. It is a question for you as to whether you regard that as comment. He is saying

that what has happened is that some matches have been lost and that "My comment is that something is wrong". Alternatively, you may take it that they lost some matches and the fact is that something is wrong. Then you come down to "I believe". The defendant says it is as plain as a pike staff that that is comment. He says "I believe". In effect he is saying "You 10 might not believe it but this is what I, Casey, believe", and he says that what they do is they hoodwink coaches that they have to train three nights a week in this way and they have to go into all this weaving and ducking about and they have to be subjected to a gruelling eighty minute match and that all this is necessary and he says "My comment is as you see". Then he says "This means" - meaning "That is what my comment is" - "They are pressing their bodies to the limit four nights a week". He then goes on to say that that is a short cut to staleness. All that is said to be, so far as the defendant is 20 concerned, comment on the fact that they had lost and why they lost. Then he says "I've always believed once a man becomes an international he doesn't need to be guided all the time with his preparation for matches." The defendant says that is very plainly belief. That is his belief; that is his comment. It does not matter whether an international should be guided or whether an international should not be. The question is that is what he believes and that is his comment. He says "Manly has persisted for the past three years with the physical regimentation of its players by a fitness fanatic 30 named Reg Austin". It is a question for you to decide whether that is fact or whether that is still part of the comment. If it is fact is it substantially true? We know, and it is

not argued, that he was not there for three years, he was there for two, but in your minds does it make a straw of difference that he was there for two years and not three years or does it appear to you that it is absolutely vital and very important and therefore that is not substantially true. It is a matter for you. Then he talks about Reg Austin being a magnificent man and of his various qualities and then he goes on and says "since he has taken over the records show . . .". Well, what do the records show? If that is a comment, it is a comment; if it is a fact, what do the records show? The records show that they had gone from being a team that won the premiership, the championship, to being this "tattered band" as he describes it, "of former champions", from being a championship team they have gone to what they are now, having lost three matches in a row. You will bear in mind that Casey says they were against a team you would not expect this team to lose against. He says it was not altogether Austin's fault and that other matters had contributed. Then he says, "I question the wisdom of Austin . . ." that is when he tells an international to do another six 400 metre sprints as some kind of penance. The question is whether that is comment or fact. If it is fact, is it substantially true, that telling an international to do another six 400 metre sprints is as some kind of penance. Is it substantially true? According to the article with Dorothy Goodwin he admitted he said, "They wanted to fight me. They still had enough breath left for another couple of laps which shut them up". If that is fact, is that substantially true or not. If it is, the defendant makes the point; if it is not, the plaintiff makes the point. But bear in mind that he says he "questions the wisdom of Austin".

Then he says "League stars train very hard", and nobody is arguing about that. Then he says, "But once they start . . ." and then he puts the question, "is there a need for such a grinding programme?" He asks the question. It is a matter for you to look at. He then says, "The problem is Reg Austin and company think they are doing the right thing." Then there 10 is that last sentence. He does not say he should be sacked as has been put to you. He does not say that. He does not say he ought to be sacked. He says, "My advice is . . . ". The question is, is that a comment. It is open to you to say that that is a comment, that is an expression of his opinion - "That is my advice, you do not have to take it but that is what I think".

The plaintiff wants you to believe, and presses upon you that that is a statement of fact, that he is saying, "Sack him". Members of the jury, it is a matter for you and I hesitate to 20 express any view, but I suppose in the course of your daily activities when people say something to you and you say to them, "My advice to you is so and so", are you stating a fact about something or are you stating what you think, your view, your opinion, your comment, and that is the way you express it by using the words "My advice is . . . ".

Members of the jury, these are the matters which the defendant puts to you by way of its defence to what we call comment. If you look at question 7:

"Has the defendant satisfied you (and bear in mind the 30 defendant has to establish this) that any comment was based upon proper material for such comment?"

"Proper material" I tell you as a matter of law is a fact which is substantially true. Further:

"Was the comment that of a servant or agent of the defendant?" There does not seem to be any argument about that latter part - he certainly was. The defendant, of course, says you will answer that Yes; the plaintiff says you will answer it No. You have heard the plaintiff's submissions this morning and there were passages that he read to you, that none 10 of this is comment at all and the plaintiff argues to you, through his counsel, that these are all statements of fact and there is no comment involved. That is a matter entirely for you.

That brings me to the last matter and that is the question of damages. How do you approach damages? Supposing you had arrived at the point where you find that the plaintiff has established that the imputations are made out and that they are untrue and, you say, defamatory, and that all of the defences have failed - all and every one of them - then you have 20 to look at damages.

In a case of this sort it is the plaintiff who is asking for the damages and it is the plaintiff who has to prove the damages. The plaintiff has to satisfy you and, again, he has to prove it to your satisfaction on the balance of probabilities. If he has not satisfied you, that is a failure to establish before you that matter.

However, I tell you that the law presumes that if a person is defamed there is some damage. It might be very slight but there is some. That is why the law allows you to bring 30 in a verdict for what is called in law "Nominal damages" - token damages. The law does say that you can find, "Well, it is true he was defamed but the view we take is that the damage

is so small that it would only call for a very very nominal amount". You will remember from your own reading of books and other literature where very funny little amounts in old currency, for example four pounds eight shillings and two pence, used to be returned for damages in these sorts of actions. I am not saying it is right or wrong, I am just tel- 10
ling you it is what we call "Nominal damages".

On damages the law is this, that the purpose of you awarding damages to the plaintiff, Reg Austin, is not to wreak punishment on the Daily Mirror and not for purposes of wreaking punishment on Mr. Casey, that would be wrong. This is not a court of punishment. There are courts of punishment. We are not here to punish anybody. The purpose of your giving damages, if you get to it, to Mr. Austin, is to compensate Mr. Austin for what damage it has caused him, such as you find it to be. By compensating we mean to make up to him for that. 20
You cannot take him back to the day before all this happened but as best you are able and as best money can do it, you make up to him by compensating him in money for what you believe is a fair equivalent that would satisfy the wrong that he has suffered. That is a matter entirely for you. Nobody in this court here, Mr. Nicholas, myself nor Mr. Neil, will say to you about the sum of money, "We think it should be X dollars." It has nothing to do with us. There is no book of rules or list of payments we can turn to and say, "That is what you should get for that or this". This is a matter for your good 30
sense, your sense of solid justice as between Austin and the defendant, Mirror Newspapers. That is a sum proper for him to get, proper for them to pay, a sum that is reasonable for him

to get and reasonable for them to pay; just and fair. That is what you have to do. That sum should be what is enough to compensate him for what he has suffered and that means you have to determine what harm you think he has suffered. The defendant has put to you he has not suffered any substantial harm at all. Nobody has come here on behalf of the defendant and 10 said, "We used to think he was a great man, a nice man, but we now do not think that about him and we would not have anything to do with him." Nobody has come here from all the hundreds of people in this community who had something to do with or know about football, nobody has come here and said they have been affected in the slightest way by this article. A lot of footballers and trainers gave evidence in the case but none of them suggested they were in any way affected by any of this material so that as far as that is concerned there has been no matter adverse to him and it is his task to establish it. 20

The plaintiff says this has gone out to a lot of people and surely somebody must have seen it. Well probably somebody has but if they have nobody has come here to say so. You are entitled to consider the extent of the circulation of some hundreds of thousands of papers that go out, use your own common sense whether all of the people who did see or read it would take any notice of it or not. It is a matter for you to judge the effect or harm that that has caused the plaintiff.

In addition to that you are entitled to see what he says about it himself. He says that when he read it he was dis- 30 appointed and he was angry. If you believe that, and it is a matter for you, if you accept that he was - there was another adjective he used - "hurt" - he was hurt, disappointed and

angry. Well, it is a question for you, what do you think, how long do you think he would be hurt, disappointed and angry? You will bear in mind what has been put to you by Mr. Neil and Mr. Nicholas and it is entirely a matter for you. I really cannot offer you any further assistance.

If what has been said about him is false, that is a factor you can take into account as to whether it has added to the harm or not. It is essentially a matter for you. 10

Apology, he asked for an apology. He did not get one. He did not get one because the defendant believed he should not give him one. The defendant takes the view he has not defamed him. Whether the fact he did not get an apology, in the circumstances of this case, increases the damage he has suffered, the hurt and disappointment he has suffered or it has not, is a matter entirely for you, something you should consider and take into account. 20

The plaintiff says the defendant says it did not intend the imputation. Why would they not then apologise to him? The defendant's answer to that is as shown in this case this imputation did not arise in that there was no defamation of him. You will remember what took place with Sutcliffe. That is of some relevance as to how much he really did suffer if you found this or not - depends how you look at it - Casey did send Sutcliffe out. He sent him out in relation to training. By that time Mr. Austin, you may think, would have some inkling of what Mr. Casey had written. Be that as it may, if he had any trouble or problem, so goes the defendant's argument, he only had to say something to Mr. Sutcliffe about it and it would have been taped. The first question was that he 30

thought a lot of Sydney footballers over-trained and the argument is he could easily have said, "No they are not, I think Casey is very wrong to have said that about me." The point is that nothing was complained of in that interview that took place with Sutcliffe, at all. It was discussed, the question of professional football, a lot of money in it, a lot of training and in other codes they do not train so hard. That is the nature of football and the people who play it because it is a professional game. It is a question for you whether that causes any upset by having Mr. Casey saying it or by what he had to say, or whether that was an ameliorating factor or not is a matter for you and it is left to you.

Members of the jury, those are the matters of law and the matters of fact that have been left to you. You have before you all these questions. When you go out you will have the papers with you and you can go through them one by one and form opinions in relation to each of them. Nothing more and nothing less than an answer to the questions is sought of you. What you think of it is extremely important but you are not asked for any reasons or anything of that sort, you are simply asked to answer those questions and so that you know what will happen when you return having indicated you have reached an agreement, you will come back and you will be asked various questions. The foreman of the jury will be asked to stand. First of all your names will be read out and you will answer to your names. Then you will be asked in relation to these questions and question 1 will be read to you and the Foreman will say yes or no. I remind you again if you get to question 1 and you give an answer "No" to both parts of question 1 then

no further question will be asked of you because that will be the end of the case. That means there is no such imputation.

If the answer to that question is "Yes" then you go down to the next one - were they defamatory?" If you answer "No" to that one you will not be asked any more questions and that will be the end of the case, it is not defamatory and there is 10
no defamation.

If you say "Yes" to this you will be asked the other matters.

So that you know, I think it is only fair to put to you the respective cases on these questions. If you have a pencil and somebody wants to make a note of it, the plaintiff told you that you would answer No. 1 "Yes"; that you would answer No. 2 "Yes"; that you would answer "No" to the rest of them except No. 8 which is the amount of damages. In other words the plaintiff asks for "Yes" to 1 and 2 and it asks for a 20
figure in relation to No. 8 and asks for "No" on the rest of the questions.

The defendant asks for "No" on 1 and 2 and if that is so that is the end of the case and there are no further questions. If you answer "Yes" to 1 and 2, that is to both of them, then the defendant asks you to answer "Yes" to the rest of the questions or if not to all, three, 4, 5, 6 and 7, at least to some of them, in which case there would be no damages.

MR. NEIL: There are one or two matters -

HIS HONOUR: I have not taken the jury through the whole of the 30
evidence because Mr. Nicholas dealt with it previously on Friday and you have taken them through it fully this morning.

Members of the jury, normally I would also take you

through the evidence as to what the various witnesses have
said in broad terms. I can do that but it was done on Friday
by Mr. Nicholas very thoroughly and it has been done again this
morning by Mr. Neil. He took you through it very carefully,
he took you through a lot of the evidence this morning and all
the witnesses. It seems to me I would not only be over- 10
burdening you but confusing you to take you through it again.
I should tell you this, if during the course of your considera-
tion of this matter there is any matter of difference as to
what a witness said or did not say if you send me a message I
will confer with counsel and if it is proper what you have
asked will be read to you in the area you wanted or the whole
of that portion of the evidence will be read to you. If some
of you want to be refreshed on it, it will be read to you.

If there is any matter of law you find or think you want
further help or assistance from me on then you send a message 20
on a piece of paper to the Sherriff's officer and in both cases
again I will confer with counsel and later you will be brought
back and if necessary and proper I will give you any further
direction that may be necessary. I do not therefore take you
through the whole of the factual evidence and arguments in the
transcript because it has been done so thoroughly.

HIS HONOUR: Is there anything on the facts, Mr. Neil?

MR. NEIL: Not on the facts as such, your Honour.

HIS HONOUR: What about the law?

MR. NEIL: There are a few matters I would seek to put to your 30
Honour.

HIS HONOUR: Can all this be done in the presence of the jury?

MR. NEIL: I think my friend may have some responses and it
may be better if it were done in the absence of the jury.

HIS HONOUR: Is there anything you want to put, Mr. Nicholas?

MR. NICHOLAS: Only one short point, your Honour.

HIS HONOUR: Members of the jury, sometimes there is something which has to be added - sometimes there is not - and I have to see now whether there is or is not. Rather than you hear something you should not hear it is best if you retire and I 10 ask you now to do so but do not start to consider any of the questions until I give you the final word to do so.

(Jury retired.)

MR. NEIL: Firstly, your Honour told the jury that they could consider the words used by Mr. Austin to Dorothy Goodwin because he had admitted to using those words. What I would ask your Honour to tell the jury because your Honour was quoting from the Dorothy Goodwin article --

HIS HONOUR: I actually read from the transcript.

MR. NEIL: The jury will have the Goodwin article before them 20 and I would ask that your Honour would direct the jury that the material in the Dorothy Goodwin article, except for the quotes by Mr. Austin, cannot be considered by the jury as material on the truth or otherwise of the remainder of the Goodwin article. In other words, the only parts of the article --

HIS HONOUR: I never told them they could.

MR. NEIL: No, but I would submit the impression may have been gained by the jury and may well have been gained --

HIS HONOUR: I read to them what he said in his evidence and 30 he had admitted that.

MR. NEIL: Indeed, and that is material which when considering the factual issues before the jury they could consider and they can consider that because it may be considered as an admission. But the remainder of the Goodwin article is not evidence of the truth or otherwise of the statements in the Goodwin article.

HIS HONOUR: I did not say it was.

MR. NEIL: I accept that but the jury could conclude it might be. In other words, I would ask your Honour to dispel from 40 the jury's mind any possible suggestion that what appears in the article carries with it any evidentiary value one way or the other, other than the statements made by Mr. Austin,

especially when I did ask Mr. Boyd the question did he threaten to punch Mr. Austin.

HIS HONOUR: The admission only went to the part I read and you say it does not go to the balance?

MR. NEIL: Yes, what Mr. Austin said in court only relates to what he is reported to have said in the Goodwin article and not to the remainder of the article. 10

HIS HONOUR: Only the piece about "Fatty Boyd" down to words "... ha ha."

MR. NEIL: Yes, the words in quotes that he has used.

HIS HONOUR: That is all I read to them.

MR. NEIL: I understand that but I think your Honour sees the point.

HIS HONOUR: You say not to the totality?

MR. NEIL: Yes. Nextly, your Honour put to the jury that there were various circumstances in respect of question 6, circumstances such that the plaintiff was not likely to suffer harm. I would ask your Honour to put to the jury that one of the circumstances of the publication included the failure of the defendant to inquire of the plaintiff. Secondly, that one of the circumstances of the publication is the failure to refer in the article, in fair terms, to the Goodwin article. 20

HIS HONOUR: Unless Mr. Nicholas is to say something to the contrary, I do not see how I can do that. What has to be considered is the circumstances of the publication. It is true they might have been published in circumstances where your client might have been seen - but they weren't. You can only look at the circumstances as they were. It is not suggested he did see your client. 30

MR. NEIL: I submit it is a circumstance of the publication that they did not make an inquiry. I can see what your Honour is saying, that it is not. I submit it is.

HIS HONOUR: A failure to put something in an article - it then becomes a different publication. You have to take the publication as it is.

MR. NEIL: I would submit not. The next point is this: your Honour said to the jury - and this is on the question of whether he was likely to suffer harm under par. 6 - your Honour said to the jury that the question is not did he suffer harm - indeed, I would put to your Honour that your Honour could go further and say to the jury it is relevant for the jury to consider on the question whether he was likely to suffer harm whether he did suffer harm. 40

HIS HONOUR: That is something to be viewed at the time of the publication.

MR. NEIL: Indeed, but I would submit it is a relevant matter to consider if he subsequently did suffer harm. It is relevant on the question of whether he was likely to suffer harm at the time of the publication.

HIS HONOUR: It seems to me the two can stand together. If the jury took the view it did him some harm, they could take the view that in the circumstances of the publication it was not likely that he would. 10

MR. NEIL: Indeed, but the jury might believe that it should consider them quite separately. I would be submitting that they are entitled to consider the question of whether he did suffer harm in relation to the question of whether he was likely to suffer harm.

HIS HONOUR: I see your point.

MR. NEIL: Nextly, your Honour put to the jury that in some circumstances what appears to be fact may be comment. 20

HIS HONOUR: Yes.

MR. NEIL: I would submit to your Honour that your Honour ought to put the other side of the coin to that. Your Honour ought to tell the jury that in some circumstances what appears to be comment may be fact.

HIS HONOUR: I said comment can be fact. I said what appears to be comment may be in truth fact.

MR. NEIL: Yes. Your Honour said to the jury words to this effect, "I will give you a statement of law, namely that material which may appear to be fact may in fact be comment". 30

HIS HONOUR: You want me to say that material that might look like comment may be fact?

MR. NEIL: Yes. So there are two sides that may be put to the jury. Your Honour did say to the jury that one matter they could consider was that Casey had said that the losses of the team were against teams that it was not expected they would lose against; but when I sought to test that matter under cross-examination your Honour ruled I could not explore the issue of whether or not they had lost to weak teams or good teams. I would ask your Honour to withdraw that direction and tell the jury it is irrelevant as the case has been conducted, Mr. Casey's views as to the relative merits of the teams - it is not relevant - that is the relative merits of the teams that Manly played when they were defeated in the three matches prior to the publication of Mr. Casey's comment are not relevant. 40

Nextly, there is a matter of some slight difficulty. Your Honour has put to the jury that I have put to the jury that the plaintiff says the article is all fact. In particular when your Honour was referring to the last line, "My 50

advice is to sack him", I had made it clear to the jury that I was putting the alternative, that the plaintiff submitted that the article is either all fact or to the extent there was any comment in the article it was not based on proper material.

HIS HONOUR: All I did say was that that is what it said and I left it to them what it meant.

10

MR. NEIL: I am not putting to the jury the proposition that the whole of the article is fact. I am submitting to the jury that they can consider it all to be fact but if they found any comment in it then to that extent it is not based on proper material so that the plaintiff would succeed either way. That is the submission I have been putting to the jury.

HIS HONOUR: That is taking segments of the article, separate segments. It is one related article.

MR. NEIL: That is why I put it in that way. I have left it to the jury to determine it in accordance with the questions. I put it to the jury in accordance with your Honour's direction and in accordance with the questions as - it is all fact or if there is any comment in it then the comment such as they find to be comment was not based on proper material. They might find a small or large portion as comment. I have not sought to divide it up as I thought I would be confined to the issue as presented in question 7.

20

HIS HONOUR: That takes us back to your submission, some parts of it were not covered by comment.

MR. NEIL: Yes, and I purposely did not, I would submit, offend against your Honour's ruling in relation to that. I put to the jury that it was a matter for the jury to determine if any parts are comment in the context that the plaintiff's submission was that the jury would consider that they are all fact but if they concluded there was any comment in it then it was not based on proper material.

30

MR. NEIL: There is a submission I would ask your Honour to put to the jury purely to clarify the next point. In consideration of whether comment is based on proper material for comment the jury may take into account such matters as appear from the evidence as they consider to be proper material which could or should have appeared in the article. I just want to place that on the record.

40

On the questions, I think it is fair to say I put to the jury, as far as question 3 was concerned, the plaintiff was not going to quibble, he would leave it to the jury how they answered it. We would prefer the answer "no" but in the circumstances of this case it is entirely a matter for the jury. I was not saying to the jury "the plaintiff says you must bring in the answer 'no' to question 3", because I was not going to quibble whether there was much difference between that and imputation two.

50

HIS HONOUR: There is a difference. I know you say there is not but there is a difference. What do you want me to tell the jury, that you do not mind if they say "Yes" to question 3?

MR. NEIL: If your Honour considers there is a difference I will withdraw the submission.

HIS HONOUR: I do not want to overstate or understate what I have put to you. 10

MR. NEIL: I will leave that to the jury, I will not ask for a direction.

HIS HONOUR: That particular submission is withdrawn.

MR. NEIL: Nextly, your Honour put to the jury that that damage may be presumed but your Honour put it to the jury in the context of nominal damages.

HIS HONOUR: No I did not. I said you can give nominal damages but he must get some damages because damage is presumed and that is why you can get nominal damages. 20

MR. NEIL: The impression the jury could well receive is that in additional evidence as to damages the presumption of damage only activates the jury to bring back nominal damages. I submit that is not the law, that the presumption of damage, even if the plaintiff gave no further evidence of damage, the matter is still at large for the jury and the presumption of damage of itself is not confined to nominal damages.

I understood your Honour to be saying that the presumption of damages means they can get some damages and this allows for nominal damages. I submit the presumption of damage is a matter of law and this enables a jury to find damages at large and is in no way confined to any nominal area. 30

The presumption of damage is resigned purely to get the plaintiff into the arena. I submit even if they thought there was no other evidence of damage, the presumption of damage still leaves damages at large.

There is just one factual matter and that is when your Honour was referring to the Sutcliffe matter. That is part of the evidence at p.44 which I read to the jury. Your Honour may have given the jury the impression that he had not really complained to Mr. Sutcliffe. 40

HIS HONOUR: I am talking about one segment.

MR. NEIL: I am asking your Honour to clarify it.

HIS HONOUR: We are talking about a segment. They have not got a transcript of the evidence of what he said in the conversation.

MR. NEIL: My friend could rely on the claim because he said

nothing in the interview itself to go to the implication of damage. The interview must be considered in the light of the evidence:

"Casey didn't miss me yesterday ... I am doing a television show ... and I said okay".

HIS HONOUR: I went on to say to the jury that this question was in the segment "Do you think footballers are overtrained?" and he went on to say what you have put. I put it in that context. He made no reference then to anything Casey had to say about it. 10

MR. NEIL: One would not expect the plaintiff to be even required to say -

HIS HONOUR: It is a factual matter.

MR. NEIL: I would ask your Honour to draw the jury's attention to the fact that before the show was taped Mr. Austin said, "Casey didn't miss me yesterday ... training of football teams". 20

HIS HONOUR: If that is so all Mr. Austin had to do was say, "I am not going to say anything about what I think about Mr. Casey saying those things about me in the paper".

MR. NEIL: The point I am making is it was clear the interview was considered to be a totally separate matter from the article, and that is not a matter the jury can consider.

HIS HONOUR: What is the direction you seek?

MR. NEIL: That the fact that Mr. Austin made no reference to the Casey article during the taped portion of the Sutcliffe interview has no bearing on the question of damages under the law in the light of the preceding conversation between Sutcliffe and the plaintiff and cannot be raised by the defendant to mitigate damages. 30

MR. NICHOLAS: The evidence is so against what my friend puts to you. At p.45 I put in cross-examination to the plaintiff:

"You would agree with me, would you not, knowing as you did ... the answer is probably yes".

That was on the question of damages. With great respect your Honour moved from the reference to the presumption and your Honour went on to the specific part of the direction leaving it to their good sense. Nobody suggested that we should move right away from any realm - 40

HIS HONOUR: You do not want me to add anything on damages?

MR. NICHOLAS: In my submission it is clear. My friend had something to say about Mr. Casey saying these things. That was a matter in-chief at p. 125 in which he mentioned Manly

and Parramatta. He also mentioned other teams whom he considered were lowly rated teams. My friend certainly did not cross-examine and the questions were admitted without objection. It is in the context of being undeniably talented players.

On the question of the situation my friend put to you, whether in fact he did suffer harm, I have nothing to add. 10

I submit my friend's submissions about the circumstances as to question 6 ought not to go, there is nothing to add to them. I submit your Honour has correctly directed the jury on the Dorothy Goodwin article.

HIS HONOUR: What about the piece where I told them that fact could be comment and now he wants comment could be fact?

MR. NICHOLAS: I submit your Honour covered that and made it clear that it was a matter for the jury to decide. I submit if your Honour goes back to it again they will be completely confounded. 20

HIS HONOUR: You do not support anything that he put?

MR. NICHOLAS: No, and I go further and say it would be wrong to put those matters. Your Honour put them that dealing with the comment question, people recognise the right to express opinions and it is a very important aspect of free society.

The question here is whether or not this article is comment. I put to your Honour it is not a question whether the article in its total form is comment but whether, from the defendant's point of view, it contains comment. My submission is the article does not have to be totally comment to succeed. If they were left with that impression that would be putting it too high. 30

HIS HONOUR: You mean if only part of it is comment you are entitled to succeed?

MR. NICHOLAS: Yes, that was part of question 7 and there was argument about that.

MR. NEIL: On my friend's point about my not questioning Mr. Casey, may I just seek to find the particular part -

HIS HONOUR: It was in relation to a team of talented players against a team of less-talented players, that was the context, was it not? He said you would not have expected, for instance, Newtown to have been able to match Manly. 40

MR. NEIL: I have to find it. I asked him some questions about the capabilities of the teams that they had played and they were divided and these questions were rejected.

HIS HONOUR: Where is that?

MR. NEIL: This is difficult. I am just trying to find it.

MR. NICHOLAS: He asked about Eastern Suburbs being a good team and those matters appear at p. 143.

MR. NEIL: He was asked:

"As at 27th April, 1981, Manly had had some losses including a loss to Eastern Suburbs, is that right? A. Yes.

Q. I want to suggest to you that after five losses the competition of 1981, Eastern Suburbs was leading the competition by eight points, do you agree with that?" 10

Your Honour rejected that and I did not object to Mr. Casey giving his view of the teams that had beaten Manly. I thought it was a reasonable question to ask and I wanted to test it and one of the ways to test it was to get the results of the rounds of 1981 and to look at them and to ask the witness questions about the circumstances of those losses, particularly as to whether or not they were good teams in fact. Mr. Casey was saying that Manly was beaten by teams that he would not have expected to beat Manly. 20

HIS HONOUR: That was his belief?

MR. NEIL: Yes.

HIS HONOUR: You are not going to his belief, you are going to the fact, and that is a different matter.

MR. NEIL: It is not so much his belief, either. He was relying on the records, and he said that the teams which had beaten Manly were lowly teams and he would not expect them to beat Manly.

HIS HONOUR: That is an expression of opinion. 30

MR. NEIL: They were not lowly teams. Eastern Suburbs were at the top of the table at that time.

HIS HONOUR: They had only played five competition games.

MR. NEIL: That is the point. He is allowed to say that the teams which had beaten Manly were no good.

HIS HONOUR: He does not say that. Mr. Casey says that he did not believe they were. You could have conducted your cross-examination as to his belief, but you did not.

MR. NEIL: He said from the records. I put to him that, (and I had instructions and they were not the only questions I had, but I only got the one question out) after five rounds of the competition in 1981 Easts were leading the competition - and that was in accordance with my instruction and it would have been an important matter for the jury to consider whether or not Manly had been beaten by the top teams as of 1981 or not. I was not allowed to deal with the topic and in the circumstances the only way the matter can be fairly left to the jury, 40

I would submit - and it is not really helpful to me but it is better than the present situation, is if your Honour would withdraw the reference to Mr. Casey's knowledge or belief of the records about the status of the various teams as at April 1981, and leave it neutral.

On the last matter my learned friend raised, I would simply put that your Honour gave lengthy directions - and I have asked for certain matters, I know, but I would submit in the circumstances that what my friend is asking for is not necessary for your Honour to give. Your Honour has dealt with the matter.

10

HIS HONOUR: You mean to say it is not a proper direction?

MR. NEIL: To the extent that my friend claims your Honour's directions were wrong, I would submit they were not and there is no need for your Honour to give the directions my learned friend is asking for. It is quite clearly a matter for the jury as your Honour has said many times.

20

HIS HONOUR: Do you want that put, Mr. Nicholas?

MR. NICHOLAS: I have made the request and my answer is Yes but I quite understand the point and we are quite anxious to have the jury sent out today.

HIS HONOUR: I do not wish to inconvenience counsel in any way but it is ten to four and it may be better if I told the jury to come back at 10 o'clock tomorrow morning.

MR. NICHOLAS: We would oppose that, your Honour. They had addresses on Friday and they have had some today and I would be asking that they be sent out this afternoon. The matter is fresh in their minds and they have already had the week-end and we ask that they go out this afternoon.

30

MR. NEIL: My instructions are that even though it be late it would be better for the matter to proceed.

(Jury returned to court).

HIS HONOUR: Members of the jury, there are just two very short points I want to redirect you on. The first matter is a matter of fact, dealing with the evidence. I did say to you something in relation to Mr. Casey, about his views of the teams against whom Manly has played and as to whether they were strong teams or not strong teams. Mr. Casey's views on that do not really matter one way or the other and you can dismiss that from your minds in relation to your labours.

40

The second matter is when dealing with comments, as I told you, the question of whether it is comment or not in this article is a matter for you. I do not want you to think from what I said that you have to think the entire article itself is comment. It obviously is not, because there are facts in it. The question is, is there comment in there, and that is 10
a question for you entirely. It does not have to be totally, from start to finish, a matter of comment. It is a matter for you entirely.

MR. NEIL: There was the matter of the other side of the coin, your Honour.

HIS HONOUR: Members of the jury, would you be good enough to retire and consider those questions? When you come back you will be asked to answer to your names and you will be asked have you agreed upon answers to the question. You will indicate that you have and they will be read to you and your fore- 20
man will give those answers and it will be then said to you, "So says your foreman, so say you all", to say that you all agree.

That is as far as I wish to take you at this stage. Will you retire now and consider your answers to those questions?

(The jury retired at 3.54 p.m.)

AT 4.27 P.M.

(The following questions were received by his Honour from the jury:

"Question 7 poses the jury the problem that should we get 30
to this question we may be confused by the ambiguity of the question. Question 7 may be answered Yes because any one comment could be based on proper material and yet fail to consider the article as a whole.

Question 8: is the jury to consider, if it gets to this question, the costs to the plaintiff for pressing his claim, or is this a matter for your Honour.")

MR. NICHOLAS: I would have thought the question is clear. It is not ambiguous. It may be that your Honour might see fit to call them back and say - what we are saying is: obviously their function is to look at the article as a whole, but the defence is that to "any" comment and if there is any comment there which is based on proper material, the law provides, it constitutes a defence. Obviously, the comment can only be contained in the whole of the article. It is not the same thing as saying that the whole of the article must constitute comment. 10

HIS HONOUR: Your point is that having looked at the article if they find there is a matter in there which is comment and it is based on proper material then that constitutes a defence?

MR. NICHOLAS: Yes, obviously it is very hard to imagine any case where the whole article would be entirely comment.

HIS HONOUR: It is very simple if it is just the one simple statement that a man did X and that was disgraceful - there is no problem about that. There is no problem about the comment. 20

MR. NICHOLAS: No. But your Honour we say it is proper and they should be perhaps reminded that all they need find is comment contained in the article and that the article may consist of large chunks of fact and some chunks of comment.

HIS HONOUR: Supposing there was just one comment?

MR. NICHOLAS: That would be enough. I can think of many cases, comment cases - no doubt your Honour too. For example, a theatre review where it can go on for paragraphs describing the excellent costumes and then come up with a comment about a particular aspect. 30

HIS HONOUR: Take a theatre review where there is are a dozen different comments about a dozen different people but there is one comment about one person, who was a plaintiff, based upon one fact - there is no problem about that. It is that comment on that person. The other comments on the other persons do not matter a straw, do they?

MR. NICHOLAS: No, it must concern the plaintiff. 40

HIS HONOUR: If you get a situation where a number of comments are made concerning the plaintiff, the problem becomes more difficult. Your point is that it goes to the article and going to the article as it does, any comment in there --

MR. NICHOLAS: Yes, comment contained in the article. That is the only place you can find it. The comment must necessarily be borne in the article. That is the point, with respect. Therefore, we submit, the question is properly framed.

HIS HONOUR: That would apply even if the comment had nothing to do with the defamation? 50

MR. NICHOLAS: That could be so. It could be a comment about something else altogether. A commentator cannot be circumscribed.

HIS HONOUR: I see that in the event that it is a comment which is challenged but if it is not a comment which is challenged - if the imputation here alleged was that the players had been trained into the ground - if that is found as comment, I understand that. On the other hand, if it is found to be an expression of fact, the fact he says somewhere else in the article a comment, namely that they are a tattered band of champions, that would have nothing to do with it and the fact that you made that comment would not touch it, would it? 10

MR. NICHOLAS: You must keep coming back to the section. The section does not say it has to be proper material insofar as it affects the plaintiff. It does not qualify it. If you look at s.33(2) it says: (read). That case has not been made out here. That is the source of confusion and that is where it all came from and with the greatest of respect it ought to be put to rest. That aspect has not been dwelt upon before the jury, nor as this case has finally gone to the jury could it or should it have been. The question is a proper question but it may need some assistance to put them on the track. 20

MR. NEIL: I would ask your Honour to put to the jury that if there is some comment based upon proper material, if on consideration of the article as a whole you find that the remainder of the article still supports the imputations or one of them, your answer should be No. That would enable the jury -- 30

HIS HONOUR: What you mean is the whole of the remainder as being non-comment - is that what you mean?

MR. NEIL: No, being either non-comment or comment not based on proper material. Being either fact or comment not based on proper material. If the remainder of the article, read as a whole, being fact or comment not based on proper material, or a combination of both, still supports the imputations, your answer should be No. 40

HIS HONOUR: I do not see how you can use the comment, the alleged comment.

MR. NEIL: Alternatively, if that does not find acceptance with your Honour, the other answer that your Honour would give to the jury would be simply this, if your Honour is not disposed to give the formula I have put to your Honour, that the jury must consider the article as a whole and should consider whether the article is substantially comment based upon proper material for such comment.

Perhaps a third suggestion, that your Honour would simply say to the jury that the jury must consider the article as a whole. 50

HIS HONOUR: Just that.

MR. NEIL: Yes, but I would ask your Honour for a direction in descending order of the three formulas I have put to your Honour.

HIS HONOUR: I cannot put it to the jury like that. I cannot say "Take your pick of the three". 10

MR. NEIL: I would ask your Honour for the first and if your Honour was against me I would ask your Honour for the second. If your Honour is against me on that I would ask for the third. I do not wish to be difficult but it is a matter of difficulty for the jury and they should be in possession of an answer that enables them to solve the problem.

MR. NICHOLAS: My submission is that question 7 is properly formulated and if your Honour reminded them of your Honour's earlier direction that would be the proper way to go about it.

HIS HONOUR: That is to say that they consider the whole of the article and if they were satisfied there was any comment based on proper material, the defence is made out? 20

MR. NICHOLAS: Yes, your Honour.

HIS HONOUR: On proper comment that is substantially true.

MR. NICHOLAS: Yes.

HIS HONOUR: It really comes back to the ruling I gave much earlier when you put virtually what you have put to me here, Mr. Neil.

MR. NEIL: Yes, indeed, your Honour.

HIS HONOUR: I feel I should reject all your submissions, Mr. Neil because they are all inconsistent with what I had ruled upon earlier. Your earlier submission was that comment should only go where there is comment and not where there is any factual matter. Do you remember that? 30

MR. NEIL: I certainly do. I can understand what is falling from your Honour. I am sorry to hear it, but I understand it.

HIS HONOUR: As to the last question, I think I will simply say to the jury, "Do not worry about costs, costs have nothing whatever to do with you." Do you agree with that?

MR. NEIL: Yes, your Honour. 40

MR. NICHOLAS: Yes, your Honour.

(Jury returned at 4.46 p.m.)

HIS HONOUR: Members of the jury, I am sorry we have delayed

you for these few more minutes but it is only fair to say to you there have been some submissions as to what should be put to you on the two matters which you have raised.

Let me take the last matter first because it is easy. The question of costs has not been mentioned to you at all and it has not been mentioned to you because it has nothing 10 whatever to do with you, so do not worry about that. You must not consider costs in any way whatsoever, for or against anybody. That is the first thing. You just deal with the matter as it has been put to you.

The second matter, being your first question - and I understand your problem - what I have to tell you is this: this is a matter of law and you are obliged to follow what I tell you on it. You do not try to work out anything from it, you have to do it, as we all do, including myself. I cannot tell you what I would like to tell you, I have to tell you 20 what the law says and that is this: on this question of comment you will look at the whole of the document. That is the first thing. If on doing that you are satisfied that there is any comment therein, that is in that document, which is based upon proper material - and proper material means a fact which is true, substantially true - then the defence is made out. That is the position.

I will repeat that to you: you look at the whole document to see whether there is comment. If there is any comment and that is based upon proper material, namely it is based 30 upon a statement of fact which is substantially true, then the defence of comment is made out. There is no point in saying that something else could happen or something else might

happen or something else should happen; I can only tell you what my understanding of the law is and what the law is that you should follow. So you will approach that question in that way.

That question has been drawn by both counsel. You must not think it has been done lightly or quickly. It is also one 10 which has, in terms of formula, been used in other cases and it is one of which I personally approve and it is the one that is before you and it is that question that you apply your minds to, not some other question. Do you follow and understand? Would you now retire?

(The jury further retired at 4.50 p.m.)

MR. NEIL: I have an application that your Honour should discharge the jury.

HIS HONOUR: Why?

MR. NEIL: Because at this delicate time of the case there 20 were two matters put to the jury - one, that the question was drawn by both counsel. In relation to that I objected to the question and I asked for a totally different way in which the matter should go to the jury.

HIS HONOUR: You agreed to it ultimately?

MR. NEIL: No, your Honour.

HIS HONOUR: That was my understanding, Mr. Neil. I know you did put up other questions but it was talked about and I altered it and it was realtered and I understood it was agreed to. That is the only reason I put it that way. 30

MR. NEIL: At no time did I agree that this was the right question. At all times when your Honour has heard argument I was against the question. I put detailed arguments to your Honour on very strong bases and I do not, with respect, think that I did agree. Your Honour might have misunderstood me.

HIS HONOUR: Questions were put up in two different forms and ultimately, after discussion as I understand it, the matter was ultimately accepted by both counsel.

MR. NEIL: But over objection, over the fundamental objection that I made that that type of question was wrong. My friend 40 had said it had been used in Chappell's case and Hardy's case

and I think I at one stage used the word "grotesque" and your Honour said I should not use that word. But I never in any shape or form agreed to it.

HIS HONOUR: That was in the submissions. I was speaking as to what ultimately happened.

MR. NEIL: The jury might think that in some way or another I am conceding that this is a question the plaintiff in some way or another concedes is the correct question to go to them. Ultimately your Honour said that you would make a ruling that the questions my friend had put up ought to go and then there was a question as to whether there should be a change to some of the wording and I agreed to the two amendments having had the questions determined against me. But I only agreed as to the wordings. 10

HIS HONOUR: Nobody gave a ruling on any questions at all.

MR. NEIL: I asked your Honour to put to the jury a different question. 20

HIS HONOUR: I know you did.

MR. NEIL: Or an additional question, and I forget how I framed it - that the jury should dissect the areas of comment and if they still found that the imputations were available on the remainder of the article they could still find for the plaintiff.

The second matter I wish to put is that your Honour has said to the jury that your Honour personally approved of the question. 30

HIS HONOUR: I would not have put it to the jury if I did not.

MR. NEIL: It is the matter of your Honour's personal approval. Your Honour was at pains to point out to the jury that even if the jury was not terribly happy with the law - this is the effect of what your Honour put - they had to follow it, so that the jury goes away with the impression that the law might be a bit wrong but they must apply it and they then go away with the personal imprimatur of the judge, personal approval of the question.

HIS HONOUR: I would not let a question go to the jury with which I did not agree. As I understood it it was agreed and because it was agreed I accepted it and having accepted it I approved of it. That is what I mean. 40

MR. NEIL: That question was not drawn with my participation, your Honour. In no way did I in any way concede that the substance of that question ought to go to the jury and the suggestion it was drawn by both counsel and the personal approval of your Honour - as a joint matter - at a time when the jury is seriously concerned about an issue and substantially obviously worried -- 50

HIS HONOUR: Does this appear anywhere in the transcript?

MR. NEIL: The argument in relation to that was not taken down fully, your Honour.

HIS HONOUR: What is your view about this, Mr. Nicholas?

MR. NICHOLAS: I have been going back to see if there has been some transcript of the argument. There is no question about it, Mr. Neil argued in support of the set of questions for which he was contending and there was certainly argument about the form of question 7 and my learned friend made no concessions about that. Your Honour then, and this is my recollection, had to rule upon the matter. Your Honour had two conflicting arguments and we argued at some length, your Honour will recall, on the effect to be given to the Act and the use of the word "any" as opposed to the use of the word "the". That occupied some time. Then your Honour, at the end of the day, was minded to put in "the comment" and I think I dissuaded your Honour - 10 20

HIS HONOUR: It is very difficult.

MR. NICHOLAS: My understanding is that your Honour having ruled, the questions then were ultimately settled to reflect your Honour's ruling. That is how I would see it.

HIS HONOUR: It is certainly correct what Mr. Neil says that I was against him on the type of questions he wanted in terms of that.

MR. NICHOLAS: I suppose it is like a line of questioning where objection is taken and the ruling is made and one presses on. 30

HIS HONOUR: Yes, and having done that I thought the matter was agreed to by counsel as to the form in which it should ultimately go.

Mr. Neil, you want me to tell the jury that the plaintiff did not agree with the form of that question?

MR. NEIL: The plaintiff did not agree with the substance of the question.

HIS HONOUR: Then I should tell them that that is the way I ruled it should go? 40

MR. NEIL: I submit your Honour should discharge the jury because the damage is done.

HIS HONOUR: I would not discharge the jury. You do not want the jury discharged, do you, Mr. Nicholas?

MR. NICHOLAS: No, your Honour.

HIS HONOUR: Have you any objection to me telling the jury that

Mr. Neil did not agree with the form of the question?

MR. NEIL: I did not agree with the substance of the question,
your Honour.

MR. NICHOLAS: I think the true substance should be reflected.
The matter was debated, it was argued, counsel had different
views about it and your Honour ruled a certain way and that is 10
the direction they follow and that is what they are bound to
follow.

HIS HONOUR: I reject the application for discharge but I am
prepared, in accordance with your wish, to advise the jury of
that further matter, Mr. Neil.

(Jury returned at 4.58 p.m.)

HIS HONOUR: Members of the jury, I wish to withdraw one thing
that I said to you earlier, the last time you were here, namely
that both counsel had agreed with the form of that question. I
withdraw that. Mr. Neil, for the plaintiff, did not agree 20
with the substance of that question. He submitted a different
type of question as to substance and I have given a ruling on
that and therefore this is the form of the question, and it
was in that form in which the matter was ultimately settled.
The question that you have to deal with, and this is a matter
of law, is the question which you have on the sheet. Do you
understand?

FOREMAN OF THE JURY: Yes.

HIS HONOUR: Are you content with that, Mr. Neil?

MR. NEIL: Yes, I am obliged, to your Honour. 30

(Jury retired at 5 p.m.)

HIS HONOUR: I would like it to be noted that the reason why
I said what I did to the jury in relation to "I can see your
problem" is because when I redirected them one of the jury men,
being the one closest to me, raised his eyebrows and gave a
look of some --

MR. NEIL: Disappointment?

HIS HONOUR: I do not say disappointment, I would have said
mystification or "I am not quite following" and when I repeat- 40
ed it he did the same thing. It was only because of that

final expression that I thought I should say "I can see your problem". That is why I said it.

(The court adjourned.)

(The jury returned at 5.25 p.m. with the following answers to the questions supplied:

1. Has the plaintiff proved that the matter complained of conveyed the imputations (or any imputations not substantially different from) 10
 - (a) The plaintiff directed physical conditioning and preparation of the Manly Rugby League Team in such a wrong and incompetent manner that he was unfit to hold the position of trainer.
 - A. Yes.
 - (b) The plaintiff was an incompetent conditioner of the Manly Rugby League Team.
 - A. Yes. 20
2. (a) Was imputation 1(a) defamatory of the plaintiff?
 - A. Yes.
 - (b) Was imputation 1(b) defamatory of the plaintiff?
 - A. Yes.
3. Has the defendant satisfied you that the matter complained of conveyed the imputation (or any imputation not substantially different from)
 - "That the plaintiff directed physical conditioning and preparation of the Manly Rugby League Team in a wrong or incompetent manner." 30
 - A. Yes.
4. Has the defendant satisfied you that the imputation in question 3 is substantially true?
 - A. No.

(Question 5 not answered.)
6. Has the defendant satisfied you that the circumstances of the publication of the matter complained of were such that the plaintiff defamed was not likely to suffer harm?
 - A. No. 40
7. Has the defendant satisfied you that any comment was

based upon proper material for such comment and was
the comment of a servant or agent of the defendant?

A. No.

8. If you find none of the defences established what
damages do you find?

A. \$60,000.)

10

HIS HONOUR: Members of the jury, I thank you for the atten-
tion you have given to the aspects that you have dealt with in
this matter. I have to tell you that we have not yet finished
with this case and you will have to be back here in the morn-
ing at 10 o'clock in order that the matter be finalised. I
will adjourn the case now and you will return in the morning
when we will ultimately dispose of the matter.

(Jury retired.)

HIS HONOUR: Gentlemen, I think it should be noted that prior
to the jury coming in with the answers to the questions, I
did raise with counsel the question of whether or not depend- 20
ing on the findings of fact of the jury and the findings of
myself as a judge, in terms of the section dealing with
qualified privilege having been determined, that the jury
should then be asked to return a verdict one way or the other
in accordance with that finding and their own findings. There
was some discussion in relation to this with both counsel which
I need not recapitulate here since in the long run it was
agreed by both counsel, without qualification, that for more 30
abundant precaution it might be just as well to bring the
jury back and, depending upon the conclusions which I reach
on the question of qualified privilege, to then ask the jury
to return a verdict in accordance with my directions - and
that will be done. Accordingly, I have asked the jury to come
back in the morning.

(Counsel address his Honour in relation to Mr. Neil sub-
mitting to his Honour that there was material in the
answers of the jury to the questions provided upon which
his Honour could take guidance in relation to deciding 40
the question of qualified privilege and that because the
jury found that the publication was defamatory there was
no defence at all. Mr. Neil further submitted that his
Honour should have regard to the written submissions and
make findings of fact bearing in mind the onus upon the
defendant and urged upon his Honour to find that the de-
fence had not been made out.)

(Further hearing adjourned to 9.30 a.m. on Tuesday,
22nd March, 1983.)

In the Supreme Court of New South
Wales, Common Law Division,
11. Judgment of his Honour,
Mr. Justice Lusher, 22.3.1983

IN THE SUPREME COURT)
OF NEW SOUTH WALES) No. 12521 of 1981.
COMMON LAW DIVISION)

CORAM: LUSHER, J.

TUESDAY, 22ND MARCH, 1983

AUSTIN v. MIRROR NEWSPAPERS LIMITED

10

JUDGMENT

(Re the defence of qualified privilege)

HIS HONOUR: I now deal with the question of the defence of qualified privilege which was raised by the defendant. In this matter questions were left to the jury subject to the form of Question 7 thereof as to how comment was to be left. There was no dispute between the parties as to the form of the questions. The form of the question which Mr. Neil wished to be left in terms of Question 7 is set out in the form of questions which he submitted to me and which are available. 20
It will be noted that no question as such was left to the jury relating to the defence of qualified privilege in any form.

During the course of the trial, at the end of the evidence, the defence of qualified privilege was mentioned and Mr. Nicholas of Queen's Counsel, who appeared for the defendant, asked that I deal with it before the matter went to the jury as it could, depending upon the way in which it was determined, be decisive and avoid any need for the jury to consider any matter at all, that is to say if my decision was favourable to the defendant. Mr. Neil at that stage put in a number of written submissions on the issue generally and further submitted that that not be done, that I should have the jury's 30

findings since they may be of some assistance to me in determining the question involved on qualified privilege. The view that I then took was that it was premature for me to enter upon the question of qualified privilege since its application as a defence depended upon a finding by the jury that the imputations, or one of them, were as alleged and that one or both were defamatory. 10

Mr. Nicholas then agreed that I should defer my decision on this question and that it would be appropriate to raise the matter after the questions were answered, and accordingly the question was deferred, from which it followed that the question can only arise if the imputation and defamatory nature of it was decided favourably to the plaintiff. This course was agreed to by Mr. Neil.

No submission was made by either counsel that any question should be left to the jury relating to qualified privilege. It was accepted that it was a matter for the trial judge. 20

The relevant questions as to imputations and defamation having been answered favourably by the jury to the plaintiff, as were other questions relating to other defences which were raised by the defendant including the amount of damages has now been determined. The matter of qualified privilege remains to be dealt with.

Mr. Neil has made a number of submissions in relation to this in writing supported by reference to some authorities and an additional submission that the matter which is concerned here is one which is of apparent interest only and that ss. 2 of s. 22 has not been fulfilled. He also made reference to Wright v. A.B.C. (1977) 1 N.S.W.L.R. 697, per Reynolds, J.A. 30

711-712. He referred also to *Morosi v. Mirror Newspapers*
(1977) 2 N.S.W.L.R. 749 at 797, *Illawarra Newspapers v.*
Butler (1981) 2 N.S.W.L.R. 502 at pp. 507 and 508 per Samuels,
J.A. Mr. Neil also relies upon the material in pars. C - M
in his written submissions and also to the use of the words in
the publication, the headline and extravagant language, for 10
example, "Minor catastrophe", "over zealous", "hoodwinked",
"gruelling" and so on, words of similar content. I refer to
the paragraphs and the pages but I do not itemise them here as
the documents are available.

In relation to pars. 1, 2 and 3 which relate to the
interest, I reject the submissions therein made. In my
opinion there was an interest between the publishers and the
readers in a case such as this, and I so find. I also find
that the question of s. 22 is an extension of the common law
and for this I rely on *Morosi's* case. 20

In relation to par. 4 on the first page, I reject that
submission. In my opinion the word "information" in the sub-
section refers to comment and opinion as well as information
by way of fact.

In relation to par. 5, I reject that submission as in my
opinion it does not follow from what is submitted.

In par. 2 on p.2, it sets out s. 22(1)(c) and says that
the onus is on the defendant, with which I would agree. It
says the onus cannot and has not been discharged. I disagree
with the first part of that and I deal with the second part 30
subsequently herein.

As to par. 4 on p.2, that there are matters to be consid-
ered by the jury, that I may be assisted by the jury's findings

and that I should await the jury's findings: This has been done and accordingly no problem arises in relation to it. I do not agree that those findings are necessarily binding upon me in relation to the matter. In the course of argument Mr. Neil, as I understood him, was inclined to agree that the jury's findings on the matters before me were not necessarily 10 binding or conclusive to my province and that I was not therefore necessarily bound by them. In my opinion I am not. Mr. Neil also relied upon a number of points which are set out on pp. 5, 6 and 7 of the submissions and which are numbered from A to M. In relation to A, I do not agree with that. I do not agree with par. B. In relation to par. C, he relies upon the manner and extent of the publication and on the question as to the prominent position of the words, and that I would agree that the language was extravagant - I disagree. I take the view that the language there is colourful language but I do not 20 find them in any way extravagant as used in that context by Mr. Neil. In par. D he says there is a close connection between the article and the imputations. I do not quite understand what this means but it is quite plain that the article, in the jury's findings, contains the imputations. To that extent there is that connection. As to par. C it says that the defendant did not mean to convey the imputations and for this he relies upon interrogatory 11; and interrogatory 11 does say that. He says that the comment was not fair or based on proper material. I do not accept this submission. In my 30 opinion it was fair and it was based on proper material. As to par G. that there was lack of contact with the plaintiff and other persons by Mr. Casey, and more particularly by the

defendant. I agree there was a lack of contact with the plaintiff but I do not regard this as in any way decisive in relation to the matter before me. In par. H it says there was no evidence by the defendant, as distinct from Mr. Casey, regarding publication. This is the fact, subject, of course, to the fact that there was a letter tendered which was written 10 on behalf of the defendant in reply to the request for the apology. Paragraph I states that the defendant does not assert any belief in the truth of the imputations. This is so. As to par. J, that it is not reasonable to publish serious imputations such as unfitness or incompetence, this is really a question for myself later and I deal with it subsequently. It also says that the terms of the publication did not alone satisfy the onus and that there was no evidence by the defendant as to the care taken. These matters are dealt with later. Finally in par. M, that there was authority in which s. 22 had 20 been successfully raised by a newspaper with a large and extensive circulation - whether this be so or not is a matter I do not think I should comment on.

The defendant relies upon, apart from pars. (a) and (b) of the sub-section which I should say now I accept as having been satisfied, the fact that the defendant's conduct in publishing the matter is reasonable and it says so for the following reasons: that the specific groups were interested in the subject matter of the article; that the author or commentator has experience and expertise; that the language itself was 30 temperate in all circumstances; that there was an honest belief by the author in the material and in the substantial truth of what he wrote; that it was a long-standing column

and that the plaintiff himself was a man in the public eye; that the existence of the earlier Goodwin article published the day before was available and was read by him and had been accepted as being in a newspaper media article; that the plaintiff himself had accepted that what he said there, in the terms of the narrative were attributable to him, were cor- 10
rect and that he had said that. I infer from that that it was correctly reported that the plaintiff had thereby voluntarily put his training techniques or manner and system into the public arena for some discussion and that there was public interest in getting results and the performances of teams, all this being as a matter of record and in the public domain.

I should say at this point of time that in broad terms I would accept all of those submissions of the defendant.

Apart from the above broad submissions by both counsel, Mr. Neil in his submissions put it that the jury's answers 20
would be of assistance to me in deciding the question of qualified privilege. I accept, of course, that this is certainly so as to questions 1 and 2, as to the imputations and the defamatory nature of them. As to how the failure of the defendant to establish the other defences would assist is more problematical. This was put to Mr. Neil and his further submission in relation to this then led to the question as to whether s. 22(1)(c) raised questions of law or questions of fact or a question of mixed law and fact, and if of law on what facts was I to act, and if it was on the fact, were the 30
facts to be determined by the judge or the jury and if the judge was bound by any of the jury's findings which might touch upon par. (c). Mr. Neil relied upon the decision in Wright's

case at pp. 700, 703 and 712. His submission was that that was a question of law to be determined by the Court and not by a jury. He relied for this upon the headnote No. 2, expressed in succinct terms in that case, to support that proposition and submission.

Mr. Nicholas, on the other hand, submitted that par. (c) 10 involved questions solely for the Judge and relied on s. 23 which provided that where proceedings are tried before a jury and on the facts there is a question of whether there is a defence of qualified privilege the question is to be determined by the Court and not by the jury. He sought to distinguish Wright's case as being quite different in that there was in that case no evidence offered by the defendant.

In relation to par. 23 in my opinion the words there "on the facts" relate to the facts found, whatever they may be, and however that may be done, and upon such facts as found, 20 the question of whether there was a matter of qualified privilege which then was to be decided was to be decided by the Judge on those facts. I do not think that s. 23 itself assists on the question as to whether the Judge himself decides the facts.

The matter does present problems. The question of primary facts and ultimate facts is not without reference in the various authorities. In malicious prosecution, for instance, reasonable and probable cause has been regarded as a matter for the Judge ultimately upon undisputed facts or if disputed 30 they are to be determined by the jury. Similarly at common law in defamation. (*Hebditch v. McIlwaine* (1894) 2 Q.B. 54 at 58; *Adam v. Ward* (1917) A.C. 209 at 318 and 334). Nor can

the questions be framed for the jury so as to include the very questions and the Judge has to determine himself. (See Adam v. Ward supra.) In Justin v. Associated Newspapers 86 W.N., p.17, Wallace, P. indicated that no issue in that case was left for the jury on the question of qualified privilege on p.22 and he was of the view that s. 17 of the Act, which then applied, was 10 for the Judge subject only to the qualification that any disputed facts necessary for the ruling were for the jury: Although he thought it was somewhat anomalous since some of the requisite matters were themselves questions of fact. Walsh, J. was of a similar view at pp. 32 and 33. He mentioned that the Act does not state what matters are to be considered by the Judge and what matters are to be considered by the jury. Jacobs, J. also accepted the proposition that disputed questions of fact were for the jury (p.51). In Wright's case under the present section the matter is put in the joint judg- 20 ment of the learned President and Glass, J. that the preferred view was that their treatment at first instance is as though they are questions of law and be so carried through to appellate level. Even so he concluded in that case that even if that case was treated as fact or law, appellate intervention was called for on the facts. Reynolds, J. in the same matter, as I read it, seemed to deal with the matter as a matter of fact. In Butler v. Illawarra Newspapers the Court of Appeal per Samuels, J. said that the Court of Appeal would make findings of fact which had been made by the trial judge; although, 30 with great respect, it adds: "I do not agree with his reasons", from which I infer that the Court of Appeal there regarded the matter as one of fact for the Judge.

Accepting as I do that I should follow Wright's case and Butler's case and with the assistance that I got from Wright's case as to relevant considerations to be considered in relation to this problem, and the parties not having sought any question to go to the jury on qualified privilege, I approach this matter as a matter of fact in the first instance and then, 10 having determined the facts, I then consider whether or not the matters dealt with in pars. (a), (b) and (c) apply. As I have said, I have already stated I am clearly of the view that (a) and (b) have been established.

Section 22 begins with the statement that where in respect of matter published - so it deals with "matter", and s. 9(1) (A) of the Act does provide that it is the report and article and the like there set out which is the "matter". The imputation is made by means of the publication of the matter. It is true that that section specifically states that that is the 20 manner for the purposes of that section and I am alive to the implications of that. However, with such assistance as I gain from that reference and s. 22, in the light of the totality of the Act, the conclusion which I reach is that the matter is to be construed as follows: that where in respect of a matter (and that is to say the article) published to any person within sub-ss. (a), (b) and (c), if they are established, the question of qualified privilege is sustained. In short, that "matter" there is the article which contains the imputations which are spelt out of it. 30

So that the first thing, as I indicate, is to identify "the matter". I have already mentioned that it was the article itself and I have also mentioned that it contains, as it does

by the jury's answers to questions, the defamatory imputations. It is the article which is published, not the imputations. The imputations are not published as such; they are spelt out and extracted from the article by the plaintiff and accepted by the jury. I find the necessary interest and/or apparent interest in the matter under sub-s.A; that readers have an in- 10
terest in having information on the results of Rugby League football matches and on the performances of teams and players, coaches and trainers and all matters relating thereto, includ-
ing explanations and views and opinions as to their performances or lack of them. I find also that information includes comment and opinion as well as fact. I find that the subject matter that is dealt with is the subject matter of professional Rugby League football and its matches and the performances and methods and tactics of teams, players, coaches, trainers, ex- 20
planations and considerations thereof and of the matches, re-
sults and performances of those concerned as indicated above. The subject includes explanations and questions of opinion and material and comment which touches these matters.

Accordingly, as I have said, I find pars. (a) and (b) as established by the defendant. In relation to (b), I specifically find that the matter was published in the course of giving information of that subject to the members of the public.

This brings me to par. (c). Here the inquiry is whether the conduct of the defendant in publishing the article containing the defamatory imputations was reasonable in the circum- 30
stances. I find that the circumstances were that the plaintiff had the day before been quoted in the press - and I refer to the passage purporting to quote him in the exhibit, and that

this was an indication of what went on at training under his control and it was an indication of his manner and method of dealing with such incidents and individuals. I find that very good teams with very good players had lost matches in recent fixtures including that weekend. None of this was disputed. I also find that this was obviously a matter of 10 some notoriety in the public domain in relation to a large section of the sport going public. I find that Manly had lost - and this is not disputed - the last three out of five matches in the competition, it having played five matches in that competition, the last against a team not so strong, and that all this was well known. The results in relation to other teams was not in dispute and they were equally well known. I find that their performance was a matter for and was available for and was open for consideration and discussion and that the various matters expressed in the article related to the subject 20 matter I have mentioned; that the matter was written and expressed by a commentator with long and wide experience and expertise in the game, in training and in matters relating to football generally. I also find that he had viewed this game and others and had formed a view as to the subject matter before writing the article and that he had read remarks attributed to the plaintiff in the press, in the Goodwin article. I also find that the plaintiff was an experienced trainer of the Manly team and was a person in the public eye and that he was not personally known to the writer. I also find that the 30 writer honestly believed what he wrote and he also believed in the substantial truth of it.

Both parties asked me to consider the words of the

article, if it is permissible to do that - and in my opinion it is. It is my further opinion that I should make findings as to the article itself, as part of the circumstances.

The jury finding is really of no assistance to me in this sense: its finding being expressed as an answer to the form of that particular question which went to the defence, 10 and I observe that Reynolds, J.A. in Wright's case referred to "comments" as being a matter relevant to circumstances under which material might be published.

In relation to the answers of the jury it is proper for me to say that this was a composite answer to a question expressed in composite terms and its answer given to such a question was sufficient and adequate and proper to dispose of the defence which was there raised and to which the question was directed. However, in my opinion it is not to be regarded as 20 conclusive by any means as to the circumstances which I need to consider and in this sense I find there is no necessary inconsistency between what I may say and what the jury have found in answer to Question 7 particularly because, as I say, of its composite nature. The answer to the question does not assist me in the circumstances. I think in my opinion that the question of comment in the sense in which I am looking at it is a matter for me, as part of the general circumstances, and is a matter that I should consider (see per Reynolds, J.A. in Wright's case). Furthermore, in my opinion, there are plainly 30 matters of comment in the article and I should therefore express my finding as I see it, that there was comment involved. If the facts are for me as to the circumstances and comment is a factor, then it seems clear that I should express a

finding and as I have said, it is clear in my opinion that there was comment. If I am wrong in this approach and the jury's verdict is to be regarded as conclusive on this question of comment, then the question is clearly stated in Question 7 and the finding is there and the question in relation to any appeal would present no problem since the material is fully available. 10

I find that the greater part of the article consisted of comment by the writer and that that comment was upon facts which were, as I find it, substantially true, namely that it was substantially true - indeed it was true - that there were three teams which had lost recent matches, that Manly had lost the last three out of five and the last loss had been against a team it was expected to defeat. I find that the statement, prefaced as it was by the words "I believe" at the beginning of the fourth paragraph in the article, clearly shows that the rest of that paragraph is comment, opinion and belief. I really do not see how this can be contraverted. 20

The next paragraph states that "this means ...", which in my opinion is clearly giving the meaning of that belief and was also comment. The next paragraph states a result of that belief. The next paragraph, which is the first paragraph in the third column, commences with the statement, "I have always believed" and I should have thought it equally plain that that was a statement of belief, opinion and comment. The statement in the second paragraph in column 3 beginning, "Manly has persisted...." I find as a fact to be substantially true. The reference to three years instead of two years, as far as I would be concerned, that is substantially true in the 30

context with which this article is dealing. The first paragraph in the fourth column is substantially true in that the records did show a change.

The reference to "fault" and the reference to "other persons contributed ..." is a separate matter and is regarded by me as a question of fact. The "questioning of the wisdom", as I read it and find, is a statement of opinion and the balance of that paragraph, in the light of what was attributed to the plaintiff in the Goodwin article, was substantially true; the point being "six" as against "a few". I find that this is substantially true. The second last paragraph presents the matter as a question of fact. The last sentence is said to be advice - it is prefaced by the words "my advice". "Advice" in that sense I find is a statement of opinion or comment. The headlines and the midlines themselves I find as comment. 10

In relation to the language itself, I find it colourful and expressive and not untypical of sporting columns. I do not find that it is expressed in extravagant terms. In my opinion, the comments made were fair in relation to the general material and in the very substantial sense, having regard to its totality, was based upon substantially true facts and material and was relevant to them and to the subject matter being discussed. I find that the writer had no knowledge that he was conveying any misleading imputations in the article and, as I have said earlier, I find that he had an honest belief in the material and the totality of the material which he published. These are the facts and the circumstances under which this article was published, one of them being, of course, that it was an article which contained, in the main, comment by an experienced 20 30

and expert commentator whose column was, on the evidence as I find it, long-standing and who honestly believed what he had written. It was not an article of obvious or of clear defamatory content or imputation. Indeed, the plaintiff made a number of amendments, the last of them being at the beginning of the trial itself, before he settled upon the imputations which he claimed arose from it and which the jury subsequently have found did arise from it. I also consider as part of the circumstances, and I find, that the article was published in a newspaper with the circulation given in the evidence and which is not subject to any dispute. I also find that the connection between the subject matter and the article itself and the imputations which are in the article, were all close and clear and specific. There was nothing tenuous about the relationship between the article and the subject matter. 10

The plaintiff urges that the defendant by the answer to an interrogatory did not intend the imputations which were found. In my opinion, it would be strange if it did since it was not believed at the time so far as the defendant was concerned that there was such an imputation and also having regard to the view that was expressed in the letter which was tendered in respect of the apology. 20

The question then remains as to whether in all these circumstances and accepting that the defendant's commentator was experienced and expert - as I find on the evidence - whether the conduct of the defendant in publishing the matter was reasonable in the circumstances. What is reasonable in this sense is a question of judgment having regard to all the circumstances, the conduct of the publisher itself so far as I 30

can see, its act in publishing what had been written by its
commentator and on whom it relied, he being the writer of a
column of some many years' standing.

The finding that I make is that in all the circumstances
the conduct of the publisher was reasonable and, accordingly,
the defence of qualified privilege has been established and I 10
so find.

SUPREME COURT OF N.S.W.
FILED
31 MAR 1983
\$150-
REC NO. S5470

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY
COMMON LAW DIVISION
No. S12521 of 1981
C.A. No. 102 of 1983.

REGINALD AUSTIN
Appellant/Plaintiff

MIRROR NEWSPAPERS
LIMITED
Respondent/Defendant

NOTICE OF APPEAL

The proceedings appealed from were heard 10
on the 14th, 15th, 16th, 17th, 18th,
21st and 22nd March 1983 before a judge
and jury.

The Appellant appeals from decisions of
Mr. Justice Lusher.

GROUNDS

1. That His Honour was in error in
holding that a defence of qualifi- 20
ed privilege under sections 22
and 23 of the Defamation Act had
been established.
2. That His Honour was in error in
holding that there was no evidence
capable of being considered by
the jury on the question of malice.
3. That His Honour was in error in
directing the jury to find a ver- 30
dict for the Defendant.

ORDERS SOUGHT

1. That the Appeal be allowed with
costs.
2. That judgment be entered for the
Appellant in the sum of \$60,000.00
plus interest.

3. Alternatively, a new trial. (L.S.)
4. Such further order as to this Honourable Court seems fit.
- The Appeal papers will be settled on the 20th day of May 1983.
at 10.15

-2-

APPELLANT: Reginald Austin of 533 Willoughby Road,
Willoughby, 2068. 10

SOLICITOR: John Needham McKevitt Emmerson of
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SOLICITOR'S AGENT: Booth & Boorman, 115 Pitt Street,
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J. Emmerson
.....
Appellant's Solicitor

FILED: 1983.

SUPREME COURT OF NEW SOUTH WALES
FILED
21 APR 1983
NO FEE

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY The proceedings appealed from were heard
COMMON LAW DIVISION on 14, 15, 16, 17, 18, 21 and 22 March 10
NO.S12521 of 1981 1983 before a judge and jury of four.

C.A.No.102 of 1983 The appellant by Notice of Appeal dated
31 March 1983 appeals from decisions of
REGINALD AUSTIN Mr Justice Lusher.

Appellant/Plaintiff The respondent cross appeals from cer-
tain of the findings of the jury.

MIRROR NEWSPAPERS
LIMITED

GROUND

Respondent/Defendant 1. That the finding by the jury in
answer to question 7 that the 20
defendant had not satisfied it

NOTICE OF CROSS
APPEAL

that any comment was based upon
proper material for such comment
(L.S.)
and was the comment of a servant
or agent of the defendant was
perverse, against the evidence
and against the weight of evidence.

2. The finding by the jury in answer
to question 8 of damages of 30
\$60,000 was excessive, against
the evidence and against the
weight of evidence.

ORDERS SOUGHT

1. That the finding of the jury in answer to question 7 be set aside and question 7 be answered "Yes"; alternatively, that it be held that the defences pleaded in paragraphs 5(c) and (d) of the Amended Defence were established.
2. That the finding of the jury in answer to question 8 be set aside. 10
3. Alternatively to 1 and 2 above, a new trial.
4. Such further order as to this Honourable Court seems fit.

(L.S.)

The Appeal papers will be settled on 20 May 1983 at 10.15 a.m.

CROSS APPELLANT: Mirror Newspapers Limited
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CROSS APPELLANT'S SOLICITOR: John Francis McDarra of Dawson Waldron
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J. F. McDarra
by his partner 30

FILED: 20 APR 1983 1983

High Lett
.....
Cross Appellant's Solicitor

IN THE SUPREME COURT)
)
OF NEW SOUTH WALES) C.A. 102 of 1983
) C.L. S12521 of 1981
COURT OF APPEAL)

CORAM: GLASS, J.A.
SAMUELS, J.A.
MAHONEY, J.A.

10

THURSDAY, 23RD AUGUST, 1984.

AUSTIN v. MIRROR NEWSPAPERS LIMITED

JUDGMENT

GLASS, J.A.: This is an appeal against the decision of Lusher J. whereby he directed the entry of judgment for the defendant in a proceeding claiming damages for defamation. The trial before a judge and jury took place on 14 - 22 March, 1983. By their answers to specific questions the jury found for the plaintiff on the issue of defamation, rejected various defences 20 raised by the defendant and assessed the plaintiff's damages in the sum of \$60,000. The trial judge, however, found that the defendant newspaper had established a defence of qualified privilege under s. 22 of the Defamation Act 1974. The plaintiff appeals on the ground that his Honour erred in making that determination and also in ruling that there was no evidence of malice fit for submission to the jury. The defendant by its cross-appeal challenges as perverse the jury's assessment of damages.

The plaintiff was responsible for the physical training 30 of the Manly Rugby League football team. He sued upon an article published by the defendant on 27 April, 1981 alleging that it conveyed to its readers the imputation that he directed the conditioning of the team in an incompetent manner and was unfit to hold the position of trainer.

The full text of the article was as follows:

"DAILY MIRROR LEAGUE LIFTOUT ... LEAGUE LIFTOUT ...
OUR STALE STARS ... CASEY'S CORNER
COACHES PUSHING TOO HARD.

It hasn't been a good year for the big names of rugby league. In fact it has been something of a minor catastrophe the way Parramatta and Manly, along with Balmain, have flopped so badly. 10

North Sydney's three-try spree to snatch a win over Parramatta and Newtown's steamrolling of Manly emphasises that something is radically wrong with the preparation of major teams with undeniably talented players.

It's easy to blame Ray Ritchie and Jack Gibson or even Frank Stanton, but that would blame only those coaches while perhaps others will suffer the same fate later in the season. 20

I believe Sydney's top teams are being trained into the ground by over-zealous conditioners who have somehow hoodwinked coaches into believing that on top of a gruelling 80 minute match three nights of tortuous conditioning are also needed.

This means, in effect, Sydney footballers are pressing their bodies to the limit four nights a week.

While that might be acceptable in the boudoir, it is a short cut to physical staleness on the football field. I've always believed once a man becomes an international he doesn't need to be guided all the time with his preparation for matches. 30

FAULT.

Manly has persisted for the past three years with the physical regimentation of its players by a fitness fanatic named Reg Austin.

From the little I know of Reg he is a magnificent man, and his persecution of his own body has made him the fastest runner in the world for his advanced age.

But since Austin has taken over the conditioning of Manly the records show it has gone from being a great side to being a tattered band of former champions. 40

Now this has not altogether been Austin's fault. A certain lack of concentration and over-confidence on the part of players has contributed as much as some unimaginative coaching from Frank Stanton, Allan Thomson and Ray Ritchie.

I question the wisdom of Austin when he tells an

international footballer to do another six 400m sprints as
some kind of penance.

League stars train very hard before the season starts.

But once they start playing - sometimes once and twice
a week - is there a need for such a grinding training
program under these whip-driving coaches?

10

The problem is Reg Austin and company think they are do-
ing the right thing. My advice is to sack them."

The jury gave the following answers to the specific ques-
tions asked of them:

"1. Has the plaintiff proved that the matter complained
of conveyed the imputations (or any imputations not sub-
stantially different from)

(a) The plaintiff directed physical conditioning and
preparation of the Manly Rugby League Team in such a
wrong and incompetent manner that he was unfit to hold 20
the position of trainer. Yes.

(b) The plaintiff was an incompetent conditioner of the
Manly Rugby League Team. Yes.

NOTE:

If the answer to (a) or (b) or both is "Yes" and only then
proceed to Question 2.

2. (a) Was imputation 1(a) defamatory of the
plaintiff? Yes.

(b) Was imputation 1(b) defamatory of the
plaintiff? Yes. 30

NOTE:

If the answer to 2(a) and/or 2(b) or both is "Yes"
and only then proceed to answer question 3.

3. Has the defendant satisfied you that the
matter complained of conveyed the imputation (Or
any imputation not substantially different from)

"That the plaintiff directed physical cond-
itioning and preparation of the Manly Rugby
League Team in a wrong or incompetent manner." Yes.

NOTE:

If the answer to question 3 is "Yes", proceed to
question 4. If the answer to question 3 is "No"
proceed to question 6.

40

4. Has the defendant satisfied you that the
imputation in question 3 is substantially true? No.

NOTE:

If you answer this question "Yes" proceed to question 5.

5. Has the defendant satisfied you that the plaintiff's reputation was not further injured by: 10
- imputation 1(a) if you have found it to be defamatory in question 2 and/or
 - imputation 1(b) if you have found it to be defamatory in question 2 by reason of the imputation found to be true in question 4? Not answered.
6. Has the defendant satisfied you that the circumstances of the publication of the matter complained of were such that the plaintiff defamed was not likely to suffer harm? No.
7. Has the defendant satisfied you that any comment was based upon proper material for such comment and was the comment of a servant or agent of the defendant? No. 20
8. If you find none of the defences established what damages do you find? \$60,000."

The judge delivered a fourteen page judgment in which he held that the defence of qualified privilege under s.22 had been made out. The relevant provisions respecting that defence are as follows:

"22.(1) Where, in respect of matter published to any person - 30

- (a) the recipient has an interest or apparent interest in having information on some subject;
- (b) the matter is published to the recipient in the course of giving to him information on that subject; and
- (c) the conduct of the publisher in publishing that matter is reasonable in the circumstances,

there is a defence of qualified privilege for that publication. 40

(2) For the purposes of subsection (1), a person has an apparent interest in having information on some subject if, but only if, at the time of the publication in question, the publisher believes on reasonable grounds that that person has that interest.

(3) Where matter is published for reward in circumstances in which there would be a qualified privilege under subsection (1) for the publication if it were not for reward, there is a defence of qualified privilege for that publication notwithstanding that it is for reward.

23. Where proceedings for defamation are tried before a jury and, on the facts, there is a question whether there is a defence of qualified privilege under this Division, that question is to be determined by the court and not by the jury." 10

The first question raised on the appeal is directed to the respective functions of judge and jury in relation to this defence. Before any statutory intrusion into the common law of defamation occurred, it was well accepted that the question whether an occasion was privileged was to be decided by the trial judge, but he was required to remit to the jury the decision of any disputed question of primary fact upon which his own decision depended, Minter v. Priest (1930) A.C. 558 at 572 and Telegraph Newspaper Co. Ltd. v. Bedford (1934) 50 C.L.R. 632 at 646. When s. 17 of the Defamation Act 1958 introduced a defence of qualified protection, it was held to be a question for the judge to determine whether the conditions prescribed by the various paragraphs were fulfilled subject to the jury deciding any disputed issues of fact on which the resolution of the ultimate questions might depend, Calwell v. Ipec Australia Ltd. (1975-76) 135 C.L.R. 321 per Mason J. at 331, Bridges v. Australian Consolidated Press Ltd. (1967) 70 S.R. (N.S.W.) 52. 20 30

The defence under s.22 is even more closely integrated with the common law than a s.17 defence under the repealed Act since it is provided that the establishment of the defence demonstrates an occasion of privilege ranking equally with proof of a privileged occasion at common law, s. 20(1).

Accordingly I am satisfied that the trial of a defence under s.22 calls for the same division of function between judge and jury. No disputed questions of fact were submitted for jury determination with specific reference to the s. 22 defence. However Mr. Hughes, Q.C., for the appellant plaintiff, points to the jury's answer on the defence of comments and submits that the trial judge in his reasons for judgment overrode the jury's findings and that his decision therefore is vitiated by error of law. 10

Mr. Nicholas Q.C., for the defendant respondent, submits that the parties in abstaining from putting any questions to the jury elected to have the judge determine all primary facts, whether disputed or not, and there are passages in the judgment suggesting that he regarded himself as so authorised. No doubt the pre-occupation of counsel with the multiplicity of issues being litigated distracted attention from the proper division of function respecting issues under s. 22 of the Act and the necessity either to obtain agreement on the primary facts underlying the defence or, failing agreement, to solicit the jury's findings. I consider that it would be proper to construe what was done by counsel as an acceptance that the judge should himself determine any disputed facts save and except to the extent that they were governed by jury findings. An examination of the judgment, however, shows that he proposed to determine all the primary facts for himself and regarded himself as not bound by the jury findings in answer to question 7. He said: 20 30

"If the facts are for me as to the circumstances and comment is a factor, then it seems clear that I should express a finding and as I have said, it is clear in my

opinion that there was comment. If I am wrong in this approach and the jury's verdict is to be regarded as conclusive on this question of comment, then the question is clearly stated in Question 7 and the finding is there and the question in relation to any appeal would present no problem since the material is fully available.

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I find that the greater part of the article consisted of comment by the writer and that that comment was upon facts which were, as I find it, substantially true, namely that it was substantially true."

By finding as he did in the above passage and elsewhere that the matter was mainly comment and was based on substantially true facts the judge was inevitably brought into conflict with the jury's finding that any comment was not based upon proper material. He appreciated that this was so and observed that, if he were held to be wrong, an appeal court would have before it all relevant material enabling it to act. In my view this Court on appeal is bound to treat his reasoning as erroneous in point of law and to set his judgment aside.

The question then arises as to what should be done. Counsel for the parties were in agreement that the defence should not be sent back for trial either as a separate issue or together with other issues. They preferred to have this Court determine whether the defence had been established paying due regard to the jury's findings but deciding all other primary facts for itself as a prelude to determining the ultimate questions raised by s. 22.

Before dealing with the particular ingredients of the defence, certain general considerations arise respecting its place in the scheme of defamation law and its relation to the defence of fair comment on a matter of public interest. The latter defence as formulated at common law has been deliberately reshaped by the Act. The defendant, as at common law, must

prove that what is defended was an expression of opinion and not a statement of fact, that the comment related to a matter of public interest (s.31) and that the comment was based on proper materials (s.30). A comment cannot be fair if the facts alleged as its basis are untrue, Goldsbrough v. John Fairfax & Sons Ltd. 34 S.R. (N.S.W.) 524 at 532. The plaintiff 10 may defeat the defence if he shows that the comment did not represent the true opinion of the person making it (ss. 32, 33) which corresponds in part to common law proof of unfairness, Gardiner v. John Fairfax & Sons Pty. Ltd. 42 S.R. (N.S.W.) 171 at 173. The plaintiff, however, no longer has the right which existed at common law of destroying the defence on proof of malice (Ibid). This comes about because the statute is a codification of the law respecting the defence of fair comment (s.29).

The new statutory head of qualified privilege relates to 20 the publication of information. It provides an occasion of qualified privilege which had no counterpart at common law. Information is not defined but no reason appears why it should not include fact as well as comment and this Court has so held, Morosi v. Mirror Newspapers Ltd. (1977) 2 N.S.W.L.R. 749 at 796. If the ingredients of the defence are made out, it will protect, as does a common law privileged occasion, statements of fact which cannot be justified as true under s. 15 and comments not based on proper material under s. 30. On the other hand, unlike the defence of fair comment, it can be de- 30 feated on proof of malice since the statute has not abrogated the common law rule that the privilege conferred by the occasion is lost on proof of malice (s.11).

Bearing these considerations in mind I conclude that upon a retrial of the defence under s. 22 I should direct myself in the following manner. The jury has found that the matter published conveyed the defamatory imputation that the plaintiff was an incompetent conditioner of the Manly Rugby League team and unfit to be its trainer (as to which no justification was pleaded), that it also conveyed contextually the defamatory imputation that he directed the team's physical conditioning in an incompetent manner (as to which a defence of justification was rejected) and that any comment was not based on substantially true facts. All these findings of fact are binding upon me. However, they do not dictate a determination that the defence has not been made out, although they are relevant facts for consideration in relation to s. 21(c) namely whether the conduct in publishing the defamatory matter defined by the jury was reasonable in all the circumstances. 20

None of these facts, in my opinion, has any bearing on the two elements of the defence contained in s. 22(1)(a) and (b) to which I now turn. Mr. Hughes disputed that the requirements of those two paragraphs had been made out. He submitted that the subject of the publication within the meaning of the two paragraphs could be taken to be the performance of teams in the Rugby League competition and the alleged training methods of conditioners. Mr. Nicholas saw no objection to this description and I would accept it. He then submitted that the requisite interest was lacking for two reasons 30

(i) an interest in that subject did not fall within the section;

(ii) the general body of newspaper readers were not shown to have such an interest.

As to the first he cited the definition of "interest" given by Evatt J. in Telegraph Newspapers Ltd. v. Bedford (1934) 50 C.L.R. 632 at 662 in connection with similar Queensland legislation viz. "a real and direct personal, trade, business or social concern". He conceded that in Field v. John Fairfax & Sons Ltd. (Court of Appeal, 23rd May, 1974, unreported) it was 10 held that the public had an interest in the greyhound racing industry but sought to distinguish that sport on the ground that it contributed to State revenue. In my opinion the basis of the distinction is irrelevant and the public interest in the designated subject is both a matter of social concern in the Evatt sense and an interest within the meaning of paragraphs (a) and (b).

It is true that not all of the 328,000 persons comprised in the admitted circulation of the defendant's paper would share that interest. However, the statute makes specific pro- 20 vision to meet such a situation. Section 20(3) makes the defence available as regards all the recipients of the information although not all have the requisite interest, if the extent of the publication was reasonable. If this information on the subject of training rugby league footballers had appeared in a journal such as the Opera News or the Stock Exchange Gazette, whose readers would be largely indifferent to it, the extent of publication would doubtless be unreasonable. But having regard to the wide distribution throughout the community of interest in the sport of rugby league I am 30 satisfied that publication of information on the designated subject in a mass circulation daily is not unreasonable. Accordingly the elements of the defence prescribed in paragraphs

(a) and (b) are in my view established.

The defence, of course, will not succeed unless the publisher has additionally proved paragraph (c) viz. that its conduct in publishing the matter was reasonable in the circumstances. The construction and application of s. 22(c) have been considered by this Court in Wright v. Australian Broadcasting Commission & Anor. (1977) 1 N.S.W.L.R. 697 at 705, 711-2 and Morosi v. John Fairfax & Sons Pty. Limited (1983) 2 N.S.W.L.R. 707 at 795-6. In accordance with the views there expressed I note that the relevant matters for consideration include the manner and extent of publication, the extent of inquiry made, the degree of care exercised and any knowledge that a misleading impression was likely to be conveyed.

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I note also that these decisions authorise the following propositions.

1. The reasonableness of the publisher's conduct is to be judged in relation to his publication of "that matter" which means the defamatory matter.

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2. It is not reasonable to publish the defamatory matter merely because it was reasonable to give information on the subject which inspires interest.

3. The occasion does not protect a defamatory imputation irrelevantly made in the course of giving information.

This brings me to another submission put by Mr. Hughes Q.C. Although originally relied upon as a second ground for attacking his Honour's judgment it is relevant also to the trial in this Court of the s. 22 defence. The submission was that the article contained a number of allegations of fact which upon the evidence should be found to be untrue. The

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factual statements said to be inaccurate were eight in number:
viz. (i) that there was nothing wrong with the team's prepara-
tion (ii) that the Manly players were stale (iii) that condi-
tioners have hoodwinked coaches (iv) that players were sub-
jected to three nights of tortuous (sic) conditioning (v) that
bodies were pressed to the limit four nights a week (vi) that 10
players were regimented (vii) that the Manly team was a tatter-
ed band of champions (viii) that international players were
given extra sprints as a penance.

These allegations fall into two different categories for
the purposes of s. 22. Four of them e.g. (ii) staleness of
players (iii) hoodwinking of coaches (vi) regimenting of play-
ers (vii) team a tattered band of champions represent allega-
tions not claimed or found to be defamatory of the plaintiff
and therefore do not require to be defended under the section.
The remainder (i) preparation not wrong (iv) three nights of 20
conditioning (v) bodies pressed to the limit and (viii) giving
of extra sprints all relate to the defence of justification
pleaded to the contextual imputation that the plaintiff condi-
tioned the team in an incompetent manner i.e. they were alle-
gations the truth of which the plaintiff was trying to disprove
and the defendant trying to prove. It is to be assumed that
the jury found that these four allegations of fact were not
proved to be substantially true and on that account found that
the imputation of incompetence, if a fact, was untrue and, if
a comment, was not properly based. For these reasons I do not 30
think that, if I were to find specifically that each of these
four statements was untrue, I would be adding anything of sub-
stance to what the jury has found and what I am bound to take

into consideration in any event.

Having regard to the third proposition I have taken from Wright, I find that none of the defamatory matter was published irrelevantly in the course of giving information on the subject. Accordingly the inquiry to be made is whether in all the circumstances the publisher behaved reasonably in publishing that matter. It published matter which, as the jury has conclusively determined, bore the imputation that the plaintiff was incompetent as a conditioner and unfit to be a trainer. Further the jury has found that the imputation as an allegation of fact was not justifiable as substantially true and as a comment was not based on substantially true facts. For what it is worth I add that items (i), (iv), (v) and (viii) above being specific allegations of fact made in the article have been specifically shown to be substantially untrue. This constitutes the case for the plaintiff. 20

For the defendant reliance is placed on the following matters of fact which the trial judge found to be proved. Part of the information on which the article was based had been obtained by the writer from an article published in another newspaper the day before. It quoted the plaintiff as saying in relation to his players "I gave them six 400 metre runs just to round off the session". The plaintiff agreed in evidence he had used those words in speaking to the writer of the earlier article. The plaintiff was a man in the public eye who had by making such a statement to the reporter voluntarily placed his training techniques into the public domain as a matter for discussion. The author of the article sued upon had an honest belief in the substantial truth of the 30

allegations of fact in it and the fairness of the comment he had made. He was an experienced writer in whom the publisher could repose some confidence. The trial judge who saw and heard the witnesses was well placed to make these findings and I accept them.

As I have previously observed, the defence in question, if 10 established, gives rise to an occasion of qualified privilege ranking equally with an occasion of privilege at common law (s. 20(1)(c)). A privileged occasion at common law affords a complete answer to defamatory imputations which, being allegations of fact, could not be justified as true and, being comment, could not be defended as fair. The statutory defence, if made out, confers no less protection. I bear this in mind when I consider whether the elements of s. 22 have been made out so as to constitute a complete answer to what would otherwise be untrue statement of fact or unfair comment which de- 20 fames the plaintiff. Having given full consideration to the primary facts established by the jury verdict and to the primary facts established to my satisfaction I am of opinion that the conduct of the defendant in publishing the matter defamatory of the plaintiff was in all the circumstances reasonable and that the defence is made out.

The defendant also appealed against the judge's ruling that there was no evidence of malice fit for consideration by the jury which could destroy s. 22 privilege. Mr. Hughes Q.C. for the appellant put no oral argument but relied upon written 30 submissions previously filed. I have examined these written submissions but they do not persuade me that the plaintiff had adduced evidence of malice capable of destroying the privilege.

The various considerations relevant to this question have been recently set out in Spautz v. Williams (1983) 2 N.S.W.L.R. 506 at 520-1. The plaintiff has cross-appealed against the jury's assessment of damages but it is unnecessary to consider this question once the defendant has retained the judgment in its favour. I would propose that the appeal be dismissed with costs.

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In the Supreme Court of New South
Wales, Court of Appeal
15. (ii) Reasons for Judgment of
Samuels, J.A., 23.8.1984

IN THE SUPREME COURT
OF NEW SOUTH WALES
COURT OF APPEAL

)
)
) C.A. 102 of 1983
) C.L. S12521 of 1981
)

CORAM: GLASS, J.A.
SAMUELS, J.A.
MAHONEY, J.A.

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THURSDAY, 23RD AUGUST, 1984

AUSTIN v. MIRROR NEWSPAPERS LIMITED

JUDGMENT

SAMUELS, J.A.: I agree that the appeal must be dismissed with costs for the reasons stated by Glass J.A., to which I cannot usefully add.

In the Supreme Court of New South
Wales, Court of Appeal
15. (iii) Reasons for Judgment of
Mahoney, J.A., 23.8.1984

IN THE SUPREME COURT
OF NEW SOUTH WALES
COURT OF APPEAL

)
)
) C.A. 102 of 1983
) C.L. S12521 of 1981
)

CORAM: GLASS, J.A.
SAMUELS, J.A.
MAHONEY, J.A.

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THURSDAY, 23RD AUGUST, 1984

AUSTIN v. MIRROR NEWSPAPERS LIMITED

JUDGMENT

MAHONEY, J.A.: I agree with the orders proposed by Glass J.A.

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

COURT OF APPEAL

DIVISION

C.A. 102 of 1983
C.L.S. 12521 of
1981

REGINALD AUSTIN
Applicant

MIRROR NEWSPAPERS
LIMITED
Respondent

O R D E R

THE COURT ORDERS that

(1) The appeal be dismissed with costs.

ORDERED 23 August 1984 ENTERED 19
September 1984.

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BY THE COURT

(Sgd) G.J. BERECRY (L.S.)

REGISTRAR.

In the Supreme Court of New South
Wales, Court of Appeal,
17. Order Granting Final Leave
to Appeal, 1.7.1985

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY
COURT OF APPEAL

C.A. 102 of 1983
C.L.S. 12521 of 1981

REGINALD AUSTIN
Applicant

MIRROR NEWSPAPERS
LIMITED
Respondent

ORDER GRANTING FINAL
LEAVE TO APPEAL

UPON MOTION made this day pursuant to
the Notice of Motion filed herein on
the 14th day of June 1985, WHEREUPON
AND UPON READING the said Notice of
Motion the Affidavit of John Needham 10
McKevitt Emmerson sworn on the 13th
day of June 1985 and the Registrar's
Certificate of Compliance AND UPON
HEARING what is alleged by Mr. Peter
Neil of Counsel for the Applicant and
Mr. Davidson of Counsel for the Respon- 20
dent IT IS ORDERED that final leave to
appeal to Her Majesty in Council from
the judgment of the Court of Appeal
given and made herein on the 23rd day
of August 1984 be and the same is
hereby granted to the Applicant AND IT
IS FURTHER ORDERED that upon payment by
the Applicant of the costs of prepara- 30
tion of the Transcript Record and des-
patch thereof to England the sum of
Fifty dollars (\$50.00) deposited in
Court by the Applicant as security for
and towards the costs thereof be paid
out of Court to the Applicant.
DATED this 1st day of July 1985.

BY THE COURT

A.W. Ashe
REGISTRAR.