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164 JUNE 2013

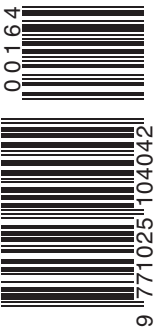
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stands up to
China

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ISSUE 164 • JUNE 2013



Stent *page 10*

FEATURES

7 JM Coetzee in Disgrace
Booker winner laid bare

9 M'lud does not concur
Judge Willis begs to differ

11 ABSAlutely shocking
Bank accused of R581m loan fraud

16 Liquidators explain away pillage
An unfortunate administrative error

20 Pretoria University ducks and dives
Every trick in the book used to
delay medical aid benefits

24 The conning Lieberthals do Durban
Clan has knack for crookery and
quackery in business and the healing arts

27 Maritzburg's Witness to change
The corporation cleans out Sleepy Hollow

28 Chinese power hampers Botswana
Ian Khama is the only African leader to
question the influence of Beijing

30 Australia ain't the promised land
And they don't want you anyway

32 Meet the smart lawyer for WikiLeaks
The lady's not for turning

5 Letters

8 Editorial

42 Smalls

COLUMNS

36 Books

38 Sport

**40 Letter from
Umjindi**

41 Last Word



Sasol pollution seen from the N1 in the Free State. So much for their claims (Nose162) to having cleaned up their act

Swipe at Bizos unwarranted

NOSEWEEK 163'S WINNIE NOSTALGIA TRIP was vintage Rian Malan, but why the nasty and dangerously misconceived sideswipe at George Bizos?

The suggestion that Bizos is somehow responsible for and could be subpoenaed "to explain the apparent fabrication of Mrs Mandela's alibi" is misguided or malicious. The alibi defence was put up by the accused and supported by her witnesses. The case presented by Bizos and his two juniors – on the instructions of their attorney – was their client's case, not theirs.

If legal counsel are to be called to account for the unpopular clients they may represent or the contrived defences their clients may fabricate, our constitutional right to a fair trial would be seriously eroded. This would strike at the very foundation of the rule of law.

Johann Kriegler
Parkview

Green-eyed reputation thieves

IT DOESN'T SEEM TO HAVE OCCURRED TO Imraan Coovadia and other green-eyed thieves of JM Coetzee's reputation that JM is entitled to free choice of how and where he lives his life. Or that South Africa may have lost him in part because the *nouveau* literary set didn't begin to appreciate him.

I still think *Disgrace*, disgraced for its so-called racism, was prophetic. I still think JM is one of the best writers South Africa has or possibly ever will produce. And that Nadine Gordi-

mer was once a brilliant writer too, in the early days when her short stories reflected what nobody else wanted to see.

Rosemund Handler
Cape Town

Nobody has suggested Coetzee was not free to choose where to live (or what to think); what Coovadia did (as does another reader in this issue) was to ponder the reasons for JMC's choice, based on available evidence, and as a further reflection of his pessimistic/damning view of South Africa's prospects, dominated by black South Africans. And then to question how that squared with the supposedly more optimistic liberal views of his many admirers (and, maybe, even those of the Nobel prize adjudicators). – Ed.

Past perfect

THANK YOU FOR THE THOUGHTFUL ARTICLE on bringing back the extinct. (Resurrecting the woolly mammoth, "Nose-Ark", nose163.) It's too often [simply] reported with much breathlessness at its novelty.

However, curiously seldom remarked upon is the bring-back-the-quagga breeding project which has been running in Cape Town for decades now, quietly doing very credible science under the hype radar.

David Chaplin
Fish Hoek

The quagga project doesn't involve gene manipulation like the projects

that I was writing about, but rather is about selectively breeding "desirable" traits into a population of Burchell's zebra that look like quaggas. – Adam Welz

Slaves to prejudice

YOUR ARTICLE, MAURITIANS ARE SLAVES TO their past (nose163) made for enjoyable reading, probably as I have a personal interest in the matter – I am a descendant of a Mauritian slave – or maybe because it is a much-needed change from the normal hard-hitting corruption and hard luck stories of everyday South Africa.

Unfortunately as a country we are in a similarly unclear position. History records my Creole forefather's accomplishments on the East African Islands, yet as a professional white male in the country of my birth, I am generally considered a non-person for suitable employment.

I can relate to Jean-Pierre Lenoir and others in the article, but feel and accept that in democracy there is very little that can move the situation forward; only time will tell.

Bruce Jones
Umhlanga

Teed off by socialist nonsense

I AM SERIOUSLY VEXED AND IRRITATED BY Tom Eaton's article "Handicapped by denial" (nose163). How can you publish such rubbish? Is your mission not to publish the truth? When Eaton talks about the incredible game of Golf

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Letters

he really doesn't know what he is talking about.

It strikes me as Marxist-socialist bleeding heart stuff when he says things like "golf is the defining symbol of bourgeois virtue" and makes out that he knows about golf and why people play Golf.

Playing Golf is not "escaping from reality" but teaches you many things about how to cope with reality, like there are no (ANC) hand-outs in the game, you play the ball as it lies and where your ball lands is where you hit it; so too you must cope with where you find yourself in life and if you miss a short putt it is not someone else's fault, it is yours.

So it is in life. Ask any real golfer. And the camaraderie of playing with your buddies?

Some of the guys in Pollsmoor are there because they broke the rules. Well, in Golf if you break a rule you call a penalty on yourself, and if you want to improve yourself you work hard on improving yourself – that is what this game teaches you, Tom Eaton. If these same guys had had the good fortune in life to have experienced the game of Golf possibly they would not be in Pollsmoor.

Rob Sowry
Johannesburg

I keep telling my writers that criticising a man's religion is looking for trouble. But consider this: if those guys in Pollsmoor and their buddies had had the good fortune in life to earn enough to be able to afford to experience the game of Golf (please note the respectful

capital), they probably would not have ended up there anyway. – Ed.

There are some real heroes...

WITH REGARDS TO YOUR ARTICLE ON Sean Wisedale, and how he has lost it (*nose162*): sadly, as was mentioned also by Tom Eaton in his great article, we have lost touch with who our true heroes are.

Sportsmen are put on pedestals for their achievements, when all they have are God-given talents which is very different to who they are. Sadly they remain incongruent with their ideal and real self.

I just wanted to make you aware of a true sportsman and silent hero, who has no real talent, but a God-given set of values.

He leads a life of pure integrity. He is a humble adventurer, with a heart. His cause is greater than himself, he takes on these adventures in the name of animals and conservation.

He truly shows the nature of the human spirit, and I know of very few people who truly inspire as he does. Check out Davey du Plessis. (www.worldwonderer.co.za).

Robyn Wolff
Durban

Du Plessis is privileged to have a devoted mother who is brave enough to sing his praises in Noseweek. – Ed.

Article sinks business deal

WE ACT FOR MR YUSUF ADAMS, OF Zambli 216 (Pty) Ltd and Smada Property Holdings (Pty) Ltd. Our clients have instructed us to address this correspondence to you, not, for immediate purposes, in contemplation of litigation (although these rights are reserved) but rather:

(1) to request that you take down the false and defamatory allegations [about our clients] which continue to be published in *Noseweek* online. [See the

article, "Easy Pickings" in *nose142*], and (2) to curtail unjustifiable and unlawful reputational and financial harm which our clients have suffered and continue to suffer as a result of the allegations published in *Noseweek*.

[The full text of this letter detailing the "falsehoods" allegedly contained in the *nose142* article can be found in the online edition of this magazine at www.noseweek.co.za – with free access. – Ed.]

The reasons for our clients responding only now, 17 months after the article appeared are, *inter alia*

(1) at the time our clients dismissed the allegations as frivolous and without merit, and were until recently under the impression that none of the stakeholders in their business could have believed the allegations to be true;

(2) the allegations were not re-published in the mainstream media;

(3) our clients have only recently been cognised of the extent of the reputational and financial harm caused by the article when, in September 2012, Zambli entered into a sale agreement with the Dipula Income Fund to sell the fund two properties which are currently being leased to the national Department of Public Works.

However, a financial institution has since disapproved of the transactions, citing *Noseweek* as the reason.

We await your urgent response.

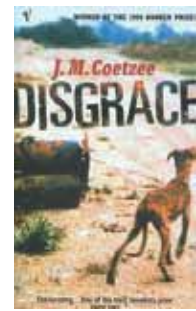
Greg Palmer
Webber Wentzel attorneys
Johannesburg

After thoroughly investigating your clients' complaints, we remain of the view that our story was true, lawful and in the public interest. Therefore, we deny that your clients have suffered "unjustifiable and unlawful" reputational damage.

*Unless you can advance more convincing reasons why we should do so, we do not propose removing the story from the *Noseweek* website.*

As regards the Dipula Fund's decision not to proceed with the purchase of your client's properties, we believe the fund's decision was prudent in view of the contentious circumstances surrounding these properties and the possible consequences of an in-depth investigation by the Auditor General, the Treasury and the Public Protector of the leases concluded by the Department of Public Works in recent times. – Ed. ■





Disgrace says it all

PROFESSOR COOVADIA CAN FIND THE answer to why JM Coetzee deserted South Africa in Coetzee's novel, *Disgrace*, a deeply pessimistic tome on his view of the future of the country.

Coetzee uses the novel as a metaphor to express his negative view of our future. It is a journey of moral degeneration, starting with the virtual rape by the protagonist professor of his young coloured student. In the scene he exploits his sense of intellectual and racial superiority as well as the power of his position over his victim to coerce her into having sex with him. When his deed is exposed, all that is required is for him to apologise.

This mild sanction typifies the disdainful reaction of state institutions to "non-white" victims of crime in the apartheid state. Whilst Coetzee does not attempt to justify it, the introduction serves to convey the power-divide between white and "non-white" society. As the story progresses this power structure is reversed. It exposes the author's inner state of despair and hopelessness over the future.

Rather than apologise, the protagonist resigns from the university. He leaves Cape Town and takes up residence with his daughter, who lives a reclusive existence with her dogs on a smallholding in a remote district of the Eastern Cape. Once a month they travel to the nearest town to sell their produce on the local market. It is here that he meets the local vet, an overweight middle-aged, completely unattractive woman whose main function

is to euthanise stray dogs that roam the community. Here Coetzee conveys an image of the poverty that awaits us in this negative and depressing environment.

Our protagonist strikes up a working relationship with the vet. His task is to dump the dead animals. On a day when this is done he returns to the vet's stark, empty surgery and in an act of depraved lust he has sex with her, surrounded by the instruments of death. This ugly scene exposes the protagonist's descent into a state of moral turpitude combined with the erosion of self-esteem. The scene serves as a metaphor to represent the poverty, its concomitant corruption and loss of dignity that awaits whites in the new South Africa.

At the farm his daughter employs a black assistant to, among other things, feed her dogs when she's away. On a day of her return from the market she arrives home to discover all her dogs have been poisoned. Her assistant had invited friends and family to stay with him on her property. It is quite clear where the guilt for this cruelty lies. Father and daughter are powerless to remove their new squatters. The poisoning of the dogs is the first step towards their intimidation and subjugation. As more of their neighbours' friends and family arrive to squat on their property an all pervading climate of fear begins to overshadow what was once relative peace and tranquillity.

Shortly after the poisoning incident the father is attacked by three of his new neighbours. He is locked in the toi-

let of the house. They then proceed to violently rape his daughter. He is powerless to help her as he listens to her screams and cries of despair as each of her assailants takes a turn to rape her.

After this crime the father wants to abandon the homestead but his daughter, now pregnant refuses to leave. She also refuses to have an abortion. Instead she ingratiates herself with her criminal squatters. Her final and complete subjugation occurs when she decides to marry the chief instigator of her rape. In so doing she sacrifices every shred of morality for the sake of self-preservation.

This conclusion to a thoroughly depressing story represents a grotesque parody of the author's perception of how whites will survive under the new dispensation in South Africa.

The protagonist represents the old government. His moral decline symbolises the regime, decaying in the face of the violent onslaught against the state. The squatters symbolise the integration of blacks into previously "whites only" areas. The violent rape symbolises the all pervading state of crime and criminality sweeping the country and our impotence in dealing with it. The marriage represents the loveless acquiescence of whites to their new rulers in a union based on fear in which the pragmatic compulsion to retain possession of material wealth overrides the moral imperative to preserve integrity. This is the fate of the South Africa Coetzee has abandoned.

Chris Meares,
Bramley, Johannesburg

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Editorial

Whorehouse at the foot of Africa

THERE'S NOT MUCH TO ADD TO THE LATEST Gupta story. Five years ago *Noseweek* reported: "The Guptas, who emigrated from India to South Africa in 1993, are best known as the power behind computer marketer Sahara, but are nearly as well-known for their claimed close friendships in high places. They talk of regular visits to the Mbekis, and often flying Jacob Zuma in their private jet to his campaign engagements. They recruited Tokyo Sexwale's Mvelaphanda..." And so on.

Three years ago, *Noseweek* reported on the Guptas' dealings with steel company ArcelorMittal as follows: "Justifying the composition of her company's new BEE structure, ArcelorMittal's chief executive told the *Mail&Guardian* that "strategic" (as opposed to broad-based) black investors had been included "where the company needs assistance in a particular area... For 'strategic', read 'politically connected'; for 'assistance', read 'lobbying with government'. So what are the lobbying fees, and to whom do they go?"

In summary: President Jacob Zuma's 28-year-old son, Duduzane Zuma, got shares that he could sell back to the company four years later for between R46m and R104m, (What most upper middle class people might earn in two lifetimes.) The Gupta family company Oakbay, too, got

shares that could be worth between R46m and R104m.

So, how did the Guptas get their stake, and how did Duduzane Zuma get a stake as large as theirs?

ArcelorMittal's spokesperson explained (to Moneyweb) that the Guptas had been cut in as "major facilitators" of the deal. And the president's son, who stood to get as large or a larger stake than the Guptas?

The spokesperson was stumped: "I can see what you're saying – was there a greater contribution from him to warrant it? Or was it purely based on the fact that he's the president's son? I don't know. I can't answer you for sure."

Next day government spinners were describing the deal as "controversial, not corrupt". It looked horribly like a by-now-standard bribery procedure: the bribing company rarely pays the bribe directly; it pays a well-connected agent or "facilitator" a ridiculously high facilitation fee, who then uses a chunk of it to pay a friendly bribe. Ask Siemens and BAE. Ask Shabir Shaik.

Cartoonist Stacey Stent politely comments for us on page 10.

Put more bluntly: Zuma and his cronies have turned our country into a whorehouse: we're there to be screwed for a few bucks by any passing prick. Our president is a glorified pimp.

Orange alert was justified

IN NOSE 158 READERS WERE REFERRED TO A letter that Leonard "The Liquidator" Katz of ENS had written to Moneyweb, attacking our report (*nose157*) about the sale of Cape Town's 15 On Orange hotel by the liquidators of a company called A Million Up (AMU).

"I have always been of the view that it was a waste of time to engage with *Noseweek* as their articles are vindictive and clearly have their own agenda," Katz wrote. "The article on AMU plumbs new journalistic depths. It makes use of baseless speculation and rumour... has no basis whatsoever in fact... It is completely untrue that Absa 'wants to buy [the hotel] in quietly'. After indicative bids for the property have been received, the liquidators will follow an open tender process."

Which, we reckoned, was good news.

Now it transpires that *Noseweek* was not alone in suspecting all was not entirely kosher about the veil of secrecy Absa and its lawyers had tried to throw over their plans for the hotel that already owes the bank

R581 million. A major US investor has issued summons against Absa in California, making some nasty allegations and disclosures about the bank's role in the development and how it has staggered under a weight of fraud and reckless lending.

The bank's motive, he suggests, was to prefer some of its bigger creditors – and hide the inevitable disaster to secure performance bonuses for the bank's top executives which they should otherwise not have got. (Absa CEO Maria Ramos, we seem to recall, was one of the executives who received a pretty substantial bonus that year.) See page 11.

● Finally there's the trial of Fidentia's Arthur Brown. It's a fascinating, extremely complicated, multi-faceted story and the judge had, in any event, yet to pass sentence when we went to press. So readers must wait for our July issue for a full rundown on the trial and our considered view of the case. The mainstream media have not served you well. Consider reserving your judgement for now.

The Editor

Enlightening and entertaining excerpts from a recent judgment by Judge Nigel Willis

Of strange bedfellows forced into unnatural relationships



Judge Nigel Willis

IN APRIL THE JUDICIAL SERVICE Commission recommended Gauteng judge Nigel Willis for appointment to the Supreme Court of Appeal. Prior to his JSC interview, all the lawyers surveyed by *Business Day* had rated his chances of being chosen above the other white male candidates as “slim, to none”.

To understand why worthies of the lawyering establishment aren't thrilled at the prospect of having Judge Willis on the Appeal Court – and why *Noseweek* has come to think it a hilariously good idea – you need only read the judgment delivered by Willis (in November) in the application brought by Kensani Consortium (Pty) Ltd against Kensani Corrections and FirstRand Bank.

The case related to various complicated contracts concluded in relation to the construction of a new high-security prison in Makhado (previously known as Louis Trichardt) and, more particularly, to the applicant's right to withdraw the money held in a particular bank account. Some extracts:

Judge Willis:

“ Such is the ingenuity, the skill, the brilliance of our prisoners who have to be confined in maximum security prisons, that this maximum security prison required technology, design and methods of construction that are not to be found in South Africa.

If one wishes to build maximum security prisons, the best place to look for prototypes is the United States. It is there that the Department of Correctional Services went in order to obtain the skills and resources necessary... The issue was complicated by the fact that... to award a tender, that tender had to be BEE compliant.

To further compound the problem, among the *dramatis personae* were the usual suspects, viz, male albinos of a pinkish hue who were born in South Africa. These usual suspects were willing to put in money by way of invest-

ment and also to provide skill in terms of raising the necessary finance.

In order to deal with these difficulties, a massive set of different agreements was drawn up involving a number of different parties including Wackenhut Corrections Corporation based in the US, which later changed its name to the GEO Group Incorporated, The South African Custodial Services (Louis Trichardt) (Pty) Ltd, the first respondent, the applicant, and banks including FirstRand Bank Ltd, BOE Merchant Bank and various other banks as well as an entity known as the SACS Security Trust, SACS being the South African Custodial Services and an entity known as ‘the Trust For The Time Being’ for the SACS Security Trust.

In addition, not only were there complex agreements drawn up by a battery of highly skilled lawyers around the world, but the following accounts were opened:

1. A disbursement account, 2. A revenue account, 3. A debt service reserve account, 4. A compensation account, 5. The insurance account, 6. The construction insurance account, 7. The maintenance reserve account, 8. The rectification account, 9. The fixed component upside account, 10. The operational reserve account, 11. The indemnity account.

For all I know, there may have been more accounts opened if it were not for the fact that the English language starts to run out of epithets with which to describe the different banking accounts which were opened. The reason, in a nutshell, why these complex agreements were drawn up and why there were these different accounts, is that major investors and parties in America were not prepared to embark on this BEE project if there were any risk that the tender would be set aside and that they would lose their money.

In other words, the project was entirely ring-fenced with bank guarantees in the event of there being any difficulties. I think it fair to record that approximately every second week

when I am in Motion Court one has a situation where so-called ‘BEE deals’ come to grief. The reason for this is that, in my respectful opinion, you have strange bedfellows forced into unnatural relationships with one another. Before anyone rushes off the hill to report me to the Judicial Service Commission for being a racist or a ‘homophobe’, let me emphasise that some of my best friends are black and gay. The reason why I refer to this ‘unnatural relationship’ has nothing whatsoever to do with race or sexual orientation, but everything to do with universal human nature.

If one searches the internet under ‘suddenly acquired wealth’ one will see that there are all sorts of psychologists who have ventured opinions as to the psychological maladies that afflict people who suddenly come into vast sums of money. There are neuroses, such as paranoia and narcissism and all manner of insecurities. Relationships with friends become problematic, so do relationships with relatives. One of the chief manifestations of the problem is one known as greed...insights into the damaging consequences of greed go back at least as far as Biblical times. One need only read the Book of Proverbs where there are all sorts of warnings about how one should acquire wealth and how one should relate to it... On the one hand, one has a problem with greed and on the other, a problem with resentments about paying the money. That is precisely what happened in this particular matter. There was a fallout between BEE partners and the matter was then referred to trial. After a number of days of trial, the parties reached a settlement.

There was some argument as to whether [*the agreement*] envisaged that it could be possible, from time to time, that there was more money in this particular bank account at any particular time than was required in order to maintain the guarantees.

If I understood Mr Hodes [*P B Hodes SC for the first respondent*] correctly, he did not persist with this point or, if

he did, he did so so faintly, that this was not the correct interpretation.

Quite plainly, provided there are surplus funds above that necessary to maintain the guarantee, these could be paid out...

Mr Hodes, who was not shy to remind me that he had been in practice as an advocate for 48 years, sought to educate me as to the law relating to the admissibility of hearsay evidence.

The experience was refreshing. If I understand Mr Hodes's argument correctly, it is that inadmissible evidence carries with it a permanent stain. It is indelible. It cannot be removed. It is rather like the ink from an octopus: once it penetrates a garment it remains there forever.

The imagery is mine and not Mr Hodes's. I accept full responsibility for it. While I look forward to the golden jubilee celebrations which will no doubt be around the corner when Mr Hodes celebrates his 50 years of successful practice as an advocate, I regret to record that I remained unilluminated by his particular interpre-

tation of the law relating to the admissibility of hearsay evidence.

Mr Hodes referred me, with a flourish, to the case of the President of the Republic of South Africa and Another v South African Rugby Football Union and Others 2000 (1) SA 1 (CC). He submitted (and here I am in full agreement with him) that every lawyer in South Africa knows about this case. It is indeed a very well-known case, perhaps because two great South African passions, rugby and politics, collided with one another, ultimately in the Constitutional Court.

Mr Hodes referred me especially to the passage... which is never to be forgotten, not only by lawyers, but also by judges throughout South Africa. The Constitutional Court issued a stern rebuke to the High Court for having regard to evidence of a hearsay nature as to what President Nelson Mandela had said and done and which President Mandela had not admitted.

The facts in this particular case are clearly distinguishable. As is recorded in the answering affidavit, the first re-

spondent admits having received the alleged dividend in question [*so that it is no longer hearsay*]...

In all the circumstances, the applicant is entitled to succeed in terms of a draft order which was prepared, which fully reflects my intentions in this matter.

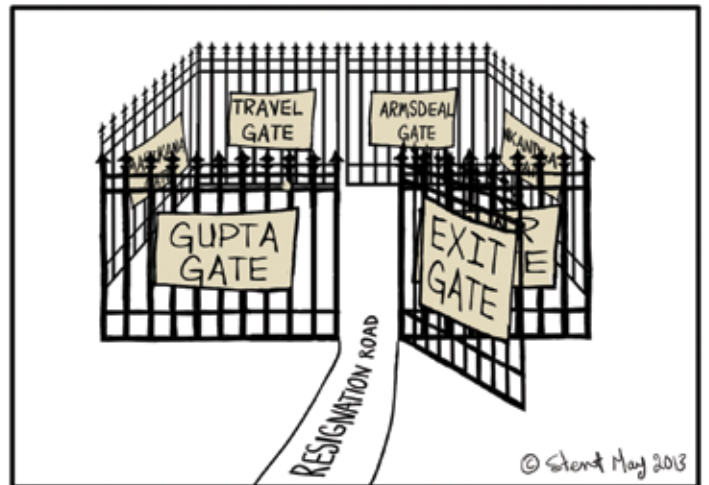
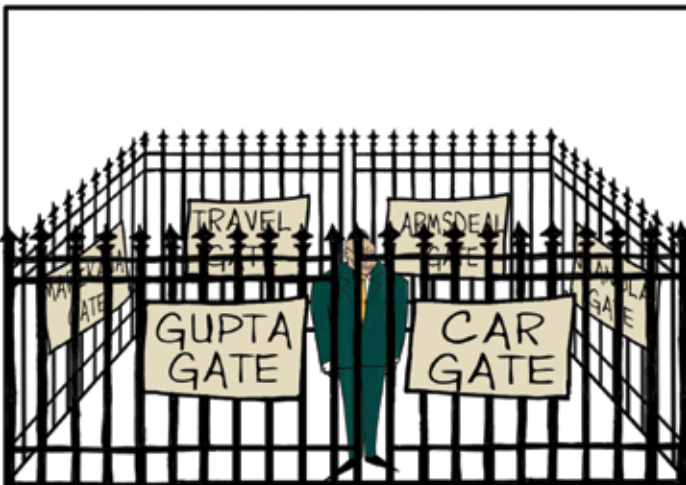
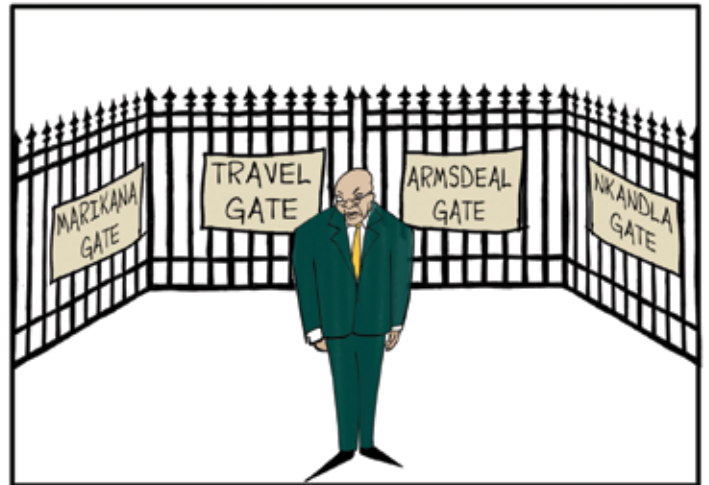
I shall make an order in terms of a draft marked 'X'. For the sake of completeness, I shall read this out into the record so that there is no risk in the event that (as so often happens in this court) the order goes missing, there will be any doubt as to what the court ordered.

I also make it clear that once I have delivered the order, counsel are free to photocopy this order so that there is no room for any doubt as to what the intention of the court is.



It now becomes plain why Business Day could report Willis's interview by the JSC as "a mostly relaxed, even jolly, 40-minute affair". – Ed.

Stent



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Absa sued in R581m loan fraud case

Huge damages claimed in doomed Cape Town luxury hotel project

SOUTH AFRICAN-BORN FINANCIER AND diamond dealer Leonard Himelsein, long resident in California, has issued summons in the US against Absa Bank Ltd, in which he is suing for damages “in excess of” \$20 million (more than R82m) for fraud.

Himelsein, a diamond dealer who emigrated to California 30 years ago and has since become a US citizen, issued the summons out of the US District Court for the Central District of California on 14 March this year.

In the summons particulars Himelsein says he was persuaded in 2006 to invest in a luxury hotel development which was to become the five-star, 15 on Orange in Cape Town. The project was originally conceived by a group of South African investors who, for that purpose, established a company called A Million Up (AMU). Himelsein – along with several business partners in another company called GLM (acronym for the first names of Gary Itzikowitz, Leonard Himelsein and Max Kretzmar) – agreed to acquire 60% of AMU.

Himelsein, who invested over \$20m, is “effectively the largest shareholder”.

He says in the summons that the hotel project was only nominally led by Chaim Cohen, a South African property developer and a key client of Absa at the time. (Cohen had separately obtained a revolving credit facility in the amount of nearly R1 billion for other development projects undertaken by his Newcity Group.)

In reality, Absa controlled virtually every aspect of the hotel development. While the bank provided an initial R370m to finance the project, it required a number of sureties from various directors and shareholders.

In May 2006 GLM – which by then was the holding company of the hotel’s owning company, AMU – was required by Absa to provide a guarantee for R41m.



Luxury Cape Town hotel 15 on Orange is at the centre of massive fraud allegations

Himelsein, as a major shareholder of GLM, authorised the suretyship “from his offices in Santa Barbara, California, by signing a form provided by Absa that identified Himelsein as being located in that city”. He agreed to authorise the surety, he says, “on the reasonable assumption that Absa would comply with its obligations as the lender on the project and deal with him and AMU fairly”.

To raise additional capital for the hotel, Absa facilitated a reverse-merger of AMU with an already JSE-listed company, QPG. The shareholders of AMU exchanged their shares in AMU for shares in the listed company.

The original plan included the development of a five-star hotel and a number of luxury condominiums which would be operated by the Protea Hotel Group. But, declares Himelsein, Protea’s involvement was more than a simple contract to manage the hotel: “Material contracts that formed the basis of the QPG merger and share

offering required that Protea issue a guarantee in favour of AMU for 50% of the minimum lease and dividend payments due for the first three years of the [Absa] loan. Protea was intended to share the risks of the project in addition to reaping the anticipated benefits. Absa was responsible for securing that guarantee from Protea.”

In 2008 Absa required GLM to sign a further suretyship for R55m, but Himelsein explicitly refused to agree to this additional obligation.

Undeterred, Absa proceeded to accept what is described in the summons as “an invalid suretyship authorised by Chaim Cohen acting in concert with Absa, without a board meeting and without the knowledge of Himelsein, who only learned of it in August 2011”.

It is claimed that all further finance provided by Absa after that point was unauthorised and therefore defrauded GLM and Himelsein. *Inter alia*:

- Absa improperly allowed payment of about R9m to Cohen’s

Newcity Group, “even though any payment to Newcity was expressly limited to R3.8m”. With the resultant additional interest on funding, the hotel company’s total exposure on this item eventually amounted to close on R7m.

● Absa was obliged to confirm unconditional pre-sales of 12 sectional title units in the hotel to a value of R110m before commencing the development. “Although pre-sales were obtained, Absa did not disclose that they were in fact not unconditional. Nine of the 12 were not, and were cancelled shortly afterwards. As a result, the additional exposure of AMU ran to R80m, requiring additional advances of R30m from Absa, just to pay the interest.

● Absa failed to implement the required guarantee from Protea, “a fact which Absa hid from QPG and AMU” and which resulted in substantial additional exposure for those companies.

● As a result of Absa’s failure to appoint independent quantity surveyors, there were significant time and cost overruns which led to delays in the opening of the hotel. The delays meant that, unknown to Himelsein, further financing of some R45m had to be obtained from Absa for a period of five months, at an “unconscionable” loan fee of R10m.

“Absa again concealed critical material information in order to continue loading up AMU with debt.”

● Absa’s assurances to Protea that the project was on time, when it was not, led to avoidable liability by AMU to Protea, and lost bookings over the 2010 World Cup.

“Absa allowed approximately R20m to be paid to Protea to compensate for the delays, an amount which, under any circumstances, should not have exceeded R1m.

“Instead of sharing in the risk, as was contemplated all along, Protea, one of Absa’s largest borrowers, was constantly coddled and protected by Absa to the detriment of AMU, QPG and Himelsein. Absa intended to protect Protea at all costs, thereby protecting other massive loans it had issued to Protea – and its own bottom line.”

By the end of November 2010 the debt of the hotel project had ballooned to more than R550m, from an initially planned funding amount of R370m. By May 2011 the figure stood at R580m.

● “On August 31, 2011, Absa entered

LEONARD HIMELSEIN IS A MEMBER OF THE World Federation of Diamond Bourses and also, still, of the Diamond Club of South Africa. His main business interests, as listed on his website, include:

● National Pacific Corporation, a manufacturer and international distributor of fine gold and diamond jewellery and watches;

● Himelsein Diamonds, a diamond manufacturing and distribution company; Himelsein Inc, a minerals and strategic investment and international consulting company; and

● Santa Barbara Loan and Jewelry, a lending and financial service company.

He is the founder of the Leonard Himelsein Scholarship Foundation and, for many years, he has been a member of the Inner Circle of the Senatorial Committee of the US Republican Party, “a privilege that led to his being invited to the White House to meet President George Bush Sr on several occasions”.

into additional ‘agreements’ with AMU – without obtaining permission from QPG or Himelsein – which recklessly advanced even more money towards the unsupervised development of the hotel. Absa also forced a balloon payment [*a once-off repayment of all by then outstanding instalments*] that would be due seven months later (on March 31, 2012), which Absa knew AMU would not be able to pay.

“By that time AMU and QPG were in such a dire financial position that they were unable to finance their own legal advisors in the negotiations. Absa procured the professional services of legal advisors to act for AMU and QPG when, in fact, they were financed by Absa [*and could therefore be expected to be acting in Absa’s interests*].

● “The timing of the transaction is also extraordinary in that it coincided precisely with the determination of Absa’s annual bonus structure. Under the circumstances, it appears that Absa personnel were individually incentivised to close the transaction on August 31, 2011, even though it was all but certain to lead to AMU’s ultimate liquidation.”

● Not coincidentally, on November

22, 2011, Pieter Steyn and Pieter Swart, both of Absa, met with representatives of Grant Thornton, auditors of QPG and AMU, and assured Grant Thornton that the balloon payment which was due on March 31, 2012 would not be called up by Absa and would be extended notwithstanding the terms of the August 31 agreements.

Based on these assurances, the auditors signed off the financial statements of QPG on the basis that QPG was a going concern. Absa deliberately misled Grant Thornton, a fraudulent misrepresentation, as Absa then called the loan when the balloon payment was not made.

● It was not until the QPG annual report for 2011 was released that shareholders learned that AMU had bought Protea’s interest in the project for R60m and repaid Protea’s investment of R22m – all with more money borrowed from Absa. “Absa had conspired to undermine AMU in order to bail out Protea,” Himelsein concludes, adding that despite the buy-out, Absa insisted that Protea remain the manager of the hotel.

In conclusion, it is contended in the summons that Absa used its influence and control over the companies to “bail out Protea and pay off its close partners, such as Chaim Cohen’s Newcity company”.

In 2012 QPG issued a profit warning, informing shareholders of a large increase in the QPG loss per share, attributable to AMU’s acquisition of Protea’s interest in the hotel project.

A subsequent regulatory announcement informed shareholders that AMU owed Absa R581m, was in default and that Absa had issued a notice that it intended to take ownership of the shares in AMU (and in the process take QPG’s only asset – the hotel, penthouses and retail shops).

As *Noseweek* went to press, QPG had since been delisted and a court application for its liquidation was pending.

AMU’s subsequent attempt to seek “business rescue” was successfully opposed by Absa, and Absa received permission from the Registrar of Banks to acquire AMU as a subsidiary.

An Absa spokesman confirmed that the bank has received the summons, but had yet to decide how it would respond. ■

Manx cat out of the bag

Byzantine legal row rages out of control over struggling Louis Group's Isle of Man and SA assets. By Mark Thomas

You may be aware that an article was published this week concerning a Structured Fund which Louis Group Isle of Man launched in 2007 and which is administered in the Isle of Man. This Fund, which invested in properties on a mezzanine finance basis, has nothing to do with our property syndications.

SO BEGAN THE MEMO THE CEO OF Louis Group (SA), Dr Alan Louis, sent to his investors in an attempt to discredit *Noseweek's* report last year (*nose158*) about the group's failed offshore operations.

In essence, the reverend brother (there are four of them in the business, all declared devout Christians) was assuring his investors that their South African-based operations were independent of the European ones, were sound, and were above board. Therefore they should definitely continue to sleep soundly.

But, as *Noseweek* suggested before, the Louis Group's affairs in South Africa are in as desperate a shape as they are on the Isle of Man. We know that on the authority of our friends at Investec Bank, no less.

And Investec is well acquainted with the affairs of the Louis business, which the bank describes as "one of the largest privately owned property, hotel, financial services and technology companies in South Africa". For the past 15 years the bank has, been one of the Louis Group's major funders.

Investec's claims against Louis Group SA (Pty) Ltd were declared to total R172.5 million (plus interest) "in respect of monies loaned and advanced" by the bank, plus a further R20-odd million (plus interest) "in respect of a suretyship agreement signed by the group in favour of the bank for

the debt of Louis Group Securities (Pty) Ltd".

The "loans and cash advances" were made more than five years ago in at least 12 separate transactions, the first, on September 11, 2006; the last – a loan of R28m – on October 3, 2008.

As local investors by now know, on February 25 this year, three months after *Noseweek* published its first cautionary report on the Louis Group, Investec Bank launched five high court applications that initially sought to have almost the entire South African Louis Group of companies, including the title company, Louis Group (SA) itself, put into liquidation. But then, just days before the court applications were to be heard, bank executives had a meeting with Alan and Brian Louis and their attorney, Derek Wille.

At that meeting the brothers and their attorney are said to have persuaded the bank that while they could not pay their debts on demand as a result of cash flow problems (no news to Investec: the Louis had been defaulting on repayments to the bank since May 2011) and were therefore "technically" insolvent, the value of their assets, "even at forced-sale values", exceeded their liabilities, so the group was still "factually" solvent.

This might be wishful thinking, and one would have thought Investec was unlikely to take such an optimistic view, or so quickly accept assurances from the Louis brothers, considering the following statement in its founding affidavit by Michelle Nainkin, the bank's legal recoveries manager in Cape Town: "[*Investec's*] security is being eroded in that, through gross mismanagement and fraudulent behaviour, funds which are meant to reduce the [*Louis Group's*] indebtedness are

being appropriated to other creditors."

And this one: "The lack of corporate governance detailed [*in the Isle of Man court records*] is not unlike what Investec Bank has experienced in its own dealings with the Louis Group."

Despite all that, the bank appears to have been easily persuaded. At the last minute, Investec converted its liquidation applications to Business Rescue applications, with the various Louis

Anxious investors await clarity on the company's failed offshore operations

Group companies to be placed under the supervision of Investec's preferred liquidation and business-rescue practitioner, Trevor Glaum of Sanek Trust.

This was done on the stated assumption that business rescue would provide a better return for creditors than immediate liquidation, since the business rescue plan would "make provision for the realisation of assets over a period of time and concomitant payment to creditors".

Which is not quite what, by law, the purpose of business rescue is supposed

to be. According to Chapter 6 of the new Companies Act which provides for Business Rescue Proceedings, the two prominent means of commencing the process are either through voluntary application based on a resolution of the board, or an application by any of the affected parties – who are its creditors, shareholder(s) or employees. In this particular case, Investec Bank acted as an affected creditor.

Before opting for business rescue and before any court can grant any such application, there are two basic tests that must be applied, according to attorney Walid Brown, a director of Werksmans Attorneys. The first: whether, without any such breather, the company is likely to fail to fulfil its financial obligations when they become due in the ensuing six months. Or, put another way: if, without business rescue, the company is likely to go insolvent within six months. But, it was common cause that the Louis Group was already insolvent – and had been for quite some time.

The second test is to assess whether there is a real prospect that the business will be saved if a rescue plan is applied, and not deteriorate. While the South African act is meant to work much like the US's Chapter 11 bankruptcy proceedings, its closest relative is the Canadian Companies' Creditors Arrangement Act which, in essence, offers tentative protection to businesses against creditors as the businesses seek cost-effective means to restructure themselves.

However, as explained by Brown, the law is not aimed at rescuing a business that is already "into the red zone"; "a well-run company should be able to anticipate difficult times ahead". The evidence presented to court by Investec indicates that the Louis Group had been in the "red zone" for nearly two years and in that time had defaulted on several occasions.

For example: attached to Investec's application is a letter, dated 18 August 2011, written by the bank to Louis Group SA for the attention of Alan Louis. In the letter it emerges that the company had been in arrears with its monthly R2.5-million repayments to the bank since July 2011. And that, by arrangement, it was going to be allowed to reduce its payments for July to November to R1m a month; only

at the end of that November would the accumulating arrears of R1.5m-a-month, together with penalty interest, be repayable to Investec. (As a reward for the concession, Investec extracted from the company a R1m "restructure" fee, plus VAT, to be added to the outstanding capital amount.)

The Louis directors were also required to sign irrevocable Powers of Attorney enabling the bank to sell two of its important Cape Town properties: 47 on Strand, and the Louis Group's head office building at Century City. Investec could appropriate the proceeds should the Louis Group default on any of its repayments.

Default it did, almost immediately. In December 2011, Investec used the Louis Group's arrears as leverage to extract further rights with regard to the group's assets, including the right to receive R14m from the proceeds of the sale of the Rosmead Centre and another R5m from the proceeds of the sale of The Paddocks shopping centre in Milnerton and a cession of dividends.

In its business rescue application, Investec indeed offers no evidence or argument to suggest that the company is likely to be saved if given the respite offered by a business rescue plan and the appointment of a business rescue practitioner.

Which raises the question: on what basis did Judge Monde Samela approve Investec's business rescue plan for the Louis Group? Last year, in the case of Oakdene Square Properties (Pty) Ltd v Farm Bothasfontein (Pty) Ltd, the South Gauteng High Court dismissed an application for business rescue on the grounds that liquidation of the company would achieve a similar result. Did the Western Cape High Court approve the rescue deal concluded by Investec and the Louis Group simply because nobody was there to oppose it?

And, back to brother Alan, how could he in all Christian honesty have assured his investors that the "difficulties" that the Louis Group companies had experienced on the Isle of Man (his euphemism for the entire offshore operation having been put into liquidation) would have no effect on their investments in South Africa?

As for Investec: considering that business-rescue practitioners come at

a fee, was it the intention of the bank to further deplete the coffers of the company with little intention of any rescue – other than to secure a preference for Investec's claims, which it might not be able to secure in a liquidation?

In its founding affidavit for the court application, deposed to on 18 February this year, the bank notes – apparently with some distress – that "it recently came to [Investec's] attention that 65% of the shareholding in the respondent [Louis Group (SA)(Pty) Ltd] is now under the control of liquidators in the Isle of Man, creating considerable uncertainty for creditors of the group here in South Africa".

"Louis Group International Europe, the 40% shareholder of the respondent (Louis Group SA), is in liquidation and as far as the bank is aware, a further 25% of the group's shares (those owned by Alan Family Trust) have been pledged as security to Louis Group Structured Capital Limited, another of the six companies in liquidation."

Might that have motivated the bank's last-minute decision to rather go for Business Rescue?

Was the placement of Louis Group (SA) and its associated companies under the control of a business-rescue practitioner (especially one who might be expected to be well disposed to Investec) not, more likely, simply a means of wresting control of the Louis Group from those less-sympathetic Isle of Man liquidators?

In the same affidavit, Ms Nainkin almost admits as much when she declares that, as a consequence of developments on the Isle of Man, "[Investec Bank's] security is being eroded. This is clearly to the prejudice of [Investec] and other creditors". (So much, again, for brother Alan's assurance to local investors!)

What threat did those Isle of Man developments pose to Investec? As majority shareholders, those IoM liquidators could not only themselves have applied for the voluntary liquidation of Louis Group (SA); there is reason to believe they may have significant claims against the South African Louis companies, which might have enabled them to appoint a liquidator of their own choice, one who might be disposed to challenge various recent deals concluded by the Louis brothers – including some involving Investec. ■

LOUIS ACTION GROUP

The Louis Action Group (LAG) was established by a group of investors as a result of the Louis Group's (LG) activities in the Isle of Man (IoM). These activities resulted in [Judge] Deemster Doyle issuing winding-up orders in respect of Louis Group (IoM) Limited and five other associated companies at the Courts of Justice on 21st January 2013.

Having carefully considered the judgment of Deemster Doyle, and other evidence in the public domain, members of the LAG are extremely disturbed by events. We consider the crux of the matter to be:

"How can £25 million of investors' savings simply vanish without trace in 'a fully transparent, well regulated international business centre', such as the Isle of Man, in such a short period of time?

"We are angry and deeply shocked to discover that our hard-earned money and future security may be irretrievably lost in a totally unacceptable way. The LG, on their website and in face-to-face interviews with potential investors purported that its business ethics were based on Christian principles and went far beyond commercial standards of corporate governance.

Investors now face the real and distressing prospect that their current and future hopes and aspirations have been severely compromised, if not completely negated. The result:

- Loss of homes;
- The real possibility of people being made destitute;
- Retirement plans being postponed;
- The payment of university education now being out of reach for children;
- Living standards being severely affected.

The consequences are not merely financial, but combined with anxiety, stress and the future uncertainty arising from the winding-up process, have a profound impact on the personal well-being of members' lives.

The LAG has two simple aims that it wishes to achieve: Justice and Redress.

One man, with the assistance of others, managed with risible ease, to rob investors of £25 million in a few short years.

"This has brought the effectiveness of the Isle of Man's system of corporate governance and investor regulations as applied by the Financial Supervision Commission (FSC), overseen by Mr John Aspden, into doubt.

"LAG considers that the IoM FSC should be held accountable and explain why pre-emption, in the form of compliance procedures were not adhered to.

"There was compelling evidence by early 2009 that

should have alerted the FSC to act decisively with the LG before catastrophic losses occurred.

"The Louis Affair has disturbingly similar features to those surrounding the business affairs of Sir Robert Maxwell over a decade ago – matter addressed by the Cadbury Report. In light of Deemster Doyle's final judgment it would seem that, to a significant degree, one man's actions, culminating in catastrophic losses, were possible only by virtue of the actions and inactions of certain statutory officers, and directors of LG and its syndicated companies, and other third parties.

"If correct, this has far-reaching implications for the Manx economy. Investors with LG who might have reasonably assumed Manx law provided another safeguard, have had their faith and trust violated.

"LAG requests a full Public Enquiry to give an open and transparent account of how this debacle, now known as the 'Louis Affair' occurred, with the specific aim of:

- Establishing responsibility at personal, business and compliance levels of all parties involved;
- Pursuing individuals who have breached Manx legal and fiscal laws using international agreements with other jurisdictions wherever they currently reside.

Redress

"103 investors find themselves in situations of extreme personal and financial distress. The majority of investors are Manx residents.

"The negative impact of investor loss has immediate and long term consequences on the Manx economy with loss of spending power and potentially significant claims on the Manx systems.

"LAG request that LAG investor funds be returned in toto from whichever avenues can be fruitfully explored.

"Contacting and Joining Louis Action Group www.louis-action-group.co.uk

"The LAG is open to all those people who have invested in a Louis Group investment structure regardless of where they are resident in the Isle of Man. If you would like to become a member then, please contact the Louis Action Group via the website contact page:

www.louis-action-group.co.uk or by email: **louisactiongroup@gmail.com**"

Legal authorities refuse to produce files on excessive liquidation fees. By Tony Beamish

Officials defy access law

THE OFFICIALLY APPOINTED liquidators of Asch Professional Services (Chris van Zyl of Progressive Administration; Natasha Sansom; and Rene-Lynne Barry-Kleynhans) in 2011 purloined R2,038,326.77 in excessive fees from the trust account of the company in liquidation. The fact that they were charging an unlawfully excessive fee was pointed out to them on a number of occasions by shareholders, yet they steadfastly maintained that possession was nine-tenths of the law. Since no-one had filed an objection to their account in the advertised period for objections, they believed they were safely home with their loot.

Their attorney, Juliette Langford of Edward Nathan Sonnenbergs, eventually responded to the shareholders' complaints, saying: "The liquidators were not under any obligation to provide [you] with notice that the account was lying open for inspection, other than the requisite advertising of same, which was duly attended to. [You] have only yourselves to blame if you did not inspect the account."

(Take what you can get away with, appears still to be the ethos at ENS. They, too, will of course be paid a handsome fee from the liquidation account: R2.3 million at last count.)

Three of the shareholders then brought an application in the Western Cape High Court. This was followed by a visit from the Hawks, who warned the liquidators that a few difficult questions would follow. The liquidators hurriedly repaid the full amount plus interest of R111,074.85 into the trust account.

The liquidation of Asch is unusual in that it was not liquidated due to an inability to pay its debts but because the director-shareholders did



Lennie 'The Liquidator' Katz

not get along. There was a lot of easy cash up for grabs, which prompted Van Zyl to rub his hands with glee in the presence of a *Noseweek* source, saying, "I love money. I luuurve money. I loooooove money."

The angry creditors who took the matter to court – and to the Hawks – were former directors Gavin Cooper, Ganief Fish and Omar Jakoet. Together they have a claim to a sizeable amount of the cash in the Asch account, giving them a direct and substantial interest in the proper administration of the company's liquidation.

The liquidators are opposing the court action with two well-known senior counsel – Jeremy Gauntlett and Gavin Woodland – now briefed to try and persuade the court that their pillage was merely a "bona fide administrative error" and an "overpayment" and that they had "no intention to mislead creditors or the Master."

Having made such an "isolated and non-deliberate error" one would have expected them to admit that all was not well in their accounting department and stand down to make way for another liquidator to check their accounts. But not Chris van Zyl and Co. They're determined to maintain their (by now) anxious grip on the administration of the Asch estate in the belief that no-one, not even the Master of the High Court, will check their work.

This desperation to prevent anyone from questioning or checking their administration of Asch's affairs, *Noseweek* has discovered, extends not only to the Asch files but to the records of all the scores of other lucrative liquidations the trio have dealt with over the past five years. Which, naturally, has made *Noseweek* suspicious.

Maybe this wasn't "an isolated and non-deliberate error," as Van Zyl has

asserted. We can only know for sure if we check those files. All the files that we wish to check are held in the offices of the Master of the High Court in Cape Town. So, off to the Master's Office we went in November, where Mr Warno Steenkamp warmly received us. He happened to have the list of liquidators and file reference numbers up on his screen when we called, but he said that the Master herself, Mrs Zureena Agulhas, would have to consent to his emailing it to us. *Noseweek* promptly emailed Steenkamp, confirming what he had told us and copied it to the Master. No response, so we repeated the exercise three days later but again there was no response.

We asked Department of Justice and Constitutional Development (DOJCD) spokesman Mthunzi Maga to help. Mr Cool reassured us: "Send me the details and I will tell them to give you the information or else they must tell me why they are refusing it." We never heard from him again.

Would an application in terms of the Promotion of Access to Information Act (Paia) help? There is always a hope that a Department of Justice might comply with Paia legislation.

We made our request on 14 December to the Deputy Paia Officer, Ms Marlyn Raswiswi, and by 20 December had paid the requested R35 into the DOJCD's bank account.

On 21 January *Noseweek* received the following reply from Raswiswi: "I regret to inform you that record with information or records relating to..." she then proceeded to (mis) quote our lengthy and detailed list



Chris van Zyl

of requirements back to us, followed by a simple one-liner:

"[They] could not be found in the DOJCD. In this regard I refer you to the affidavit deposed to by Ms Raswiswi... which sets out the steps taken to find the records."

Her attached affidavit painfully regurgitates the contents of her letter but she then adds one extra bit of information:

"I have instructed search to Adv Martin Mafojane, Chief Director at the Office of the Chief Master and was informed that the list of appointed liquidators does not exist. In the circumstances, it is therefore not possible to grant access to the records requested. Should the records be found later I shall reconsider your request."

Her affidavit was commissioned on 14 December 2012 – the same day she received our Paia request and six days before we paid the DOJCD so that the search could go ahead. It was commissioned by "Modiba Attorneys" (no name, no pack drill) and doesn't comply with the several formalities required for the commissioning of affidavits.

Annexed to it, is an "Internal Memo" from Adv Mafojane dated 20 December 2012, in which he states: "The requested information of list of appointed liquidators is not a statistics that the Master offices keep. There is thus no record of such a list. The requestor may however check the Masters' portal in the Department website. There is no objection for the requestor accessing the Master's office Cape

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LITTLE BUDDHA
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Town to peruse any file containing what we deem public knowledge.”

Besides noting the extraordinary time sequence, we were effectively refused access to the computer on the basis of a denial of the existence of records we had ourselves seen on Warno Steenkamp’s computer screen.

No-one knows which matters these liquidators have handled better than they themselves, so we filed Paia re-

quests with the three of them. We were sure that they would give us the list we requested, as it would – according to their own evidence before court – acquit them of any wrongdoing. They didn’t quite see it that way.

When it comes to requests for privately held information, one is required to indicate the right that one wants to exercise and protect. *Noseweek* said the following in our requests:

“The media have a right, and indeed the duty, to inform the public about matters which fall in the public domain and for which the liquidators are accountable to the Master of the High Court and the Master in turn to the public. This right is safeguarded and the duty is imposed by the Constitution. (Section 16 of the Constitution of the Republic of South Africa, Act 108 of 1996.) The matter on which Requester wishes to report clearly falls in the public domain and is therefore such a matter.”

After reminding them that, in the Asch court application, the shareholder-applicants had levelled allegations of fraud against them, and that in response they had claimed it was a “bona fide administrative error”, a mere “overpayment”, and that they had had “no intention to mislead creditors or the Master.” They told the court they had repaid the amount together with interest into the estate account.

We then informed them that we wished to check each and every Liquidation & Distribution Account and the supporting vouchers furnished by Progressive Administration/Van Zyl to the Master of the Western Cape High Court for the period 1 January 2008 to date. Just to check the veracity of their contention that it was “an isolated and non-deliberate error,” to overcharge for fees.

Attorney Leonard Katz of ENS responded on behalf of the liquidators, saying:

“1. The purpose for which you state in your application you seek the records is the very issue to be determined by the High Court. The issue has been fully ventilated in papers before the High Court.

“2. Our clients contend that the application is not a bona fide attempt to utilise the mechanism of the Act in order to obtain information. It is a further step in a vendetta which is being carried out by *Noseweek* against our clients. The application is thus for an ulterior purpose and amounts to an abuse of its provisions.

“3. We are instructed to advise that our clients decline to give you access to the records sought, in that the information requested is not required for the exercise or protection of any rights.”

Katz’s response didn’t make sense to

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us, so we approached the Paia whizz from Grahamstown: Jay Kruuse is an attorney and director of the Public Service Accountability Monitor at Rhodes University. He observed:

“Section 50 of the Promotion of Access to Information Act obligates a requester to show that the record(s) sought from a private body are “required for the protection of any rights”.

To contend that *Noseweek* has not met the requirements of this section when the very liquidators (who owe an onerous duty to both the Master of the High Court and a diverse range of public and private creditors) have tried to counter serious allegations of fraud on the basis that their considerable “overpayment” was an “isolated and non-deliberate error” is unconvincing and cause for further questions and concern.

Professors Jonathan Klaaren and Iain Currie, authors of the Promotion of Access to Information Act Commentary, make the point that “the use of the phrase ‘any rights’ means that particularity is not required – there

is no need to show that the effects on rights is particular to the applicant. A generalised grievance is just as effective. So is a request motivated by a desire to protect the rights of the public in general.

“Clearly in instances where liquidators have acted erroneously but in good faith, or at worst, have conducted their affairs in an unlawful manner, the public has a right to know and the Master’s Office should ensure that the necessary corrective action is taken.

“In the present matter, rather than refusing access to the liquidator’s records, would it not be better to act transparently in order to meaningfully dispel any further concerns or suggestions that this was not an isolated incident?”

Noseweek will take a team of volunteers – who have already indicated their willingness to assist free of charge – and go through each and every file at the Master’s Office and, in due course, report what we find. This may be the biggest data journalism challenge in *Noseweek*’s 20-year history. ■

Making room at the inn

NOW, MAYBE, FINALLY IT’S REALLY HIGH noon at that East Cape Saloon!

In January, while Nigel Owles’s lawyers pressed for a temporary sheriff to be appointed to evict Pieter van Wyk, the illegal occupier of his hotel in the Eastern Cape village of Rhodes, they learned that Van Wyk had hurriedly petitioned the Supreme Court of Appeal in Bloemfontein for permission to again appeal his pending eviction.

Four years into the battle, Owles’s lawyers once again lodged opposing papers. That’s where the matter lay when *nose163* went to print.

Early in May they were informed that Van Wyk’s petition to appeal had been rejected by the Chief Justice, so they can finally get him evicted. That is, as soon as they can get a sheriff – permanent, acting or temporary – appointed to do the job. With luck it was happening as this issue went to press. ■



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University ducks responsibility to desperately ill staffer

Every trick in the book used to delay medical aid benefits

WHEN ERMA VILJOEN JOINED THE University of Pretoria's Alumni Affairs Department in 2000 she was a dynamic and energetic career woman with vast experience in marketing and fundraising. The former member of Tukkies' Student Representative Council had returned to her alma mater, arranging international conferences on education and assisting with the institution of a Chair in Education Law within the Commonwealth.

On paper, her employer offered what looked like excellent benefits: her children could study free; she had group life assurance; disability cover; UIF; 120 days' sick leave over a three-year cycle; medical aid (for which the university subsidised the premiums by 50%); and a provident fund to which the university contributed 12.5% of her salary.

Little did Viljoen suspect that the university and its insurance cohorts would use every trick in the book to avoid paying out these purportedly excellent benefits. She would have to fight them for five long years – while desperately ill – to get what she believed was rightfully hers.

The university says it acted more than fairly to accommodate Viljoen's claims and that no agreement could be reached in the five years. It says the position changed only last year after its insurers, Momentum Life, reconsidered Viljoen's disability claim, which it had rejected twice before.

But it's not as simple as that. Ironically the university's provident fund rules regarding early retirement state that it could be granted at the discretion of the employer – the university – and not that of its insurer.

Viljoen's nightmare began when she developed serious health problems in 2006. Her symptoms included extreme fatigue, muscle weakness, enzyme defi-

ciencies and constant pain in the neck, back, head and abdomen. At times her blood pressure shot up radically, she struggled to think clearly, was extremely anxious and slept poorly.

The original diagnosis was severe fibromyalgia but her response to treatment was slow and incomplete, according to her medical reports. In short, none of the more-than-10 medical specialists consulted were able to put a specific name to her condition.

Viljoen first applied for medical disability in January 2007. At the age of 47, she was too young to meet the criteria for early retirement, but permanent medical disability would qualify her for certain benefits attached to her employment contract and provident fund at Momentum. The university's conditions of employment say an employee is released from duty while such an application is pending.

For Viljoen that clause meant unpaid leave, because both her annual and sick leave had been exhausted. Normally, processing such an application would take about six months, but if it were established that she was permanently disabled, the benefits would apply from the date of her application.

While awaiting the outcome – and receiving no salary – Viljoen had to pay all the premiums for her employment benefits out of her own pocket. She says the university either had no intention of following procedure or it had none in place to take care of her predicament, which might be a contravention of the Employment Equity Act.

To make things worse, Momentum rejected her application for permanent disability and the university summoned her back to work.

By insisting she return to the same job that her medical condition had prevented her from performing, she says the university ignored the Employment Equity Act requirement

of "reasonable accommodation".

Back at work, Viljoen's health then deteriorated to such an extent that she re-applied for permanent medical disability in 2008. Again, she had to take unpaid leave while awaiting the outcome. And again, the university stopped all her employment benefits as well as the perk of free study for her children, saying it was under no obligation to pay these benefits because Viljoen was on unpaid leave.

Momentum came up with the ambiguous finding that she was "temporarily disabled to work" but had an "excellent chance of recovery" and suggested she be re-evaluated after 24 months of treatment. But since a re-evaluation period of six months is standard, Viljoen appealed the finding and asked to



be reassessed by a medical panel. Although this request was in accordance with her service agreement, the university failed to reply.

The university says it has no knowledge of any appeal lodged against that ruling. Anyway, it says, there was no need for an assessment by a medical panel because the university had accepted that Viljoen was ill. (Somehow, it simultaneously accepted Momentum's contention that she wasn't *that* ill.) It says that, because Viljoen had already been granted additional sick leave, it was felt that no further assistance could be given to her.

Instead, the university informed Viljoen that it would start a process to terminate her service, unless she returned to work by the end of August that year.

Her service agreement however, made provision for extra fully paid leave of up to 24 months when/if there was a possibility of recovery – which was what Momentum contended. And the university had clearly decided to go with its insurer's decision. Yet the university would have none of that, saying it was a discretionary benefit which it was entitled to refuse.

In April 2009

Viljoen cannot verify whether there was insurance fraud because the fund administrator blocked access to her benefit statements several years ago, at the behest of the university

the university offered Viljoen a settlement of R47,800 – just enough to cover her son's study benefit which had been cancelled. She rejected the offer, not least because the documentation made no mention of there being medical reasons for the termination of her services; it simply said it had been "at her request".

Next, says Viljoen, the value of her provident fund mysteriously decreased by more-or-less the same amount as that of the settlement sum offered. She says she later established that the university changed the date on which she had joined the fund.

The university denies changing the date but Viljoen cannot establish and verify whether there was an act of insurance fraud because the fund administrator blocked her access to her benefit statements several years ago, allegedly at the behest of its "client", the university.

Several months passed after the settlement offer was turned down, with no further word from the university. Then in August 2009 Viljoen lodged a complaint with the Pension Funds Adjudicator.

The university's head of human resources, Professor Annél van

Aswegen argued before the adjudicator that Viljoen had accepted – not rejected – the R47,800 settlement and that her services had already been terminated in February of that year.

Either she was oblivious to what was going on in her department or she was simply lying. The university denies both suggestions, but the fact is, the professor was unable to supply any documents to confirm what she was telling the adjudicator.

Van Aswegen's evidence was the first Viljoen heard that she was no longer employed – still under the impression she would be reassessed after 24 months, as per the finding of the insurance company.

Even the Pension Funds Adjudicator's conciliator appeared confused and ruled that the case be investigated, recommending at the same time that Viljoen open a case of unfair dismissal with the CCMA, which she did.


After the hearing, the university backdated its offer (that Viljoen had already rejected) to February 2009, the date it claimed to have dismissed her.

Around this time, Viljoen was diagnosed with mitochondrial cytopathy, a very rare metabolic disease, which manifests itself by way of several different syndromes. It is not possible to cure and treatment is targeted at relieving symptoms and delaying its progression. More recently, DNA tests confirm that one of her sons also carries the gene and early symptoms are already manifesting themselves.

A report by genetics professor Dr George Gericke was handed to both Momentum and the university, stating that Viljoen's symptoms were a result of this condition. However both parties continued to oppose her disability claim (even suggesting she seek treatment from an occupational therapist).

Meanwhile, the CCMA heard Viljoen's case of unfair dismissal in December that year. The university argued that it was too late for Viljoen to have opened the case. And when Viljoen applied for condonation, Van Aswegen submitted a sworn affidavit with yet another date and reason for the termination of Viljoen's services.

The CCMA ruled in Viljoen's favour – and against the university – saying there was no need for procedural "condonation" and declaring "the dates of termination of employment and the



Erma Viljoen

Who is Professor van Aswegen?

ANNÉL VAN ASWEGEN HOLDS A LLB FROM THE University of Pretoria (*Cum Laude*, 1975). She is a former member of the University's SRC and has published several law books and articles.

In 2001, when she held the post of acting Registrar at Unisa, Van Aswegen brought an urgent application in the high court against Unisa and its council chairman, Advocate McCaps Motimele. She was seeking a review of the short-list of applicants for the position of vice-principal at the university.

Van Aswegen claimed that she had

not been fairly assessed because she had been a witness in a case of sexual harassment against Motimele, brought by a colleague, Professor Margaret Orr.

In that case Van Aswegen testified that she, too, had been kissed "inappropriately" by Motimele.

Before Van Aswegen's court application could be heard, Unisa scrapped the post of vice-principal. The court then ordered Motimele and Unisa to pay Van Aswegen's costs.

She left Unisa shortly afterwards to take up her current position at her alma mater.



Professor Annél van Aswegen

reasons are contradictory and they show that the respondent (the University of Pretoria) does not know the actual date of termination and the reasons thereof...

"My opinion and finding is that the respondent (UP) has contradicted itself on the date of employment and that the respondent is not reliable."

Several dates were set for arbitration but nothing materialised because the university kept postponing, telling the CCMA that the parties were about to reach a settlement.

The truth was that Viljoen had rejected their offers because they only seemed to benefit the university. The CCMA therefore has not made a final ruling on the case.

After more than a year of negotiations the university finally agreed that medical grounds were indeed the reason why Viljoen's services were terminated and agreed to calculate her loss of income and benefits up to 26 January 2011. In other words UP was prepared to pay Viljoen as if she had still been in service up to that date.

But that same afternoon, when she arrived to finalise the paperwork, she learnt that the university had had a change of heart. Their lawyer simply pronounced that the offer would "cost them too much".

The representatives then tried to coerce Viljoen into accepting a settlement of R300,000 but in return she had to drop the pending CCMA and Pension Funds Adjudicator complaints as well as a case with the Long Term Insurance Ombudsman, whom she had ap-

proached to assist her with her claim against Momentum. Viljoen refused.

Months later the university produced a fourth set of dates and agreed to medically board Viljoen, but this time it backdated her termination-of-service from January 2011 to October 2009.

Because of the university's submission of all the different dates and reasons for termination, Viljoen has to this day been unable to claim from the Unemployment Insurance Fund.

The university told *Noseweek* – in response to questions about the variety of dates and reasons for Viljoen's termination-of-service (which had been changed no fewer than four times) – that these had been the subject of discussions during which the university made different proposals to Viljoen. (However, in sworn affidavits on four different occasions, the university contradicted itself.)

Once medically boarded, Viljoen would have been entitled to certain employment benefits based on her salary at the time. In other words, being boarded in 2011 would entitle her to higher benefits than in 2009. However, Van Aswegen was adamant that Viljoen should not get any benefits at all because Momentum had not declared her disabled. (This could be interpreted to mean that the university will not allow employees to go on early retirement unless they are permanently disabled.) Viljoen says the bottom line is that the University of Pretoria has no formal disability policy.

Neither Momentum nor the uni-

versity bothered to ask for Viljoen to be reassessed after the 24-month period of treatment. The university also withheld the documents related to the calculation of her benefit claims. Van Aswegen even instructed Momentum not to share information with Viljoen.

The University of Pretoria admits that Van Aswegen asked the insurers that all information destined for Viljoen should be routed through the professor but says this was due to many instances of miscommunication between Viljoen and the fund administrators, and says that Viljoen was "not prejudiced in any way".

Viljoen says she is being prejudiced to this day and that the truth is something entirely different. It appears that Van Aswegen unilaterally appointed a private lawyer to obtain all information destined for Viljoen – a lawyer not officially appointed to act on behalf of the Provident Fund.

Van Aswegen's conduct prompted Viljoen to send a formal Access to Information request to the university and the provident fund administrator, Alexander Forbes. Both simply ignored her request, something that could be regarded as a criminal offence.

In the meantime Viljoen's provident fund case is moving ahead slowly, if at all. The university's subterfuge contributed to a 21-month delay.

In May 2011 the adjudicator ruled that the university must supply the provident fund with the date and reason for Viljoen's termination of service, and that Momentum pay the benefits within six weeks.

All three entities simply ignored the ruling. The university's response to this allegation: "Settlement negotiations were under way which would have affected what would have to be provided."

This answer typifies the duplicity with which the university has handled Viljoen's case – a woman who has been desperately, debilitatingly ill for more than five years.

It seems that even the government's watchdog, the Pension Funds Administrator, cannot get the university, its provident fund and its insurer, Momentum, to abide by its ruling.

Viljoen's only option would have been to approach the high court. But without the funds to finance a court case and because of her ever-deteriorating health, this was not an option.

By February 2012, desperate and living on handouts, Viljoen appointed a private disability consultant. Surprisingly, he was able to accomplish in one hour what the university declared they could not finalise in five years: Momentum approved Viljoen's medical disability application.

She received confirmation in writing from both Van Aswegen and the university's lawyer that her date for early retirement would be 31 March 2012.

At last it was verified that Viljoen had at no stage resigned and that she was still employed by the university. She believed she was entitled to four years' back-pay, leave and other employment benefits, such as her son's tuition fees. She would also get a one-off lump sum as well as a monthly pension from Momentum until she reached the university's retirement age of 65.

Unfortunately this was not the end of it. Momentum paid out R1.6 million to Alexander Forbes, the fund administrators, but they were unable to proceed with Viljoen's payout for another seven months – because the university did not give them instructions. Once again the delaying tactics of the university caused Viljoen more pain and misery.

The university blames complications surrounding the retrospective calculation of benefits – and that Viljoen had not provided them with information – clearly a nonsensical excuse, since the university had all the information which it had purposefully withheld from her.

After all that, Viljoen says the uni-

A private disability consultant was able to accomplish in one hour what the university declared they could not finalise in five years

versity still cheated her: they used the February 2008 date – when she had first applied for permanent disability – instead of the 2012 date when her service was terminated – to calculate her benefits. Their actuary's calculations were based on the 2008 date. Despite numerous requests, to this day, Viljoen has not been shown those actuarial statements.

But what happened to the 2012 date

that was twice confirmed in writing?

Well, according to the university's lawyer, that was simply a "typo"!

Without her signing any document or knowing exactly how much was due to her, Viljoen was given a lump sum benefit in September. She is now receiving a monthly pension.

The university says her lump sum would have been lower and her monthly pension marginally higher, had they used the 2012 date, and she would have forfeited the back-pay which amounted to almost R600,000. Viljoen's actuary's calculations show she has lost or been short-changed by millions of rands.

And her legal costs have exceeded R350,000; the university says its own costs are confidential.

The disgraceful fact is that even though the University of Pretoria has an internal legal department, it appointed private lawyers to act against its own employees.

● *Noseweek* is investigating another instance of a University of Pretoria employee in a similar situation to that of Viljoen. The staff member was pressured – after two desperate years without any income or benefits – into accepting a settlement that was a fraction of that to which he should have been entitled. ■



"You know, you can do this just as easily online."

Family that preys together

In Sicily it might simply be called a Family business, but it's another story when it comes to the South African Lieberthals – notorious surgeon Wynne, twin brother Hugh (after being diagnosed with cancer and collecting on a dread disease policy, he immediately made a miraculous recovery) and nephew Jayson (who does confidential printing jobs at a secret location) ... **By Gavin Foster**

JAYSON LIEBERTHAL – WHOSE UNCLE Dr Wynne Lieberthal is possibly the most incompetent surgeon in South Africa and has been dubbed the Butcher of Rosebank – describes himself as chairman and CEO of the J Holdings Group, a multifaceted private equity property holding, management and development company with interests in catering, the media, medical supplies and printing.

His day-to-day activities are largely confined to the print game, though, where he spends his days swindling customers and suppliers in Durban; opening and closing print shops under different names; processing fake EFT payments; dodging debt collectors; and not answering any of his phones.

Lieberthal's business plan is simple: he opens a print business under a new name – including One Stop Print; Print Boyz; On The Spot Marketing; and Print Now – then does a little business and pays his bills in cash or with a credit card to develop a relationship with the supplier, before switching to EFTs, when things change.

In September, the oversight service, BusinessWatch, sent out an alert naming Lieberthal, his father Hugh and the various company names under which they operate:

“WARNING. Do not accept POPs and cheques from the following entity. Their modus operandi is to win your trust with cash and card (Capitec) purchases. Then they start to bring/send printed proof of payments (POPs), which look legitimate, but

the funds never materialise into your account. They have also paid with Absa cheques (ML Lieberthal) which bounce as the cheque book is in a state of cancellation.”

Noseweek spoke to a number of Durban people who say they were defrauded in this way. Only one, a feisty lady pharmacist, got her money in the end. She had Hugh Lieberthal arrested when he came in to fetch his medication after he'd caught her for over R10,000. He later phoned her from the police station to ask if she'd drop the charges if the outstanding debt were settled in full; she agreed and sent one of her employees to the police station to collect the cash. Once the woman had taken the money and handed over the receipt, Lieberthal tried to get the police to arrest her for blackmail.

“While Hugh was in the shop one of my staff commented that she'd read all about the Lieberthals in *Noseweek*,” the pharmacist told us. “He then asked us why people believed what they read in *Noseweek* but not what they read in the Bible!” (See *nose57;60*.)

Noseweek spoke to landlords, print suppliers and print shops, pharmacies and a newspaper ad department who were all stung, with one landlord now suing Hugh's son Jayson for more than R100,000. We also spoke to customers who'd paid Jayson up front and either didn't receive the goods they'd ordered, or were sent low-quality useless rubbish. One customer complained of T-shirts where the printing was upside-down and the wrong colour; Jayson Lieberthal took the shirts



The yarns Jayson Lieberthal spins when he's cornered are all hastily compiled. One says 'please bear with me I was in a terrible accident yesterday I was almost killed'



All in the family: Jayson Lieberthal (left). His wife Michelle (above) modelled for the giant billboard advertising One Stop Print's four-hour, one-day print service in Durban

back and disappeared, leaving the customer R13,000 out of pocket.

The yarns he spins when he's cornered are all hastily compiled – one, with a photograph of a wrecked car attached, says “please just bear with me I was in a terrible accident yesterday I was almost killed” while another, to consumer journalist Wendy Knowler on 28 March this year, following up on their failure to deliver business cards and a banner to a customer, says (sic): “Hi e is not being ignorded we were robbed and beaten all our computers and cell phone were stolen we have just got back on line and i will attend to it”. This was followed 10 days later by: “as I told you I had a robbery and lost all my data so I need a copy of the invoice to pass as a credit note to send to JHB for a refund witch I have done.”

Jayson Lieberthal rarely answers his phones, and refuses to provide a physical address for his latest supposed print business. Print Now's website offers a 24-hour service, free door-to-door delivery nationwide, and printing of promotional “matrrial”, “dairys”

and “brouchures” but gives a landline number that is never answered, and no physical address. When clients ask to meet Lieberthal he tells them that he'll meet them elsewhere, because he prints exam papers for the education department and documents for banks, and the confidentiality factor means the location of his print shop is thus top secret.

All of the above is really just another story about a small-time not-very-bright crook desperately trying to hang on to a business that he's patently incapable of running profitably.

What initially attracted *Noseweek's* attention, though, was that the scripts used by Hugh to get scheduled drugs for his family emanated from his already notorious twin brother, Dr Wynne Lieberthal, who now runs a general practice in Sabie. Dr Lieberthal featured in the 2004 *Noseweek* story that exposed his drug addiction, mutilated patients and some highly questionable dread disease insurance claims for his friends and family (including his brother, Hugh).

He'd also been suspended from practising medicine in 1991, but managed to get reinstated soon after coming out of rehab. After qualifying as an orthopaedic surgeon, he was struck off the roll again in July 2004, when the Health Professions Council of South Africa (HPCSA) found him guilty on seven charges of unprofessional conduct relating to botched operations. One of these procedures resulted in a teenage girl being condemned to life in a wheelchair.

Then, in 2007, the HPCSA reinstated the persuasive Dr Lieberthal as a surgeon working only under supervision, and then in 2009, the council lifted even that restriction. Less than a year later he was suspended once again after the HPCSA received 13 fresh allegations from disgruntled patients, some of whom had been permanently crippled by his handiwork.

Yes, believe it or not, he has since been reinstated again, but officially is allowed only to work as a GP.

Back to Jayson Lieberthal, who posted a very interesting video interview on YouTube in 2011 which was purportedly filmed in Zambia. In it, he talks about his grandiose plans for that country and, after rambling on about building housing, a tourist resort, and a hospital and bringing about an injection of skills and know-how into Zambia's economy, he



Jayson Lieberthal's Lamborghini, shopping and wife (as trumpeted on Facebook)

tells how one of his many companies, Cervilox SA, supplies orthopaedic implants that he could make available in Zambia at half the South African price.

One of his extraordinary claims was that his company had developed implants which were suitable for hospitals that didn't have X-Ray equipment. There was a revolutionary replacement hip that, he said, could be fitted in just 45 minutes and the patient would be walking within a day of the operation.

"We have CEE approval, FDA and ISO, so they are manufactured to the most stringent specifications," he said. In his blog, called "Jayson Say's" (sic) he tells how he took his famous uncle the surgeon, whom he calls "Professor Lieberthal", to meet various officials and politicians with a view to selling the products there and saving the country millions in foreign exchange.

This is what he posted, speaking of himself in the third person:

"On one of Lieberthal's trips to Zambia his uncle Wynne Lieberthal a Professor of Orthopaedic surgery accompanied him. Mukuni immediately took a shine to the prof and asked him if he would consider taking a post at the Zambia University teaching hospital. The prof agreed and as normal they went off to meet the CEO of the UTM Dr L Chikoya. The meeting

Dr Lieberthal has had 29 complaints laid against him – the highest ever in South Africa

seemed to go incredibly well for both Lieberthals with the hospital agreeing to both employ the professor and procure medical equipment from J holdings. On return to SA Prof Lieberthal eagerly awaited his letter of appointment of months of waiting and Prof Lieberthal turning down other illustrious job opportunities in SA they received a call from Mukuni stating that he had the contract ready for Prof Lieberthal to sign and start work."

Sadly for the Lieberthals the Zambian shenanigans seem to have come to naught, and the "Professor" is still working as a GP in Sabie. None of the anticipated tenders – one was to provide 4,000 houses – came through. Perhaps the Zambians smelt a rat.

Back in South Africa *Carte Blanche* on 10 November 2010 ran a story titled "Medical Malpractice". The transcription available on their website tells how Dr Lieberthal has had 29 complaints laid against him – the highest ever in South Africa – and former patients tell of the surgeon's ineptitude that had caused them much misery.

Then the focus shifted to orthopaedic implants, and *Noseweek* was intrigued to read that Wynne Lieberthal was involved with a company called Surgical Innovations. An ex-employee named only as Walter told *Carte Blanche* that Lieberthal provided labels, brochures and everything else required to repackage surgical products for the company without the permission of the manufacturers. Guess who did the printing.

While Dr Lieberthal was working under supervision at state hospitals he involved himself in the supply chain, and *Carte Blanche* produced a copy of a letter to the finance department of Nelspruit Hospital expressing his request that Surgical Innovations be accepted as a vendor. Walter claimed that Witbank Hospital was charged 20% over list price for the products ordered by Dr Lieberthal, and the overcharging extended to the operating theatre.

"A procedure that would cost R24,000 in Sandton Mediclinic would be charged out at R60,000 at Witbank Hospital," said Walter. "They would load the price plus 20% and he would add extra on that charge sheet."

Jayson and Hugh Lieberthal both insist that their habit of forwarding notifications of non-existent deposits is not fraud – it's the same as bouncing a cheque, they told *Noseweek*.

When questioned about the Zambian interlude Jayson said that one deal went bad but others are ongoing. He declined to give any further information.

The HPCSA confirms that numerous allegations of unprofessional conduct against Wynne Lieberthal are still under investigation. ■

Witness for the prosecution

Old guard routed as SA's oldest newspaper gets a face-lift

SINCE MEDIA24 SWALLOWED UP THE oldest independent newspaper in the country, *The Witness* (established in 1846), it has been spitting out staff with a frenzy hardly imaginable in the sleepy hollow of Pietermaritzburg.

The biggest casualty of the purge has been the managing director, Greg Orsmond, who was fired for unspecified reasons on 29 April after he stormed out of a disciplinary hearing declaring it was “a set-up”. He had been suspended at the beginning of the year while investigators from Media24 head office in Cape Town sniffed around his offices in Port Shepstone and in Pietermaritzburg. Staff were simply informed that his services had been terminated and that there would be “no further discussion about the matter”.

Orsmond refused to comment “for the time being” when asked to confirm or deny rumours that charges against him related to the alleged “misallocation or misappropriation” of R11 million, and that he had been “using the company’s cheque book as his own”.

“My negotiations with the company are still at a delicate stage, but should be finalised within a week,” he said, shortly before *Noseweek* went to press.

Orsmond’s dismissal leaves the paper’s old mahogany row completely empty, echoing to the departing footsteps of the general manager Thakane Motebang and her executive secretary, as well as marketing manager Hilton Treadgold. By the time they got to the door it was still swinging from the departure of the editorial director John Conyngham, whose contract Media24 refused to renew; the business editor; the deputy editor; the distribution manager; and many others, clutching their retrenchment letters.

Conyngham was a key member of *The Witness* establishment. He was appointed editor in 1994 in the wake of a staff revolt against the former ed-



Witness editor Angela Quintal

itor and steered the paper to calmer waters through his collegial style. He was kicked upstairs in 2010 to make way for the paper’s first black editor, Fikile Moya, who left after only a year for *City Press*, deepening a leadership crisis, while Media24 searched for a suitable replacement.

The former owner of *The Witness*, Stuart Craib, who still chairs the paper’s board, cuts a forlorn figure these days in the sole occupied office of what used to be the executive hub of the organisation. Craib himself has nevertheless joined in the spirit of jettisoning unwanted goods, selling his family’s last interest in newspapers, the *Village Talk*, and in Intrepid Printers. *The Witness* itself had been owned by his family since the 1940s, and they had been associated with it for some time before that.

All of which leaves no room for doubt: The Corporation has arrived in sleepy hollow! Quips an insider:

“We might have half the managers we once had but we’re getting double the management!” That management is in the form of two tough-nosed executives seconded from Media24 head office: Andre le Roux – there to spearhead the move into Durban – and acting general manager Andre Olivier.

The exodus of old staffers comes at a critical time for *The Witness*. Circulation has plummeted from a historic high of 30,000 in 1994 to 18,000, causing it to cast covetous eyes on the bright lights of Durban with all its advertising riches to repair its fortunes.

New editor Angela Quintal was headhunted from *The Mercury*, ironically by the now-sacked Orsmond, to expand – some even suspected, to relocate – the paper’s operations to Durban and launch a new Durban edition in a crowded market that already includes the Independent group’s *Mercury*, *Daily News* and *Isolezwe*. Two-thirds of the editorial staff had been on warning that they would have to move cities, but outrage from loyal readers in Pietermaritzburg and the Midlands prompted Quintal to take the unprecedented step of publishing a lengthy front-page editorial denying that the paper was abandoning the city, which is celebrating its 175th anniversary this year.

The extent of the push to Durban may since have been scaled down, and the operation is already running two months behind schedule, but editor Quintal insists it’s still all systems go to expand into the Durban market. “While other newspapers are retrenching reporters, we’re hiring more of them,” she adds.

Meanwhile Media24 is cracking the whip for more profits with ruthless cost-cutting regime: the entire Express group of community papers (part of the extended *Witness* stable) has been bulletted, and 60% of the staff of the Fever community papers are being retrenched. ■

Botswana's power struggle

As SA's northern neighbour is plunged into darkness and water shortages, President Khama is the only African leader querying Chinese bona fides on the continent, writes Susan Puren

CHINA'S VENTURES IN AFRICA ARE NOT necessarily the answer to the problems of under-development. In fact, things could get worse, as has happened in Botswana.

In November 2008 the Botswana Power Corporation (BPC) signed a contract with a consortium consisting of China National Electric Equipment Corporation (CNEEC) and Shenyang Blower Works (SBW) to build a large power plant outside Palapye. The 600MW Morupule B power plant was the biggest and most complex project ever to be undertaken in Botswana, costing P11.1 billion (US\$970 million at the time). China financed P6bn and the World Bank, the balance.

Four years later Botswana is experiencing widespread load-shedding that has plunged consumers into darkness and affected water flow. There are now frequent water shortages.

The reason? Eskom's energy supply contract with BPC has come to an end and the Chinese have failed to deliver on time.

Contractually, CNEEC was supposed to have commissioned four units, each generating 150MW, by October last year. But only one – at Morupule B – is working, two are undergoing technical repairs and the fourth is still under construction. Blockages and steam tube leaks on two boilers during the commissioning phase caused the delays but there was also non-compliance with Botswana's Safety, Health and Environmental standards (SHE). These resulted in three fatalities.

The project has been rocked by scandal and uncertainty from the start. CNEEC had no experience in building huge power stations and its competency was questioned when it won the tender ahead of construction companies from India, Europe and another two from China.

In 2007, BPC board members conducted a site inspection of the bidder's facilities and completed projects but CNEEC was allegedly unable to show much. At the time, even the Chinese Embassy in Gaborone warned the Botswana Power Corporation that the integrity of CNEEC was suspect.

Like many African countries, Botswana has a consistent electricity deficit due to declining generation capacity and increasing consumption. Its electricity demand is around 500MW, and the mining sector is its biggest consumer.

Botswana's old coal-fired power station, Morupule A, has been in operation for more than 25 years. In recent years, South Africa and Zambia have supplied more than 80% of Botswana's power. But over the past five years, Eskom has gradually reduced exports to meet the rising domestic demand in South Africa. Botswana's current

supply crisis started at the beginning of January shortly after Eskom cut supplies. To make things worse, the Morupule A power plant is being refurbished and will only come on line again in 2014.

With its back against the wall, the Botswana government appointed the engineering firm Aurecon AME Limited at the end of February to conduct an audit of the Morupule B plant. The international law firm, Norton Rose, came on board to provide legal advice. At the time the minister of Minerals, Energy and Water Resources told Botswana's parliament that it was a "tactical intervention to ensure firmer project oversight and timely delivery to address the current power crisis".

Had all gone according to plan at Morupule B, Botswana would have had a sufficient supply of power by now. Instead Botswana Power has had to plead with the Batswana to save electricity. And, for the economy to stay afloat, the government and private sector have had to fork out millions to operate two diesel-run plants at Orapa and Matshlagabedi in order to keep up with the demand. It will cost around P300m a year to keep the two plants going.

In the meantime Eskom has undertaken to make a reliable supply of electricity available on a contingency basis. Botswana Power's cost for importing electricity is estimated to be P2bn. The tragedy is that the country was supposed to be self-sufficient and even exporting power by now.

The Botswana government is deeply concerned that the situation might lead to a loss of confidence, put many businesses at risk and perhaps cause political instability.

President Ian Khama recently slammed the Chinese company, saying the situation was threatening to cause an implosion of Botswana's economy.

The government is deeply concerned that the situation might lead to a loss of confidence, put many businesses at risk and cause political instability



Botswana's President Ian Khama

Bilateral trade between Africa and China is at an all-time high, having reached US\$166bn last year.

Chinese companies were until recently involved in 18 projects worth US\$740m (about R700bn) in Botswana. But their prospects for new business in the country now seem very thin. With 95% of the work completed, the government fired the Chinese SinoHydro Corporation over delays to the Gaborone Airport expansion project. They were fed up with deadline setbacks. The Sir Seretse Khama International Airport was supposed to have been completed for the 2010 World Cup. So was the National Stadium, while the Serowe Stadium cannot be used due to poor workmanship.

"We have started really tightening up on the way Chinese companies deliver on government contracts," Khama declared in a recent interview.

Now it looks like the Botswana taxman has run out of patience. The

Botswana Revenue Service (Burs) obtained a garnishee order to impound payments made by Botswana Power Corp to CNEEC. As a result the Chinese construction company has apparently threatened to abandon the project should they not be exempted from paying P600 million in unpaid VAT.

Botswana's *Sunday Standard* newspaper recently reported that Botswana Power has made the payment, thus violating the high court order. Now Burs is preparing for a court battle with both Botswana Power and CNEEC. Burs has even alerted the immigration authorities to ensure that the company's directors do not skip the country.

Khama seems to be alone among Africa's leaders in publicly taking a critical stance on China's apparent largesse. The majority of African leaders, South Africa included, await the arrival of the Chinese Father Christmas with child-like anticipation. ■

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ARE YOU SURE YOU WANT TO LIVE HERE?

Think before you sneak off to Sydney – you may just find life in Australia disconcertingly familiar, says **Anne Suskind**

WHAT'S YOUR PICTURE OF SYDNEY, I asked my dearest friend recently on a beautiful Cape Town day. Her reply: "Somewhere where you can enjoy things, all this... without worrying that other people can't." And then we talked about the men at the traffic lights and the daily deals one does with oneself in order to stay sane amid all the contradictions.

Having lived in Australia for nearly half my life, it seems to me that country has become, for some South Africans, imbued with longing. As much as people claim to despise its banality, it has come to epitomise a good life, a sunny life, a free life, a lucky life.

Cold comfort it may be, but living in Sydney these days isn't so great either.

Start with government corruption in the state of New South Wales. (Australia is a federation, remember.) The

past few months have seen a series of revelations at the Independent Commission against Corruption. It's been alleged that former NSW Labor minister Eddie Obeid and his family made a profit of about R300m from a corrupt government coal tender presided over by disgraced former minister Ian McDonald, himself dubbed "Sir Lunchalot" who – to quote the online news site, Crikey – over a dinner which cost A\$1,800 (about R16,500), signed a deal which could have been worth A\$100m to the NSW government and taxpayer, for an investment of only several hundred thousand.

McDonald had starred in an earlier inquiry into the receipt of personal services from a sex worker called Tiffanie.

In a remarkable March 30 story, the *Sydney Morning Herald* reported that Richard Torbay, who not long ago resigned from the NSW parliament, as

well as from his position as Chancellor of the University of New England (where he'd started off as a kitchen hand), had been spotted with Obeid, pre-dawn, on a lonely stretch of country road. Torbay's business shirts, we are told, "hide a multitude of tattoos", while his "corporate entities disguised his vast real estate empire".

At a federal level, despite the buoyant economy, the governing Labor Party is dogged by failures and embarrassments. So it was that Prime Minister Julia Gillard's de facto husband (a one-time hairdresser and now Australia's "First Bloke"), while campaigning for prostate cancer awareness, joked that he'd like to be examined by a female Asian doctor with small hands. Then Gillard, who is unable to make a speech without declarations about "the Australian (pronounced Austrayan) working family", showed remarkably



Sydney: not a pretty picture



Julia Gillard breaks it gently to a crestfallen Jacob Zuma – she already has a hairdresser

bad judgment and shot herself in the foot with a media regulation package that earned her the ire of every media outlet. Soon after that, in March, she escaped being ousted, when her presumed party-room challenger, former prime minister Kevin Rudd, whom she had ousted before, failed to show for the ballot.

Rudd claimed he was doing the honourable thing, but everyone knew he'd just failed to get the numbers.

And the opposition? It's headed by Tony Abbott, likely to be the next prime minister. Educated by Jesuits and a

dropout from a Catholic seminary, he's dubbed the "Mad Monk". His better-known observations include "Climate change is absolute crap" and (on asylum policy) "Jesus knew that there was a place for everything and it's not necessarily the place of everyone to come to Australia".

The high point of Gillard's political career was a widely admired speech attacking Abbott's sexism and misogyny.

So don't think that Australia boasts a political class of which many are proud.

Then there's the cult of celebrity chefs, which sees them elevated to rock star status. And don't get me started on the seriously crippling private school fees, or on what happens to the curriculum in a cash-strapped university system with no history of philanthropy and whose major way of boosting income is from full fee-paying foreign students.

And finally, don't forget that Australians don't really like us.

To illustrate: In March, I went for a quick dip at the tidal pool. I was just 15 minutes, on the way to collect my son from school. I felt innocent and quite blameless. When I got back to my little car, there's a cool looking, ear-ringed, 50-something surfer mildly berating me for blocking the

The opposition is headed by Tony Abbott, whose observations include "Climate change is absolute crap"

beach access for the disabled. Thanks, I said, carefully polite, but monosyllabic. But he went on – and on. I said, "I take the point, thanks, but please back off." Next thing I know, a tirade: "You're all the same. Fucking obnoxious, entitled South Africans."

I speak only for my little neck of the woods, the eastern suburbs of Sydney. Most Australians there may tell you they know a few good ones. But, generally, South Africans are regarded as entitled and obnoxious. At times it's become cringe-worthy to be one. ■

South Africans are not loved Down Under



Lawfare. Taking up cudgels for Julian Assange

Australian celebrity human rights lawyer and key member of Julian Assange's legal team, Jennifer Robinson, is a regular visitor to South Africa. *Noseweek* interviewed her when she attended the 18th Commonwealth Law Conference held recently in Cape Town

WHEN JULIAN ASSANGE'S whistle-blowing website WikiLeaks made its first major splash by releasing the shocking, classified *Collateral Murder* video in 2010 – showing a US Apache helicopter target a group of Iraqi civilians, 11 of whom died – Jennifer Robinson immediately recognised a challenge.

"I thought, 'who is this Australian who is doing this stuff. He's definitely going to need help. But how do you contact Julian Assange?'" She laughs at the recollection.

Today, Robinson, a glamorous fellow Australian, a Rhodes Scholar, and the director of legal advocacy for the Bertha Foundation, is a key member of Assange's legal team and one of the public faces of WikiLeaks.

At the time of the release of the video, Robinson, who is in her early thirties, was working with famous Australian human rights lawyer Geoffrey Robertson QC as a media, defence and human rights lawyer. "We were advising and defending cases for, among others, CNN, *The New York Times*, Associated Press, Global Witness and Human Rights Watch.

"I was doing a lot of freedom of information cases against the government and had a keen interest in press free-

dom. I was already feeling frustrated on behalf of my media clients at the way the government was able to either delay or deny freedom-of-information requests," she says.

When Robinson first became aware of Assange in early 2010, she'd heard about WikiLeaks – which she refers to as the world's first stateless media organisation – "but I had not really paid too much attention to him until *Collateral Murder*".

"They released some Guantanamo Bay stuff earlier and I followed that – but it was not until *Collateral Murder* and the Afghan war documents that I was like, wow, this is really big. And even then I didn't realise just how big it would be.

"Today, I would say this is one of the biggest issues and one of the biggest legal cases of the decade and of our time. In terms of media and public interest, I don't remember another case that's generated the global interest that Julian's case has. In terms of free speech protections, the criminal investigation in the US is probably the most significant media law case of our time and of course the biggest leak in history," she says.

She didn't have to go looking for Assange. About six months after the release of the *Collateral Murder* video, he

ended up in London and reached out to Geoffrey Robertson for help.

"My law firm decided to take the case. I said 'absolutely let's do it, I'd love to do it,'" says Robinson.

Relating her first encounter with Assange in London, she says: "He was working away on his computer, as he always is. I had just been on television, giving an interview about human rights abuse in West Papua in which we discussed whether Indonesia's president could be





Picture: The Australian

Jennifer Robinson

prosecuted for what had happened.

“Julian and I started talking about that and I was struck by how much he knew... about the history and politics of the region and we had this great conversation. I remember being very impressed by the breadth and depth of his political knowledge of the world and I continue to this day to remain impressed.

“You could ask him about any country that has been touched by the cables – which is every country – and he will

debate the country’s politics and history. It is incredible.

“His ability to deal with really large data sets, to distil and understand them, as well as to retain the information that he is reviewing is significant – and I am not overstating it...”

When we meet late on a Sunday afternoon at the fashionable Grand Café in Camps Bay – her choice – the former beach lifeguard with head-turning looks, apologises for “the hair”. She’s been in the sea all day, diving with

sharks after attending the Commonwealth Law Conference in Cape Town all week.

In her conference address, Robinson highlighted the huge impact that WikiLeaks and its publications have had on journalism as well as on human rights accountability and political change.

She also addressed the implications that the criminal proceedings against WikiLeaks and US trooper Bradley Manning – the alleged source of the *Collateral Murder* video – would have for the rule of law and free speech protections.

“WikiLeaks has brought about an information revolution which, in turn, has been credited (by Amnesty International, 2011) with contributing to

This is one of the biggest issues and one of the biggest legal cases of the decade and of our time

political revolution in the Arab Spring.

“As a lawyer with a key interest in human rights, I have particularly enjoyed watching the many ways WikiLeaks materials have been used in seeking accountability for human rights abuse around the world,” she told delegates.

Robinson was raised in the small country town of Berry, about 150km outside Sydney. “It’s one of the most beautiful places in the world, surrounded by beach and mountains. When I was little it had a bank and a corner store.” She grew up watching her father and grandfather train racehorses along Seven Mile Beach.

Also influential in her life was her grandmother, who set up and ran shelters for battered women. “I spent a lot of time with my grandmother and my mother at the shelters. Playing with those children makes you realise how

lucky you are and that it's important to look after others."

Robinson graduated in Law and Asian studies from the Australian National University – earning the university medal in law as well as the distinguished scholar award for Asian studies, before being admitted as a solicitor in New South Wales.

She was awarded a Rhodes scholarship and, in 2006, graduated from Balliol College Oxford with distinction and an MPhil in public international law.

While studying, Robinson did volunteer work with human rights organisations, focusing on the accountability of multinational corporations for human rights abuses. In 2002, she volunteered with the Institute for Advocacy and Study of Human Rights, focusing on the Grasberg mine in West Papua, Indonesia.

While at Oxford, she worked part-time for Geoffrey Robertson. In 2009 she joined the London law firm of Finers Stephens Innocent and in 2011, became the legal director for the Bertha Foundation, tasked with creating and developing a global human rights and public interest law programme.

An avid reader and enthusiastic traveller who considers herself a global citizen, she plays touch rugby, hikes, and runs to keep herself fit and sane. She's also a foodie who loves trying different restaurants.

Since her first encounter with Assange, she has travelled the world advocating for his rights. "I defended him in the early stages of the extradition proceedings in London, I advised during Cablegate and I helped him negotiate the release of Cablegate with all the media partners..."

"I have met with Australian government representatives, raising Julian's case and trying to encourage our government to do what I believe they ought to have done in his case and did not do."

She also attended Bradley Manning's Article 32 pre-trial hearing on behalf of WikiLeaks and filed the first case with the Centre for Constitutional Rights on WikiLeaks' behalf, seeking greater access to material and better public access to the Bradley Manning proceedings "because, as I discovered when I turned up at proceedings in 2011, the reporting restrictions and restrictions on public access are worse than at the

Guantanamo Bay hearings. From a First Amendment point of view, that raises real concerns. "Unfortunately, that case we filed with the CCR was ultimately denied but it was an important point of principal."

Robinson has also given numerous media interviews and public lectures about WikiLeaks, to raise awareness.

"Because of the statements made – particularly by the US government – there is a misperception about what WikiLeaks does and the legality of what they are doing, so you've got a financial blockade by financial companies which is completely extra-legal. There is no law prohibiting people from giving money to WikiLeaks. But you are prevented by those companies from using your Visa card or MasterCard to donate to them."

WikiLeaks is
also pushing
the boundaries
and forcing the
mainstream press
to do better

Robinson sees Assange every few weeks to consult and discuss strategy. Since taking up his case, she's been to Australia, Greece, Germany, Pakistan, India, Indonesia and Malaysia, mostly working for the Bertha Foundation.

"I travel around the world and he's still there... I walk in and he's sitting with his arms folded, and he says, 'Where's Jen been now?' I really feel for him. But, inevitably, I come back with stories about how enthusiastic people are about WikiLeaks."

"I was recently with Imran Khan in Pakistan looking at drone attacks, and Imran himself spoke about the importance of Wikileaks..."

So how is Julian Assange doing?

"He is as comfortable as you can be, being confined to a small embassy with no outdoor area. He can't go outside.

There is no outdoor area where he can exercise. There are police stationed at every exit and window. I can count four or five police officers at any one time. I pass two before I get in the door and there are others stationed at the back of the building. It creates an oppressive feeling. But he copes remarkably well with the pressures. He is still working away as best he can. WikiLeaks has just released the Kissinger Cables, so they are still releasing material.

"The Ecuadorian government has said they would like to see a resolution of this case by the end of the year. Julian has already been there six months, can you imagine. It is hard to comprehend what it would be like."

Does she like Assange?

"I don't have to, but I do. He is incredibly smart and brave and incredibly committed to what he does. There are few people I've met in my lifetime who are as committed as he is."

"He knew that, by publishing, it would make his life incredibly difficult... but he did it anyway, knowing he had an obligation to the source or sources to publish and that is the stated commitment WikiLeaks makes – if you give it to us and we verify it, we publish it. He did that, knowing the personal sacrifices he would have to make to do it and that is brave. Whatever anybody else says about him, they would have to admit that was brave."

"It's also," she says, "great fun to debate with someone who is so well-informed, and who really takes the time to understand the cases and legal concepts."

Is Assange a misunderstood man?

"Yes, he really is misunderstood by the mainstream media. The coverage of him as a person is unfair. He can be very difficult. But it is generally because of his commitment to what he is doing. I think you have to be hard-nosed and a pretty dogged character to achieve what he has done."

And what of WikiLeaks? "WikiLeaks has provided a great public service. It is an incredible innovation in terms of journalism. The word WikiLeaks has become synonymous with debates about the nature of journalism. As a platform, the technology provides anonymity to sources. It provides, through technology, a protection that the law does not provide the world over.

"As a media defence lawyer I am con-

stantly lamenting the fact that journalists can still be sent to prison for contempt if they refuse to reveal their source. It is still the position in Australia and many Commonwealth states and many states around the world.

“WikiLeaks is also pushing the boundaries and forcing the mainstream press to do better. The mainstream press has a duty to have an antagonistic relationship with government in terms of secrecy and transparency... and unfortunately we have seen way too many examples in recent years where the mainstream press have sat on stories of major public interest because of their relationship with government.

“Bradley Manning’s statement to the court in his court-martial proceedings in the US emphasises the point. He said he tried to give the material to the *New York Times* and the *Washington Post* but nobody got back to him and it was only when he took it to WikiLeaks that he could feel a sense of relief that he could leak the material and it would be made public.

“How can we as the public make democratic choices about government and about things being done in our name if we don’t know what’s being done and we don’t have the information we need to make properly informed choices?

“WikiLeaks places a spotlight on the cosy relationships between media and government and how those relationships can result in self-censorship.

“A further concern is the concentration of media ownership and also corporate ownership of the media which has meant that, sometimes, other vested interests (eg, what the rest of the corporate empire has at stake with government in terms of contracts) can affect the way the media reports facts.

“That is probably one of the best things about WikiLeaks. It has made people see that. You don’t read the newspaper as gospel any more. It is crucial for people to bring a questioning mind to what is being reported and why...

“The way WikiLeaks papers are being used for greater human rights accountability is to me really important.

People ask Robinson all the time where she thinks the Assange saga will go... I cannot tell you. If someone had said to me in September 2010, when I first met Julian, that this case would



Jennifer Robinson with Julian Assange after his extradition hearing in London in January 2011

become as huge as it has; that I would end up having to visit him in the Ecuadorian Embassy, I’d never have believed them.”

Is Jennifer Robinson there to the end for Assange’s cause?

“To the extent that I am required, yes. And it is incredibly disappointing to me as an Australian that our government has been so terrible on the issue. It is a wake-up call for all Australians that our government will not necessarily look out for your interests.

“We asked the Australian government to ask questions of the US about their plans. They refused. The only assurance Australia asked for from the US is that they provide forewarning before they seek his extradition, so that Australia can prepare its political response. That, to me, is embarrassing for my country and very sad.”

Besides her work with WikiLeaks and the Bertha Foundation, Robinson is an Adjunct Lecturer in Law at the University of Sydney Law School.

Her role at the Bertha Foundation is to mentor young people with an inter-

est in human rights into long-term careers in public interest law.

“It’s something of an unusual career choice for someone my age who has been doing some really high profile cases. The reason I found it so compelling was that this programme will facilitate many more public interest lawyers.

“Our aim is, over the next decade, to facilitate 1,000 young lawyers – and generally to elevate the notion of movement lawyering – lawyers who work to support the work of activist groups through strategic litigation.

“The wonderful thing is that I am creating a programme for others that I would have loved to have had at university.”

What drives Robinson to do what she does? “It sounds clichéd but I am motivated by injustice and wanting to fix it. I guess I couldn’t stand it if my brother were treated the way Julian was treated...

“It’s that sense that... if you are able to imagine what it is like for those in society who are marginalised, it doesn’t sit well not to do something about it.” ■



Caliban's rage. William Jefferson Clinton's eight years of reptilian rule

HOW CUNNING OF THE PUBLISHERS TO BRING OUT hardback and e-book versions of *No One Left to Lie To* when the soothsayers are murmuring that Hillary Clinton has designs on the White House. Christopher Hitchens's furious denunciation of the House of Clinton and all its works, first published in 1999, might just give Democratic voters cause for pause.

Razor-tongued Hitchens, now no longer with us, did a gory hatchet job on President William Jefferson Clinton, erstwhile darling of the American left – but he was equally unsparing of Hillary. The book, with an admiring foreword by Douglas Brinkley, spares neither of the Clintons.

Not since the formidable commentator H L Mencken fulminated in the 1920s and '30s against the sinful politicians of his day has so much articulate rage been directed at the American political system and those who so cynically exploit it.

Veteran journalist Hitchens went into battle fully armed. He knew his stuff, and carried out determined research for years. The book is initially densely populated with names unfamiliar to foreign readers, but you get the picture. It appears that the Clintons wielded malign power from the centre of a web of dodgy connections.

Brinkley comments that Hitchens had wanted to be sympathetic to Bill Clinton, but his sense of ethics made that impossible. He refused to be a liberal muted by the “moral and political blackmail of the Clintons' eight years of reptilian rule”.

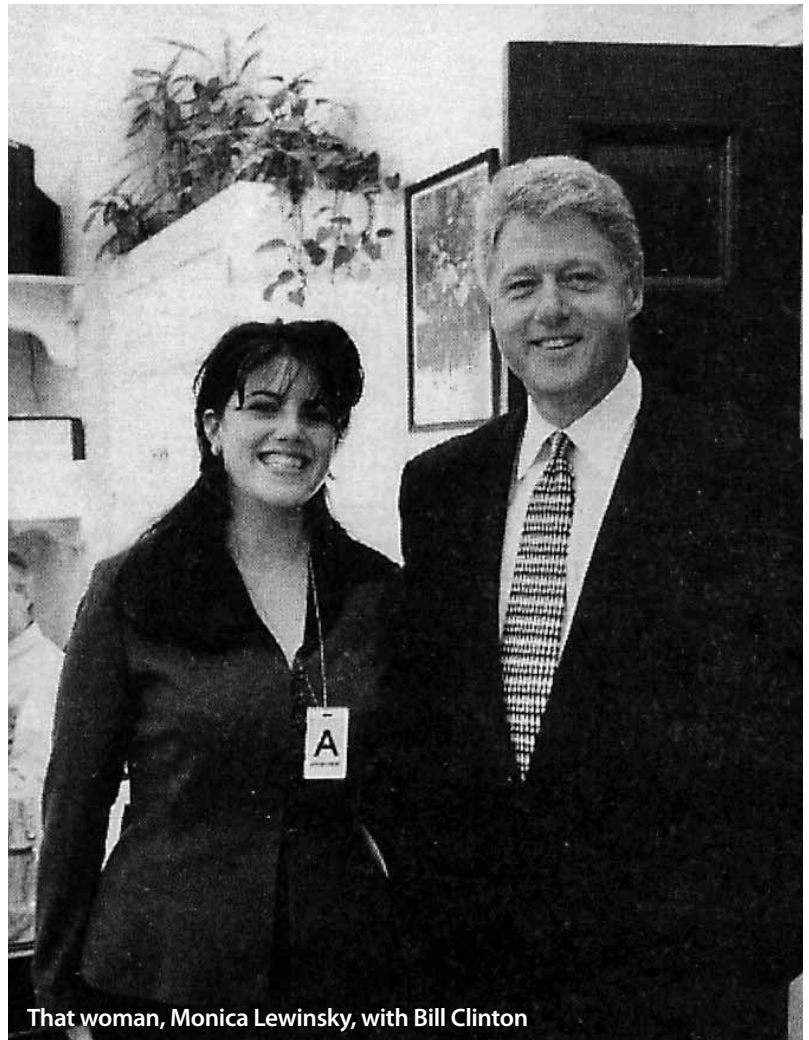
And he is persuasive. If his vivid vocabulary occasionally seems over the top, he soon proceeds to prove the relative merits of this prosecution. The invective is particularly scathing in the chapter headed “A question of Character”. In the midst of the Monica Lewinsky scandal, it became clear that Clinton toadies worked frantically to persuade the populace that they should concern themselves with “issues” rather than display improper interest in “personalities”.

This dodge proved increasingly unconvincing as abused and discarded women started popping out of the woodwork to tell their tales of unhappy encounters with Bill Clinton. By and large, he seemed to have an eye for respectable women, whom he forced to succumb. At least two of

NO ONE LEFT TO LIE TO
by Christopher Hitchens
(Atlantic Books, London)

them accused him of biting. Their respectability worked in the assailant's favour, as they wished to avoid unpleasant publicity.

Hitchens detected a recognition of the “character issue” at the outset. He says “not one of Clinton's team in 1992 did not harbour the fear that a ‘flaw’ might embarrass and even humiliate everybody”. There were suspicions that there might be funny money problems, “bimbo eruptions”, or a sordid combination of the two.



That woman, Monica Lewinsky, with Bill Clinton

Hillary Clinton's book *It Takes a Village* records a relevant conversation with the Clinton daughter Chelsea. Her mother tells the six-year-old that other people will try to convince voters to vote for them instead of for Daddy by saying terrible things about him. "Chelsea's eyes went wide, and she asked 'What do you mean?'. We explained that in election campaigns people might even tell lies about her father in order to win." Chelsea was in tears.

Hitchens contends that Clinton half-realised, when he gained the Oval Office, that he had no grand thoughts and no noble dreams. He also realised that he might have to give up one of the things which brought him release from his demons. "He lost little time in substituting the one for the other, and reacted with extreme indignation when confronted with the disclosure of the fact. This was the rage of Caliban glimpsing his visage in the glass."

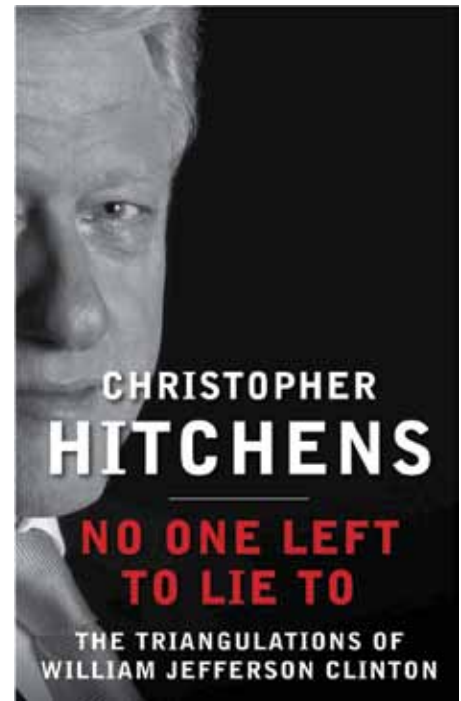
Hitchens demonstrates what he believes were deliberate attempts to divert attention from his impeachment proceedings by ordering pointless bombing raids on distant lands.

At Christmastime in 1998 demon-

Clinton half-realised,
when he gained
the Oval Office, that
he had no grand
thoughts and no
noble dreams

strators outside the White House protested the bombing of Iraq with chants of "Killing children's what they teach – that's the crime they should impeach".

As the sexual assault cases mounted against Bill Clinton, one of the presidential couple's advisers, Dick Morris, was fired. He then remarked that "Bill loves Bill and Hillary loves Bill, and so



that gives them something in common".

Hitchens comments that the cynical lying campaign against Monica Lewinsky and other women sexual victims of the president revealed Mrs Clinton's one worthwhile achievement, in having tried to protect her daughter by forewarning. "A speck of pity here, perhaps," Hitchens reluctantly concedes. ■

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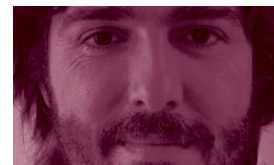
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Game theory. Playing to win means that everyone loses

DURING DESSERT, rude conversation was silenced by the appearance of our hosts' young daughter. Five years old and insomniac, she had stomped through to the adults to stand on tiptoe and whisper into her mother's ear that she did not want to go to her preschool's athletics day tomorrow.

We were sympathetic. Most of us had disliked the sporting events we had endured during our childhoods. No matter how nurturing and supportive our parents or teachers had been, we had all feared failure, and even as five-year-olds we had a keen sense of which classmates were good at running or throwing and which weren't. For those children who were not particularly speedy or co-ordinated – the majority – the whole thing was a cattle parade in which well-meaning adults patronised you and told big fat lies. It's not about winning or losing, they kept saying. OK, we wondered, but then why do the winners get ribbons and everybody else gets a platitude? If sport is not about winning, then why do it? Why not just organise an inter-schools stroll in the sun?

Her mother phoned in some excuse or other the next day, but of course we all knew that bunking her first sports day would not save the child from the path along which almost all middle class South African children are dragged: that decade-long ritual which is officially called "playing" or "participating" in organised sports, and which, for the most part, has very little to do with participation and even less to do with play.

In South Africa, sport for chil-

dren is as much about adult expectation as about children having healthy fun. And because we are a nation unhealthily obsessed with elite sport, we turn a beam of pure, concentrated ambition on our youngest sportsmen and sportswomen, with retarding results. Middle class South Africans are barely old enough to walk when they first understand how their sporting careers will play out. Either they will be athletic, and will be pushed towards provincial and then national "honours" (South African nirvana), or they will fall out along the way. Once they fall out, they will be expected to become sports watchers, standing adoringly at the sideline, buying stupidly expensive merchandise to prove that they are loyal supporters and therefore Real South Africans.

There is a terrible hollowness to this progression, because it overlooks one of the fundamental requirements of sport: participation. In our unhungry rush to embrace elite sport, we have learned to mock less skilful athletic pastimes. The girls or boys in the fourth hockey or cricket team are seen as losers four times removed from the sunlit uplands of First Team



glory. Even when we're old enough to know better, we unconsciously react with patronising, "ag sweet" pity when we see an elderly amateur hobbling around a field or a tennis court. We don't realise that we should envy them.

I'm not suggesting that we should do away with elite sport. On the contrary, sport played at the highest level remains a profoundly compelling spectacle to watch. Besides, without it, hundreds of famous international footballers would be unemployable as anything other than crash-test dummies and sandbags. But I would argue that this all-or-nothing view is bad for our society, and especially bad for our middle class, prone, as it is, to ignoring large chunks of humanity at the best of times. I could even imagine that there might be a link between active participation in low-level sport and active citizenship. When all you do is watch international sport, it is inevitable that you might start believing that anything less than total mastery is a waste of effort. This belief could easily inform your life as a citizen, too, as you convince yourself that if you can't vote in people who will do exactly what you want, there's no point in being involved in civil society.

The destructive potential of elite sport was never more evident than in the fascinating phenomenon that was the Makana Football Association. Formed by political prisoners on Robben Island in the 1960s, the League's sophisticated administration and strict adherence to Fifa was intended to give the lie to racist myths about blacks' inability to organise themselves or be disciplined.

From the outset, the MFA emphasised participation rather than ex-

cellence. Elderly prisoners played alongside teenagers, and men with two left feet hacked along next to players with genuine *eshibobo* skills. But soon the better youngsters wanted more. They wanted to excel, to delight in their youth and brilliance, and so a kind of Dream Team was formed. It was an organic desire, and entirely understandable; but its impact on the solidarity of the prisoners was dramatically destructive. An elite team implied that everyone else were Losers. Eventually the team was disbanded to save the Association. It revealed the surface tension on which participation sits; how, when we play to enjoy each other, we play within ourselves; but when we play to win, we have to discard something of our humanity.

**Widely regarded
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nurturing and
inclusive game**

No matter what the beer ads tell us, elite sport is not a triumph of the human spirit. It is a focussing, and, by implication, a narrowing of it.

So how do we create a more humane mindset through sport? One answer might be to examine the games we force our children to play. Huge amounts of money and time go into trying to determine whether certain food or parenting techniques are helping or harming children, yet few have ever questioned whether rugby, hockey, netball or cricket are helping to create happy, engaged citizens. Are we sure, for example, that we shouldn't be offering football instead of rugby? Are we ever going to wonder whether co-ed games might be more beneficial than segregated ones?

One glaring example of the blind spot caused by our focus on feeding elite sport is the game of rounders. Widely regarded as the preserve of naff primary school teachers, it is, in fact, a profoundly egalitarian, nurturing and inclusive game. Where our other favourite national sports demand individual brilliance, rounders is structurally inclusive. Everybody gets a chance to bat, and if you're a rubbish batter, you only have to suffer the humiliation of three swings and three misses. Even better, you don't then have to watch a star bat for an hour while you stew in the shame of only having lasted 90 seconds. Nine innings mean nine shots at redemption. And perhaps most important of all, boys and girls can play together, and hopefully un-learn some of the appalling lessons society has taught them about who they are and where their value lies. If nothing else, it teaches girls how to throw, and in so doing allows them to enjoy one of the primal pleasures of our species.

There are other strategies, of course. Keeping parents off the sidelines might be a good start: we don't allow parents to come into exam venues, to shout aggressive support at their children while yelling "You're all going to fail!" at the other kids; so why is this allowed on the sports field?

But most of all, we need to find a way of reminding ourselves that it's okay to play sport badly. Once we've mastered that, who knows? Our five-year-olds might want to go to their sports day tomorrow... ■



Sad end. Death of a dream that excited a miserably impoverished community

FOR THE LIFE OF ME, THERE ARE SOME things I will never understand. One is the failure of people to work in harmony for the greater good. Nothing could serve as a better example of this than the Industrial Development Corporation's pull-out from a project involving our neighbouring community of Badplaas.

This rural impoverished community has just been dealt a major blow as a result. The IDC was slated to be putting up R3.2bn for a lemon-growing venture with Coca-Cola that would have had dramatic economic impact – not least by creating 6,000 permanent jobs.

In a letter to concerned community members, the IDC said the ongoing problems of land claims and other factors had forced its hand, resulting in the unfortunate decision to pull out. In fact, not just pull out but cancel any prospect of situating the project in this lush but highly impoverished valley.

When I covered the area's land-claims disputes between 2007 and 2009, I witnessed the desperation of people over the lack of jobs – a plight made worse by the land-claims fiasco.

Another question that does not seem to have a suitable answer, or any answer at all, is why didn't the government – in this case, the land commission – step in to resolve these disputes?

For me, the resolution should be simple: OK, you the community trust – so and so – will have this portion of land; and you – whoever – will have that portion. All other claims are now null and void, finish and *klaar*.

There are times when someone must take a firm decision.

Why didn't the politicians intervene to save this major project? Why couldn't the various parties, land claimants, come to agreement over their land disputes in order to save the project and bring in the R3.2bn investment? Many of them are doing nothing productive

with the land they've acquired anyway.

I am reminded of some of the poverty I saw while gathering stories in that poverty-stricken valley – like a *gogo* carrying a 20l bucket of water on her head, and households using home-made stoves fired up with wood.

The IDC explained its pull-out decision in great detail. This, as we know, is rare in our Mzansi, since so many such projects fall victim to the thieving actions of unscrupulous characters – be they the sons, nephews or whoever – of leaders holding the highest offices in the land, or some other shmuck.

In brief, the IDC said, "the IDC has every intention of making a project happen, but the Badplaas site has unfortunately presented too many time-consuming challenges.

"...all necessary preliminary work was completed, such as the feasibility study which included the soil study; infrastructure study; irrigation water availability study; as well as the modelling for the farm and the processing plant. The socio-economic study was also completed, however, the unfortunate result is that Badplaas is not a viable site at this stage due to these factors. Other factors include disputed land ownership among current land owners, lack of legally constituted community representative bodies, ongoing court cases and arbitration about land ownership and sales."

Along with all these pressing land issues the IDC said the project had also been derailed due to applications for prospecting permits for silver and gold on most of the area's earmarked properties and because of a lack of co-operation "from the Nkomati Mine, as well as Department of Mineral and Energy Affairs with regards to environmental monitoring information and possible pollution. It will therefore not be possible to currently develop a 2,000-hectare project in this area".

Nkomati Mine? Owned of course by

Mr Philanthropy himself, Patrice Motsepe of African Rainbow Minerals.

For crying out loud, how could such a group, with such a personality as Motsepe not intervene, or at the very least cooperate with the IDC?

The IDC, in closing, said it had decided not to pursue the Badplaas site further and rather look for an alternate site for the project.

"We trust that efforts to sort out the land ownership, the legality of the trusts and CPA land ownership bodies will continue to unlock the land in this valley," wrote IDC senior specialist Johann Marshall.

The project would have gone a long way to help the community recover from devastating economic losses incurred in the early 2000s due to land restitution and land claims.

The land restitution programme saw the area's economic base – agriculture – virtually eliminated, while the beneficiaries of said restituted land made the situation worse by failing to keep the land productive. This was exacerbated by their overlapping claims which remain a problem today. Add to this corruption whereby land was bought from farmers and sold to the government at highly inflated prices, One of the most damaging incidents was the fraudulent hijacking of a trust, the Ndwandwa Community Trust, and its 17,000 hectares. The regional land commissioner at the time paved the way for the alleged fraudsters to undertake the hijacking by combining several trusts with the original Ndwandwa Trust saying it would help speed up the restitution process. But that is a story in itself.

Already disadvantaged by the monumental mess created by the former commissioner, the historical land restitution and the land claims fiasco, the poor beneficiaries have now also lost out on the IDC's Coca-Cola lemon project and all those jobs. What a sad end to a dream. I still can't believe it. ■



Rooi Hel. The devil is in the detail

NO MAN IN THE STREET NOR EVEN WOMAN in Port Elizabeth knew why the local prison was called the Red Hell. I mean it's just a big rectangular sort of lump of *gebou* with lots of poky windows and steel bars all over and the colour of ordinary old bricks, the least exciting of colours. But the Prisons Service had never felt it was their job to be exciting certainly not to be Hellishly exciting.

Upon entering die Rooi Hel, however, one noticed that the staff never took off their caps but pulled the peaks well down over the eyebrows, whilst the *bandiete* there always looked only at their boots, even when wishing one a good morning. This in spite of the fact that a certain *Superintendentgevangenisbeampte* who had better remain nameless decreed it imperative that a convict should not creep around all the time searching for shreds of tobacco on the floor but look one straight in the eye and smile respectfully.

Yet it was this self-same Superintendent who on going through the books one day had realised that it was now 1965 and his prison was available for a coat of paint, he was the one to choose the colours, and since he had plenty of free labour he could make it as complex and beautiful as he chose. The inside of his *gevangenis* was of simple austere facebrick, see, with neatly done courses of mortar, and now he chose 200 buckets of much better brilliant Indian Red acrylic and appointed a squad of 20 artistic *bandiete* to paint every brick with a small brush. Not the mortar between bricks, just the face. Throughout the entire *boep*. But upon standing back when the job was done he found it all a bit monotonous and got the painting span to go over all the mortar with an even smaller brush and white paint. Well, what can I say? To behold it was madness. This is the reticulate camouflage system of the giraffe, man! The lion is unable to settle its eyes on any part of the body and by the time it's got its mind together and is ready to sink

its canines into some part of its prey, the giraffe is half a kay away and still galloping.

In *boep*, galloping in any direction is seriously discouraged, we *byt vas* and go about with hung heads as if in mourning, and now and then we do indeed find something to smoke; snout, tobacco. But the Big One is when some crafty dealer has smuggled in some *boom* and they're smoking it up in a secret corner; then a great sigh goes up



The superintendent appointed a squad of artistic bandiete to paint every brick with a small brush

throughout the *boep* and every *bandiet* rushes to window or ventilator for a second-hand lungfull of the delicious dagga fumes wafting all about.

And that's how *ou* Elston comes to be positioned on a stool at the passage window of our cell. A warder happens to be standing there. In *boep* language you get two sorts of *boer*: 'n *plaasboer* and 'n *tronkboer*. A farm-farmer and a prison-farmer, and this one snarls at Elston, *Hoekom hou jy my dop?* Elston replies: *Waar moet ek nou kyk?* The

boer gets enraged. *Klim af of ek kla jou aan!* he hisses. Elston gets down. But a minute or two later he's back and sniffing. Now there's a cleaner *bandiet* in the passage with his broom and Elston says to him, *Waar's die boer?* Cleaner looks obviously at somebody to one side who signals him some sort of message. *Hoekom vra jy?* cleaner asks. *Ek wil hom naai,* says Elston.

Yirra yissis the *boer* goes berserk, 'ksê! He furiously unlocks the metal outer, cell door, slams it open and he's just about to open the steel grille when he sees *ou* Elston coming for him across the cell. It's a big cell with 12 of us in it, nasty bastards, long-term convicts waiting mindlessly for transfer to Pretoria Central. Elston is pushing the Indeterminate for GBH. He is a *breker*, a street-fighter. His weapon of choice is a length of heavy motorcycle chain on a stub wooden handle. Elston's face is a mess of badly-mended bone and scar tissue. His hands are as the underside of a rhino's foot. He is merciless and impervious to pain.

The *boer* quickly re-locks the grille, just in time. But Elston might reach through the bars to grab his lapels and smash his face forwards against the bars. He makes off at the double and comes back with two really heavy *ouens* with handcuffs, leg-irons and truncheons at the ready. Elston smiles sweetly and steps forth. He smiles sweetly at the Super in his office. It's lashes for you *orraait*, says Super, you know that's what you get for swearing at a *beampte*. He's passed sentence before hearing any evidence. I didn't, says Elston, I told the section cleaner I wanted to make love to the *beampte*. Super scans Prison Regulations in his *soukol maaind*. Nothing. *Is jy dan 'n moffie?* says he. Are you a sodomite? *So af en toe, seg ou* Elston, also I *steek* small donkeys and big dogs and chickens. *Jou vieslike skurk!* says the Super, you disgusting scoundrel, and further scans. There's nothing in Regulations about bestiality of course and nothing about prisoners being in love with staff.

You know you not allowed to look out the windows, says he. Three meals, starting tomorrow. Elston smiles sweetly. ■

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