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noseweek

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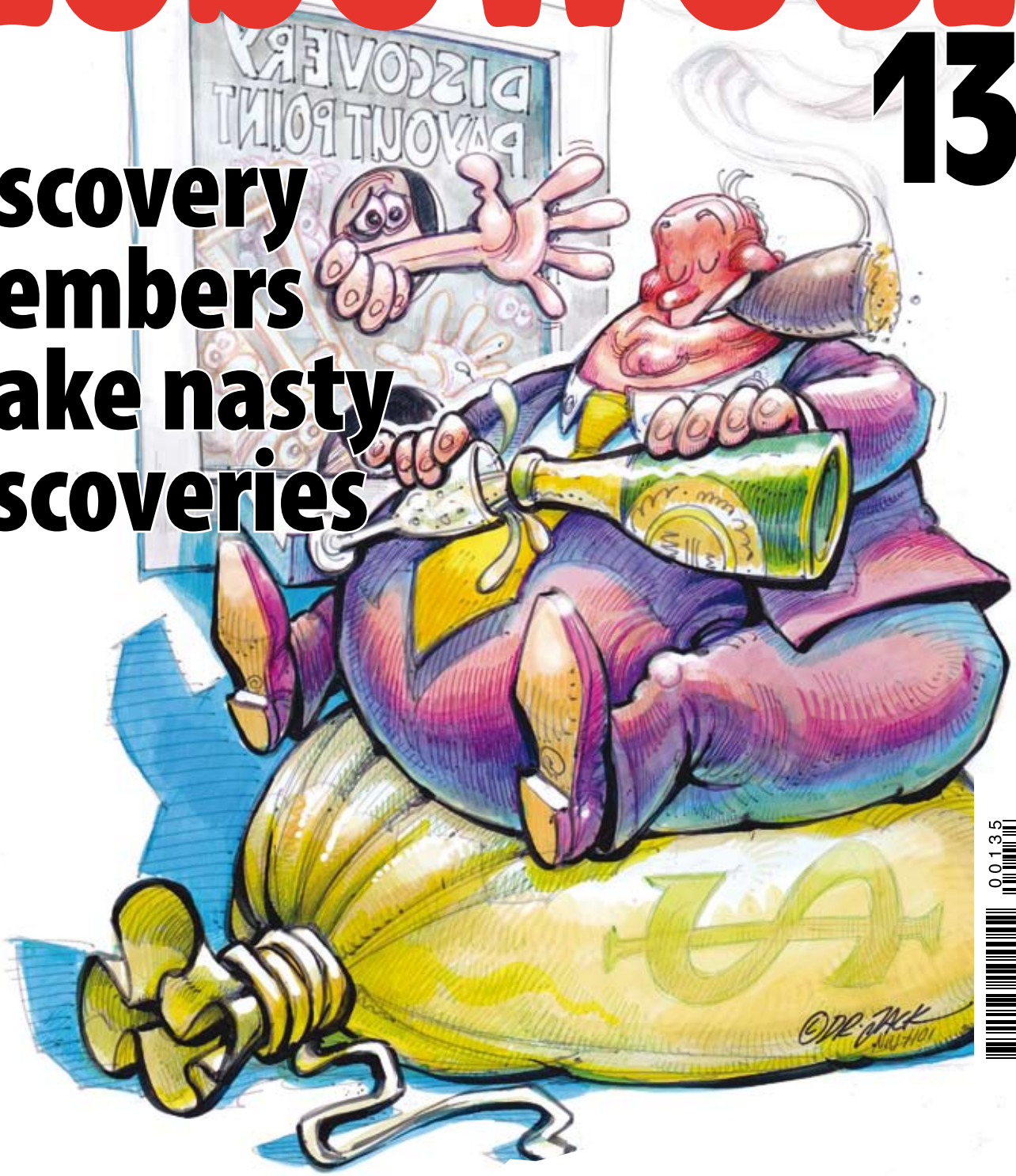
JANUARY 2011

Discovery members make nasty discoveries



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"Laid back" accountant siphons millions

Exec director and the missing zeros

Midnight board meetings, no minutes.

noseweek

JANUARY 2011 ISSUE 135

Discovery's rude good health page 8

Letters

Rotten apple falls close

FNB afraid of the Sexy Boys? ("Rotten sheriffs", *nose*134) I don't think so! Perhaps he who looks for rotten apples in someone else's backyard, discovers some in his own? FNB's potentially dodgy partnership with Quick Sell estate agents, may well be a bigger story than the equity theft made possible by corrupt sheriffs in South Africa.

Jacques
Cape Town

Making BEE work

In the light of your article "BEEn there" (*nose*134) – just think how much money gets lost with these types of contracts. The only assured fact is how much the "right person" makes. I really feel we must support proper transactions with accredited BEE companies by awarding them contracts they can handle, and have some sort of audit/support system in place to ensure they acquire the skills required to move up the ladder. Big business ought to get together on this; with concerted efforts, they could change the way BEE is handled. For a start we could take a closer look at the really successful BEE deals that have gone down, and how they were made to work.

BJ
by email

DA or ANC: spot the difference

It is most irritating to see that Western Cape MEC for local government Anton Bredell has behaved in exactly the same way we have accused our ANC-led councils of doing. I wonder if the DA will react to this story? This type of thing cannot be helping the cause of our local DA who are pulling out all stops to get elected here.

Beverley
Plettenberg Bay

Nuking Japs the right thing

Harold Strachan knows nothing about that war against the Japanese (*nose*133). I was involved in that war, chasing them out of Burma. We were preparing for the assault on Malaya and Singapore when the Americans dropped the Bomb, thus saving hundreds of thousands of lives, both Allied and Japanese.

The Japanese soldier was a total savage to his defeated opponents, seldom surrendered and had to be killed to get past him; it was assumed most of the Jap civilians would have acted likewise.

The carnage would have been horrendous: the American estimate of their casualties for the initial lodgment on the Japanese islands was 250,000 killed, wounded and missing. Add to that the Jap casualties and the bombs were totally justified.

That's apart from the fact that the Japs needed to be taught that their savagery at the rape of Nanking, their brutalisation of the inhabitants of conquered countries and the deaths of an estimated 20,000 allied PoWs on the Siam death railway and in PoW camps had severe consequences.

B Nobile
Vereeniging

Mono-Choice

Current DSTV decoders from Multichoice are blocked so that one cannot record TV programmes onto a DVD recorder/player. Only the PVR recorder can do the job, but Multichoice does not tell you this when you upgrade your older decoder. The PVR costs R2,000 and a monthly fee of R65 – far more than a DVD recorder. So don't throw out your old decoder.

And move over Bill Gates, we have a new monopoly on the block.

Chris Elston
Glenwood, Durban

> "He who looks for rotten apples in someone else's backyard sometimes finds some in his own"

Gus

Best Legge forward

In the article "Jake White threatened me with Kebble killer" in *nose*131 there is a defamatory reference to me as "*Star* sports editor David Legge (later fired for falsifying overtime claims) ...". That is untrue.

I resigned as an executive editor (responsible for sports coverage in *The Star*, *Saturday Star* and *The Sunday Independent*) in 2008 to join AFP as Africa sports correspondent. The decision was mine alone and no pressure was brought to bear on me.

The Star editor Moegsien Williams and deputy editor Jovial Rantao repeatedly pleaded with me to change my mind and stay. As a compromise I stayed on for many weeks after my planned departure date to ensure a smooth transition for my successors.

Mr Williams later hosted a farewell dinner for me. At no stage in 24 years (1984-2008) at Sauer Street was I asked to explain a financial decision. I was responsible for millions of rand and received continuous praise from superiors for the way I handled it.

David Legge
by email

A few senior colleagues on The Star confirmed that they had heard rumoured at the time what was reported as fact by Dale Granger in his noseweek *piece, but both Mr Williams and Mr Rantao have assured us that the rumour was completely unfounded. We sincerely apologise for inadvertently having perpetuated a falsehood, thereby possibly harming Mr Legge's good name. The offending reference has been removed from our website.* – Ed.

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Don't shoot the messenger

America's total onslaught on WikiLeaks *has triggered something momentous on the internet. It has finally forced the world off the fence. Now no-one can avoid the question: do we go along with the dishonesty and greed of disreputable governments and corporations, or do we make a stand for truth and decency?* Noseweek *and its readers have long ago made their choice clear.* WikiLeaks *deserves to be defended by decent people everywhere. In support of that contention we can do no better than republish here a piece written in early December by* WikiLeaks *editor-in-chief Julian Assange, as he was about to hand himself over to be detained by British police acting on a Swedish warrant. It was first published in* The Australian.– The Editor

In 1958 a young Rupert Murdoch, then owner and editor of Adelaide's *The News*, wrote: "In the race between secrecy and truth, it seems inevitable that truth will always win." His observation perhaps reflected his father Keith Murdoch's exposé that Australian troops were being needlessly sacrificed by incompetent British commanders on the shores of Gallipoli. The British tried to shut him up but Keith Murdoch would not be silenced and his efforts led to the termination of the disastrous Gallipoli campaign. Nearly a century later, *WikiLeaks* is also fearlessly publishing facts that need to be made public.

I grew up in a Queensland country town where people spoke their minds bluntly. They distrusted big government as something that could be corrupted if not watched carefully. These things have stayed with me. *WikiLeaks* was created around these core values. The idea, conceived in Australia, was to use internet technologies to report the truth.

WikiLeaks coined a new type of journalism: scientific journalism. We work with other media outlets to bring people the news, but also to prove it is true. Scientific journalism allows you to read a news story, then to click online to see the original document it is based on. That way you can judge for yourself: Is the story true? Did the journalist report it accurately?

Democratic societies need a strong media and *WikiLeaks* is part of that media. The media help keep government honest. WikiLeaks has revealed some hard truths about the Iraq and Afghan wars, and broken stories about corporate corruption.

People have said I am anti-war: for the record – I am not. Sometimes nations need to go to war, and there are just wars. But there is nothing more wrong than a government lying to its people about those wars, then asking these same citizens to put their lives and their taxes on the line for those lies. If a war is justified, tell the truth and the people will decide whether to support it.

If you have read any of the Afghan or Iraq war logs, any of the US embassy cables or any of the stories about the things *WikiLeaks* has reported, consider how important it is for all media to be able to report freely. *WikiLeaks* is not the only publisher of the US embassy cables. Other media outlets, including Britain's *The Guardian*, *The New York Times*, *El Pais* in Spain and *Der Spiegel* in Germany have published the same redacted cables.

Yet it is *WikiLeaks*, as the co-ordinator of these other groups, that has copped the most vicious attacks and accusations from the US government and its acolytes. I have been accused of treason, even though I am an Australian, not a US, citizen. There have been dozens of serious calls in the US for me to be "taken out" by US special forces. Sarah Palin says I should be "hunted down like Osama bin Laden", a Republican bill sits before the US Senate seeking to have me declared a "transnational threat" and disposed of accordingly. An adviser to the Canadian Prime Minister's office has called on national television for me to be assassinated. An American blogger has called for my 20-year-old son, living in Australia, to be kidnapped and harmed in order to get at me.

And Australians should observe with no pride the disgraceful pandering to these sentiments by Prime Minister Julia Gillard and her government. The powers of the Australian government appear to be fully at the disposal of the US as to whether to cancel my Australian passport, or to spy on or harass *WikiLeaks* supporters. The Australian attorney-general is doing everything he can to help a US investigation clearly directed at framing Australian citizens and shipping them to the US.

Prime Minister Gillard and US Secretary of State Hillary Clinton have not had a word of criticism for the other media organisations. That is because *The Guardian*, *The New York Times* and *Der Spiegel* are old and large, while *WikiLeaks* is as

yet young and small. We are the underdogs. The Gillard government is trying to shoot the messenger because it doesn't want the truth revealed, including information about its own diplomatic and political dealings.

Has there been any response from the Australian government to the numerous public threats of violence against me and other *WikiLeaks* personnel? One might have thought an Australian prime minister would be defending her citizens, but there have only been wholly unsubstantiated claims of illegality. The prime minister and especially the attorney-general are meant to carry out their duties with dignity and above the fray. Rest assured, these two mean to save their own skins. They will not.

Every time *WikiLeaks* publishes the truth about abuses committed by US agencies, Australian politicians chant a provably false chorus: "You'll risk lives! National security! You'll endanger troops!" Then they say there is nothing of importance in what *WikiLeaks* publishes. It can't be both. Which is it?

It is neither. *WikiLeaks* has a four-year publishing history, during which we have changed whole governments, but not a single person, as far as anyone is aware, has been harmed. But the US, with Australian government connivance, has killed thousands in the past few months alone.

US Secretary of Defence Robert Gates admitted in a letter to the US Congress that no sensitive intelligence sources or methods had been compromised by the Afghan war logs disclosure. The Pentagon stated that there was no evidence the *WikiLeaks* reports had led to anyone being harmed in Afghanistan. NATO in Kabul told CNN it couldn't find a single person who needed protecting. The Australian Department of Defence said the same. No Australian troops or sources have been hurt by anything we have published.

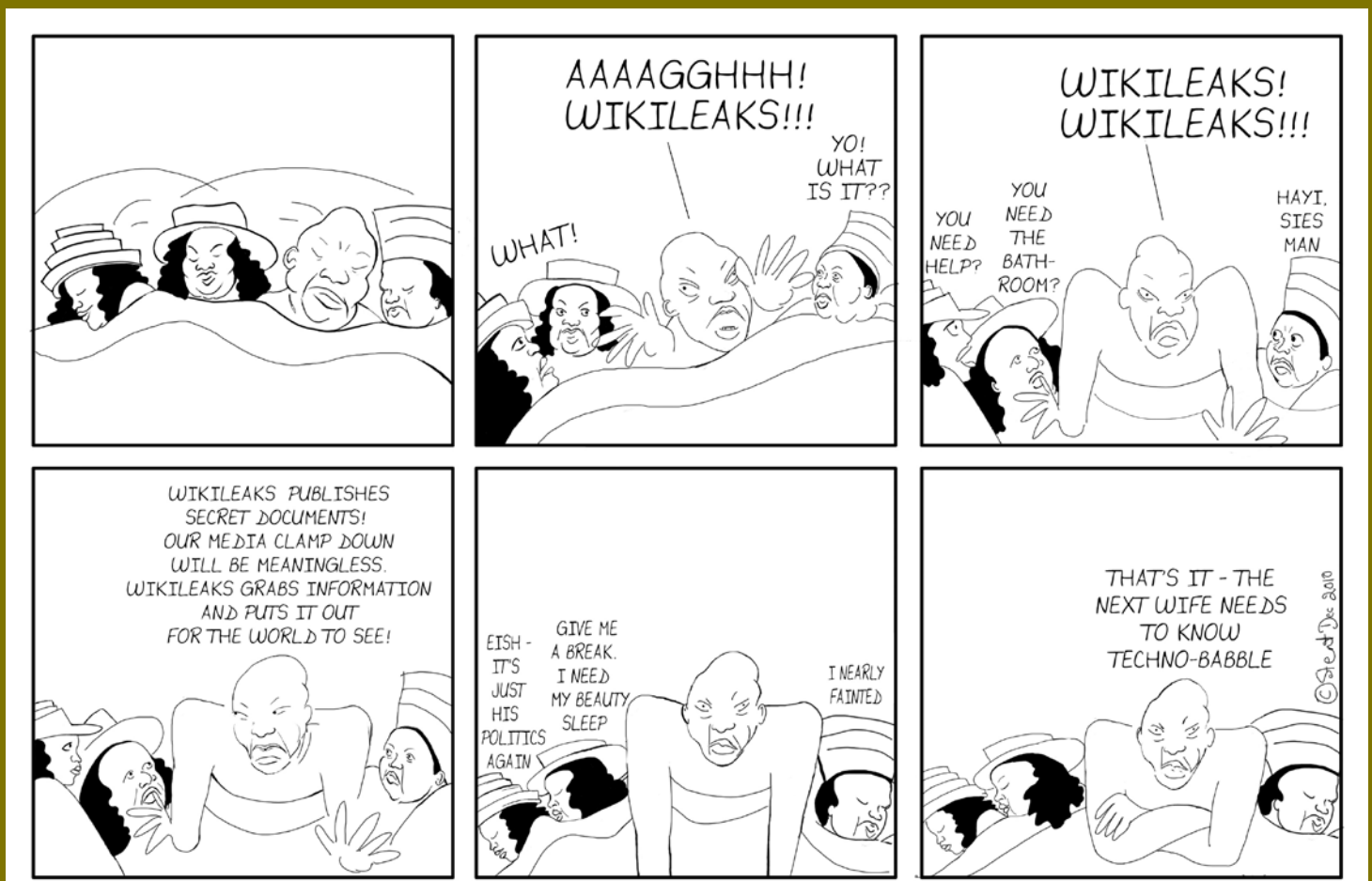
But our publications have been far from unimportant. The US diplomatic cables reveal some startling facts:

The US asked its diplomats to steal personal human material and information from UN officials and human rights groups, including DNA, fingerprints, iris scans, credit card numbers, internet passwords and ID photos, all in violation of international treaties. Presumably Australian UN diplomats may be targeted, too.

King Abdullah of Saudi Arabia asked the US to attack Iran; officials in Jordan and Bahrain want Iran's nuclear programme stopped by any means available; Britain's Iraq inquiry was fixed to protect "US interests"; Sweden is a covert member of NATO; and US intelligence sharing is kept from parliament. The US is playing hardball to get other countries to take freed detainees from Guantanamo Bay. Barack Obama agreed to meet the Slovenian President – if Slovenia took a prisoner.

In its landmark ruling in the Pentagon Papers case, the US Supreme Court said "only a free and unrestrained press can effectively expose deception in government". The swirling storm around *WikiLeaks* reinforces the need to defend the right of all media to reveal the truth.

Julian Assange



Nice try, SARU!

We reported in nose133 on controversy in the rugby players' trade union, the South African Rugby Players' Association (SARPA), involving CEO Piet Heymans. One of the charges against Heymans was that, as a result of his alleged incompetence, SARPA has lost its seat on the executive of the South African Rugby Union (SARU). Heymans denied being in any way to blame, and said the decision to exclude SARPA had been taken by an anti-trade union SARU board member. Heymans said the matter was going to arbitration, despite the fact that SARU had received opinions from three senior counsel, all of whom said that SARU would lose. On 16 November, while the Boks were training hard for their upcoming defeat by Scotland, the arbitration award was handed down by advocate Nic Treurnicht SC. Unsurprisingly, it was in favour of the players' union, with Treurnicht finding that the relevant collective agreement is binding on SARU, and that SARPA is entitled to representation on the SARU executive.

Katz out of the bag

In nose133, *noseweek* said Stephen (also called Steven) Powell had been the lead prosecutor in the prosecution of former Investec employee Laetitia Peyper. We also published that his ENS Forensic falls under Leonard Katz's liquidation division. Both statements were wrong. While it's true that Mr Powell was a prosecutor with the Department of Justice for many years, he in fact left the department in 1998 (long before the Peyper case) to work for Deloitte & Touche from where he was recruited by Sonnenberg Hoffman Galombik (now Edward Nathan & Sonnenberg) to establish ENS Forensic, of which he is managing director. He does not answer to Mr Katz.

While *noseweek* does everything in its power and resources to research facts, this time we stuffed up – for which we offer Mr Powell our sincere apologies; also our thanks for the polite way in which he brought the matter to our attention.

Buy, buy me a ponzi pie

Johan Swart, whose KZN ponzi scheme Exclusive Finance was exposed in *nose*133, is indeed still (as *noseweek* had heard) hanging out in Ballito and in the same line of business – working for Mr Dharshan Boodhram, who apparently sold Exclusive Finance to the Swarts in the first place.

A CIPRO search shows that Boodhram, who lives in upmarket Sandhurst has fingers in many a pie. He owns a number of companies with confusingly similar names, like New World Enterprises, New World Eduloans, New World Housing Finance, Simunye Brokers & Consultants CC and Simunye Brokers & Consultants (Pty) Ltd.

The search also showed Boodhram as a director of Edge to Edge 13 (Pty) Ltd, and wife Caroline Swart as a director of Edge to Edge 103 (Pty) Ltd. Apparently the assets of Exclusive Finance (such as they are) have been taken over by a cc called either One Lane or Fast Lane. (CIPRO shows no record of either but Mrs Swart did register a cc in May called All At One Finance – so be careful if you're offered a deal by any of these.)

Apparently five years ago a financial manager at Exclusive Finance, Hugo van den Heever, realising that something was very amiss, took his story to both SARS (tax evasion) and the SAPS (fraud). But there was no follow-up. Pity. Had they done their jobs, a lot of people wouldn't have lost their money.

■ People who lost money to Bernie Madoff's US ponzi scheme are determined to get some of it back. They have issued a string of summonses against companies they claim were complacent in allowing Madoff to operate. HSBC recently got one for $9bn (R85bn), JP Morgan Chase one for $6.4bn and UBS one for a mere $2bn.

In December Carl Shapiro, a Boston philanthropist, was persuaded to hand back $625m (R4.3bn) he had made from investments with Madoff.

Discovery's R135m cockup

How insurer looks after its wealth at the expense of your health

Bennie Piek, an entrepreneur from Benoni, has suffered eye problems for most of his life. As a child, Piek developed a traumatic cataract in the right eye, and at 21 had the cataract removed and an intraocular lens implanted. Despite his impediment, Piek, now 40, has been successful, having owned or had interests in a cellphone retail business, a labour brokerage, bottle stores, and a fork-lift company.

In November 2002 Piek followed the advice of his broker, Craig van Schalkwyk, then MD of Capital Solutions, to take out a "Risk Transaction" with Discovery Life, which provided protection for death, disability, dread disease and loss of income. Piek made full disclosure of his visual impairment and lens implant, and his proposal was accepted and the policy came into force in February 2003 at a premium of R2,300 per month.

That same month Piek had the intraocular lens in his right eye replaced, but shortly thereafter developed a retinal detachment that required emergency surgery. The lens was removed, leaving Piek without light perception in that eye – effectively, he became blind in the right eye. So, in April 2003, he submitted a claim to Discovery under the "severe illness" component of his policy. Discovery agreed to pay a lump sum of R114,000, being 10% of the sum assured (R1,143m), and to review the matter in six months. In October 2003, as there had been no improvement, Discovery upgraded the claim from severe illness to capital disability and agreed to pay a further R1m, plus "income continuation" of R31,000 per month for six months. In all, a satisfactory outcome.

After the pay-out the policy was shut down, and with Craig van Schalkwyk's help Piek applied for a new policy, to cover bond exposure (Piek had bonds totalling R3,5m), death, disability, illness, and loss of income. Piek referred to his disorder in these terms: "Permanent blindness right eye, deterioration of peripheral vision in left eye", and gave his doctor as Dr Troskie of Benoni Eye Clinic. The new policy came into effect in August 2004, with a hefty R8,000-per-month premium.

In 2005 Piek developed tunnel vision and was unable to distinguish colours, leading Dr Troskie to conclude that his left eye was following the trend of the right eye. So, in November 2005, Bennie claimed on the new policy, under capital disability, severe illness, premium waiver and income continuation benefits. Again no hassle – Discovery paid a lump sum of R5m and agreed to pay Piek's medical aid contribution (R4,500pm), his insurance premium (R8,000pm), and an income of R100,000pm. Again very satisfactory. Craig van Schalkwyk wrote to Discovery head of claims, Sylvia Steyn: "I would like applaud your company, its products and the individuals in the group for the amazing experience that you provide to clients. BRAVO!"

Not so fast Craig. After 18 months Discovery told Van Schalkwyk that, at the request of their re-insurer, Piek had to be re-tested, by Dr LP Kruger of Retinal Associates, apparently a top eye specialist. But Kruger was never available, so Piek saw one of his colleagues, Dr Marelize Conradie.

Conradie did a barrage of tests and said Piek should return for a second examination. But when he did, she was no longer sympathetic. According to Piek, she told him: "Either you're as blind as you say you are, or you're as mad as a

hatter." (Piek later learned that Discovery Life forensics head Marius Smit met with Conradie the day before that second examination.)

In her report Conradie claimed that Piek was light receptive in his right eye (she later apologised, saying it was a typo and should have read the "left eye" – some typo!). A few days later, Van Schalkwyk got a call to say the claim was under review, and he and Piek should attend a meeting at Discovery's offices. When they arrived they were told they were to see the forensics people rather than the claims people, and Van Schalkwyk immediately knew something was amiss.

They were taken to a tiny room, where, they were told, everything would be recorded. There they were "interrogated" for two hours by Dr Bill Munday, Alan Meechan of Claims, Marius Smit of Forensics, and another forensic investigator called Shane. And there was a bombshell: We've had a tip-off you aren't quite as blind as you say you are, Piek.

Piek and Van Schalkwyk weren't told who this "tip-off" had come from, but they're pretty sure it was from a man who had accompanied them on a game reserve jaunt, who was quite jealous when he heard about Piek's Discovery pay-out. (It transpired that Discovery had been sent a photo taken on the trip of Piek on a quad bike. Piek says Van Schalkwyk was sitting behind him steering the bike and they were travelling at about 5kph.)

It also emerged that Shane had been following Piek to his gym in Boksburg, and had taken videos of him finding his way around the weights' room (Piek's been using the place for eight years so of course he knows his way around – and someone always drives him there).

The Discovery team also claimed that Piek had misstated his income, even suggesting the two were in cahoots. The meeting got a bit heated, with Van Schalkwyk asking Marius Smit if he'd like to do a little test – take Piek out to the highway in your car and let him drive back (Smit declined the offer). Eventually it was decided that Piek would have further medical tests and that Discovery's auditors would do an audit of his finances.

Marius Smit later phoned Piek to apologise for how things had been handled and assured him he had nothing to worry about. Later he was told to go back to Retinal Associates to be examined by Dr Kruger himself. A rigorous five-hour testing session followed – but when Kruger submitted his report Discovery wouldn't let Piek see it. No wonder: it says he has "optic nerve damage in the left eye... the right eye is blind due to the retinal artery occlusion... Mr Piek has irreversible visual loss secondary to retinal disease as well as optic atrophy".

Having bombed out on that front, Discovery now focused its efforts on Piek's earnings. Somewhat predictably, the report submitted by Discovery auditors Ernst & Young concluded that Piek had overstated his income of R100,000 per month. Van Schalkwyk then did his own investigation of Piek's financial records, and concluded that his income was in no way overstated (Piek claims that his gross income over that period was some R172,000 per month). Van Schalkwyk delivered his report to Adrian Gore and Discovery Life CEO Herschel Mayer on 5 November 2007, and requested an urgent response. To date, he's heard nothing. Telling Discovery "Your company has failed our client; what was once sublime has denigrated to a disgrace" may have had something to do with it.

Steyn was frogmarched into a meeting and told to back off or seek alternative employment

Someone who did get back to Van Schalkwyk was Sylvia Steyn, Discovery Life head of claims. According to Van Schalkwyk, Steyn told him that, with the information it now had, Discovery would resume payments. But, says Van Schalkwyk, a short while later Steyn called to say she'd been frogmarched into a meeting and told by her superiors that she should back off or seek alternative employment. She added that, in her view, Discovery would be severely embarrassed should the matter go to court.

This may well occur. On 30 October 2007 Jaco Brand, General Manager: Individual Life Administration, Discovery, wrote to Piek: "[You] misrepresented your income and breached the warranties... further knowingly allowed accountants JJ Vermaak & Co, acting on your behalf, to provide false information... Discovery is entitled to cancel your policy." The company also demanded repayment of R 7,614,218, being the full amount paid out under the second claim – even though much of it had nothing to do with income.

A meeting followed but the matter couldn't be resolved. When Piek refused to pay Discovery instituted legal action for repayment. Piek also issued summons for payment of R100,000 per month until age 65 (in 25 years' time).

As a result of Discovery's repudiation, Van Schalkwyk, one of Discovery's top brokers (once described by Discovery sales manager Sean Hanlon as "a highly valuable intermediary", whose "contribution to Discovery, our clients and the industry as a whole is exemplary"), cut his ties with the company and moved to Momentum. Discovery's spiteful response came on 20 January 2008: "As a consequence of such termination you and Capital Solutions are no longer entitled to receive any renewal or trial commission in respect of business you submitted prior to termination." This deprived Van Schalkwyk of significant income.

So what gives? To Van Schalkwyk it's simple: Given Piek's medical history, the second proposal should never have been accepted – the underwriter made a mistake, and has been dismissed. He admits he was surprised that it was accepted, but adds: "I simply put forward the proposal. Piek made full disclosure."

After 18 months of heavy payments, Discovery's re-insurer told Discovery that it had messed up, and it would have to bear the loss itself. Over Piek's expected lifespan this could come to serious money, up to R135m. More than enough for which to ditch a client – and a valuable broker.

This was Discovery's commment on the story: "Discovery Life has instituted legal action against Mr Piek. The South Gauteng High Court has set the matter down for hearing on 10 October 2011... As the matter is *sub judice* we are not in a position to provide further information or comment."

Battling WITH MEDICS

Discovery Health plays hardball

"THANK YOU FOR CALLING Discovery; we may record this call to monitor the service we give you." So says an automated voice says when you phone Discovery Health. In truth, this should be followed by: "We won't give you a copy of the recording, especially if it shows we messed up."

Meet Rose Steyn (65) of Florida, Gauteng. Steyn has been slugging it out with Discovery since spending three weeks in hospital in 2008. She'd been unwell for some time with symptoms that included sweating and chest pains, when her GP referred her to specialist physician Gary Hudson at the Life Fourways Hospital.

Hudson, it seems, is very popular, and Steyn couldn't get through to his rooms by phone. So she emailed him saying she'd like to consult, and Hudson replied that she should check into the Life Fourways Hospital on 17 October 2008, and gave a medical aid code she would need. She phoned Discovery and was given a one-day hospital authorisation before checking in. Hudson didn't get around to seeing her until the following day, so Rose told him she was concerned that her hospital authorisation had expired. He assured her he would sort it out.

Over the following days Rose had all sorts of treatments and tests, as diverse as physiotherapy for a sore shoulder, an appointment with a clinical psychologist for depression, a gastro examination and an MRI test. (*Do we hear the sucking sounds of a milking machine?* – Ed.) The diagnosis: hyperparathyroidism, which would require a thyroid lobectomy, to be performed by a Dr Gordhan, a surgeon who would only be available some days later.

While this was going on, Rose had a very unpleasant experience. On the third day two admin people came to the ward – during visiting hours when it was at its fullest – and told Steyn that her authorisation had been retracted, and that if she couldn't pay her way she would have to leave. A highly upset and embarrassed Steyn rushed through to Dr Hudson's rooms, where he again assured her that "things would be sorted out". When she returned to the ward, she received a profuse apology from the sister – a dreadful misunderstanding!

In the meantime Steyn's daughter, Del Butts, had been on the phone to Discovery, talking to Dr Andrew Murray, head of the Managed Healthcare Division, and Lorraine Dos Santos, divisional manager in director Adrian Gore's office. Both assured Del that things would be sorted out, and indeed Dos Santos phoned back to say she had a new authorisation number. She asked Dos Santos to phone it through to Life Hospital Fourways, which apparently happened, because Steyn spent the next two and half weeks in hospital and had the surgery. In early November 2008 she was discharged after 21 days in hospital.

Yes, the number was a big one, upwards of R80k. But the real shock was yet to come – Discovery denied all liability for her medical expenses, claiming that the second authorisation had been retracted by Dr Murray. In a letter Discovery sent to the Council of Medical Schemes (which dismissed the

complaint lodged by Steyn), Discovery said: "The Scheme's position is that an authorisation is not a guarantee of payment and the final adjudication of a request for funding can only be made upon receipt of the claim, confirming the condition and treatment received." In a subsequent meeting, Discovery's Dr Murray said an authorisation is no more than an indication that the company is likely to pay the bill.

So what was behind the retractions? The reasoning is a bit garbled, but it seems to boil down to two things. Firstly, there's apparently an exemption in Discovery's rules, saying the company isn't liable for hospital fees where the patient is admitted before they've consulted with a doctor (Discovery say this is a common occurrence with Dr Hudson, who requires people to go into hospital if they want to see him at short notice). Secondly, Discovery claimed Dr Hudson failed to submit a written report, and did not properly motivate Steyn's hospitalisation. They reckoned that much of the treatment Steyn received could've been administered outside of hospital.

Dos Santos says doctors get patients to consult in hospital because it's more lucrative

Steyn may have spent three weeks on her back in hospital, but she wasn't going to take this lying down. Steyn, who admits that she's irritable and difficult, kicked up an almighty stink. Phones rang, emails came and went and tempers flared. In one email to Steyn's daughter Del, Dos Santos said she and Dr Murray had "explained the situation to your mother to the point of exhaustion". In an email to Dos Santos, Steyn said: "I am not of sub-normal intellect and comprehend without having to be tutored like a child. I have never sought a free ride and regard insinuation to that effect as an insult." After a while, Discovery blocked her emails.

A meeting was eventually set up to see how much, if anything, Discovery would pay from Steyn's savings and other accounts. It was decided that it would be best if she wasn't present, so she was represented by her husband Ben and her other daughter, Caroline Passmore. Discovery was represented by Dr Murray and Lorraine Dos Santos. Caroline had the foresight to record the meeting, and the recording makes for interesting listening.

As for the first authorisation given over the phone, Murray and Dos Santos insisted that Discovery had been misled into giving it – they claimed that, although Discovery was given a code, it hadn't been made clear that the purpose of the hospital visit was to consult. When Caroline asked to be shown the rule that excludes hospital consultations (it doesn't appear in the handbook for members, but apparently does in the *War and Peace*-length version of the rules that members don't get to see), Murray muttered about the rules giving Discovery discretion to pay for clinically appropriate hospital treatment, and that it isn't appropriate to consult in a hospital. As for the second authorisation, Murray claimed it had been given by an unauthorised junior.

No agreement was reached and a second meeting was scheduled, which Steyn attended. Not surprisingly things got heated, and Dos Santos eventually walked out, telling Steyn: "You should be fighting with Dr Hudson, not us." An emotional Steyn ended the meeting with a plea: "Please, Dr Murray, pay my accounts and restore my dignity." Progress was made, with Murray apparently agreeing that Steyn should be liable only for one day's hospital charge, the day she spent before seeing Dr Hudson. But Discovery still refused to pay R17,000 of the R86,000.

Two things became apparent. Firstly, Discovery was clearly not keen to release the recordings of the authorisations – Murray promised to make the recordings available but didn't; on another occasion Dos Santos answered daughter Caroline's request for the recordings by saying she had offered them to her sister Del who had failed to take up the offer; Dos Santos also told Steyn she had posted the tapes to her (they never arrived). Secondly, Dr Murray and Dos Santos were very keen for Steyn to understand that the villain of the piece wasn't Discovery but Dr Hudson.

Steyn says the message from Discovery was that doctors milk the medical aid. The recordings of the meetings certainly suggest that Discovery doesn't have much faith in doctors. In one of the recordings, Dos Santos says doctors get patients to consult in hospital because it's more lucrative, and that doctors are now "writing their own cheques". She describes Hudson and Life Fourways as "appallingly uncooperative", and says dealing with them is a "nightmare... like speaking to the dead". Dr Murray even expresses doubts as to whether a motivation that came from Dr Hudson's rooms was in fact written by the doctor, saying "doctors don't write like that".

Steyn says Discovery eventually persuaded her that she should lodge a

complaint against Dr Hudson with the HPCSA, because he had failed to submit a proper report so Discovery could not pay her claim. She was loath to do this because she thought Hudson had done a great job, but eventually agreed. This completely backfired: although it did force Hudson to submit a report which the HPCSA accepted as justifying the hospitalisation, Discovery still refused to pay the final R17,000.

So Steyn is liable for R17,000, which she cannot pay as she's a pensioner and her husband's insolvent. Dr Hudson was hauled before the HPCSA and, whatever anyone might think, has been cleared – and no longer wants Steyn as a patient. Understandably, Steyn is bitter: she was humiliated in the hospital, and feels that there's a strong implication that she's a malingerer who spent time in hospital as a sort of rest. She's determined to get her hands on the recordings (especially the one in which Dos Santos told her daughter Del that a second authorisation had been issued) as she's sure they'll vindicate her.

On 17 October Steyn emailed Discovery's Dos Santos, again asking for the recordings: "The contents of these tapes are wanted as I know they have been misrepresented. In short I want to protect my honour and integrity." Dos Santos didn't respond, and two days later *noseweek* emailed her repeating the request. The very next day one Khalik Mayet (Head: Legal, Risk & Compliance), sent Steyn one of those arsehole communications that lawyers are so good at: "In terms of Section 53 of the Promotion of Access to Information Act a request for access must be in the prescribed form... to facilitate the appropriate consideration of your request, we have attached the prescribed form... please take particular note of Section F... this is of significance especially in the light of ...your correspondence to our Ms Dos Santos on 17 October in which you (regrettably, in our view) intimate a desire to withdraw your scheme membership."

Steyn completed the form, but left blank Question F1 because she didn't understand it. It says: "Indicate which right is to be exercised or protected." Steyn did respond to the next question, F2: "Explain why the requested record is required for the exercising or protection of the aforementioned right." Answer: "It is my opinion that I have been wronged by Discovery ...and I need the tape recordings to illustrate this." Not good enough for Discovery. On 30 October Steyn emailed Mayet again: "Please do not stall matters.. to date Discovery have taken two years to produce tape recordings which they maintained they had at hand." On 8 November Mayet responded: "As matters stand we wish to advise you that until and unless the form is duly completed, we are not in a position to consider the merits of your request for information.. you are welcome to attend at our Walk-In Centre in Sandton at a mutually convenient time to listen to the voice recordings of the conversations between us."

Steyn responded on 9 November: "In my letter to you dated 29 October I clearly advised you that the Section F... was not explicit and I did not understand the question... you have made no attempt to indicate the purpose or implications of this question, only demanding that I complete and sign it." Mayet responded: "I refer to your email and advise that the contents thereof have not given us any cause to alter what was communicated to you." Steyn responded: "I note that you have no intention of giving me the tape recordings, nor the meaning of F1. I will not be bullied into signing blindly."

Rose Steyn responded: 'I will not be bullied into signing blindly'

Next day Mayet replied: "As matters stand and given the tenor of communications between ourselves, we think it prudent that you get independent advice regarding the meaning of question F1." Steyn responded: "It is a sad day when a member of your society should have to exercise caution and seek independent advice before signing an ambiguous document. You should be explicit with what you ask members to sign. Allow me to state that I will not be intimidated by your legal knowledge." Mayet responded: "We think it best that both parties desist from corresponding. Discovery is intent on not dragging matters on endlessly."

So, to avoid releasing some recordings, Discovery is quite happy to lose a client, put a client and a doctor through the wringer, and take the bad publicity that goes with it. As for the offer to let her listen to the recordings in Sandton, Steyn says: "Not only is it inconvenient – I'm in Florida, Gauteng, and they're in Sandton – but it's not what I want. I want the tapes in my hands. Otherwise, what's to stop Discovery denying what I say is on them."

Dr Hudson did not respond to a request for comment. Discovery's response was curt: "Discovery Health is familiar with Mrs Steyn's complaint and our executive team and medical advisers have engaged with her extensively. We have explained the reasons why we paid certain claims and declined to pay other claims related to her hospitalisation. Mrs Steyn lodged a complaint to the Council for Medical Schemes regarding these funding decisions. After conducting an investigation, the Council closed its file on the case. Based on the facts available to us and the rules of the Discovery Health Medical Scheme, no legitimate basis exists for us to review our funding decision. More recently Mrs Steyn has requested we forward to her certain information regarding her hospitalisation. We have offered her the opportunity to access the information at our offices at a time she finds convenient. This offer stills stands. However, she has declined to take up the offer and, as legal proceedings may follow in this matter, we believe it would not be appropriate for us to engage further with Mrs Steyn, or the press, regarding her complaint."

Let's give Rose Steyn the last word: "When all my medical accounts were rejected and the authorisations withdrawn/revoked an ad came on 702 for medical attorneys, Munro, Flowers and Vermaak. I immediately phoned them to get an appointment. This was my first introduction to the power game that Discovery play. I was politely told by Karen Vermaak that they are the preferred attorneys for Discovery and unfortunately would be unable to assist. Very early in my dilemma I learnt that I was on my own in a David vs Goliath situation. When I visited the offices of Discovery, my jaw dropped when I saw the luxuries they provide for their staff. There are bowls of fruit all over the place, small parcels of cashew nuts everywhere, fancy coffee lounges. I was aghast, it appeared very luxurious and extravagant."

Welcome to the world of private medicine Mrs Steyn.

‘You don’t REALLY need teeth’

ANOTHER PERSON totally angered by Discovery Health is Shelley Snijman of Johannesburg. She’s been with Discovery for 11 years and her plan also covers her 19-year-old daughter Sarah Wolmarans. Sarah was involved in a nasty motor accident in Kwa-Zulu Natal in November 2009, suffering serious head injuries and facial trauma, including a fractured lower jaw, the loss of six teeth, and the loss of a centimetre of jawbone. At the time of the accident Sarah wore orthodontic braces, but these did not aggravate her injuries.

Sarah spent seven days at the Westville Hospital (three in ICU), where she was treated by a maxillo-facial surgeon (Snijman had asked that Sarah be transferred to Johannesburg but Discovery refused). Internal fixation plates and wires were used to keep her jaw closed, but it seems the work wasn’t done very well. Sarah returned to Joburg for post-surgery care.

But when Snijman began submitting orthodontic and related surgical accounts – wires incorrectly placed by the surgeon in Durban had to be removed; new wires had to be inserted; dentures were needed to ensure that Sarah’s mouth didn’t lose shape – she was told by Discovery that this was all cosmetic, and would have to be paid from her savings (which were depleted).

Snijman is adamant that this is rehabilitative dentistry directly related to the accident, and so should be covered by the prescribed minimum benefits (PMB) fund or the trauma recovery programme. Discovery argued that the dentures were made more than six weeks after the accident, so could not be covered by the PMB fund. But there was a very simple reason for this – Sarah’s jaw was wired shut for a month after the accident. After that it was some time before she could open her mouth as much as 5cm, and the original braces and blocks were removed to obtain a denture mould, then replaced.

> When Sarah’s bone structure had to be re-aligned: Discovery refused to pay for ‘cosmetic treatment’

At one point the maxillo-facial surgeon treating Sarah in Johannesburg requested the assistance of an orthodontist to move the teeth into place with elastics and bands. But this didn’t work out because Sarah’s jaw and bone structure had to re-aligned. Once again, Discovery refused to pay for the orthodontic treatment, saying it was cosmetic. Snijman was by then out of pocket by some R30,000.

In desperation, Snijman asked her broker for help. The broker told her that Discovery’s handling of the matter was “shocking”, but she couldn’t take things forward. Snijman was told that she could appear before a committee of lawyers and specialists to argue her case, to which she could bring her own experts. Snijman obtained reports that showed Sarah needed major orthognastic surgery to re-align her jaw as it had not been set correctly, which would require two specialists. Discovery cancelled the proposed meeting, saying that it would “unpack” the case.

But the unpacking hasn’t been a great success. Discovery is now prepared to pay for the initial surgery of aligning the bone structure and inserting screws for the implants, but won’t pay for the crowns that go on top of the screws. So what Discovery is offering Sarah is a nice jawline but no teeth.

“Why bother?” asks an exasperated Snijman. She’s been told that if there are no teeth in place whilst the jaw heals and recovers, the facial structure collapses, the tongue swells, and the front of the lip caves in. Which would make the initial surgery a complete waste of time. Predictably the cost of the portion that Discovery won’t pay is high. But the specialists whom Snijman has consulted are unanimous that the treatment Sarah needs, including crowns and implants, can be described as rehabilitative dentistry and should fall under the PMB payments.

As one specialist says: “How is it that the rehabilitation of the teeth is excluded from trauma benefit? The teeth were perfect prior to the accident.”

Discovery comments: “Discovery Health has interacted at length with Mrs Snijman via the family’s financial adviser. We have confirmed that we will fund the expenses related to Sarah’s injuries based on the applicable benefit on their Discovery Health Plan and to the maximum limit. We have explained to the family how they may go about appealing our decision via independent channels, including the Council for Medical Schemes. If they remain dissatisfied, we encourage them to make use of these appeal channels. Discovery Health applies the rules of the Discovery Health Medical Scheme consistently and fairly to all members, and we believe that we have done so in this matter.”

Snijman is disgusted, especially as within 72 hours of her daughter’s hospitalisation she was put under pressure by some attorneys (“ambulance chasers” Snijman calls them), to submit a Road Accident Fund claim and agree to make over any compensation to Discovery. She was told that a clause in her policy requires her to do this (there isn’t). She told them where to get off.

Shelly Snijman fights on: “After much deliberation I’ve decided to go public. I am sure I am not the only person who has been given the run-around by this big corporation, in the hope that they do not have to fulfil their obligation to pay their share of medical expenses.

“When we take out medical we are under the impression that we are covered – until we need it. Then the medical aid has some excuse as to why the person is not covered, and what they are prepared to pay is far less than the doctors’ accounts. I intend to fight to the end, until they concede and pay.” ◻

SAME OLD BULL

RAND WATER BOSSES PULL PLUG ON UNFLATTERING SLIDE SHOW

A SCHEDULED warts-and-all slide presentation by the chief executive of Rand Water to his board was so alarming that the screening was cancelled at the last minute.

It happened at the board's strategy breakaway session to discuss the future of two of the group's troubled subsidiaries, Rand Water Services and Rand Water Foundation. Chief executive Percy Sechemane had dug up some highly unflattering facts and figures from these subsidiaries' accounts that didn't show some of his main board directors in a very flattering light. It had become horribly obvious that for some of them – including acting chairperson Mosotho Petlane – moribund, debt-laden and totally useless Rand Water Services has been functioning as a hidden cash box from which they've been generously supplementing their directors' fees.

Hardcopy printouts of Sechemane's slide show were distributed to the directors when they arrived at the strategy meeting, held at a Pretoria hotel on 16 April last year. But, says *noseweek's* source who witnessed the scene, two of the main board non-execs – both of whom also sat on the board of Rand Water Services – were shocked at management's "very negative" presentation and were "very vocal" about not allowing the show to go ahead. The source names them as Mdi Tsheke (Services' chairman) and Nolumphumzo Noxaka. "The acting chairperson of the main board, Mosotho Petlane [also deputy chairman of Services] was against it too."

According to figures in the chief executive's slide show, the audited accounts of Rand Water are misleading when it comes to fees paid to non-executive directors at the Services subsidiary. The printout revealed that in fiscal 2009 non-executive directors at Services received R2.17m, whereas Rand Water's 2009 annual report states they only got R746,000.

The slide show revealed that in 2008 Services's non-execs received R3,082m, whereas Rand Water 2008 annual report states they only got R621,000.

Rand Water's latest annual report states that in fiscal 2010 acting chairperson Mosotho Petlane received main board fees of R484,000, boosted

by a further R246,000 from Services; Dawood Coovadia pulled in R278,000 from main board and R143,000 from Services; Mdi Tsheke got R395,000 from main board, plus R419,000 for chairing Services; Nolumphumzo Noxaka got R261,000 from main board, an extra R135,000 from Services. Patricia Makhesha got R70,000 from main board, R62,000 from Services.

Rand Water Services, which became operational in 2005, was established to offer water-related services and to "ring fence" commercial projects that didn't form part of the parent's primary activity – bulk water supply.

In the early years, Services made gloomy returns. In fiscal 2009, for the first time, the subsidiary recorded a net profit of R1,4m, after losses of R6,1m (2008), R5,2m (2007) and R3m (2006). The 2009 profit was achieved on massively-boosted turnover (R51,5m compared to 2008's R16,8m). But, revealed Sechemane's slide show, this impressive revenue was only achieved after the subsidiary had "cannibalised" turnover and "service offerings" from parent Rand Water. New technologies researched by Rand Water over the years were "highjacked" by Services. Services was "selling our very own ideas, concepts etc back to us at a higher rate".

Next issue on the slide show agenda was the soaring salaries paid to Services's 25-plus employees – up from R5,3m in 2007 to R17,6m in 2009. This, revealed the slide show, had impacted negatively on operational results. Staff costs were "huge" for a "largely inexperienced employee base". The competence and experience of technical staff was "questionable".

Financial issues included the subsidiary's consistent net liability position and its inability to pay back debt capital. At 30 June 2009 Rand Water's total approved investment in Services was R26,448m (R12,5m equity and R13,9m interest-bearing loan).

Rand Water Foundation, a Section 21 company established in 2004, was mandated to handle the group's social responsibility activities, and to promote the delivery of water service to poor communities. The slide show pointed out that Foundation's board members outnumber its employees.

The 2009 financial statements "indicate that Rand Water Foundation has incurred an accumulated loss of R8,5m", pointed out the slide show. Rand Water's 2009 annual report stated that Foundation's fees to its directors totalled R694,000 that year (R473,000 in 2008).

Although the slide show was cancelled, Rand Water's directors still had their hardcopy printouts to stew over. And three weeks later attorneys for one of the non-executive directors, Phumelele Ndumo-Vilakazi, wrote to acting chairperson Mosotho Petlane calling for both the featured subsidiaries to be wound up.

"Rand Water Services and Rand Water Foundation are factually insolvent and have had to be supported financially by Rand Water by way of loan finance and the subordination of its loans," wrote Ndumo-Vilakazi through attorneys Goldman Judin. The letter was copied to Water Affairs Minister Buyelwa Sonjica, who in June ordered Petlane to appoint an independent auditor to investigate the allegations.

The minister clearly wasn't thanking Ndumo-Vilakazi, wife of South African Airways HR manager Bheki Vilakazi, for kicking up a stink. "It is anticipated that in concluding its investigation the auditor's findings will bring this matter to final closure, thus avoiding the negative publicity that naturally arises out of such allegations," Minister Sonjica wrote to Petlane.

Rand Water, Africa's largest water utility, has 3,000 employees and annual revenue nudging R5bn. Rand Water Services, Sechemane tells *noseweek*, has a staff of between 25 and 30 people; Foundation about 10. And he's weary and fed up with the disproportionate amount of time he's been forced to spend on Services in particular.

"I'm like a puppet that's being strung around," he complains. "This is limited to one or maybe two board members who are creating the impression that the board is in turmoil. There's nothing like that."

Of his 16 April slide show, Sechemane admits that he was not allowed to make his presentation. "That may be the case, but the reasons were nothing sinister," he says. "I think in terms of the timing, at that particular point in time, the board felt they needed more time and more information."

And that decision, Percy Sechemane tells us – scoop! scoop! – has now been made. "As we're talking a decision has been taken to disband Services. The board has decided. As we talk it's happening. All the [main] board members have been retracted from the subsidiaries and the staff of Services will be absorbed into Rand Water. There won't be any job losses."

Sechemane, who became chief executive at Rand Water in 2008, is clearly delighted with the end result of his contentious little slide show, although he's not amused that news of it has got out. "I felt this thing was not incubated the right way from the beginning," he confides. "I'm very happy that the outcome is aligned to the position that I had."

And the Foundation? It looks as though it may survive. Rand Water has its own corporate social responsibility division and in fiscal 2010 its water-related projects, in partnership with other government departments, amounted to R28,9m. Having the Foundation doing much the same thing – the provision of water and basic sanitation in poor communities, rehabilitating wetlands, Greening Soweto and so on, is now seen as an unnecessary duplication.

"We're going to have one vehicle for corporate social investment," says Sechemane. "Frankly, between you and me, I feel there's nothing wrong having that as the Foundation. We just have to tie down one or two loose ends."

Next slide showed salaries paid to Services's 25-plus employees – up from R5,3m in 2007 to R17,6m

RAND WATER SMS MAKES BIG SPLASH!

THE ANONYMOUS SMS rocketed around the cellphones of Rand Water's main board. It read: "Colleagues, as we are aware that time is of essence, to move swiftly I propose the top five to be axed should be: Coovadia, Ellman, Maluleke, Makhesha & Petlane. If the need arise then Mdi & Prof. I await yr input."

Sent by BlackBerry, the SMS caused uproar in the Rand Water boardroom. For it was mid-February 2009 and a sensitive time at the embattled public utility, where the appointment of a new board was just weeks away. The nameless sender was proposing the axing of directors Dawood Coovadia, Michael Ellman, Mohale Maluleke, Patricia Makhesha and Mosotho Petlane. And, "if the need arise," Mdi Tsheke and Prof Frederick Otieno.

So incensed was outgoing chairperson Jean Ngubane that she ordered an internal forensic investigation to identify the sender. The probe was to drag on for 10 months, assisted by a small army of external consultants, and proved to be a mission that finally defeated Rand Water's manager of group forensic services Barry Badenhorst. (Readers may recall the brusque, bad-tempered Badenhorst – "what gave you the idea that I would be discussing anything of this nature with you?" – from coverage of some of his earlier forensic frolics in *nose*94.)

Three years on and time has not improved his manners. An anonymous SMS? "I don't know where you get your information, but I think you remember from the last time when we had a call that I have nothing to say to you," he snaps.

This attempt to throw the existence of any anonymous SMS into question is eclipsed by Badenhorst's own confidential 10-page "final report" of his forensic investigation, which in dogged detail relates the sometimes questionable steps the sleuth took in his attempt to unearth the elusive mole.

Not much luck with Rand Water chief executive Percy Sechemane either (last year's package R2,5m, which includes a R511,000 "performance incentive" bonus). "I'm weary now. I'm getting tired of these questions," sighs Sechemane. "Why is this newsworthy?" he demands. "People were saying they were being accused of having

sent the SMS. I've never really taken this seriously."

But what about the cost of your forensic investigation? "There wasn't necessarily a cost, because we used internal people," says Sechemane. "At the end of the day I'm accountable for public funds."

Indeed – especially since Badenhorst's forensic report tells a different story. Citing the employment of a whole host of external consultants, he relates how one such was wheeled in "to analyse the Rand Water [IT] network to determine if the network was utilised" by the SMS sender. Based on the consultant's analysis, it was concluded that the SMS was "probably distributed via the cellular networks by utilizing cellphones". Brilliant! That has to be worth a mint in external consultancy fees.

FORENSIC PROBE ORDERED TO UNMASK SENDER

The forensic investigation started with an analysis of chairperson Jean Ngubane's desktop PC. Her hard drive was copied, revealing to Badenhorst and his team an intriguing scoring evaluation exercise performed by Ngubane on the competence of her boardroom colleagues, which must have been a source of great entertainment to them.

The next step was to analyse detailed billing records of board members' cellphones. Directors were asked to give their consent to these being called for, but by the end of March only half the board had done so. Badenhorst decided to go ahead anyway.

Enter more external consultants, to conduct a decidedly questionable exercise. As Badenhorst points out in his report, the respective service providers (MTN, Vodacom, CellC etc) do not provide information on their customers' cellular records without a Section 205 authority under the Criminal Procedure Act, or a Promotion of Access to Information application. In the absence of either, Badenhorst admits in his report: "I had to use external investigative resources to obtain these cellular statements from their sources in the respective cellular service providers."

He was telling the board that he used – and presumably paid for – private detectives ("investigative resources") to improperly and illegally obtain details of directors' billing records from the detectives' contacts within the service providers.

After the "arduous" process of receiving these detailed billings, each statement was "analysed thoroughly", writes Badenhorst. But it became "very clear however at this stage that unless additional information was received it would be an almost impossible task to identify the origin of the SMS". SMSs were reflected as DATA/SMS on billing statements, and although they indicated the number that had received it and from which number it was sent, it did not give any detail of the message; neither did the message have a reference number for cross-referencing purposes.

Another problem was identifying secretive board members' cellphone numbers. Here Badenhorst again made use of "external resources" to utilise their contacts within the respective service providers to obtain IMEI (International Mobile Equipment Identity) to link directors with cellphone numbers. Where IMEI checks were returned as "private numbers", obliging sources in the service providers, for "a cost", performed an "IMEI vs handset analysis". This exercise, explained Badenhorst, identifies where additional sim cards (private numbers) were used in contract cellphones. All that exercise revealed was that several board members at Rand Water do indeed use additional sim cards in their contract phones.

By 6 August 2009 there was a new Rand Water board in place – all the directors whose axing was suggested in the anonymous SMS were re-elected, with the exception of Mohale Maluleke. But Rand Water chief executive Percy Sechemane told Badenhorst that the new board "insisted that the investigation should be concluded". Badenhorst says in his confidential report that he "again explained the intricacies of the investigation" but acting chairperson Mosotho Petlane "made it quite clear that an additional effort should be made" to identify the SMS's origin.

On 19 August 2009 Badenhorst told Petlane of his "fruitless" discussion with a board member who was demanding anonymity. "This board member denied any other knowledge of the SMS in question".

In the renewed probe, external consultants were again retained and directors' cellphone records were again analysed. Without success.

On 24 August Badenhorst poured his woes into the ears of a new service provider, Kenny Roberts, managing director of LexLegis, who told him he had a source in the MTN network. The following day Badenhorst received the cheering news that the MTN Forensic Unit had decided to "investigate the possibility of tracing a SMS message in the database". The offending SMS was duly forwarded to MTN and the following day Badenhorst was told that MTN would attempt to identify the SMS originator by establishing a footprint of the message "by determining characters, line spacing and data size" and then applying it to their own database.

However, MTN required Rand Water's chief executive to file a Promotion of Access to Information application. They also required certified copies of board members' IDs, as well as new memoranda authorising MTN to release detailed billing statements. But board member Phumelele Ndumo-Vilakazi refused to sign, saying she had earlier received a note stating she was not implicated in the investigation.

On 5 November 2009 Badenhorst reported that without Ndumo-Vilakazi's consent MTN would not release the requested detailed billing. And finally, on 1 December, Rakesh Ishwardeen, head of MTN law enforcement liaison, told Badenhorst what he already knew – that SMSs sent via the MTN network "do not have any unique identification numbers" making it impossible to trace the origins of the SMS.

So. All that "forensic" work, all those external consultants, all that money spent to try and establish who sent one silly shit-stirring SMS. Still, these sprawling cash-laden public utilities have to spend the taxpayers' money on something, don't they.

AT SEA

Life policy lands client in deep water

BUYING OVER THE PHONE by telesale may prove a hazardous or even sorrowful affair. What exactly is promised, accepted and agreed? Insurance companies like Absa Life claim that their telesales pitches are always recorded. Maybe – but in Andy du Toit's experience, that's no guarantee the bank won't lie about it later.

In June 2007, while employed by a vehicle conversion company in Johannesburg's Jet Park, Du Toit (53) took out insurance with Absa Life against death, disability and retrenchment. It was one of those spur-of-the-moment telesales decisions, but he was left with the impression that, should he be retrenched, he was covered for the complete outstanding amount on his Absa credit card, up to R50,000.

In October 2008, at which time his monthly premium (a moveable amount based on the outstanding card debt) was R41.87, Du Toit and his employer parted company. But it was not until 13 months later that Du Toit was reminded by his wife that he had insurance against retrenchment. He duly submitted a claim to Absa Life stating that he had been retrenched and that the outstanding balance on his credit card at the time was R28,000.

Du Toit was pleased to receive an email advising him that his claim had been approved. But not so pleased when Absa Life paid just R6,699 into his credit card account. He wrote to Absa Life's senior claims assessor Mariska van Niekerk questioning the payout. "According to my understanding of the policy, I was insured for the complete outstanding amount on my credit card," he told her.

Not so, replied Van Niekerk. Examination of the recording of the telephonic "credit life" sale, she told him, revealed that "under no circumstances has the agent led you to believe that retrenchment would cover the full outstanding amount on your credit card". The agent, she said, had read him the full "declaration and exclusions" and explained that a copy of the policy wording was available on request.

Van Niekerk attached a copy of the policy, which indicated that Absa Life would pay only 10% of the average outstanding balance of the previous month for the duration of unemployment, limited to four monthly instalments in total. "You were retrenched on 31 October 2008; we only received your claim in 2009 and therefore paid all four instalments added together directly into your credit card. This amounted to R6,699 in total." She trusted he'd find this to his satisfaction.

He didn't, and appealed to the ombudsman for long-term insurance, Judge Brian Galgut, telling him what the tele-salesperson had led him to expect. Absa Life told the ombudsman how the amount on Du Toit's claim was calculated: "R41.87 (credit life premium as of 1 October 2008) divided by 0.0025 multiplied by 10% = R1674.80. R1674.80 multiplied by 4 months = R6699.20."

In June this year the ombudsman made his ruling. When Du Toit took out the policy he was advised that he could cancel it within 30 days of receiving the policy document if it was not what he wanted. Although Du Toit never received a copy of the policy, he should have followed up and asked for one. And the policy explained the retrenchment benefit and its exclusions. The final ruling: "The insurer is not liable to pay a higher benefit to you than the amount already paid."

However, Absa Life then offered Du Toit an additional R1,500 – which he rejected. He found it fishy that Absa Life was unable to produce the recording of the June 2007 telesale. "If they cannot produce the taped telephone conversation between us, surely they have something to hide?", he wrote to the ombudsman. But once the ombud has made a final determination its function is at an end. All Du Toit might do is lodge an appeal.

In his letter granting leave to appeal, Judge Galgut had a surprising bit of news. He had managed to secure Absa Life's recording of the telesale and told Du Toit: "What was said to you in the conversation, without qualification, was that 'the sum insured is equal to the outstanding balance of your credit card up to a maximum of R50,000'. The consultant concerned did not add that that would apply only to your death or disability, and that as far as retrenchment is concerned there would be a substantial limit to the amount payable.

"You may well have been left under the impression, therefore, that in the event of your retrenchment you would be covered for the full event. An appeal tribunal may well hold in the circumstances that you were misled and are entitled to relief as a result."

Mr Justice Phillip Levinsohn, former deputy judge president of the KwaZulu Natal High Court, heard the appeal. In his 8 November decision the judge said the significant difference between benefits paid out for death or disability and retrenchment, had not been explained to Du Toit in the 2007 telesale. "It was represented to him that if he was retrenched the full balance then owing on his credit card up to a maximum of R50,000 would be covered by the insurance."

Contrast that with the shameful assertion by Absa Life's Mariska van Niekerk of what the recording of the telephonic sale had revealed.

Judge Levinsohn said Du Toit was entitled only to the sum payable on his credit card when he was retrenched, not to the capital amounts still outstanding on his budget accounts. Since this was R9,919 the judge ordered Absa Life to pay Du Toit a further R3,219.

A spokesman for Absa Financial Services told *noseweek*: "Despite the fact that Mr Du Toit claimed more than a year after the retrenchment event – the policy requires a claim to be lodged within 120 days – Absa Life nevertheless admitted the claim. Furthermore, although one of the exclusions to a retrenchment claim is that the insured accepted voluntary retrenchment, Absa Life paid him out, despite the fact that his retrenchment fell into this category."

Andy du Toit, predictably, is still livid and insists he's been shortchanged. "I'm owed at least another R10,000," he tells *noseweek*. But after a protesting note to Judge Levinsohn the appeal judge has emailed him: "The final decision has been communicated to you and as far as I am concerned the matter is closed."

■ After fresh protests from Du Toit, Absa Life shelled out an additional R8,406. "Absa never gave the judge the correct amount due," he says. "They only gave him the budget amount outstanding and did not include the R8,406 that was outstanding on my straight account."

Swellendam's Dutch Reformed Church

THINGS FALL APART

Why did Swellendam sack one of the Western Cape's most competent officials?

The small town of Swellendam in the Western Cape is fortunate in having as its municipal manager one of the province's most highly qualified, experienced and respected local government officials.

Pity Nico Nel has been unable to do his job for the past four months, on account of being put on "forced leave" by the mayor, Jan Jansen (formerly DA, now ID). In the meantime, the running of the town has been entrusted to a junior manager, Mervyn Steenkamp, which could explain why no rates accounts were sent out for three months – and the municipality is facing the prospect of raiding its capital budget to pay its operational bills.

The official reasons for Nel's suspension are so vague, unsubstantiated and unlikely, it's little surprise no disciplinary hearing has yet been

held. Nor has Jansen been willing to explain his actions to the townspeople. After repeated requests for a meeting had been rebuffed, members of the Swellendam Ratepayers' Association resorted to stopping him at the entrance to the municipal offices. But his supporters were conveniently on hand to screen him from his democratic chores.

An urgent appeal in early August to the notoriously slippery MEC for Local Government, Anton Bredell (see "Pass the Parcel", *nose*134), was met with the assurance that an investigation was underway. But it wasn't until late October that a provincial task team made it to Swellendam.

Their report was meant to be released in early November, but almost a month later, Bredell had yet to make it public. Nevertheless, *noseweek* possesses enough evidence to give readers a fair idea of what's been going on – and right in the thick of it is a megabucks property developer.

In 2007, Jean Nortje's Cape Town-based company, Horizon, bought 12ha of agricultural land on the outskirts of Swellendam with the intention of building a mega shopping, housing and industrial complex just off the N2. (Nortje says he paid R20m for the property, but the seller, deputy mayor Matthys Koch, says it was less than R6m.).

Neither the town planning department, the engineering department, nor Nel himself had any objection to Horizon's application as long as it was in line with town planning guidelines and accepted practice. These required that Horizon confine its development to an area of 7,500sqm and pay for the infrastructure required to connect the virgin site to the municipality's bulk services and the road network.

But this didn't suit Nortje. He approached Nel and demanded the right to develop 80,000sqm or two-thirds of the site. What's more, he thought it only fair that Swellendam ratepayers should stump up for access roads and other infrastructure, which Nel estimates will cost between R100m and R150m.

Nortje complained that the conditions on his development were much more stringent than those imposed on another developer, Sentraal-Suid Ko-operasie (SSK). Which is true, but not strange, as SSK plans to build a shopping centre on a former industrial and commercial site right on the main street, smack-bang in the middle of the CBD – and already connected to municipal services.

When Nel remained unmoved, Nortje turned his attention to the town's elected representatives. In March this year, Mayor Jansen suddenly proposed that the council change the long-since-approved conditions on the SSK development to make them more arduous. SSK immediately applied for an interdict, which the council chose to oppose, unsuccessfully, at a cost to ratepayers of R133,000.

Then in April, councillor Harry Zass (ANC) popped up with the suggestion that Nortje be allowed to double the size of his development, to 15,000sqm. And a majority of councillors was persuaded. But Nortje wanted much more. So he began to target those officials and councillors who remained impervious to his charms.

In April and July he wrote to Mayor Jansen complaining about Nel, the head of town planning, Willie Hattingh, and two DA councillors, Matthys Koch and speaker Toit Loubser. In the July letter, Nortje makes the "suggestion/recommendation" that all four be excluded from any further consideration of his application.

But most of Nortje's vitriol is directed at Nel, who he accuses of partisanship, dereliction of duty, intimidation of staff and even of altering the minutes of a council meeting in an effort to hinder Horizon's application. Within hours of receiving this letter, Mayor Jansen wrote to Nel, making almost identical accusations and informing him of his imminent suspension.

Every one of Nortje's charges has subsequently been rebutted in an open letter distributed throughout the district by the ratepayers' association and Swellendam Business Chamber.

On Nortje's claim that Nel altered council minutes, the open letter points out that this charge was investigated in June by an independent advocate and found to be groundless. (That little exercise cost ratepayers another R6,000.)

Accusations that Nel and Hattingh unfairly favoured the SSK development are demolished point by point. For instance, Nortje claims that the SSK site was rezoned "within weeks" while he had to wait five years. In fact, the letter points out, the SSK rezoning took two years while Horizon's took one year and nine months. It also quotes a complaint by Nortje, that the town cannot sustain two shopping centres, as evidence that his real intention is to scupper the rival SSK project.

When *noseweek* called Nortje he stuck to his claims, saying Nel and his supporters were conducting "a witch hunt" and that there was a conspiracy among local business owners to block outside developers. "Who owns the town?" he demanded. When *noseweek* confessed to being stumped, he followed with "Have you heard of the Broederbond?".

Mayor Jansen failed to respond to voice messages, and when *noseweek* emailed him a list of questions, claimed (incorrectly) that the matter was *sub judice*. Calls to the municipal switchboard were not answered. Apparently that's the way it's been in Swellendam lately.

Every one of Nortje's charges has been rebutted in an open letter

Judge HAMMERS planners

THINGS ARE FAR FROM WELL in the Mother City's Planning Department. In *noses*127&133 we reported on how a group of Bantry Bay residents successfully opposed the construction of an eight-storey, 39-unit apartment block slap-bang in the middle of their lovely suburb.

Now, in a recent letter to the *Atlantic Sun*, Dr Patrick Morton says that the Camps Bay Residents & Ratepayers Association has brought no fewer than eight successful cases against the City's Planning Department, and is currently involved in a further three cases. Morton speaks passionately of a "recurrent failure of the Planning Department of our City Council to provide the protection that all residential communities in our town not only deserve, but actually pay handsomely for with their rates".

Morton says it's incumbent on councillors "to grasp the nettle and take up the challenge of addressing the chronic and dire situation that prevails, where developer after developer succeeds in attempts to maximise their profits at the expense of the whole community, by being granted approval of plans that are, quite frankly, illegal". He ends colourfully: "Alarm bells are sounding as loud as the Mouille Point foghorn. Can anyone up there in council hear them? And if you can — do you have what it takes to do something about the situation? The ratepayers are calling for a clean, competent and effective administration for their city."

The judgment in one of the cases launched by the the association was handed down by Judge Binns-Ward of the Western Cape High Court on 16 November. The case pitted the association against David and Susan Hartley who were seeking to build a double dwelling on a single dwelling property in Camps Bay. The association sought an order setting aside a City Council approval for the building, and the Hartleys opposed the application. On the day before the hearing, the City Council submitted an affidavit explaining that the approval had in fact been subject to certain conditions or "departures". As these conditions had clearly not been complied with, the Hartleys' opposition fell away, and the only issue was whether they should have to pay the association's legal costs, which were no doubt significant as the court record ran to some 700 pages.

So why should the Hartleys, the losing parties in the case, not be liable for costs? The couple argued that they were in no way to blame for having needlessly opposed the application, and that it was all down to the City's incompetence. They said that they made various attempts (using town planning consultants) to find out whether there were in fact any conditions attached to the approval, but that they got nowhere because the file was missing and because letters were ignored.

The judge accepted that, although each local authority is obliged to keep a "register of departures", the word "register", certainly in the case of Cape Town, is a complete misnomer – far from being an easily accessible record, it consists of thousands of files at any number of locations. And, said the judge, as for the "zoning maps" that councils are obliged to keep, in the case of Cape Town these seem to be next to useless.

Although the judge had sympathy for the couple's plight, he held that they were liable for the association's costs. The reason – the conditions had in fact been communicated to the Hartleys' agent (the architect) in the standard "final notification letter", but unfortunately he had failed to pass this information on to the couple, with the result that the architect who replaced him knew nothing of conditions and proceeded with something quite different to what had been approved.

Judgments dealing with planning issues are generally turgid affairs – you have to familiarise yourself with terms that are understood by only the few who cultivate the dialect, but are incomprehensible to anyone possessed of a life. Terms like LUPO (Land Use Planning Ordinance) and SPELUM (Spatial Planning, Environment and Land Use Management). So a big hand for Judge Binns-Ward for doing an admirable job of making very tedious subject matter comprehensible. Well done for applying the one thing that's so often missing in court judgments: common sense (if things don't work out on the bench, or perhaps Hlophe becomes a bit much, a job awaits you at *noseweek*).

Now you might say that if God had wanted judges to tell government officials how to run their departments, he would never have created management consultants. That may well be so, but clearly the consultants aren't doing their jobs. So here's what Judge Binns-Ward had to say to those at the City of Cape Town, and indeed to planning types throughout the land. He started off with some generalities: "I consider it to be appropriate... to highlight some of the pertinent shortcomings in the administrative process and draw to the attention of the relevant organs of state certain measures which require attention if cases similar to this are to be avoided."

Making the point that zoning schemes "regulate land use and development so as to promote the co-ordinated and harmonious use of land", he said that clarity is all-important: "The public, and most certainly the owners and occupiers of land in the close proximity... have a cognisable legal interest in compliance with, and the enforcement by, the local authority with the provisions of the applicable zoning scheme. It is a basic tenet of the rule of law that law cannot be effective if its content is not clear and readily accessible."

Then on to the register that should record the departures – dealing with its "abstruse nature", the judge described it as "illusive... not only to the public, but also to professionals engaged in the field of land use and development and even the local authority's own officials".

And the zoning map: "It was remarkable that none of the witnesses, whether they be municipal officials or professional town planners or architects, made any mention of having had reference to the zoning map. I think it may safely be inferred from this common omission that the map also does not fulfil an effective role in informing anyone of the existence or the nature of departures applicable to any land unit. It is furthermore not clear how accessible the zoning map is to the public."

As to whether sending a "final notification letter" to the owner and putting a copy in a musty old file notifies the public of departures: "The duty could be carried out by publishing the conditions in the *Provincial Gazette*, or, even more effectively, by requiring them to be registered against the title deed of the affected land unit. Had the conditions been registered in the current case, the unlawful and invalid approval of building plans would in all likelihood not have occurred."

Next. the issue of the delegation of authority by a municipal council of its functions: "The respondents [the Hartleys]... pointed to the difficulties they and their representatives had had in trying to obtain a copy of the record of delegations. They averred that they had been pushed from pillar to post by various officials of the municipality during their endeavours to obtain the relevant information. They had eventually been informed that they were required to make a formal application for the information in terms of PAIA. I consider that a local authority's system of delegations is something that, by its nature, should be available to the public without the formality of a request, as defined in the Promotion of Access to Information Act."

The final issue for the judge was "the unwholesome situation of a partly completed building standing unattended for months while litigation took its course". This, according to his Lordship, could've been avoided if the City had heeded earlier advice from the Constitutional Court to invite comment from neighbours. "This would significantly reduce the chances of approval of plans in cases where some of the disqualifying factors exist but were not discovered by a local authority."

A timely reminder of why lawyers run the world. Will this advice be heeded? The judge did order the registrar of the court to send his judgment to the Western Cape Minister responsible for development planning, as well as to the City Manager. At least the "Nuremburg defence" will no longer be available.

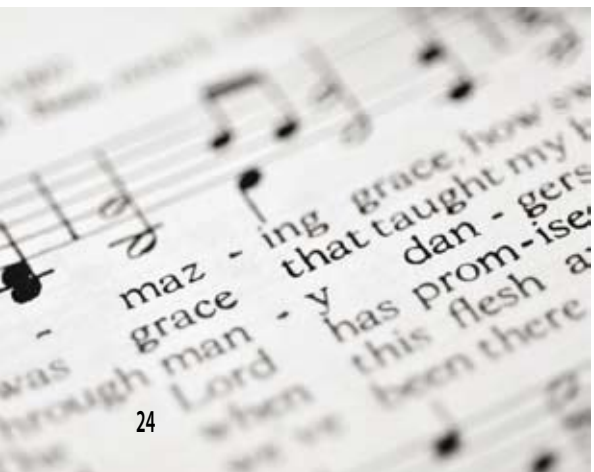
Good copyright, bad copyright

Scamming, scamming – scamming in the name of the Lord

Now here's a scam – the scam of scams. This is how it works: Select a business covered by laws few people understand, grace your company with the titles "Christian" and "International" and enlist a large law firm to administer threats to prosecute for non-compliance.

Cape Town-based Christian Copyright Licensing International (CCLI) has made a good go of it, patrolling the country demanding royalty payments from churches and schools for singing hymns for which CCLI claims copyright. Even the much-loved *Amazing Grace* "belongs" to them, and must be paid for.

CCLI was founded in the US in 1988 when Howard Dale Rachinski, a "music minister" at a large church in Portland, Oregon, set himself up as copyright cop to collect royalties on behalf of the composers of hymns. A South African version of the company was listed in June 1994, with Andrew Bodkin, Hester Verschoyle and Rachinski himself as directors.



The local CCLI has been harassing schools and churches with threats of prosecution for failing to hand over royalties on hymns being sung on their premises. Some have been handing over heaps of cash to avert being prosecuted for copyright infringements. The CCLI website announces that "CCLI helps churches maintain their integrity and avoid costly lawsuits, while also giving churches the freedom to worship expressively and spontaneously. Churches often face copyright issues in two vital areas: music used for congregational singing and videos shown in a church setting. CCLI provides practical licensing solutions for both".

Royalty amounts depend on the size of the congregation: "1-14 attendants; R750: 15-49 attendants R840; 50-99 attendants R1,390; 100-249 attendants R2,150; 250-499 attendants R2,725; 500-999 attendants R3,810". If a church holds multiple services per week, the amount is multiplied by the number of services.

In the US, CCLI targeted churches, but the local entity has focused on schools, especially private religious ones, which are told they are breaking copyright law by making copies of hymns for their learners to practice singing, or by projecting the words onto a screen for them to follow.

Included in the list of hymns for which CCLI demands royalties are nearly 8,000 in the public domain, as their authors have been dead for more than 50 years. *Amazing Grace*, for example, was published in 1779 by English poet and clergyman John Newton and his friend William Cowper. Yet CCLI claims the right to be paid if anyone sings it.

CCLI claim that their copyright ownership of *Amazing Grace* lies in the a version recorded in 1998 by CopyCare Africa cc, a South African-registered entity listing Brenda Carelsen of Pretoria and Nigel Coltman of East Sussex, UK, as directors.

As one copyright attorney told *noseweek*: "One can only claim copyright on a creation. You can't claim ownership on the creation of another author, even with slight alteration."

Another expert says: "Having reviewed the information on the CCLI's websites, it's my opinion that it's a simple business scheme, most likely initially created with good intention, but without any legal backing. Copyright laws may vary from country to country, but the concept is universal. The purpose of copyright and related rights is to encourage a dynamic creative culture, while returning value to creators so that they can lead a dignified economic existence, and to provide

widespread, affordable access to content for the public. This explains why performances during worships either in churches or schools are technically exempted as they never derive any direct financial benefits from the performances.

"Secondly, CCLI is a commercial entity and not a statutory body. If one heard a hymn being sung and memorised the lyrics, according to CCLI, writing the same down is illegal. No reasonable court would tolerate such claims. It's not an infringement of copyright if one learns the lyrics of a song and sings it along with friends or members of a congregation for no financial gain. But it would be an infringement if one photocopied the layout and design of a printed song or hymn as it appears in a copyright protected publication."

The experts warned that if CCLI's claims were allowed to stand, groups with no affiliation to the original creators of songs, hymns, nursery rhymes and even national anthems could demand royalties from everybody who sings along.

Contacted for clarification, CCLI South Africa's "licensing administrator" Elmarie Olivier maintained that they were not forcing churches and schools to buy into their schemes: "We are working within the law protecting copyrights of our members."

Ms. Olivier could not explain how copyright is being claimed on hymns that are in the public domain. She told *noseweek* that schools and churches with problems should call her for clarification. This, of course, would be a waste of time: CCLI is not a statutory body and has no right to claim royalties for hymns in the public domain, or for the singing of hymns in churches and schools.

CCLI's attorney at Fairbridge Arderne and Lawton confirmed that no-one has been prosecuted for infringement, but argued that the copyright exemptions for schools only applies to public schools, but not to private ones, because these are businesses that make money. Again, copyright lawyers say this is sheer nonsense: according to the law royalities are only due where money is being made from the performance of a hymn.

■ Owen Dean, a leading intellectual property law consultant, was kind enough to provide *noseweek* with his expert opinion on the scheme (See story right). ◻

Free as the birds

THE PRINCIPLE OF FREEDOM of speech is well established, but what about freedom of song? Is that for the birds? Should there be restrictions on what we can sing in the bathtub, in school, in church, and should we have to pay for the privilege? There are those who would have us pay fees for virtually all conceivable uses of their songs, even hymns sung in school classrooms and churches. Can this be right?

It transpires that a certain avowedly Christian copyright licensing organisation has been approaching churches and schools and requiring them to buy copyright licences for the use of a repertoire of hymns. Music teachers have been faced with the threat that, unless they acquire appropriate licences, they face dire consequences such as the imposition of huge fines and even prison sentences. Some might argue that there is an inherent incongruity in evangelising a faith and then charging followers money for heeding the call and the teachings.

What is alleged by the organisation, which claims copyright in the hymns, is that unauthorised "use" is being made of them, resulting in copyright infringement. This "use" apparently encompasses teaching hymns to students, retyping hymns for projection onto a screen, or reproducing them on paper, for use at services, causing students to memorise hymns and rewrite them in their notebooks, and performing hymns at services and the like. When asked about exemptions for learning institutions, the retort is that only public schools enjoy any form of exemptions, but not private schools.

The Copyright Act protects songs, provided they are original, i.e. they are the result of independent skill or effort and are not simply copied from pre-existing material. The copyright in a song endures for the lifetime of the author or maker of the work and 50 years after his/her death, whereupon the work falls into the public domain and is free for use without restriction.

The content of the copyright in a song includes the right to control the reproduction or adaptation of it, as well as its performance in public. Performing any of these acts without permission can constitute copyright infringement. This may give rise to an interdict restraining the unlawful activity and, if done for purposes of trade in the knowledge that copyright is being infringed, a criminal offence. There are, however, various limitations on the copyright owner's rights.

In the first place, performance must take place in public, with the corollary that a performance which is in a private or domestic situation does not constitute an infringing act. Then the law provides various exemptions from copyright infringement where it is considered to be in the public interest that the copyright owner's rights should not prevail. These exemptions include dealing fairly with a work for private study or for personal or private use, taking quotations or excerpts from it, and using it by way of illustration for teaching. These exemptions make no distinction between public and private institutions of learning. In interpreting the applicability of exemptions, the court has a measure of discretion and is likely to take into account circumstances such as the purpose and character of the use complained of, and the nature of the work in question.

Of course, if the author of the work departed this mortal coil more than 50 or more years ago, there can be no question of copyright infringement. Many popular hymns fall into this category. It is possible that a hymn or song can be reworked so as to adapt or update it and, if there is sufficient substance to the reworked material, a fresh copyright can come into existence, but only in respect of the new material. The owner of the new copyright can claim no rights in respect of the earlier version of the work.

A copyright owner can appoint an agent or collecting organisation to manage his works. However, he/she has an election whether or not to require payment for the use of a work. Perhaps in this modern materialistic world even using hymns is seen and pursued as a business opportunity! Have the moneychangers re-occupied the temple? – *Owen H Dean, intellectual property law consultant*

CROOKERY SCHOOL

Cooked qualifications and a prospectus well seasoned with half-truths provided the recipe for an unpalatable catering college

When Robert Barnard of Cape Town decided to follow a dream and become a chef, he relied on the internet to identify a good school. Little did he know that not all that appears Swiss is Swiss. The web led the 23-year-old to "Dr" Herbert Derendinger's Swiss Institute of Hospitality Training, and coughing up R39,000 for an 18-month diploma programme. Robert lasted nine months, which brought plenty of irritation but little culinary expertise.

According to Barnard, Derendinger enticed him to cough up by claiming to hold a "doctorate in hospitality" from Pretoria Technikon. He also claimed to have been the brain behind the importation of the official Swiss hospitality syllabus to that same technikon. Derendinger assured Barnard and his fellow applicants that the institute would provide world-class training and a qualification recognisable anywhere in the world.

Robert was also urged to register immediately, as the "Swiss system does not allow chefs to graduate above the age of 25". The young man convinced his parents to raise the cash for a deposit and, in June 2008, they signed an agreement with Derendinger – at which point a new player, Chaplans Restaurant & Café Bar, owned by Allan Scott, joined the mix. Chaplans would offer 40 hours of "practical classes" per week, and students would also get eight hours of theory classes per week.

Things were looking good – but from there on it was downhill all the away. Robert told *noseweek*: "The first three months were hectic. I would do every petty thing at Chaplans' kitchen, from peeling potatoes to cleaning. Chaplans paid me directly for the first three months, then began paying my wages directly to Derendinger."

While Robert didn't mind having his wages go towards settling his fees, he grew suspicious when the theory training turned out to consist of only two to three hours a week, conducted at the homes of one or other of the students. One day when no home was available, they got their theory lesson under a tree in a public space. Says Robert: "What 'world class' education would be provided under a tree?"

Feeling responsible for wasting his parents' money, Robert approached a friend, David du Preez, who is well experienced in youth education, to help him investigate Derendinger. Du Preez quickly established that diverting Robert's entire salary to Derendinger put both Derendinger and Chaplans Restaurant in breach of the Labour Relations Act. Says Du Preez: "An employer may not deduct more than 25% of an employee's wages to settle financial obligations."

When Du Preez contacted Derendinger to enquire about the claimed Swiss accreditation, Derendinger indicated that his institute was affiliated to the DCT University Centre, Switzerland. Says Du Preez: "I contacted the Swiss centre, which categorically denied any affiliation with Derendinger or any of his companies."

In his reply to Du Preez, David Baird of DCT University Centre pointed out: "If no document affirming a school's accreditation is provided, that is tell-

The self-proclaimed professor turned out to be a polished fraudster

ing and conclusive on its own."

Derendinger's website claims that he provided the hospitality syllabus to Pretoria Technikon for its courses, and that he is accredited by the Tourism, Hospitality and Sports Training Authority (Theta). Theta has had no contact with Derendinger's outfit, and Pretoria Technikon also denied having had any contact with Derendinger.

Du Preez then contacted Steven Bellingham, chairman of the South African Chefs' Association, who also denied affiliation to Derendinger's outfit, as claimed on his website. Bellingham threatened legal action and the claim of affiliation to the Chefs' Association soon vanished from the website.

Du Preez handed the results of his investigation to the Departments of Labour and Education and to the Western Cape government, but heard no more.

Noseweek's own investigation could uncover no employment records for Herbert Derendinger prior to 2000, when he is listed as working for Nedbank. In 2007 he worked for Discovery, was unemployed in 2008 and in 2009 was employed by SA Wimpy. Designing gourmet burgers, no doubt.

Calling the self-proclaimed professor of culinary affairs introduced *noseweek* to a very polished fraudster, with a ready answer to any question. He obtained his Ph.D in "Food and Nutrition from Cambridge University in 1984", he said – but couldn't disclose exactly where he had obtained his LLB and Master's degrees. Cambridge University has never heard of the man – and don't teach courses, at any level, in food and nutrition.

When asked why his institute is not registered with the Department of Education, nor accredited by Theta, Derendinger declared: "The Department of Education and Theta are not competent to understand our syllabus and I would not waste time and money seeking their authority to enrol students." He could not explain why the "incompetent" authorities appear in his marketing materials.

He then insisted: "We are a franchise of the Swiss education system and accredited by the Swiss government." Told to look at his website for proof, *noseweek* discovered a profuse adornment there of Swiss flags. But the Swiss embassy in Pretoria vehemently denied affiliation with Derendinger or his Swiss Institute. Eric Amhof, Swiss deputy ambassador in Pretoria, told *noseweek* that Derendinger's institution is not registered in Switzerland and said the embassy would be keen to learn more about Derendinger's suspect operations.

When *noseweek* contacted celebrated "food personality" and "Giggling Gourmet" Jenny Morrison, she was saddened to hear what Robert and other young South Africans have had to deal with. "Parents who enrol their kids at non-accredited culinary institutions should be smacked," she said. "One can't get a diploma after a mere 18 months. Culinary students should have at least two years of thorough theoretical lessons before being sent to an established restaurant for practicals. You don't send students to a kitchen in the first week."

Alan Scott of Chaplans Restaurant & Café Bar declined to say why he had taken on untrained students or why he diverted their wages to Derendinger. Vanessa Mortlock, personal assistant to the Western Cape MEC for Education, who received Du Preez's report and an affidavit from Robert's parents, told *noseweek* they get so many letters from the public that they can't easily establish what happened to the matter. An email arrived a little later from Paul Boughey, of the Ministry of Education, Western Cape:

"Please be assured that this Ministry is constantly on the lookout for any form of unlawful exploitation of learners. However, we have no record of correspondence on this issue, possibly because the matter was referred to the Department of Higher Education and Training, under whose jurisdiction the Swiss Institute falls."

So Derendinger continues to ply his trade as self-proclaimed professor of culinary training.

MUGABE, THE MALE STRIPPER + THE MILLIONAIRE'S MANSION

Noseweek takes a sneak peek at how the other half percent live

WHO is the immensely wealthy "very high-level" individual from Zimbabwe who has made an offer of R80m for the fabulous Sandhurst mansion of the late cellphone mogul Miko Rwayitare?

There are at least two likely candidates: President Robert Mugabe and that country's Reserve Bank governor Gideon Gono.

Mugabe, 86-year-old arch looter of Zimbabwe's wealth, certainly has the ill-gotten gains to put down the big bucks. And his ghastly wife Grace – 41 years Mad Bob's junior – would certainly appreciate the absurd vulgarity of the multi-pillared mansion.

But then there's the intriguing possibility that the well-heeled Gono – who's a youthful 50 and has been reportedly having a passionate affair with the president's wife for the past five years – would like to snap up Miko's mansion and set up house there with Grace after Mad Bob's eagerly-awaited demise. Certainly Gono likes his luxury – his home in Zim is a 47-roomed white elephant with swimming pool, gym and mini theatre.

So what's the evidence behind this fascinating speculation? Michael Black, the Johannesburg estate agent acting for the mansion's present owner – Patience Mlengana, wife of Telkom's executive manager Mzamo Michael Mlengana – lets drop the R80m offer and its country of origin when he takes *noseweek* on a guided tour of the gaudy sandstone pile.

Black, an American from Houston, Texas, who came here 20 years ago, is a colourful cove, a former stripper with the Chippendales, the famous troupe of erotic male dancers founded in a Los Angeles night club. He tells *noseweek* that in the last six months he's had as many as 55 appointments to view

A different male stripper from the former one described in the story (left); and your actual Bob Mugabe

Mikos's mansion – "probably only five of them legitimate buyers who could genuinely afford this price".

What price? Patience Mlengana, who beat the R60m auction bid of insurance billionaire Douw Steyn and picked up Miko's pad in November 2008 for R62.5m, is asking R100m. (With transfer duty and everything else, her total outlay nudged on R74m.)

Blake confides that so far he's had three offers: R80m, R75m and R70m. He dismisses the lower two principals as "chancers" and says his present hopes are on the R80m punter, whom he describes as being of "very high level from Zimbabwe".

"Yes, he could have been acting for Mugabe, you never know," he agrees. "It's the sort of place that Grace would go for."

Blake declines to name the emissary. "These people tend to be very quiet. They tell me as much as they want to tell me. They ask for private viewings, where there are no other people in attendance. Which is kind of nerve-racking sometimes, because you don't know what's coming. You're at risk.

"As curious as I am, I want to know for my seller's sake if the buyer is legitimate, and who they represent. But I can't question them too much, especially at that level. You can insult them very easily."

Blake has also had potential buyers from the US, UK and Nigeria to view the property. It's the type of house that suits a king or a president. "One of the clients we brought here recently is the president of a country."

Noseweek is sharing Blake's guided tour of Miko's mansion with a representative of Rent-a-Maid, who has been

asked to give a quote for sprucing the place up. It certainly needs it: dust envelopes the remaining opulent furniture – a lot of it, as reported in *nose*102, was spirited off into storage by Rwayitare's family after architect Greg Pietersen came into brief possession of the mansion when he picked up Propro, the company that owned it, at an earlier sheriff's sale in August 2007 – for a bagatelle R400,000.

However, Investec, which had loaned Propro R36m to build the pile in the first place, subsequently won a high court order allowing it to sell the property to recover the debt. Hence the second sheriff's auction – and the emergence of Patience Mlengana as new queen of the heap. And Miko Rwayitare? Readers will recall the highly suspicious circumstances of the 65-year-old Rwandan's sudden death in Brussels in September 2007, just six weeks after architect Pietersen ("another chancer," according to estate agent Michael Black) acquired the mansion following Rwayitare's five-year failure to settle his architect's fee (*nose*101).

Today, Rent-a-Maid runs a disapproving finger through the dust on an ornately-carved balustrade and reckons she'll need to send in an army of eight cleaners to get the place shipshape.

It's depressing, walking the marble floors of Miko's dream home. The racks in his beloved wine cellar, once packed with Mont Rochelle, an oak-matured chardonnay from his Franschhoek vineyard, are bare. The "night club", stripped by looters during the last pre-auction viewings, is just an empty room. The private cinema still has its commodiously-comfortable black leather armchairs, but someone has made off with the expensive ceiling-mounted projector. "A lot of electronic stuff has been stolen," says Michael Black.

The sad fact is that Patience Mlengana has hardly been the ideal custodian of the palace. Since she became its mistress more than two years ago, it has stood forlornly empty. The grounds became a jungle – though a garden service has recently restored them to a semblance of their former glory. The plunge pool is still watered by what looks like pea green soup.

"She bought it as an investment and will wait until she gets a fair price," says Black. I think they'd look at R85m. Every seller would prefer more, but I think they're prepared to do a deal. Miko had it on the market at R145m – and got an offer of R100m from a member of the Moroccan Royal family. He turned it down."

Flogging it now for R80m to Mugabe, or whoever the potentate from north of the Zambezi turns out to be, wouldn't leave much of a profit after all the costs. Which will of course include estate agent Michael Black's commission. "No, I'll not be taking 5% [R4m on a R80m sale]," he says. The former Chippendale stripper confides he has done a deal with Patience for a slightly more modest reward.

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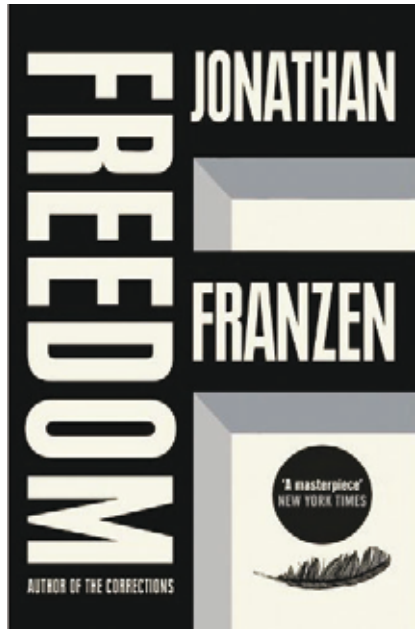
Issue 135

CONGRATULATIONS TO THIS MONTH'S WINNERS OF TWO KEN FORRESTER WINE PACKS

Mr JJ Duvenhage, Upington
Ms Irene Wiegand, Ashwood
Mr T Bouwer, Palm Court
Ms Carol-Ann Beukes, Muldersdrif
Mr Jan Venter, Montana Park

Passion in Suburbia

Len Ashton
Reviews
Freedom
(Jonathan Ball/Harper Collins)
by Jonathan Franzen



Jonathan Franzen is a voyeur. Not a creepy-peepy type, you understand. Simply a brilliant observer and chronicler of the truths of everyday life as it is lived by middle-class Western humanity. It's all there: the absurdities, the decencies, the casual cruelties. The laughter and the miseries.

Franzen is a wizard who fashions his spells from the seemingly mundane. In other words, a true story-teller, since he engages with the unvarnished truth, and mines understanding therefrom. The result is a compulsive read, the compulsion deriving partly from the reader's recognition of self among the characters and motivations. You are, willy-nilly, a member of the cast. The ability to project such inclusiveness is enviable, not simply for rival writers, but for those who regard themselves as socially inept in one way or another. It's a non-clichetic version of You're okay, I'm okay.

We all tend to imagine that we are capable of shielding our secrets from a nosey world. Franzen gives the impression that he knows those secrets, and notes them in tolerance. Which is not to say that the moral core, the values of reasonably civilised societies, do not apply. But virtue is certainly its own reward in Franzania. Just like in real life. Good guys tend to have a tough time in a wicked world, and, gosh, life is unfair. But you might as well enjoy the party as much as, and while, you can. If, that is, the capacity for joy happens to be part of your emotional equipment.

Freedom is told with sustained, deceptive simplicity which makes for wryly delicious discoveries of passion and humour in the seemingly dull lives of suburbia.

Franzen's calm observation of an ambitious female politician irritated by domestic emotional demands is recorded with wicked accuracy: "In addition to her strenuous elocution, Joyce had strenuously proper posture and a mask-like Pleasant Smile suitable for nearly all occasions public and private... her Pleasant Smile could be worn even at moments of excruciating conflict." Step forward Hillary Clinton.

Franzen is unnervingly accurate in capturing the unexpected explosions of love and/or lust, which tend to confound the afflicted. It's not easy being a nice person when you morph into Attilla the Hun, with sudden onset of speech and breathing impediments hampering the attainment of certain delights.

He has a remarkable aptitude for reading and comprehending both male and female minds in conflict, particularly with each other. The reader can only imagine that the author has garnered his knowledge as either a hugely tolerant listener or has ample experience of the love-hate dilemmas that bedevil relationships.

Growing pains, particularly the adolescent and young adult varieties, are rendered non-judgmentally. Or, rather, there is enough carefully chosen material to force a reader attitude. The heat of forbidden tragi-comic adult desire is presented similarly. And so vividly that the reader can feel the hot breath on the neck. The fact that there is no hint of the pornographic intensifies the impact of the writing.

Franzen depicts humanity as is, but contrives, in the density of his superbly detailed record, to admire resilience, creativity and courage where he finds it. For all we know, he is a pain in the neck socially, but, on the evidence of *Freedom*, he would be a good friend.

BLOODY END

An outcry has broken out, locally and internationally, about the exponential increase in rhino poaching. It's claimed that poachers have killed more rhinos in South Africa in the past three years than during any other three-year period in the last 90 years. After all, poachers now work in syndicates, using AK47 assault rifles, GPS devices, night vision equipment and helicopters.

The furore has seen the Worldwide Fund for Nature call for funding to strengthen game and national park border defences. In response, Defence Minister Lindiwe Sisulu told a news conference that she wanted state weapons company Denel to develop an unmanned drone helicopter to be used to catch rhino poachers. Why do politicians imagine that new gadgets will succeed where humans are failing?

Exact figures of how many rhinos meet a bloody end to satisfy irrational human passions are hard to come by, and the situation may well be far worse than officially acknowledged. The official figures differ according to where they get published, and questions about rhino populations posed to the authorities are answered with inconsistencies, omissions and confusion. Officials seem to prefer fobbing off the curious and concerned, declining, for example, to release data on wildlife populations on the basis of "third party confidentiality": they falsely claim government can't reveal details of contracts with private individuals.

Increasing links between Africa and the Far East seem to be facilitating the trade in rhino horns, which are used there to prepare aphrodisiacs, and in the Middle East to make ornamental daggers. Undoubtedly a global initiative should tackle this trade, but more and more people are claiming that South Africa should recognise its role in bolstering the market by allowing trophy hunting and rhino horn stockpiling.

The core of the problem, it's claimed, lies with the Convention of Trade on Endangered Species (CITES) policy of "sustainable usage of resources" – embraced by SANParks and the wildlife industry. Most rhinos on private game farms come from the Kruger National Park, which sells them on this basis. However, there is no monitoring of what happens to them once they leave the Kruger. It now appears that a large number are quickly hunted, often by pre-order, or sold at auctions for hunting.

For years animal rights activists and welfare groups have regularly complained that the sale of SANParks rhinos to private game reserves plays a key role in feeding the demand for rhino horns. The way the permit system operates makes it difficult for anyone, including Parliament, to discover how many rhino hunting permits are being issued. SANParks shrugs it off, saying responsibility lies with provincial authorities – where, it seems, records are either poorly kept or deliberately lost. This, it's claimed, leads to "laundering" animals for the international market. Calls for the centralisation of the permit system under an independent body go unheeded.

SANParks may be a scientific body but selling animals without monitoring what happens to them casts doubt on their commitment to the overall protection of the ecosystem. SANParks' annual reports show that sales of rhinos increase each year (as does rhino poaching), but questions about the basis on which the animals are selected for sale go unanswered.

In a 2009 report, animal rights activist and author Michéle Pickover pointed out that 80% of the Limpopo parks enforcement positions were vacant. Says Pickover: "We will not get rid of poaching while the 'sustainable usage' policy is in place. By allowing rhino hunting at all we create opportunities to grow the trade in horns. There has to be a change of mindset away from treating rhinos as tradable commodities – which is the cornerstone of South Africa's approach to 'conservation'.

"Government should place an immediate moratorium on the capture, sale, translocation and hunting of rhino and Rhino horn stockpiles should be destroyed. The situation must be opened to public debate. "

Meanwhile, rhino hunting attracts a stream of hunters. Says Pickover: "While there is an uproar about the number of rhinos being poached, nothing is said of the fact that at least an equal number of rhinos are killed 'legally' by 'trophy hunting'.

"In the end, the difference between poaching and trophy hunt- ing lies in who gets the money."

BJRN, BOKKIE, BJRN!

In February 2009 photographs of a rescued Australian koala sharing a firefighter's water bottle captured hearts around the world. The koala, a survivor of an inferno which swept through the Mirboo North region, was taken off for treatment at a rescue centre. Around the same time fires raging through the Helderberg in the Western Cape left scores of wild animals horribly burned – with nowhere to take injured creatures for treatment. Fire-fighters described their utter helplessness in the face of terrible suffering, with one saying he almost broke down on finding a badly burnt buck that he couldn't help.

But why does the Western Cape, where summer fires rage across thousands of hectares of national park, have no emergency treatment programme for fire-injured wildlife? The City's Disaster Management department couldn't answer that question and referred *noseweek* to Andries Venter, chief inspector of the Cape of Good Hope SPCA. Asked whether the SPCA manages any wildlife treatment centres, or if he knew of any plan to develop a wildlife rescue programme, Venter carefully explained, at some length, the ways in which the SPCA is "fully geared" to handle domestic animals. Thank you Mr Venter.

A subsequent appeal to SPCA CEO Alan Perrins gave Perrins the oppportunity to raise the barrier in avoiding the question. The SPCA, said Perrins, was fully prepared in case of a nuclear accident at Koeberg and was very successful "in preparing for the 2010 games". They also networked with the Animal Anti-Cruelty League and the Cart Horse Protection Society.

May we repeat the actual question? What about wild animals injured by fire? "Oh, wild animals are difficult...": Perrins voice trailed away. No, they had no centre to handle wild animals – they had been waiting for some time for money from the Lotto to establish a depot at Grassy Park. Naughty Lotto, again.

"So there is no plan for wild animals caught in veld fires?"

"Oh no – we do have a plan," said Perrins and referred *noseweek* back to Wilfred Solomons of Disaster Management, who told *noseweek* that his department is formulating a new disaster management plan, which includes provision for dealing with injured wildlife, but couldn't give details. He was also at pains to point out that *noseweek* talked to the wrong person at the SPCA – we should have talked to Andries Venter, not CEO Perrins. Birds of a feather. Horns of a dinosaur.

The main reason why treating fire-injured wildlife seems to play little or no part in officialdom's thinking may lie in the widely-held idea that wild animals burned in veld fires deserve what they get as part of nature's grand plan to ensure the survival of the fittest.

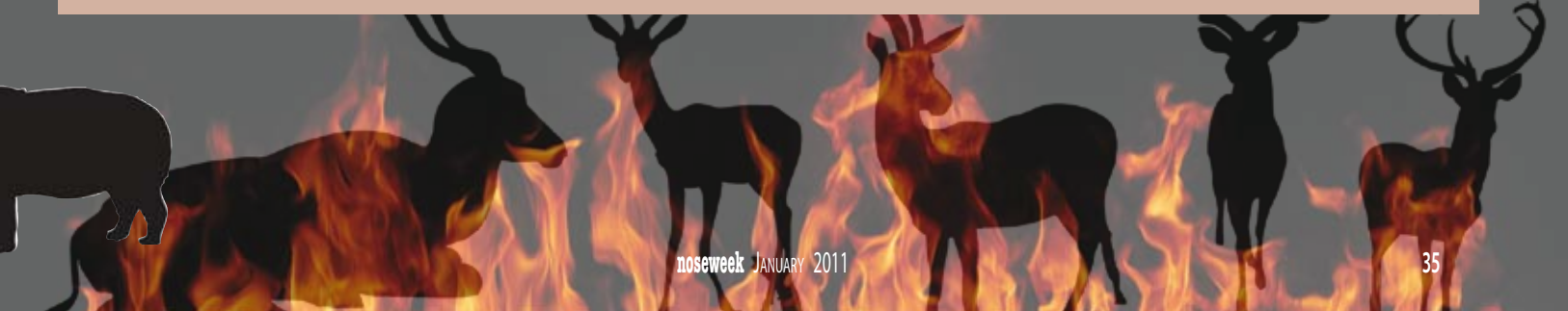
Tony Rebelo of the South African National Biodiversity Institute exemplifies this attitude, in an article "Burn Buck Burn" which appeared in the *Constantiaberg Bulletin* on 2 April. Responding to a letter from school children expressing concern about "poor animals caught in wild fires", Rebelo explained that fires in the fynbos cause regeneration of plantlife, and "any animals that are unfit, ill-adapted or stupid are weeded out: braaivleis for the ravens and scavengers".

Rebelo did warn that frequent fires, especially in the wrong season, lead to serious damage to the ecosystem's ability to regenerate itself. If, as a scientist, he's very aware of the massive intrusion on the fragile natural zones that ring the cities, why does he avoid dealing with the threat of fires to the dwindling wildlife in those areas? Sorry Mr Rebelo, we'd say you missed your chance with those children.

According to Gavin Smith, environmental representative for Ward 84 and vice chairperson of the Greater Cape Town Civic Alliance: "The Helderberg is blessed to have free roaming wildlife on the periphery of our urban areas, but this comes with the responsibility to protect wildlife from the harsh consequences of the ever-growing human inhabitation. A number of agencies, civilian oversight groups and associations rally when there is a disaster, giving support and attempting to limit the consequences to animals and wildlife. There is however a need for coordination and this should form part of the official disaster management plan [in order to provide] rapid response, emergency treatment, relocation and care processes for any animals in distress, during and after the event."

Michéle Pickover, who promotes ethical conservation and is the author of *Animal Rights in South Africa*, takes an even stronger line. In her view, saying "it's only natural" when wild animals die in fires which are more often than not begun by humans, signals a deeply problematic attitude. She points out that if the fire-threatened animals were elephants or other "big five" creatures, the world would take notice: "Many of these animals are small and so their existence is ignored."

When will the authorities wake up to the lack of a disaster plan for our precious wildlife? n



SUCCESS!

Bheki Mashile's
Country Life

Does it matter? Yeah – it bloody well does

"Success, success, success – does it matter? To live in this town you must be ta– ta– tough." So sang Mick Jagger in the Rolling Stones hit song *Shattered*. I've been humming the tune these past few days in celebration of some unprecedented successes. It shows all over again that, to do this job, you do need a really good nose for news – and, as you'll see, you have to take no crap at all.

First off, there was the storm raised by my Josh piece (*nose*133). The story was picked up by various national newspapers, and made it onto e.tv – not once but twice. The independent broadcaster aired the first segment on the morning of 18 November and topped it off with an extended treatment that same evening.

The "Josh Affair" concerns the allegations that an assassin was taking out politicos in Mpumalanga. But this newshound – I've been referred to as a dog on more occasions than I care to remember – revealed that the man everyone was calling "Josh", far from being an actual assassin, was simply a guy paid to play the role of one. On e.tv, and the next day on the SABC's Nelspruit station *Ligwalagwala*, Josh reiterated what I had written in this column.

Ligwalagwala, a Siswati station, interviewed me and Josh simultaneously via telephone, he in Barberton and me in Midrand (where I was attending the farce that was the Sanlam Community Media Awards). Over the next few days I was inundated with calls from national newspapers, particularly *City Press*, which had two journalists competing for the same story, one based in Jozi the other in Nelpsruit. (Don't these guys coordinate their editorial planning sessions?)

What was so gratifying about those calls from other newshounds was them telling me they'd read my story in *noseweek*. Ok – so? Well, *noseweek* and I were slammed for the piece, that's what – with me standing accused of being used by God-knows-who. That slamming was done by no less than the *Sunday Times* itself, which took exception to what I'd reported – so much so that it described part of what I'd written as "defamatory". The paper went further, denying there was ever a court case regarding the matter.

But then Josh came forward to confirm what I'd reported (which had been relayed to me by highly reliable sources) – and he did so on national television and on a regional radio station.

Meanwhile *Sunday Times* investigative journalist Mzilikazi Wa Africa declined to be interviewed by *Ligwalagwala* on 23 November, when he would have shared the stage with Mpumalanga provincial police spokesman Leonard Hlathi. The show's host thought he was making a strong point when he asked why Wa Afrika would decline an opportunity to stand by his stories and statements on the matter. "It doesn't make sense", he said.

I beg to differ – it definitely does make sense. How was Wa Afrika to defend his allegation that Josh was an unknown individual who had been kidnapped by the police and told to say he was Josh? Wa Afrika told me this when I spoke to him at a memorial service for James Nkambule. Defamation? Don't even try.

Instead of slamming this small newspaper country boy and his *noseweek* colleagues maybe the *Sunday Times* should slam its city slicker investigative journalist against the wall. Maybe, just maybe, that will rattle his head enough to divulge what he really knows, because he spent quite a bit of time with the man behind the whole thing, the now deceased James Nkambule.

Success number two: the Government Employees Pension Fund (GEPF) was none too happy with my piece on the Phindile Sithole intestate fraud (*nose*132), and I was summoned to Pretoria to clear the air. They felt I had implied there was collusion from the GEPF. Naturally I said there was none. Sithole is the home-based care worker who suddenly found herself lucky enough to be "lobolared" (if this isn't a common word maybe it should be) by one of her patients. When the ill Mr Mashego died Sithole jumped at his pension. Unfortunately it was all fraud.

At the end of the day, a peace pipe was smoked, as the GEPF decided my version of the situation was valid. They then followed up on the victim's complaint on their hotline – and their investigation brought fantastic results. The pension fund concluded there's indeed a *prima facie* case of fraud and has taken appropriate action. That is all I ever wanted from telling the story.

Lastly: history has been made by me and my little *Guardian*. On 24 November the Umjindi Municipality (Barberton) made a settlement offer in response to a civil suit I had laid against Executive Mayor Richard Lukhele's driver, Jabulani Ginindza.

These legal matters came about when Mr Ginindza did not take kindly to my taking photos in front of the municipality offices in 2008, and decided to make that known by grabbing me by the throat and attempting to choke me (which prompted me to later dub him chauffeur boy").

Charges were laid and Ginindza was found guilty. That led to the civil action and *voila*! – a small independently-owned community newspaper claims victory against a municipality.

"Success, success, success – does it matter?" Yeah, Mick: it bloody well does.

Harold Strachan

Comet

WELL THERE'S NOT MUCH of anything you might call pleasure in boep, to be sure, but a welcome bit of it for me was trudging round the exercise yard with David Kitson, a modest man of acute perception and ready humour, walking and hearing him describe his work on the ill-fated de Havilland Comet, that first-ever passenger jet and first to fly the trans-Atlantic route. He didn't work on the fuselage that blew up over the Mediterranean, he was eager I should understand; his part of the aircraft was the locking device on the undercarriage, and this he carefully designed to be fail-safe, which is to say if it were to malfunction it would do so with the wheels down. And it occurred to me as he spoke that care was what Kitson was all about, such care befits a good engineer, and that's why he was appointed to reassemble a broken SACP/ANC leadership after the disastrous arrests at Liliesleaf Farm, Rivonia, in 1963.

But no amount of care could save him from the mess left by a certain Joe Slovo, top SACP leader, who had originally been instructed by the party's central committee to do the job, to go underground and reorganise the resistance. Slovo hadn't done that, you see, he had taken wing for a better heroic struggle from a safer distance, namely a comfortable spread in comfortable Hampstead, London. Kitson took his place, and that's how he came to be walking round the exercise yard and telling me about the Comet's undercarriage. Pushing twenty years, he was, which you might say were now owing to him by Slovo. Bloody shit! said Kitson of Slovo. I didn't mind, to me it had always been clear that what drove Slovo was megalomania, straight. Power, man!

I don't know how you push 20 years, I really don't, but Kitson seemed to, and he pushed the lot, not one day's remission. In fact he counted himself lucky to emerge at all; his sister-in-law who had visited him under strict supervision for fifteen years was found in her flat beaten to death from sheer spite, that's how things were in those days. But on release he betook himself to London in good spirit, there to join his missus, Norma, a woman of great drive who was running the City of London Anti-Apartheid Group. It was she who had initiated the round-the-clock picket at South Africa House, had it running come wind come weather for 23 years until the release of Mandela. Of course Dave was much fêted by the British media, and his own engineers' union, in which he had had important status, arranged for him to take up a union-funded position at Ruskin College, Oxford, where he had spent two years as a research fellow before joining the struggle in SA. O frabjous day! Callooh! Callay! Everybody celebrating the hero's return! Well, no, not exactly. Slovo was waiting for him too, but not to shake a comradely hand. No mazel tov. Just revenge.

It had always been clear that what drove Slovo was megalomania, straight. Power, man!

Now Norma's independent City of London Group caused the anti-Apartheid élite considerable chagrin because this group's perpetual picket was by far the best demo around, and you can't have people like that dividing the leadership, it will only weaken the cause, hey? All this was explained in brilliant Marxist/Leninist dialecticalist materialistical terms by a certain Samuel Khanyile, alias Solly Smith, a brilliant newcomer from the SACP back home, and Slovo thought him just the man to turn loose on the Kitsons. Our Solly set about this duty with some zeal, demanding that Kitson denounce his wife and dismantle her group, or else... And of course Kitson replied that he didn't have the right to run his wife's life and anyway he thought she was doing a jolly good job. So that was that, both were unceremoniously kicked out of the party evermore, then driven into a wilderness where no trade unionist was allowed to associate with them in any way, including Kitson's own, and Ruskin College was obliged to cancel any funding, to forbid any contact whatever with the Kitsons. You wonder how anyone had the power to order such things, do you? Well thus is the power of propaganda, Cde, and you might as well get used to it. You are either with us or agin us. Mix with the Kitsons and you are that dreadful thing called a Reactionary, i.e. pro-Apartheid.

But whatthehell, time and tide wait for no man, hey, and both Kitsons wafted back to Africa in due course, where their hearts were. But not South Africa, see, even if Madiba himsacred-self said please-please have a heart. They hung about in Harare and played cards because no freedom fighter would defy struggle culture and offer a friendly smile. So gaan dit mos in die ou wêreld, boet. Norma slowly died of everything and Dave quietly moved into Joburg and I went just last month to visit him in a quiet place for old Jewish folks but he had just died too, and that's why I write this piece which is not an obituary but an accusation.

But it's nice to know the Kitsons finally learned who Solly Smith really was. Take a guess... Ja, you got it! an SA Security Branch agent inserted to disrupt the revolutionary high command in London. He should have been given a gong for his efficiency.

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SMALLS

PERSONAL

Hey Jane Another 12 months of *noseweek*. Yay! Love Plum.
Happy Christmas to Lindy, Pierre, Yasmin, Tristan, Donovan, Linda, Alex & Gail. Love Grandy.
Look forward to each edition of *noseweek*, long may you strengthen the world's free press!
Dear Colleen and Dylan, I love you guys. Stuart.

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