

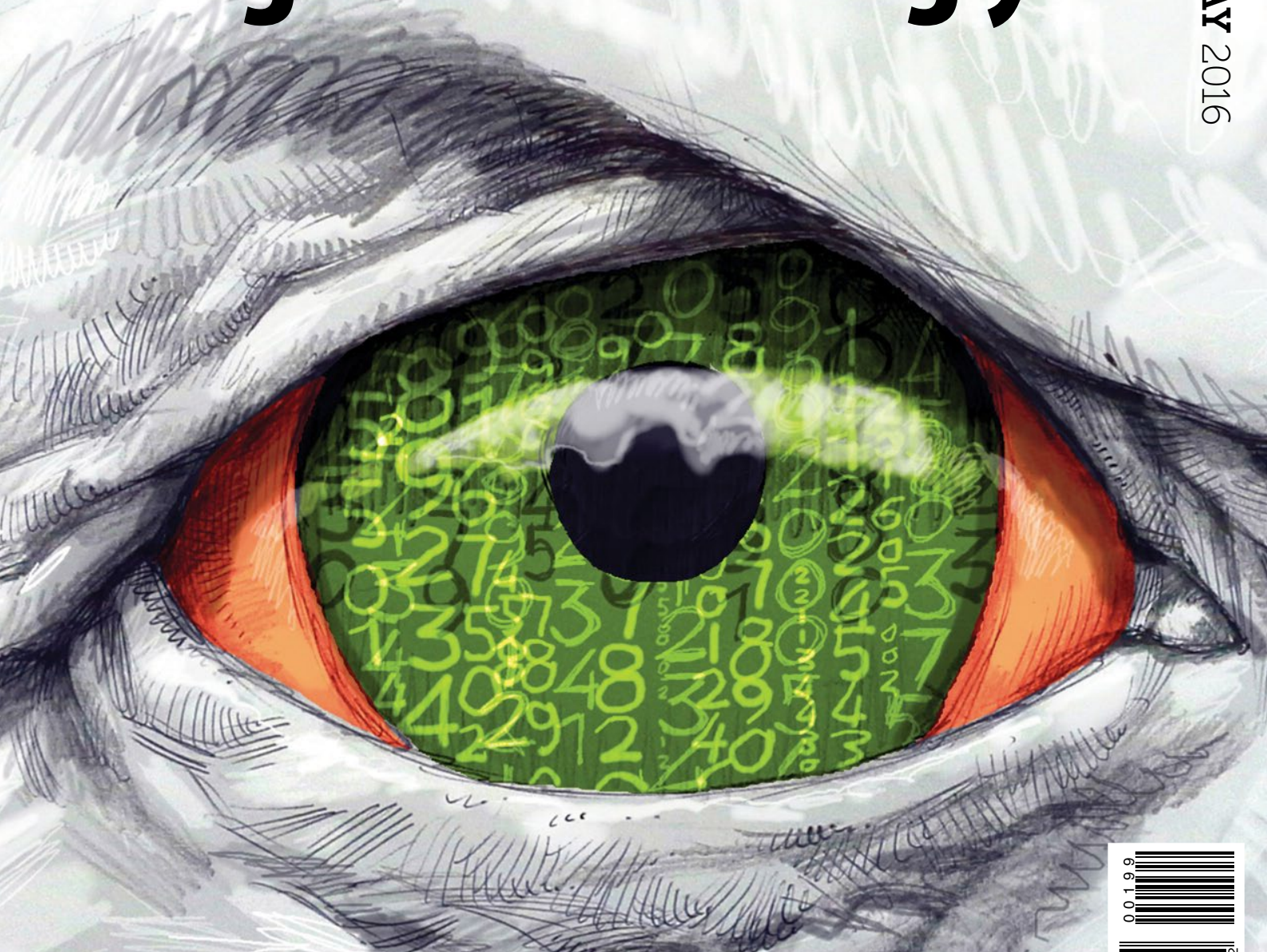
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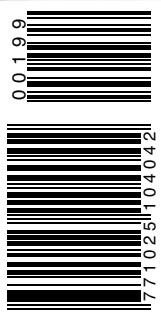
199 MAY 2016



**INSIDER STINK AT JSE
TROUBLE BREWS
OVER LABAT**

**INVESTEC'S BEEN AT IT FOR YEARS
KEBBLEGATE SET RULES FOR
GUPTA CAPTURE GAME**

**BITTER TASTE
ANGRY PENSIONERS
CHALLENGE HULETTS**



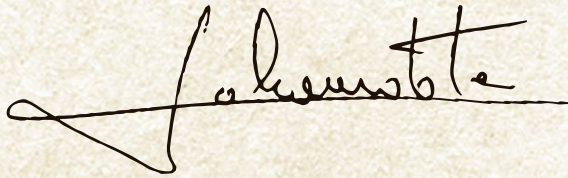


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Hillcrest residents smell a rat



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Letters

Conjurer's tricks

THE FAT, CASH-LADEN CON-ARTIST depicted on the cover of your March edition (*nose197*) looked to me less like a musical conductor and more like a prestidigitator, but then you would have written "Hey Presto" instead of just "Presto". Given the font size this must be *Noseweek's* biggest-ever typo, hey?

Stephen Pain
Riversdale

Typo? A terminological inexactitude writ large enough for you to have noticed it. "Presto", a musical directive, given by tradition in Italian to indicate a fast tempo. – Ed.

Guptagate a devastating setback

GUPTAGATE CONTINUES TO MAKE banner headlines. But whether or not President Jacob Zuma lied (again) is the wrong question. With the ANC continuing to back him, the real question is: are we as a nation utterly without ethics or morals or any bed-rock sense of decency?

The unravelling of Guptagate reads like a textbook of treachery. It's been a disillusioning experience for all South Africans. Trust in the government declines sharply, as cynicism towards politics and public figures

increases. The cumulative impact is a legacy of suspicion and distrust [*and licence*]. It has come to represent the lawless power of a lawless people.

All it takes is the incantation of magic words like "I am in charge" and "Only I appoint cabinet ministers", in order to inure yourself from accountability for just about any malfeasance. Lying to the populace is a clear betrayal of trust and screams for recognition as the most impeachable offence of our elected leaders.

Guptagate is Shakespearian tragedy of epic proportions – an apt metaphor to describe the destructive powers of corruption and how it eats away at the institutions of democracy. The assault on the rule of law is a devastating setback for our constitutional order.

Farouk Araie
Johannesburg

Bobroffs, purveyors of dark arts

I HAVE READ, AD NAUSEUM, IN YOUR august journal, of the dastardly and corrupt dealings of those reprobates the Bobroffs. So imagine my delight when I read in the *Sunday Times* that an Interpol red notice had been issued for their arrest and that extradition proceedings have been initiated

by the Hawks to have them returned from Australia.

Whilst this is indeed good news, what irks is that for 40 years this diabolical duo have fleeced their clients and for years you have broadcast their misdeeds but still they were able to amass millions abroad with apparent impunity. And then allowed to skip the country with as much impunity.

Stephen Jeffries
Cape Town

Not all lawyers are lowlife!

THE INTRODUCTORY PARAGRAPH TO JACK Lundin's report on the legal battle between Nedbank and its erstwhile attorneys ("Dog eat dog," *nose198*) is, to say the least, reprehensible and uncalled-for with regard to the many attorneys who remain honest and hard-working. Believe me, there are still many of us who have never stolen from or importuned a client, and who regularly assist clients in need without payment.

I have been a *Noseweek* reader for years, but I am offended because in the close-on-50 years I have been in practice I have never seen myself or my colleagues in general as "less than human... heartless... money-grubbing". How about an apology?

Herman Smit
Durbanville

If most attorneys were honest, our legal system would not be in the catastrophic state it is today, denying ordinary citizens access to justice. Your letter comes as dew in the desert. On reconsideration, I concede our tongue-in-cheek introductory paragraph was unnecessarily crude and you and your honest colleagues are entitled to an apology, here tendered. – Ed.

Prof commended on his patience

PROFESSOR ULRICH VAN DER HEYDEN, visiting professor to Unisa, was far too patient and accommodating with both the arrogant and inept South African Embassy in Berlin and the incompetent and useless staff

Gus



Stop! Watch!



Fleeing carpet... Guptagate a devastating setback

at Unisa (“Kafka in SA”, *noses* 196 & 198).

I would have told the lot of them to f**k off and stick their bureaucratic forms where the sun don’t shine!

And, after all Bheki Mashile’s ramblings and complaints about the government and the ruling party over the years in his column, he still insists (in *nose*198) on voting for these morons?

If you want things to change and improve, then for heaven’s sake, vote for anybody but the ANC. What these guys need more than anything else is a wake-up call.

Nick McConnell
Howick

Gone off Mashile

I WELCOMED THE ADDITION TO *NOSEWEEK* of a black columnist. When Bheki Mashile started out, the perspective of a USA-raised, SA-born black man returned and now in possession of a BEEE /land-reform dished-out farm... the experiences thereof described in reasonable English, seemed compelling. Occasionally, his pieces have been mildly amusing, but rarely stimulated either sympathy for his circumstances... or much admiration for his intellectual insight.

Most of Mashile’s offerings over the past year at least have seemed dashed-off at the last minute, in pursuit of payment rather than any serious attempt to grow an audience in a

publication read by the intelligentsia.

I suspect he may have been equally unsuccessful in growing anything more productive on that free farm.

His last column (*nose*197) showed him up for who he really is. I prefer not to use epithets to describe persons who trip themselves up in the hope that several rereadings of their own words, might eventually give them that “light-bulb” moment. Read, Bheki, read.

I, for one, consider it time for a new black voice to be heard, one who has something to offer this readership. Or is the quest for a salient black intellectual too much to ask for?

Ingrid Luyt
Hogsback

Noseweek writers must be prepared to take as good as we dish out. And I am confident Bheki is strong enough to ride the backwash of the waves he causes. He might even do the rereading you suggest. – Ed.

A way to redistribute wealth

HAROLD STRACHAN NOTES THAT redistribution of wealth is the only way forward for our troubled country. A practical way to begin addressing this is for those of us who employ others to close the wage gap.

It is far too common for people who understand and even contribute to the argument for egalitarianism to pay their domestic worker, gardener, nanny, factory or shop workers as lit-

tle as they can get away with. Many employers don’t factor in transport, which costs a fortune, and don’t realise that many poor people who are employed are supporting up to 12 unemployed relatives.

Dawn Garisch
Cape Town

■ DEAR OLD HAROLD! FINALLY, AGE HAS conquered reason, and he is back to his fiery youth! Now he proposes that the “Class War” scorpion, riding across the river on the back of the “Capital” frog, sting him.

Of course we all, together, plunge to our joint demise but, after all, this is the Marxist nature.

Boris Yawitch
Riviera, Johannesburg

On a wing and a prayer

IN JANUARY I TOOK THE PLUNGE. OVER the years I’d rush out to get my *Noseweek* as soon as I heard the tantalising radio ads but was often disappointed to find it was not yet available in the stores. I would chide myself that I *have* to subscribe.

Eventually in January I subscribed to both *Noseweek* and *City Press* (also elusive in the stores). Today my *Noseweek* was handed to me by a smiling Jehovah’s Witness who had picked it up on my front lawn. What a luxury to have the magazine tantalisingly beckoning, giving me the impetus to get my chores out of the



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way. Then, I get a call from *City Press* to say that, because I subscribed, I'd won a ticket to the J&B Met in the posh tent and *now* I read in the March *Noseweek* that I've won a pack of Ken Forrester wines. Ahhh this is the life!

And, as if this isn't enough, we read about Bobroff & co among other local scandals, knowing *Noseweek* already made the discoveries years ago. Thank you!

Noy Pullen
Lakeside

Psychologists take a stand

THE STAGGERING STATISTICS ON MURDER, rape and violence against women make us all feel angry, fearful and unsettled and are a reminder of the pervasive and chronic gender violence in our society.

As therapists dealing with the consequences, we are acutely aware of the psychological cost to individuals, families and communities. But our role is limited both in terms of what we can do and the number of people

we can reach. Our various positions of privilege also silence us: we are bound by confidentiality. But, as the saying goes, "The only thing necessary for the triumph of evil is that good people do nothing." Our primary role lies in becoming aware of what's going on in our own minds and containing the painful feelings that arise in response to these brutalities. Yet it is no longer enough to make our voices heard in our consulting rooms. We must take a stand as a profession.

Birds at Bellagio

Except for the undertaker-crows sneering in sartorial black and gray from elegant branches overhead, the birds at Bellagio, small and large, expect to die from gunshot wounds on autumn afternoons

Ingrid de Kok
FROM: CARAPACE 26

Despite our constitution, patriarchal attitudes not only abound, but are condoned – by our president, by numerous cultural and religious institutions and practices, by popular culture, by social media memes and images, in bars, around dinner tables, and in bedrooms. Women and girls in poorer communities are more vulnerable to violence and have less access to resources, but gender-based violence exists across race and class.

We need better policing – the family of recent murder victim found dead in a Khyalitsha communal toilet, Sinxolo Mafevuka, was not even contacted by the police until the deputy minister visited the area more than a week after the incident.

We need a more efficient justice system; political leadership; better education; and more men and women to speak out against this.

We have to ensure that gender-based violence stops with each and every one of us – in the language we use, the jokes we tell, the institutions we support, the way women are represented in the media, the way we raise our children. All behaviour,

speech and representation that trivialise gender-based violence should be recognised as hate speech.

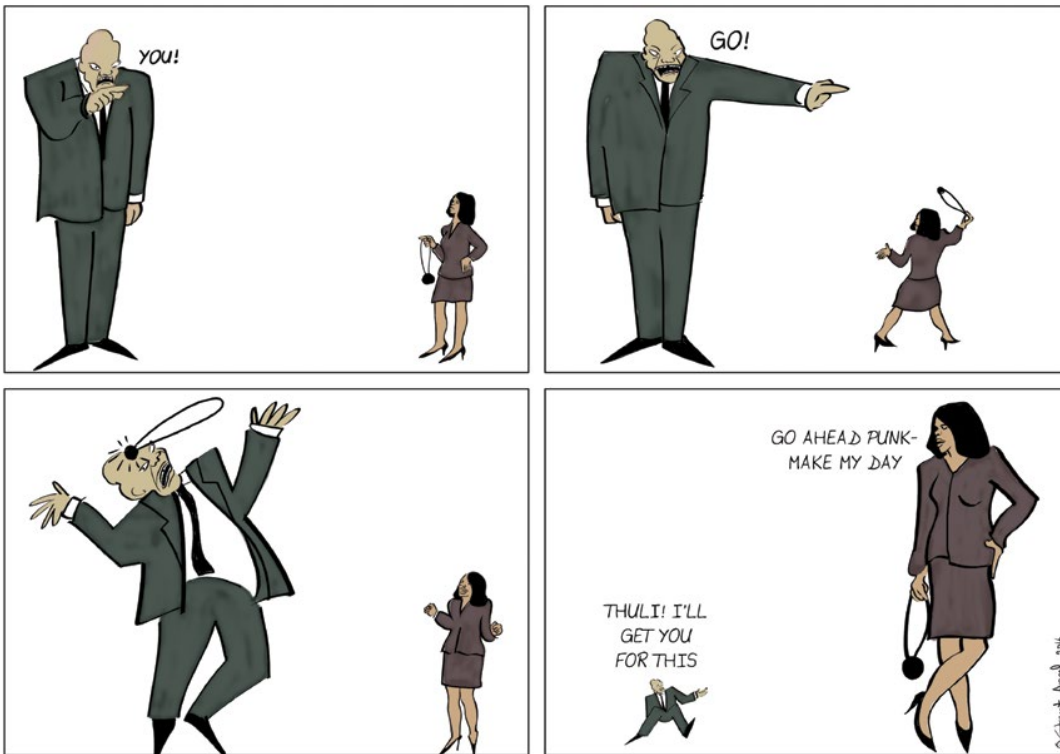
We call for services to support parents and victims, as well as for psycho-educational programmes to be incorporated into the Life Orientation curriculum.

We also need interventions for children who are first-time perpetrators of sexual violence. Mental health services must be prioritised.

We can no longer remain silent and passive. We call on all our colleagues and allied professions to add their voices to ours, to end this scourge.

Cape Town Psychoanalytic Self Psychology Group

Stent



Thanks to Judge Mogoeng Mogoeng for the David and Goliath reference and to Gus Silber for suggesting a cartoon

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Panama Papers, the Guptas and financial journalists

RYK VAN NIEKERK IS A HIGHLY-regarded financial journalist and editor of *Moneyweb*, which we have always believed to be a reliable, independent source of critical financial information. Readers may therefore be surprised to note that we have, sadly, found it necessary to pull him up (see page 35) for accepting a (costly) “fun freebie” from Absa.

Read what follows and you might just understand why we are so protective of the independence of the few financially competent journalists that remain to keep a critical eye on those commercial interests that affect our lives at every turn, none more so than our banks.

The Panama Papers, the world’s largest ever data leak have revealed how Mossack Fonseca, a Panama-based law firm, helped current and former world leaders, as well as businessmen, criminals, celebrities and sports stars, evade or avoid tax via anonymously owned shell companies and offshore accounts.

The International Consortium of Investigative Journalism coordinated the reporting with 376 journalists from 109 news organisations and 76 countries poring over the files.

This mass collaboration was necessary, partly because newsrooms are shrinking while the influential players they are trying to hold accountable are growing in size, power and complexity.

Despite the success of the collaboration, the select group of media organisations that had access to the data have been criticised for going after wealthy business figures and (some) political leaders while largely shying away from the corporate side of the story that has enabled trillions of dollars, euros, pounds and rubles to be hidden offshore.

This has raised a larger question: can the corporate-owned news media really be expected to hold the corporate world to account?

We will return to this subject in due course, but in the meantime consider the most recent example.

As South Africa generally down-grades, so the mainstream media becomes increasingly innumerate. When a political story (Zuma) overlaps with some fairly heavy financial stuff (the Gupta takeover of Optimum Coal), the media senses another sensational development in their relationship (“Zupta”), but exactly what and how remains largely a mystery.

As we reported (*nose198*), President Jacob Zuma’s son, Duduzane, acquired a hefty chunk of the Guptas’ coal entity, Tegeta, just weeks before the Guptas announced the purchase by Tegeta of Optimum Coal’s assets from Switzerland-based Glencore.

During negotiations for the deal, South African mines minister Mosebenzi Zwane travelled to Switzerland and met with Glencore CEO Ivan Glasenberg. On 20 November 2015, about half the shares in Tegeta, according to Bloomberg, were transferred to a company of which Duduzane Zuma is a director and 45%-shareholder, and another entity, Elgasolve, which is 100% owned by long-time Gupta associate and alleged frontman, Salim Essa. (Essa recently relocated to Dubai.)

Oakbay, the Gupta holding company listed on the JSE, owns another 34.5% of Tegeta.

The notion that the Guptas (via Tegeta, a subsidiary of the JSE-listed holding company, Oakbay) are to pay Glencore for Optimum Coal is incorrect. There was never any intention that the Guptas pay with their own money for Optimum.

Consider that during April 2010, the Guptas used Oakbay to acquire the Dominion uranium deposit (see *nose198*), apparently for the equivalent of US\$37 million, and renamed it Shiva. The expectation was that it would, in due course, become favoured uranium supplier to President Jacob Zuma’s planned new fleet of nuclear power stations.

There has never been any indication that the Guptas put a cent on the table for that acquisition. It was financed by the Industrial Development Corporation (IDC), a parastatal that can be expected

From previous page

to be sympathetic to the president's interests.

As for Optimum, Glencore would over the years spend more than R12 billion to gain full control of the coal producer.

In its early days under Afrikaner control, the Optimum mine was a privileged supplier to Eskom, blessed with a thirty-year contract to supply coal to Eskom at a fixed rate per tonne, no matter how the price of coal fluctuated on the open market.

But as the years passed, inflation, rising wages and other mining costs took their toll; that fixed rate turned from a privilege into a punishment: by last year it was costing Optimum R400 to produce a tonne of coal that it was then having to sell to Eskom for only R150 per tonne (*nose*191). *Noseweek's* estimate is that over the past two years Optimum was making a loss of about R50 million a month on the coal it was contractually bound to deliver to Eskom.

Surprisingly, despite it being obvious to everyone that this situation was unsustainable, Eskom has been unbending in its refusal to renegotiate the deal. This despite owners Glencore having acquired the deputy president, Cyril Ramaphosa, as their BEE partner. (If anything, the "forced" sale to the Guptas demonstrates how little power and influence Ramaphosa now wields in government circles, particularly since the Marikana disaster.) In case Glencore hadn't got the message, Eskom proceeded to lumber Optimum with a R1 billion fine for its alleged failure at some period in the past to deliver coal of the correct quality.

Many read it as a clear indication that the political powers-that-be at Eskom wanted to drive Optimum – or rather its offshore owners, Glencore – into selling up at a bargain-basement price or, better still, into liquidation. We now know that the presidency had its friends the Guptas waiting in the wings to take over.

It transpires that while putting Optimum into liquidation might have been an option for Glencore, it was clearly not an option for the bankers that have funded Optimum to the tune of R2.55 billion. They appear to have preferred the sale to the Gupta companies for \$136 million.

Have the Guptas secured the banks' agreement to roll over Optimum's \$136 million (R2.55 billion) long-term bank debt? If so, one must assume that they have found a way to guarantee or secure that debt to the banks' satisfaction. Or might they have found a state surrogate prepared to take over the debt with taxpayers' money?

Glencore, to reiterate, was so desperately happy to get rid of Optimum that it had agreed to pay off the balance of Optimum's short-term debt, totalling US\$24 million.

The "sale price" of Optimum was at the last minute upped from \$136 million to \$143 million, which could just have been to accommodate a generous raising or facilitation fee for the bank or persons that put together the new rollover finance deal.

To what extent might the intervening political drama – that was precipitated when Oakbay was very publicly "fired" by its auditors, KPMG, and three bankers, FNB (part of the FirstRand group), Absa, and Sasfin Capital – affect the Optimum takeover plans? Other than that the Guptas resigned their various board positions (but not their shareholdings).

All the while Eskom has insisted that the fines and penalties it imposed on Optimum while it was still operated by Glencore – apparently some R2 billion in aggregate – remain in place. Given the Guptas' apparent exit from South Africa during the second week of March, Optimum, which is still currently under business rescue, therefore remained at serious risk of going under.

Now the really interesting bit: none of the three banks that so publicly resigned as bankers to the Guptas had made loans to Optimum Coal. By contrast, the three banks that have, and are still owed huge sums by Optimum, have remained notably silent. For them, the "reputational risk" of a deal with the Guptas and their companies does not appear to be an issue.

In possibly the only useful article on the subject, Bloomberg, the foreign-owned newswire, identified the three banks that hold R2.7 billion worth of Optimum debt as: (London-

based) Investec Plc (as lead bank), Rand Merchant Bank (another part of the First Rand Group) and Nedbank.

If Optimum had been allowed to go bust, both its bank debt and fines/penalties owing to Eskom would go largely unpaid. A new owner could start with a clean slate, free to negotiate a new contract with Eskom at a viable price. But the, until now silent, three banks would have taken a very serious knock to their balance sheets and their share price on the stock exchange. They can be expected to do almost anything to avoid such a development – just as Investec and Allan Gray did when Brett Kebble's empire threatened to go to the wall.

So Optimum is not going into liquidation. Various parties have clearly cooperated to keep alive or settle the Optimum loans – that are now said to total close on R5bn.

Investec has enormous experience in preventing insolvent entities, to which it is heavily exposed, from going into liquidation and in getting third parties to take the knock; readers of *Noseweek* will know the extraordinary lengths Investec has gone to over JCI, Brett Kebble's mothership, which was technically insolvent from when Kebble took control of it in 1997. But with a combination of stolen cash, and Investec's extraordinary manipulations, it has evaded being put into liquidation for nearly 20 years.

It is fair to speculate that Investec (for a handsome fee, as in the Kebble case) might have backed a politically-influenced financial solution to secure the Optimum debt that is to be taken over by a Gupta/Zuma-controlled company. The IDC, PIC and African Development Bank, maybe even the Bank of China come to mind. But, in the light of the most recent political furore, do Rand Merchant Bank and Nedbank have the stomach for such a politically risky rollercoaster ride?

And how long might it take Eskom to develop a suitable explanation for why it should now suddenly agree to significantly raise the price it will pay for coal from the Optimum mines, and cancel that knock-out fine?

Watch this space.

**Barry Sergeant and
The Editor, Martin Welz**

Labat: from stink to stench

The stock price collapsed – with overwhelming evidence that insiders were active. By Barry Sergeant

WHEN THE JSE SHARE PRICE of an otherwise unexceptional company, Labat Africa, suddenly and mysteriously soared by more than 1,000% – after bumping along around 10c per share (cps) for years – *Noseweek* smelled something fishy. By 12 June last year the stock price had gone up to 123 cps and possible reasons were discussed in *nose190*.

There was, of course, something cooking – which insiders knew about. Also on 12 June, Labat announced the acquisition of the Reinhardt Transport Group (RTG). Labat had been issuing cautionary notices for about a year, indicating that it was in talks that could affect its stock price.

Investors were told that Reinhardt Transport was to be paid for by contributing R230 million in vendor finance (debt); RTG would in turn be paid R330m cash, raised by way of Labat's issuing a raft of new shares.

In investment parlance, this is known as a "reverse listing" – where a largely defunct listed entity, such as Labat, is used as a vehicle to list a new, presumably profitable, asset. Labat, presided over by CEO Brian van Rooyen, a one-time rugby administrator, was initially established by US black-controlled consultancy Labat-Anderson Inc. (See *noses50,53&60*.)

The local Labat once dreamed of making semiconductors, and of being a bigwig in rail and pharmaceuticals. Instead, it ended up as a loss-making cash shell. Investors who – for reasons known only to them – were rushing to buy the cheap stock in the months ahead of the RTG announcement could/would have made millions.

On 19 November 2015, Labat issued a JSE-approved circular to shareholders, detailing the RTG acquisition. The media faithfully reported the acquisition. As *Engineering News* put it: "Labat concludes R560m RTG takeover deal" and *BDLive* reported that "Labat Africa, a JSE-listed investment holding

company, has been drumming up publicity for its subscription and buyback agreement for a 100% interest in Reinhardt Transport Group for R560m".

Then, on 17 March, Labat reported – surprise, surprise – that "The RTG turnover is lower than expected and margins have been impacted negatively over the period ended 29 February 2016..." It is not clear whether or not the deal with RTG is on or off. Does it matter? More to the point is that in the days before the announcement, the Labat stock price collapsed, catastrophically, from around 120 to 40 cps. This sell-off took place over just three days-or-so.

There is overwhelming evidence, once again, that insiders were active. Just as there may be said to be a bit of a stink over who – or what – was buying Labat shares ahead of the RTG announcement, there is now a bit of a stench over what happened at the other end of the "story".

If nothing else, the Labat saga shows that the JSE enjoys no real respect. "Speculators" who likely made profits in the tens of millions of rand on both sides of the RTG story appear to be fearless. For the highly-paid executives

who prance around the JSE, the Labat saga may be a sideshow, but in a regulatory environment, the exception – if that's what Labat is – is invariably the rule. ■



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Investec perfected the capture game long before the Guptas landed

Kebblegate set a precedent for institutional take-overs. By Barry Sergeant



WHILE JACOB ZUMA AND TEAM seem to have perfected the technique of institutional “capture”, Investec was at it a decade ago when it bagged the National Prosecuting Authority (NPA) in order to control which cases don’t get heard in court and remain covered-up forever. This is exactly what happened to potential prosecutions that should have flowed from the Kebble frauds. In hindsight, with the wildly complicated Kebble saga unravelled, it is possible to see how Investec achieved this “coup”.

Law enforcement involves four distinct entities, each of which should be independent of the others, and of everything else: the police, or investigators, who must “uphold and enforce” the law; the prosecutors, whose mandate is to act “without fear, favour or prejudice”; the bench, or judiciary, of magistrates and judges; and the correctional services. If one or more of these four falls into compromised

hands, the entire system is at risk.

It is arguable that prosecutors are the most appealing target for high-skills white-collar criminals. The NPA has long tended to hire external “experts” to assist in investigations and case preparation for the prosecution of high-profile white collar criminals. While the decision of whether or not to proceed with such a case lies with the prosecutor, much of his or her role in the white collar area has thus long been privatised.

For a decade, South Africa has seen no prosecutions of serious white collar crime. As a Durban attorney recently put it in private correspondence to a client: “The criminal justice system is in a state of collapse, and it would be a senseless waste of money for me to try to make it work”.

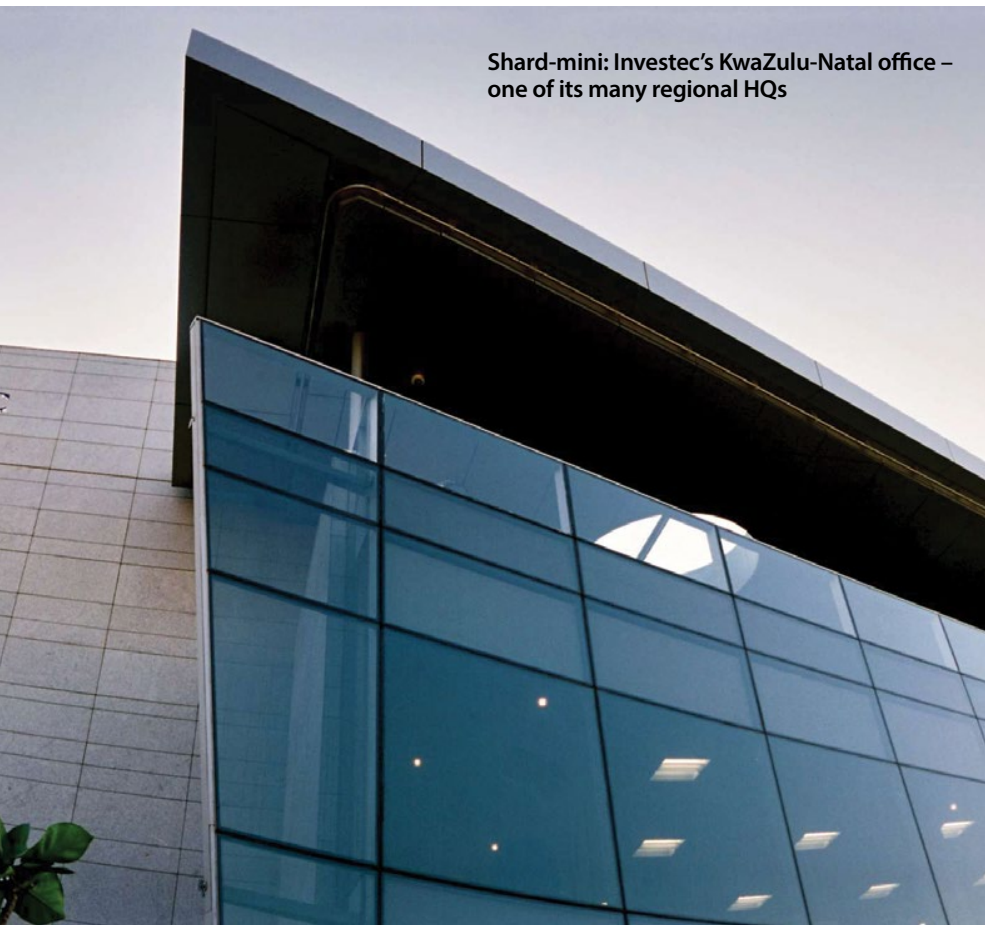
Given this national atmosphere of lawlessness, it is arguable that the rewards of white-collar crime are more attractive than grinding away at an honest job. South Africa has long been

a paradise for white-collar criminals.

Within this context, the biggest white-collar crime in South African history, the Kebble saga, remains unprosecuted. Although *Noseweek* readers are familiar with much of the Kebble debacle, the role – and non-role – of the NPA has not yet been examined in detail.

The quantum of the scam (now put at well over R38 billion), the highest post-theft value of the shares stolen by JCI from Randgold and its myriad dimensions required extraordinary verve. Above all else, it was imperative that the institutional perpetrators secure the temporary capture of the NPA, to avoid prosecution.

This was achieved. The modus operandi deployed by the perpetrators of the scam is by now one of the most heavily investigated events in South African history – but not by law enforcement agents. Read on for an examination of the opportunity and motive for capturing the NPA.



Shard-mini: Investec's KwaZulu-Natal office – one of its many regional HQs

Brett Kebble was removed as CEO of three JSE-listed entities – Randgold, JCI and Western Areas – in August 2005, and murdered a month later. For years, starting in 1999, he and a network of criminal minds had been looting Randgold's entire portfolio of liquid listed shares, (the predominant holding, by value, being the stock Randgold held in Randgold Resources) and selling them where the latter was listed, in London and New York. The cash raised was converted to rand and repatriated to South Africa, to be used for anything and everything (but with not a cent going back to Randgold).

For years before Kebble's exit from the world on 27 September 2005, it was clear that something had gone horribly wrong with his "empire".

After Kebble's departure from the Randgold board in August 2005, there was enormous pressure from investors for the truth. Randgold – listed both in Johannesburg and on

the NASDAQ exchange in the US – had little choice but to institute forensic investigations. It appointed John Louw McKnight & Co (JLMC), a

truly independent forensic examiner, headed by John Louw, an experienced chartered accountant, highly regarded in corporate circles. This seemed like an auspicious start to the investigation of what would soon emerge as the biggest frauds in the country's history.

Louw and his team immediately encountered resistance from all directions but, against the odds, JLMC completed its forensic investigation. After six interim reports their final report was delivered to Randgold on 16 March 2006. Claims against JCI were formulated three months later.

The reports, which remain unchallenged, showed that between 1999 and 2005, all Randgold's liquid listed shares had been looted and its sale had generated R1.9bn in cash, which had been distributed to four main recipients – JCI and related parties: R896m; Western Areas: R522m; Brett Kebble and his associates: R378m; and Investec: R106m.

At the time of Kebble's corporate exit in August 2005, Investec had inexplicably granted loans of R460m to JCI, Kebble's mothership, with its predominant interest of a shareholding in the permanently cash-starved Western Areas, which was developing a deep-level gold mine west of Johannesburg.

Why would Investec have wanted to keep Kebble's rotten empire afloat? JLMC's reports showed – contrary to everything Investec would assert for years to come – that Investec had an intimate and heavy relationship with Kebble and that early in 2004, Investec had embarked with Kebble on the OSLA (Overseas Securities Lending Agreement), where JCI purportedly lent Investec certain stolen Randgold Resources shares and received R271m in cash from Investec as security.

At this time, early in 2004 – as had been the case for years – Western Areas, JCI and Randgold were listed companies that regularly published financial statements. A desktop analysis of the financial statements, even by a non-banker, would have concluded that the only Randgold Resources shares owned by the three Kebble-controlled entities were owned by Randgold. To overcome this inconvenience, Investec cleverly in-

Why would Investec want to keep Kebble's rotten empire afloat?

sisted that the Randgold Resources shares in question offered to it by JCI be converted into ADRs (American Depositary Receipts), which as bearer instruments do not reflect any ownership information. Investec then executed the deal in which 5.46m Randgold Resources shares stolen by JCI from Randgold were sold by Investec on the London market for the benefit of various entities – excluding Randgold. (See *nose179* for a full exposé of Investec’s offshore money-laundering). A portion – more than R70m – of the proceeds from the sale of these stolen shares were to be used to repay JCI’s debts to Investec, on which JCI had earlier fallen into arrears.

In the OSLA lies the first reason why Investec was prepared to take such big risks on Kebble’s mother-ship. JCI had to be kept solvent, otherwise there would be the inevitable (Companies Act) Section 417 enquiry into its affairs, at which the horrors of the OSLA would likely have been uncovered.

But Investec had a second reason for its incongruous decision on Kebble: the Western Areas gold call options. Only on 25 January 2007 was the disclosure publicly made that Investec was one of the three banks on the winning side of call options over gold still to be produced, that Western

Areas had sold late in 2001. Western Areas had raised US\$104m in cash in 2001 by selling call options over 1.8m ounces of gold at an average strike price of around US\$300 per ounce for gold. These options became exercisable in unequal annual tranches scheduled until 2014.

**The links between
Western Areas
and Investec were
always deeply –
almost completely –
concealed from
the public**

Cash flow statements published by Western Areas show that it cost the company R599m to settle those options that became due between 2003 and 2006. The cost of eliminating the balance of Western Areas’ call options in early 2007 – by way of a bullet payment – was US\$527.5m, or R3.77bn at the then-prevailing exchange rate. For the hedge banks, including Investec, or their successors-in-title, this was pure, massive profit. But had Western Areas gone bust before then, the options would have been valueless.

The fact that JCI was the main provider of funding to enable Western Areas to meet its option obligations (and the gold mine’s rapacious appetite) further explained Investec’s almost unnatural interest in August 2005 in sustaining the visibly insolvent JCI. For years, Investec had done whatever was required – including the madness of embarking on the OSLA.

The links between Western Areas and Investec were always deeply – almost completely – concealed from the public.

In August 2005 Investec took over the boards of directors of both JCI (the thief) and of Randgold (the victim). Five of Randgold’s directors also served on JCI’s six-member board. Investec’s Global Head: Legal Risk, David Nurek, chaired both.

The JSE, of which Investec CEO Stephen Koseff was then a director, stood passively by. In due course, Investec started convening joint JCI and Randgold board meetings, some in its own premises, some attended by Koseff. These events blew all the stuffing out of the so-called King Code of corporate governance, which the JSE religiously swore was obeyed by every listed entity.

Most important, perhaps, was the manner in which KPMG, Investec’s auditors, were immediately appointed to be the new auditors at both JCI, the thief, and Randgold, the victim. KPMG, as it turned out, were well situated:

- KPMG were also the auditors at SocGen Johannesburg, which had loaned Kebble’s private investment holding company, the infamous BNC, more than R100m in 1997. This was later all repaid from the proceeds of selling certain Randgold Resources



**GREATER CAPE TOWN 101.3 | ATLANTIC SEABOARD 97.1
FISH HOEK/NOORD HOEK 107.9 | HOUTBAY 94.7**

shares stolen from Randgold.

● KPMG were auditors (internal and external) at Western Areas, which had directly received more than R500m in stolen cash.

● KPMG were auditors (internal and external) at T-Sec, the stockbroker that Kebble had purchased in order to launder hundreds of millions generated from the sale of stolen shares.

At JCI, when Investec's David Nurek became chair in September 2005, KPMG Services was appointed to conduct a forensic investigation of the company's affairs in the Kebble era. Thus KPMG became the forensic investigator of the thief.

Peter Gray, who had been the CEO of Kebble's stockbroker (T-Sec) when it laundered the proceeds from shares stolen from Randgold, was promoted by Investec to CEO of both JCI (the thief) and Randgold (the victim).

According to the Scorpions, during June 2006, Gray, with KPMG's Déan Friedman in tow, "reported certain incidents in the affairs of JCI and Randgold". At the Scorpions – a special investigative unit of the NPA – the investigation was conducted in two parts. The first, codenamed "Empire K" – into the Kebble money crimes, was led by Guillaume Nel. The second, dubbed "The Bad guys project", which was to investigate Kebble's murder, was headed by Andrew Leask.

The lead prosecutor in the team was Gerrie Nel, who at that time was heavily engaged in a battle with Jackie Selebi, the commissioner of police.

None other than "officials" of KPMG were then appointed to assist the Scorpions, in their Kebble investigations. The conflicts of interest arising from KPMG's interest and involvement in various of the parties under investigation should have disqualified it from any such appointment.

How could the NPA act without fear or favour if it was being guided by the tainted and deeply conflicted Gray and advised by the same "independent" firm acting for JCI, the thief? The same firm that had failed to notice, year after year, the hundreds of millions in stolen cash flying around at entities where it was auditor – Soc-Gen Johannesburg, T-Sec, Western Areas, Investec, and now, JCI?

Together with the tainted and irredeemably conflicted Gray, Investec's

auditors KPMG had the NPA's investigation into the Kebble frauds sewn up: captured. Thereafter, anyone who approached the NPA with information on the Kebble matter was met in an office by KPMG's Déan Friedman, an innumerate lawyer who headed up KPMG's forensic division.

On 21 February 2007, when the NPA finally filed an affidavit to apply for more than 30 search warrants into various people and entities involved in the Kebble saga, it was, perhaps, no surprise that it was a masterpiece of obfuscation: it detailed 59 suspected crimes and offences and identified no fewer than 29 persons who were under investigation by the Scorpions.

This list however somehow managed to exclude a number of individuals and entities that Randgold would much later find reason to sue: T-Sec; Peter Gray; Chris Lamprecht; John Stratton; Western Areas; and, of course, Investec were not on the list.

Also, the "story" contained in the affidavit was completely back-to-front. It failed to state the essence of the crime, i.e. that Randgold had been the victim of a massive theft by Kebble, JCI and other Kebble associates; that the theft had generated R1.9bn in cash; and that all had flowed to JCI, Western Areas, the Kebbles and Investec. The NPA's affidavit cast Investec in a neutral light, and possibly

even as a victim.

It was clear from a reading of the affidavit that the Scorpions were never shown the JLMC reports, which had been fully completed 11 months earlier. The JLMC reports were, in effect, all that the NPA needed in terms of the fact-seeking section of an investigation into the Kebble frauds. It would be logical to infer that the Scorpions had been advised to ignore the JLMC reports. Thus, in a magnificent illustration of obstruction of justice, the JLMC reports were suppressed.

The NPA's investigation into the Kebble frauds had been captured. The investigation into the biggest fraud in South African history died a silent death.

Jackie Selebi was charged and convicted of receiving dirty money from Kebble through Glenn Agliotti, who was later convicted for international narcotics trafficking. During Selebi's trial, the evidence-in-main was presented – of course – by KPMG, reputedly at a cost of R20m. (Note that Kebble had chosen to try to capture Selebi, rather than the NPA, and that Selebi had succeeded in having the Scorpions closed down.)

There were parallels elsewhere. The JLMC reports, available to Randgold in March 2006, were kept under wraps from Randgold shareholders for years, under the hand of Randgold chairman, Investec's David Nurek. The JLMC forensic reports were only disclosed to Randgold shareholders on 24 July 2008, two years and four months after becoming available; this was just 15 days after Nurek had resigned from the Randgold and JCI boards.

While Randgold could have – and should have – immediately sued JCI when JLMC formulated Randgold's claims against JCI in June 2006, Investec simply prevented that from ever happening. These claims have since escalated from R6bn in June 2006 to R19bn at the time of the settlement concluded between JCI and Randgold in January 2010, and have soared to R38bn today.

Investec's boldness seemed boundless. By the time the OSLA matured in 2006, the JCI board was fully under the control of Investec. The 5.46m stolen Randgold Resources shares – still in the possession of Investec

Thus, in a magnificent illustration of obstruction of justice, the JLMC reports were suppressed

London in terms of the OSLA – were worth around R700m. JCI, which had the right to buy back the stolen shares at the original loan figure and thereby be able to profit by more than R400m, did nothing. That profit went elsewhere – to Investec and cohorts. It seemed that the longer Investec and KMPG managed to go undetected, the bolder they became. Thus, when Gold Fields, that was listed in Johannesburg and the NYSE, decided during the fourth quarter of 2006 to buy Western Areas – whilst Investec’s Nurek was the chairman of both JCI (the thief) and Randgold (the victim) as well as a director of Western Areas, – Gold Fields was told nothing about the potential time bomb: that Western Areas was the beneficiary of stolen cash running to more than R500m and that Randgold thus had a very large claim – at that stage around R5bn – against Western Areas.

On 20 August 2008 Randgold belatedly issued a summons against Gold Fields Operations (GFO), the new name of Western Areas, claiming R11.4bn from GFO. This claim has since increased to R33bn. An interesting question is whether GFO will have recourse to Investec, Nurek, and others, due to non-disclosure. GFO has recently advised that it has invited (unspecified) persons – against whom it maintains it will have claims if the Randgold action against GFO were to succeed – to intervene in the case.

For his part, Koseff continues to crow about South Africa – which he maintains is a “top regulatory destination” for foreign investors. Perhaps he has forgotten or overlooked the manner in which Investec’s advisor, KPMG, “captured” the NPA’s investigation of the Kebble frauds on its behalf. The NPA has never recovered from this capture. There has been permanent damage in all directions.

Investec has successfully suppressed Randgold’s claims against JCI from behind the scenes – by coercing and honey-potting others into doing whatever it wants. It is interesting to note that, according to *Moneyweb*, five of the six most highly paid executives at companies listed on the JSE can be found at Investec (Anglo American CEO Mark Cutifani is the only exception). The five indi-

Perception is far more important than reality

INVESTEC LIKES TO POLISH ITS IMAGE, throwing money at an array of beneficiaries from bursary funds to English test cricket; from hockey, soccer, rugby and horse-racing, to Scotland’s Garden Scheme.

At one extreme of the bank’s hyperbolic public image can be found its Corporate Social Investment (CSI) “endeavours” which it trumpets as being “central to the group’s philosophy of making an unselfish contribution to society, and underpin perceptions of Investec as a good corporate citizen”.

Perceptions – as Investec’s most famous client Brett Kebble also knew – are far more important than reality. In practice, as readers of *Noseweek* will know, Investec conducts bullying campaigns such as that experienced by the minority shareholders in Randgold.

On one hand Investec states categorically that the case against it has no

substance “whatsoever”. On the other, it has instructed a veritable army of lawyers to find technical loopholes, no matter how absurd, to derail or delay the case. The campaign is aimed at exhausting the minority shareholders by fanning litigation costs, which now run into tens of millions of rand. After more than five years, the “main” case is nowhere nearer to being heard.

Investec has also conducted a long-term campaign of cultivating patronage networks. Thus in September 2000 beauty queen Peggy-Sue Khumalo went to the University of Manchester, UK, on a three-year scholarship organised by Nelson Mandela, who had called on Investec CEO Stephen Koseff to bankroll her. Kebble also cultivated this link, buying Mandela a house in Houghton.

There was a time when Investec fancied its chances on Wall Street, but it



viduals from Investec, including Koseff, earned an aggregate R363m in the latest financial year alone.

Clearly, the investing community acquiesces in everything Investec does. When Investec launched its heaviest and stealthiest attack on the Kebble empire, during August and

September 2005, asset management firm Allan Gray was the biggest individual shareholder, at 24% in each of JCI, Randgold, and Western Areas.

Allan Gray backed Investec every step of the way in preventing Randgold from timeously and fully pursuing its legitimate claims arising from



was absolutely outclassed by the likes of Goldman Sachs, and instead beat a rapid retreat to London. From that base, the company has spent a fortune on trying to build an all-conquering public image. It has become a global sports sponsor, signing a deal to be the main name behind English Test cricket until 2021. For the gambling mink and manure set, there is the Investec Derby Festival.

London is also where Investec staged the Overseas Securities Lending Agreement early in 2004 – one of the more notable cross-border money laundering events of recent times.

Another conspicuous part of the Investec “business model” is its policy of ensuring that “the right people in the right places” are rewarded beyond their wildest dreams. Thus, its bid to cover up the company’s conduct during the Keble era has seen it influence the remuneration policy at JCI and Randgold, particularly since Keble’s demise in September 2005.

Since then, the executive directors – there have only been five – of Randgold and JCI have, to date, been paid R150m. This is pretty good money for running two shell companies, neither of which had any day-to-day business. Of this, nearly R100m went to Peter

Henry Gray and Marais Steyn, both appointed with Investec’s blessing.

Under Investec’s further influence, Randgold and JCI have together paid auditor’s fees of R91m to KPMG (also Investec’s auditors) over the past decade to keep a blind eye on matters. Another sum of nearly R100m has been paid as “consulting and forensic” fees – much of it to KPMG.

But the lion’s share of the most comprehensive scam in South African history has gone to lawyers. Randgold and JCI have paid a combined R239m to lawyers over the past decade. Of this, Randgold contributed R138m. Investec also forks out some of its own money on lawyers. There are few prominent attorneys in Joburg who have escaped the Investec web of patronage.

For its generosity, Investec naturally expects results. At Randgold, when a bankruptcy hearing into Keble’s personal cornerstone entity BNC was running in Investec’s direction, the hearings were mysteriously delayed.

Legal papers showed that Randgold had a bomb-proof case worth more than R100m against SocGen Johannesburg, via its BNC claim. When the hearings were resuscitated, none other than Leonard “Lennie the Liquidator” Katz, of law firm ENS, popped up. In due

course the hearings were shut down and Randgold saw value of more than R100m go begging. ENS is, of course, one of Investec’s favourite firms.

Just as notable is the case in which Randgold is suing Western Areas (now Gold Fields Operations) for more than R10bn. Documents in the public domain show that Western Areas received more than R500m in stolen cash, under Keble’s hand. Other public documents – mainly shareholder circulars issued with the blessing of the JSE – show that when NYSE and Johannesburg-listed Gold Fields bought Western Areas, the details of the stolen money were totally suppressed. It is fantastic, but true, that law firm Werksmans, another of Investec’s favourites, is acting for Gold Fields in the case.

A number of Investec luminaries, not least David Nurek, were blindingly aware of the illicit cash that was received by Western Areas, of which he was also a director. One of the JSE circulars, in which JCI sells its Western Areas shares to Gold Fields, is signed off by Investec and the ever-present KPMG.

Investec also exerts a heavy influence over the media, from which it expects absolute respect, if not fawning. Investec not only spends heavily on advertising; it lets its influence be known in other ways there, too. Talk radio 702’s John Robbie has pointed out to listeners that his daughter, a lawyer, works for Investec in London. When Investec has something “to say”, Robbie, an innumerate Irishman, is always available. ■

the theft of its entire liquid portfolio of listed shares, condoning and benefiting from the most extended period of organised white-collar crime in South African history.

Today, South Africa’s law enforcement system is in tatters, and degenerating further by the day. When

Koseff next describes South Africa as a top regulatory destination, he may want to explain just what he means by regulations.

Investec has spent a decade demonstrating that it has no respect for regulations, law, or common decency. Sadly for Koseff and his cohorts,

Investec has come short of the 11th commandment: don’t get caught.

Investec and KPMG’s success in gaining control of the NPA and investigating authorities was perhaps the first sign of the ill wind that has since overtaken and destroyed this institution. ■

Sweet deal for sugar giant leaves bitter taste

Pensioners claim Tongaat-Hulett plundered a R585m surplus from their pension fund. **By Jonathan Erasmus**

THEY GAVE THE BEST PART OF THEIR working lives to Tongaat-Hulett Ltd, the KZN-based sugar giant which has operations throughout Sub-Saharan Africa. But behind their backs, the employer they say was “once a good company”, systematically plundered their pension fund “surplus” of more than R585 million – leaving them with zilch – before “outsourcing” the aged pensioners and workforce to a more expensive scheme with poorer prospects.

This is the claim before the Kwa-Zulu-Natal High Court in Durban by 73 pensioners (77, when they started in 2012 but four have since died) who are convinced that the JSE-listed firm hatched an immoral and secret plan, spanning six years, to brazenly commandeer pension funds that should have been shared with them.

The fund, whose board of trustees is heavily loaded with senior executives from Tongaat-Hulett (interim September 2015 results reflected an operating profit of R1.4 billion) insists that it has done nothing wrong: the trustees claim that even if they have erred they would be “within their rights” to reallocate all surplus to the employer again, even if a court should rule to the contrary.

In court papers the pensioners paint a picture of a “co-opted” board of trustees including the principal officer, Samantha Davidson, who is head of pensions at attorneys Shepstone & Wylie (Tongaath-Hulett’s legal advisors – who describe themselves as “a leading South African law firm with a reputation for integrity and excel-

lence”, but see *noses*15,17&19). All the trustees were beholden to CEO Peter Staude, himself a pension fund trustee.

The pensioners believe there was a plan to systematically pillage the Tongaat-Hulett Defined Benefit Pension Fund (and its predecessor the Tongaat-Hulett Pension Fund), over the course of five years, through opaque communiques, withholding of information, intimidation, delaying tactics and “devious accounting” before outsourcing them to Old Mutual’s Platinum 2003 Category A Benefit Fund – which, on average, performed nearly 4% poorer than the company’s own fund.

While the matter will be argued within the (narrow) scope of the Pension Fund Act’s Section 15C and the legality of the fund’s own rules as endorsed by the Registrar of Pension Funds, ultimately the pensioners simply want their share of the surplus.

The pensioners, all “company men” each with about 30 years’ service, once held senior positions ranging from middle management to CEO. Many who were contacted by *Noseweek* – including a former managing director – declined to speak out; some others would only agree to speak off the record.

“The company culture has changed. Under the former CEO Chris Saunders, who was also chairman of the fund, this type of thing would never have happened. I remember being told he once asked the fund to help a pensioner who was financially distressed. He said ‘What can the fund do to help that pensioner?’ That is the company I

knew. Now his son is chairman of the fund but he is certainly not like his father. What the company is doing now to us is simply wrong and immoral,” said a pensioner.

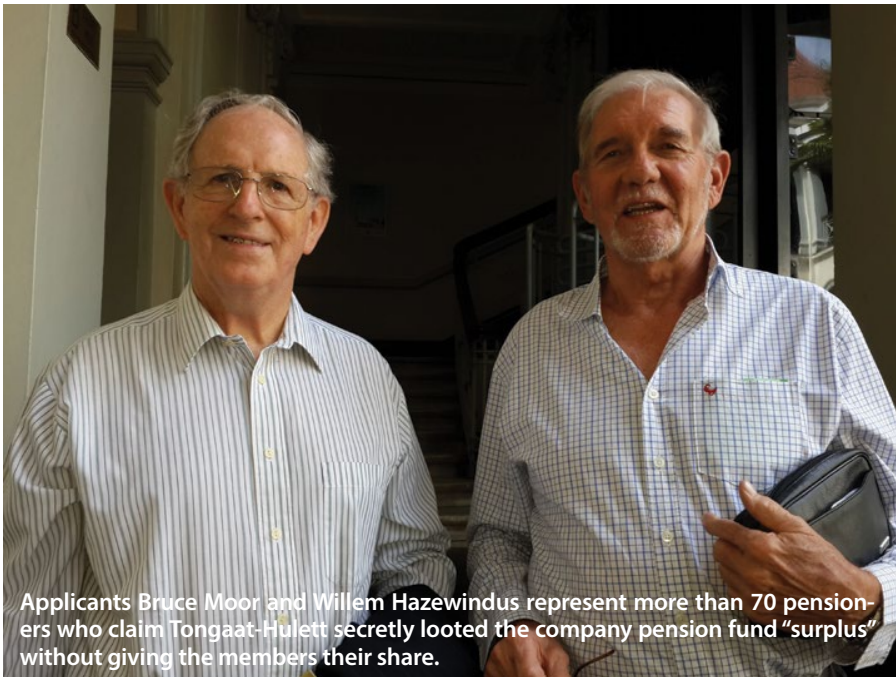
Bruce Moor, an applicant and former board member of the fund’s predecessor, the THPF, said in court papers that due to the outsourcing and the manner in which it was handled, the pensioners “sustained prejudice” due to “maladministration of the Fund by its trustees, and by the influence of the employer”.

He added that some board members “stand personally to benefit financially from the decision” through incentive-based bonuses. “Several of them, including the chairman of the board of trustees, are beholden to the Chief Executive Officer of the employer, who is also a trustee”.

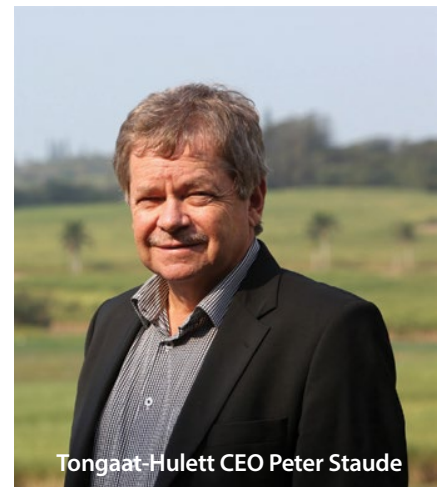
They initially took their plight to the Pension Funds Adjudicator, who dismissed their application on the grounds that it “cannot succeed” and that [*by some strange logic* – Ed] in the awarding of the “surplus exclusively to the employer... the interests of all stakeholders were taken into account”. The pensioners have now taken that ruling on appeal to the high court.

Moor said the adjudicator failed to deal with “the real complaint” and that the fund was in breach of the Pension Fund Act.

With regard to the “composition of the board” and the “substantial personal benefits which will accrue to members of the board” when the TH-DBPF is liquidated, there was a clear conflict of interest.



Applicants Bruce Moor and Willem Hazewindus represent more than 70 pensioners who claim Tongaat-Hulett secretly looted the company pension fund “surplus” without giving the members their share.



Tongaath-Hulett CEO Peter Staude

“The net result is that the board favoured the employer above the interests of the members.”

The fund has dismissed the “conflict of interest” accusation as “without foundation” and “insulting to and defamatory of employer members”.

In an opposing affidavit, Davidson contends that the court has “no basis” to interfere with the adjudicator’s ruling; that the allocation of surplus was a decision of the fund and that the rule used to wind up the fund was approved by the Registrar of Pension Funds.

The alleged “plot” of Tongaat-Hulett to loot the surplus account was multiphased.

In 2007 Tongaat-Hulett Group was split into two arms: Tongaat-Hulett Ltd and Hulamin, which is in the aluminium fabrication space. Both are listed on the Johannesburg Stock Exchange. However until 2010 the employees of both were members of a single pension fund, the Tongaat-Hulett Pension Fund.

In December 2008 the two companies took a loan from THPF of R132m, which was split, with Tongaat-Hulett Ltd getting R91.9m and Hulamin, R40.1m. The interest was far lower than that charged by any commercial lender and was linked to the annual average performance of the fund. This



Samantha Davidson of attorneys Shepstone & Wylie

transaction was never disclosed to the fund members and, remarkably, no reference was made to it in the pension fund’s annual report. The fund was audited by Deloitte, which apparently thought it unnecessary to report such a large loan in a note in the annual report.

In May 2009 after a “round-robin resolution” (meaning everyone was sent an email requiring a simple yes or no answer) and without any debate, the loan was converted to a 20% share in a fund surplus to which the company believed it alone was entitled. The surplus had been calculated by Tongaat-

Hulett’s actuary Howard Buck.

The only mention of the loan, now reclassified as a surplus, was in a summary of the THPF annual report finalised in December 2009, which was sent to the fund’s approximately 2,500 pensioners and nearly 900 in-service members. Under “Investments at market value”, it said an “Employer Loan” of R87m – presumably the unspent portion which had yet to be allocated to the employer surplus account – bore an annual interest rate of 1.44%. There was no explanation for the loan. Compared to the returns from the fund’s offshore investments and equities, which had returns of 16.45% and 55.11% respectively, the loan was a poor investment, in comparison to the other investments, and only outdone by its property portfolio which had an annualised growth of 1.43%.

The THPF trustees were informed that the fund still had a surplus of R627m. It was proposed that a second allocation be made to both Tongaat-Hulett and Hulamin. On 31 August 2010 they received a 30% slice amounting to R188m, with Tongaat-Hulett getting a R130.2m cut of this. Again, no allocation was made to the members and they were not informed of the allocations to their employers.

When Davidson was questioned by pensioners, she said this was “normal” and was legal in terms of Section 15C of the Pension Funds Act.

A month later, the fund was liquidated and split pro-rata between the two companies. Tongaat-Hulett’s members were moved to the newly

created Tongaat-Hulett Defined Benefits Pension Fund.

Almost immediately the new fund was closed to new members, and the board reduced from 18 to 10 trustees. No surplus audit was undertaken.

The new board of trustees was made up of company CEO Peter Staude, his CFO Murray Munro, executive director Bruce Dunlop, two company executives, the company secretary Maditshaba Mahlari, two employees and one pensioner. The chairman was Steve Saunders, an executive director.

Once the THDBPF was created, members were told they were being outsourced from the defined benefit fund to a defined contribution fund managed by Old Mutual.

Tongaat-Hulett Ltd stood to gain a further R363m in this transaction. Within three years of the THDBPF being created the outsourcing was complete, with little more than a month to spare before the THDBPF would have been compelled to undertake a valuation of the fund and ascertain whether there was in fact any surplus, as required by the Pension Funds Act.

At no point were the members ever considered for a surplus allocation.

A since-retired executive, Alan Fuggle, told *Noseweek* that by 2010 the pensioners began to suspect a plan to loot the fund of the surplus.

“When the allocations were made in 2009 and 2010 we as members were never told about them. There was also no mention of Tongaat-Hulett’s borrowing from the fund in any of our fund financial reports, at any point.

“Our pensioner representatives who had sat on the THPF board and kept up the fight on our behalf, battled to get any information out of the principal officer (Davidson). She pulled the wool over their eyes. She would drip-feed them information. We couldn’t even get the fund’s financials until the court ordered them to make it available,” said Fuggle, adding that the Act says that surplus should be apportioned when taking “all the interest of stakeholders into account”.

“The employer has already enjoyed benefits plus the benefit of no longer managing a fund. The members however are exposed to new risks since being outsourced. They have also since told us that, even if we are successful they might just re-allocate the surplus

Some who did object were approached personally by ‘fund officials’ to withdraw their objection

back to the employer. It is immoral.”

The THDBPF is confident it holds the legal high ground, no matter how morally shaky it may appear. In the fund’s heads of argument it is brazenly stated that even if the pensioners were to be successful with their court appeal, “such relief may well be of no benefit to them, as the board of trustees would be perfectly within its rights to reallocate the R363m to the ESA during a surplus apportionment exercise”.

In essence they would be awarding themselves at least 72% of the known surplus although they could allocate the entire surplus to the employer if they saw fit, in the absence of any rules within the fund to deal with actuarial surplus allocation.

Tongaat-Hulett, which dominated the board, admitted in court papers it would only allow the liquidation and outsourcing of the fund to take place, if they got their 20% cut of the fund’s assets – knowing full well the payout would be substantial.

To complete the outsourcing and to secure Tongaat-Hulett’s massive payout, actuary Howard Buck from Fifth Quadrant Actuaries (mostly former Old Mutual staff) and Samantha Davidson first approached the Registrar of Pension Funds to approve a fund rule allowing them to split the fund’s “excess

assets” 80/20 in favour of members. The total assets were deemed to be R1.8bn. The rule allowed for 80% of the “excess assets” (basically fund assets minus its liabilities) to be used to “provide compensatory adjustments” to members while the 20% lump sum (or R363m) was to be paid to the employer’s Surplus Account.

The pensioners claim the passing of the rule by the registrar and its acceptance by the THDBPF board was followed by a series of “misleading” letters to members from Davidson. In one she said: “all the stakeholders in the Fund must be considered in the distribution of the surplus assets in the fund in excess of the member and pensioner liabilities”.

The members claim that from the beginning they thought it was in reference to their surplus allocation.

“The 80% we got was already ours. This was not a generous offer. It was ours by right. This is completely immoral,” pensioner Peter Prince, a veteran of the sugar game, told *Noseweek*.

The pensioners have claimed that members – both retired and in-service – were dissuaded from objecting to the changes with the threat of being deprived of their share of the reserves – future salary increases having been declared non-pensionable, the withholding of future increases from objectors; a higher percentage retirement contribution; and a smaller fund that would carry higher costs.

Some who did object were approached by “fund officials” to withdraw their objection. Others considering objecting could not do so – because the final explanatory session for employee members was held at Tongaat-Hulett’s offices in Mozambique.

But by February 2013 the outsourcing process was finalised with the objectors’ accepting it “under protest”. By May 2013 they had filed a complaint with the Pension Fund Adjudicator. It was rejected in December that year. In February 2014 a “Notice of Motion” to contest the PFA ruling was filed at the High Court in Durban. Since then it has been a “to-and-fro affair” with the first court date having been April Fool’s Day 2016. In the interim the pensioners were moved to Old Mutual but the disputed R363m was left locked in the fund due to their challenge of its allocation to the employer.

The pensioners claim in their founding papers they thought that “surplus assets” and “excess assets” used in the fund’s correspondence with members during the winding up of the THDBPF were merely another means of referring to “actuarial surplus”.

Confusing matters further, in the fund’s early affidavits Davidson said the R363m paid to the employer “was not an actuarial surplus” but an “excess asset” – which they did not have to share with the fund’s members.

The plucky old-timers then pointed out that, by the fund’s own admission, the company’s share was therefore “unlawful” and “*ultra vires*” as it was a clear infringement of Section 15C of the Pension Fund Act which stipulates the Employer Surplus Account can only receive funds from a determined “actuarial surplus”.

Davidson and Buck, faced with the dilemma of being found to have broken the law, then said in a supplementary affidavit – contradicting their previous affidavit – that “the amount that was allocated to the ESA was 20% of the excess assets... [which was]... also actuarial surplus”. In the same document they disclosed an interim valuation surplus of the THDBF of close to R500m for the first time to the pensioners, who had been asking for this disclosure for two years.

“No mention whatsoever has ever been made [of this alleged surplus] by the fund in its voluminous submissions to the Adjudicator, or in its answering affidavit, or in communications with members, who were clearly misled,” said the fund’s lawyer Nigel Carman in his heads of argument.

Carman also dismissed the contradictory interpretation of excess assets and actuarial surplus as “sophistry”.

The pensioners have maintained that the registrar either erred or was hoodwinked into thinking the 80/20 split was a good deal for the pension members, when in fact he was not informed that the 20% of “excess assets” to be allocated to the ESA was not 20% of the “actuarial surplus”.

The case will rest almost solely on the interpretation of the Pension Funds Act Section 15C. The pensioners’ counsel, Craig Watt-Pringle, will need to convince Judge Graham Lopez that the fund misled the Registrar of Pension Funds into allowing

a new fund rule to be used to dissolve the fund, in conflict with PFA Section 15C. Alistair Franklin SC, for the fund, will no doubt say they did nothing wrong in securing a R363m windfall for Tongaat-Hulett.

When the matter was set for argument on 1 April – and postponed on several technicalities by Judge Lopez until a date yet to be set – the fund was ordered to pay costs for the day for wasting the court’s time and asking for the postponement.

Speaking outside court Carman said he “felt confident” that they had a good case. “We assume the case will be completed by August. We are satisfied and accept the reasons for the postponement and the judge’s recognition of time-wasting by the fund,” he said.

CEO Peter Staude was sent questions such as: Was he concerned that former senior employees felt fleeced by their erstwhile employer? Was there a strategy to extract surplus from the fund? Had he influenced the board of trustees? And would he and other senior executives be eligible for performance bonuses directly or indirectly linked to the fund’s liquidation? Davidson was asked to clarify several points and to respond to the pensioners’ contention that she was “in cahoots” with the executive.

Staude failed to answer any questions, while Davidson replied: “As appears from the legal papers filed on behalf of the Fund, the outsourcing and conversion was undertaken following due process, including extensive consultation and involvement with both pensioners and active members.

“All the elements, allocations and detail of the outsourcing and conversion were in accordance with decisions taken by a properly constituted board of trustees and approvals granted by the regulatory authorities (including the appropriate departments of the Financial Services Board).

“The high court application follows the decision by the Pension Funds Adjudicator to dismiss the complaint brought by the aforementioned two former pensioners against the Fund. The Pension Funds Adjudicator upheld the decisions taken by the trustees,” said Davidson.

Other trustee members were contacted by *Noseweek* but declined to comment. ■

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Durban residents smell a rat

Down in the dumps, something stirs... By Jonathan Erasmus

RESIDENTS OF DURBAN'S POLO AND show-jumping belt have long contended with the farmyard pong of horse manure. Now they believe the air is being poisoned by a nearby chemical dump.

In 15 statements seen by *Noseweek*, residents claim the air is polluted with a "thick pungent gas and chemical smell" leading to "nausea, vomiting, headaches, coughing spasms, eye redness" and "generally feeling revolting". They say it has got worse over the past six months.

In a joint statement, Gail and Jim Hawkins say: "the only comparison we can make is of a rotting rat – one that has been dead for a few days".

Resident Amy Fisher, a food critic, claims she developed red boils on her back, neck and torso as a result of the toxic air. "The dump smells like rotten eggs, wet soaks and diesel gas," she said.

The chemical dump site is operated by Enviroserv. It accepts industrial chemicals, condemned foodstuffs, contaminated soil and general waste.

Initially, residents say, they were told the smell was the fault of a nearby Denny Mushroom farm, and/or their own rubbish, along with Transnet's diesel pipeline (which runs through the area and burst a while back) or the strained sewage farm. However after sustained complaints, Enviroserv agreed to erect an air monitoring device in April.

Ward councillor Gillian Noyce, who also sits on the landfill's oversight committee, said she had received "dozens" of letters from angry residents but believed the site is both "compliant" and "legal". She said that because the site was "running so well", the committee now met only every second month.

"There is no hope of the site being closed down. They do take chemical products from a variety of companies in the city and if you put all chemicals



Smell detectors Lauren Johnson (left) and Sarah Rosslien

together it is not unlikely that you will get a noxious gas," said Noyce.

But she conceded that Enviroserv "can be tardy sometimes, to save money" by failing to cover holes in which chemicals had been dumped, in order to squeeze more in and by using "ash from Richards Bay" to "suppress" or cover the waste instead of using "clay soil as required".

Lauren Johnson, a resident at the upmarket Plantations Estate, has emerged as the neighbourhood's "de facto smell organiser". She said she was compelled "to get to the bottom of the stench" for the sake of her family's health and is now collating data shared daily by residents who smelling the odour and then log the time, place and type of smell.

"We're collecting this information, seeking advice from environmentalists as well as legal input to assess our options," said Johnson.

Her colleague, Sarah Rosslien, said some residents were in denial.

"Some remain quiet in the hope of protecting their property values and tell those complaining that it's simply their imagination," said Rosslien who has had to double the usage of her asthma pump in recent months.

In the past year-and-a-half, Hillcrest has been affected twice by bursts on Transnet's diesel pipeline, spilling more than 200,000 litres of fuel into gardens and fields. The contaminated soil is dug up and added to the dump.

Complicating the matter, the local sewage farm is known to clog up regularly. The residents also face the likelihood of a new 200ha general refuse landfill site being built next to the chemical dump.

Enviroserv's coastal manager Clive Kidd said that from "time to time" they do have "problems with fugitive emissions" but "never at a level that would cause health or environmental concerns".

He said the air monitoring station will sample concentrations of non-methane compounds, hydrogen sulphide, aldehyde and ammonia compounds.

"It is possible that the current climate conditions are also causing similar challenges at other odour source points... including farms, compost sites, fuel pipelines and spill areas, sewage works, illegal dumps and industrial areas," said Kidd.

He dismissed Noyce's assertions that they couldn't use ash and that the pits were "left open".

"I don't know where that comes from. Our licence allows for ash which doesn't come from Richards Bay and there is no benefit for us to leave pits open," he said.

City spokesman Thulani Mbatha said the metro was "aware of and is investigating complaints of an odour nuisance" and "will monitor and address the matter". ■



UCT'S REVOLTING CIRCUS

Now everyone's in on the act

TODD GILLESPIE, WRITING IN THE British-based internet magazine, *Spiked*, following the burning of paintings by Rhodes Must Fall protesters at UCT in February, noted that “In a pathetic move to appease the students, rather than challenging them, the university’s Orwellian-sounding Artworks Task Team (set up shortly after the removal of the Cecil Rhodes statue last year) had quietly set about removing supposedly offensive works from the university’s walls and exhibition areas.”

Locally, *Art Times* revealed that the “team” headed by “soon-to-be-fall-guy” English lecturer Dr Peter Anderson, and comprised of “secretly appointed committee members no one knows and whose knowledge of art is questionable or zero, meet to discuss which artworks are offensive or degenerate. “Many of the ‘offensive’ works had already been taken down, without broader campus consultation.”

An example given by *Art Times*: “William Kentridge who received an honorary doctorate from UCT in 2014

gave the graduation address, and was introduced by Deputy Vice Chancellor Sandra Klopper (wife of Michael Godby, previous Head of the Art History department) who praised Kentridge. Now Kentridge’s work, along with others, has been dumped courtesy of constitutionally illiterate students unable to engage with the right to freedom of expression.”

Spiked’s Gillespie takes up the story: “The task team’s remit is to conduct ‘an audit, an assessment and an analysis of statues, plaques and artworks on campus that may be seen to recognise or celebrate colonial oppressors and/or which may be offensive or controversial’. Over 75 artworks have now been removed from display partly on the grounds that ‘members of the university community are not able to choose which works they wish to encounter’. So, the university takes it upon itself to protect its poor, vulnerable students from such images lest they stumble on a dangerous painting and burst into tears.”

GroundUp’s report on these events, headlined “Prominent artwork cov-

ered up at UCT”, had renowned poet and painter Breyten Breytenbach responding in outrage:

“One knows that to work at university is a form of sheltered employment [...] But surely it must be dangerous to public sanity to entertain the Orwellian Newspeak of Dr Peter Anderson (aping the sentiments of the UCT spokesperson Elijah Moholola’s sophistry about ‘creating an environment where a diversity of staff and students feel comfortable’ – the grave’s a fine and private place) when he (Anderson) brilliantly suggests that covering the artworks (or removing them) actually brings about a conversational space promoting another mode of seeing the work, less flat and obvious, more thoughtful and imaginative...” [Ah, so that’s what the rioters had in mind all along. So clever to disguise their intellectual purpose as brute savagery! – Ed.]

Breytenbach, too, reaches a “eureka moment” with the following further quote from the unfortunate Dr Anderson: “It [the removal of artworks] should be read as an essay in creative



curation, and strictly part of the dynamic spaces of engagement...”

“How lofty!” declares Breytenbach, “This gentleman’s deep Dadaist thinking should make it straight into the Guinness Book of Immortal Donkey-speak.

“How sad that the uncomfortable ones who, ages ago, carved Buddhas in the rockface along the Silk Route did not save the Taliban the trouble of dynamiting the statues so as to create a space of conversation. What a pity the brave efforts at sustained curation of the Nazis when they banned Decadent Art and torched anti-hegemonic writings were not properly understood for its politically correct intentions.

“Did the Salafists in Timbuktu and Gao not promote other modes of seeing when they pick-axed the mausoleums of the marabouts and threw the bones to the dogs? And how heartening to see the fundis at the University of Cape Town being in synch with Boko Haram’s campaign to root out Western thought systems, or with attempts of the Islamic State cultural workers to cleanse the landscape of the vestiges of apostate (and probably colonialist) creation.

“Swallow your beard, Da Vinci, for not making the Mona Lisa invisible! And please paint out those racist Picassos that so offend our sensibili-

How sad that the uncomfortable ones who, ages ago, carved Buddhas in the rockface along the Silk Route did not save the Taliban the trouble of dynamiting the statues

ties! And while at it – why not cover the lascivious, macho legs of our tables and couches with cloth from China? Let us breathe! Are we then not throwing off our shackles as we march into the brave new world with blank minds?

“Attaboy, UCT! Go for it! Make fools of yourselves!”

A day earlier, journalist and critic Tony Jackman, referencing the film *Fahrenheit 451*, (“the temperature at which paper, books, artworks, burn. It’s a point of no return. Nothing can be unburnt. It is destroyed. Forever.”) concluded a long essay on the subject of the UCT art burning: “Heinrich Heine, whose work was to be burned by the German students in the Weimar Republic of the 1930s, had written more than a century earlier in his 1821 play *Almansor*: ‘Where they burn books, they will in the end also burn people’.

“If we respect our personal beliefs more than we do the art that runs counter to them, what respect can we have for the lives or museums of those who disagree with us? Maybe we should ask Isis. Or Hitler.”

Inevitably the saga quickly proceeded from the profound to the – dare one say it? – ridiculous: just days after the picture-burning, and despite the Anderson committee’s best efforts to spare student revolutionaries the sight of art that might offend them, a new revolutionary faction headed for the university’s art gallery with pots of red paint intent on defacing the pictures now on display there: playing it ultra-safe (so the authorities presumably thought) on exhibition were a carefully curated collection of pictures and photographs of the RMF campaign.

Who would have thought that the gender-bender society was mightily offended that the RMF campaigners had omitted to invite them to join their Rhodes riot – and in fact suspected the RMF crowd of being unsympathetic, even hostile to the LGBT community?

Now, to make sure no-one failed to

notice and recognise them, the gays, lesbians, trans-sexuals and variants yet to be identified, arrived in their own unique riot gear: in the nude. They were noticed.

From the fanatical nihilists of Daesh to the youth movement RMF and the LGBT protestors, all agree that the best way to deal with images that run counter to their preferred ideology is to eliminate them. Dynamiting classical temples or toppling colonial statuary or smearing red paint over pictures of those that offend you, amounts to the same thing: wiping ideological blots off the landscape.

Of course, it's only natural for change-bringers to celebrate their victories, and it was in suitably triumphalist mode that the exhibition, "Echoing Voices from Within" was announced on 9 March. Jointly organised by RMF and the Centre for African Studies, this exhibition promised to display "some 75 banners, artefacts, photographs and videos from the protest action in 2015 that started with the Rhodes Must Fall movement."

As an RMF statement put it, "Speaking to our collective consciousness and the continuity of grief carried through the physical and psychological wounds of the black child, the exhibition attempts to echo and reflect upon the often-untold stories of black pain and



Protestors bar the gallery door

Picture: Ashraf Hendricks/GroupUp

the collective agony of peoples whose plight can no longer be ignored."

But clearly not everybody concerned in RMF felt the same way. The exhibition opening was robustly and colourfully disrupted by protesting members of the UCT Trans Collective taking issue with the "false inclusivity" of the exhibition. Members of the collective blocked the entrance with their (naked) bodies and daubed photographs with red paint. It seems that the RMF mainstream is frankly intolerant of LGBTIQ people. Certainly no love is

lost between them: one particular photograph, representing Chumani Maxwele, the man who first threw poo on the Rhodes statue, was defaced with the word "RAPIST".

After the event, the Trans Collective commented on their Facebook page: "We have reached the peak of our disillusionment with RMF's trans exclusion and erasure. We are done with the arrogant *cis hetero* patriarchy of black men. We will no longer tolerate the complicity of black *cis womxn* in our erasure. We are fed up with RMF's use of 'intersectional' as public persuasion rhetoric."

On 6 April, Maxwele was implicated in an incident when Fees Must Fall (FMF) member Thenjiwe Mswane claimed to have been assaulted by men during a protest. Maxwele was plainly visible in a video that subsequently went viral.

Wanelisa Xaba, founder of the South African Young Feminist Activist student movement, was quoted in response: "The feminist community is outraged. This is not an isolated incident. Homophobia and transphobia has been prevalent in the FMF and Rhodes Must Fall movement.

"We are seen as derailing the movement when we call it out. The history of black radical action is designed to silence women. It won't work because we built the movement. We built the foundation of the movement."

All too often, today's revolutionaries transform into tomorrow's oppressors and thugs of a different variety. ■



Curator of the Centre for African Studies Gallery Paul Weinberg remonstrates with a member of the Trans Collective

Picture: Ashraf Hendricks/GroupUp

Google™



Google's Eric Schmidt

A FEW HUNDRED WHISTLEBLOWERS, investigative journalists, hacktivists and crypters from all over the world stepped from trams and tubes on to Berlin's Alexanderplatz on an icy day in March, all heading for the city's conference centre for a global convention titled: Challenge Power! Building alliances against state and corporate secrecy, surveillance and censorship.

The Logan CIJ Symposium 2016 was organised by the Centre for Investigative Journalism at City University in London, and Germany's acclaimed weekly investigative magazine, *Der Spiegel*.

Noseweek editor Martin Welz was an invited speaker on a list that included WikiLeaks founder Julian Assange and former NSA intelligence contractor Edward Snowden – both of whom spoke via Skype from their places of refuge – Assange from the Equadorian Embassy in London; Snowden from Moscow – since the US has flagged them as wanted men.

Other notable speakers were former

By Sue Segar

senior executive of the US National Security Agency-turned-whistleblower Thomas Drake, veteran Washington correspondent on military and intelligence matters, Seymour Hersh, and Ghanaian undercover journalist/private detective Anas Aremeyaw Anas, who is constantly in disguise – even while addressing the conference – so that he is able to pursue his hard-hitting exposés more freely. His innovative on-the-ground techniques were inspiring.

There was unanimous grave concern expressed about the ever-growing electronic mass surveillance, data-gathering and profiling of ordinary citizens around the world. Government secrecy, and the balance between national security and information privacy were key themes. Surveillance is no longer the little man spying through a long lens; it has become a highly efficient computerised exercise of gathering data from telephones, emails, social

media and personal computers. This is used not only for the convenience of marketers but to label people for political and security targeting. Speakers raised the spectre of “predictive policing” and even arrest based on such labelling alone.

Julian Assange – a star speaker at the conference – hit out at the world's largest corporation, the “big, bad Google machine” with the motto, “don't be evil”. Most people see the search engine as a warm, fuzzy, humane entity that provides free services, rather than a terrifying megacorporation, extremely close to the first circles of power in the US, and responsible for the mass harvesting of data.

“Seed-funded by the NSA and the CIA, it is a geographically invasive front organisation for enacting US foreign policy. Its chairman Eric Schmidt (Google's “foreign minister”) is a government agent who is trying to further US imperialist ambitions. In fact, Assange contended, Google is a political operation, a proxy and extension of US imperial power,” said Assange.

The internet has grown into a dangerous “facilitator of totalitarianism”, he added, with Google and Facebook being “as dangerous as governments”. “Yet” he said, “we as willing users are effectively collaborating with them as they collect our personal data”.

Assange fears the internet will see the world merged into “a giant grid of mass surveillance and mass control” and it is only by encrypting (all) one’s online activity that one will escape the state’s beady eye.

“We have to be realistic. The people behind Google are deeply integrated with the US... military, intelligence... and with political power in the US.

“(Google chairman) Eric Schmidt set up Hillary Clinton’s electronic campaign. A whole lot of Hillary’s friends work with Eric Schmidt... people like (former director of Policy Planning for the US State Department under then US Secretary of State Hillary Clinton) Anne-Marie Slaughter as well as Jared Cohen, (also a previous Hillary Clinton employee... who, in 2010 moved from the US State Department, where he had been senior advisor to secretaries of State Condoleezza Rice and Hillary Clinton to head up the think tank Google Ideas).

“When Hillary gets back in, and there’s an 85% chance she will [*speaking in March*]... when she becomes president, all of those people will be lifted on high. They will be placed into positions. Google will also be lifted on high. You can completely forget about any kind of anti-trust revelation on Alphabet, Google... whatever you want to call it.

“Eric Schmidt is now taking up a position to co-chair the Pentagon’s Innovation Board and they are going to appoint the other people that are there... The question is: Has Google been eaten by the core of traditional US power? Or is Google eating the core of traditional US power? The answer is, it is a pretty thoroughly disgusting mutual symbiosis that is occurring between the two.”

Assange pointed to the range of Alphabet (Google)’s acquisitions – including military industrial companies – to show how enmeshed it is with the circles of power.

“Additionally, we have this rapidly developing Artificial Intelligence (AI) system in Google... which is just going to merge with the National Security

Ghanaian undercover journalist/private detective Anas Aremeyaw Anas



Agency. Anybody who is not a complete loon, must see that that development is a threat to the future of mankind.”

So, what is to be done, delegates asked Assange.

“First of all, we should understand... that it really is a threat,” he said. “What you can do individually is, don’t feed it. We continually feed this thing that is collecting a vast reservoir of data about mankind, which is producing ever more sophisticated intelli-

gence algorithms to mine and develop abstracts on [*all of us*]... and to then funnel [*this*] out into its various acquisitions and relationships. It is mad to feed this thing. Left to its own devices that thing is going to dominate the world in one way or another...

“It is essential to know Google for the extension of US imperial power that it is,” said Assange – “and to know that one can live without it; that there are alternatives for almost everything Google offers.

“Get Google out of your digital life... Free software, decentralised services, or end-to-end encryption are all ideals, and important goals. But, end-to-end encryption [*where no third-parties can decipher the data*] is, in some sense our only hope.”

Assange, looking wan and quite emotional, confined to his rooms at the Ecuadorian Embassy in London, was celebrating a small victory nevertheless: in February, a UN panel found that he has in effect been arbitrarily detained – since his arrest in London in December 2010 by the UK and Sweden – for more than five years and should be released immediately with compensation. It was, said Assange, now “a matter of settled law”.

**Anybody who is not
a complete loon,
must see that that
development is a
threat to the future
of mankind**

The WikiLeaks founder sought political asylum from Ecuador to avoid extradition to Sweden for questioning over alleged sexual offences – which he denies – but he believes that if he ventures out of the embassy in London he will be extradited to the US for WikiLeaks’s 2010 publication of leaked US diplomatic cables.

Asked how he stays strong, considering all the “shit you have taken”, he said: “Well, things like Hacking with Care create interpersonal fluidity with a group unified by common values. That said, there are [other] people in pretty difficult conditions and it is important not to get too self-pitying. People every day in Syria are having the shit blown out of them... so I think, from our relatively luxurious position here... one shouldn’t overstate the case of how difficult it is... including me... I haven’t seen sunlight in years but there are worse positions to be in. A bit of solitary confinement is probably good for everyone...”

“But... there was one other thing. I knew some people cared about me. Actually it doesn’t matter whether it was 50 or one, but the knowledge that at least one person cared that I was in solitary confinement and was monitoring the situation and was trying to rally forces to do something about it... I think that’s what everyone needs, at least one person they believe really cares for them, loves them in some way. That’s enough to get you through...”

Assange writes about Google extensively in his book, *When Google Met WikiLeaks*, and describes the special relationship between Google, Hillary Clinton and the US State Department – and speculates on what that means for the future of the internet.

● Investigative journalist and best-selling author **Dr Nafeez Ahmed**, founding editor of the crowd-funded project Insurge Intelligence, spoke about breaking the story on how the US intelligence community “funded, nurtured and incubated Google as part of a drive to dominate the world through control of information”. Ahmed’s fascinating exposé *How the CIA made Google*, is available, free, in the public interest, accessible on the Insurge Intelligence website. An excerpt:

“Seed-funded by the NSA and CIA, Google was merely the first among a plethora of private sector start-ups co-



Julian Assange



Edward Snowden

opted by US intelligence to retain ‘information superiority’.

“The origins of this ingenious strategy trace back to a secret Pentagon-sponsored group, that for the last two decades has functioned as a bridge between the US government and elites across the business, industry, finance, corporate, and media sectors. The group has allowed some of the most powerful special interests in corporate America to systematically circumvent democratic accountability and the rule of law to influence government policies, as well as public opinion in the US and around the world. The results have been catastrophic: NSA mass surveillance, a permanent state of global war, and a new initiative to transform the US military into Skynet [a tracking courier service].”

Ahmed said: “In the wake of the Charlie Hebdo attacks in Paris, western governments are moving fast to legitimise expanded powers of mass surveillance and controls on the internet, all in the name of fighting terrorism.

“US and European politicians have called to protect NSA-style snooping, and to advance the capacity to intrude on internet privacy by outlawing encryption.”

● **Edward Snowden** received rousing applause from delegates when his face was beamed live on to the big screen from Russia where he has been granted asylum:

“If we could speak about one thing... it should be the general challenge we are facing in this new terrain of mass surveillance that the government likes to euphemise as bulk collection. We need to talk about what it means... but we need to think about how we got here in the first place.”

Snowden said various attempts at legal reform on this surveillance had failed. “If we can’t rely on the law, what can we rely on? Reforming things within the system is the way it should work... it is the way our society was designed to function. But what happens when you have failures across institutions? This is what produces whistleblowers. They are the safeguarders of last resort when you have a comprehensive failure across all branches of government...”

“It turns out that abuse is the by-product of power... and whenever we have these ever-smaller groups with greater and greater periods of power... we see abuses of this power and this is when we have to search for new mechanisms. And that mechanism today is technology. The technology we are relying on are things like encryption, encrypted communications that enforce our rights in the systems we rely on every day.”

Snowden continued: “There is an intersection of technology and access to information in society... and we refer to this as the communications fabric that we all rely upon today. The internet is the shorthand for it but it existed before that. It is simply all our telephony and all the other capabilities that are in a global mesh that increasingly impacts the lives of all of us but over which we have less and less influence over time. Now the application of new

technologies, our science, such as encryption, mathematics, secure communications allows us to enforce these rights across borders, whether you are a liberal state, whether an authoritarian state, whether you are trying to make sure someone can communicate between a journalist and a source in US, Russia or anywhere else. This is what we have to do – to accept that the only way to protect the rights of one is to protect the rights of all.

“This increasingly presents a threat to governments as they see this as a domain of activity that they will no longer be able to intervene in, no longer be able to regulate. The president of the US, commenting about the Apple vs FBI controversy again contextualised it falsely, as a choice between privacy and security. But the reality is that we can have both. But we can only have both if we have one or the other... if we don't have privacy, we can't have security. We don't have an open society. We don't have a free society. We don't have the liberal tradition that we ourselves inherited.”

He said, rather than watching people we suspect may have done something wrong, we are watching everybody, all the time, because they *could* abuse their liberties, not because they have done so. Snowden urged a change in political thinking, saying both technologists and journalists needed to “get a bit more radical”.

● Another speaker at the conference was computer security and privacy technologist, **David Mirza Ahmad**, a founder of the Montreal-based security-focused Linux-based operating system software company Subgraph (endorsed by Snowden) which has been developing a privacy and security-enhanced operating system and communications platform.

Spurred on by the fact that journalists' computers were being penetrated and their data compromised, Ahmad and colleagues designed Subgraph OS, a piece of free software that “may become one of the most important tools in the arsenal to fight oppression”. It was designed “so that individuals and organisations around the world can communicate, share and collaborate without fear of surveillance or interference by sophisticated adversaries through network-borne attacks. This is accomplished through system hardening and

But we can only have both if we have one or the other... if we don't have privacy, we can't have security

a proactive, ongoing focus on security and attack resistance,” he said.

The internet was “a very hostile place”, warned Ahmad. But, he said, thanks to Snowden's revelations, “we now know it is even more hostile than we had guessed”.

“The problem is, if you use a regular computer and software to do work on on the internet, and you happen to be targeted, you can be hacked. This is happening every day.” It had happened to journalists in Morocco, China, Ethiopia, Russia, Syria... and Amnesty International had done a special report on this kind of targeting of journalists.

“When people get compromised, it's always this style of attack: you get sent an email with an attachment that exploits a software vulnerability in Microsoft Office or an email client or an image viewer that allows code to run and installs a remote-access tool – a Trojan horse – to steal documents.

“There are, of course, governments, law enforcers and intelligence agencies doing this, but it's not just state agencies using software vulnerabilities to implement malware systems for the purpose of surveillance, data infiltration or lateral pivoting. “Subgraph is addressing that problem.”

These attacks have a cost, said Ahmad. “Our objective is to raise the costs of these attacks. When somebody deploys an exploit, it can require a lot of effort and time and money to develop that exploit. *Subgraph* could be the future answer to an insecure online



Thomas Drake



Seymour Hersh

world.”

● **Ibrahim Mohamoud** from Cage UK, an independent advocacy organisation with an Islamic focus, cited the case of a ten-year-old British Muslim child who, when describing his home in class, had written that he lived in a terrorist (instead of terraced) house, and was interrogated by police, along with his entire family.”

Mohamoud also related the story of a student who was recently accused of being a terrorist because he'd been seen reading a book on terrorism from his prescribed reading list. And he related the case of a four-year-old boy who “draws a cucumber at school and calls it a ‘coco-bomb’ and his family ends up being questioned”.

Some of what is going on is unbelievable, he said. “We have a secretive government policy, called Prevent,

which is criminalising thought and producing suspect communities. More than 360,000 public sector workers have now been trained to spot signs of ‘radicalisation’ and to inform on clients,” he warned.

● **Gavin MacFadyen**, conference organiser and director and founder of the Centre for Investigative Journalism, said that the mainstream press was inadequate to expose things.

“All the major papers in the US or UK publish almost nothing. If you look at what WikiLeaks brings out, it is the omission [by mainstream media] that is the critical factor. It is what they don’t publish that is the important part to note. Courageous hackers are living in exile or in prison. Some have committed suicide. Others have lost their jobs. They made extraordinary revelations and paid huge prices. There is a confluence between journalists and hacktivists. We must support them.”

● Another speaker was **Palagummi Sainath**, award-winning Indian journalist and teacher, who focuses on the people of rural India. (See next *Noseweek* for his research into mass farmer suicides in rural India).

“There are two kinds of journalism: journalism and stenography,” said Sainath. “The most important developments impacting on journalists have all come from outside the mainstream media... the stories may, ultimately, have run in the mainstream corporate media but they have not come from there. There is a compelling case – more than ever, today – for investigative journalism.”

● **Jacob Appelbaum** is an advocate for the Tor Project which developed a system used to make it impossible to identify the source of information sent via the internet. He was an early member of WikiLeaks and an independent investigative journalist who, together with *Der Spiegel*, worked on the publication of documents revealed by Edward Snowden in June 2013. He was responsible for *Der Spiegel’s* story which revealed that the US NSA was listening-in to German Chancellor Angela Merkel’s phone.

He was scathing about *The Guardian* newspaper, saying it was “absolutely the shittiest publication in the English language – not shitty because of what they publish but for what they refuse to publish then pretend it is a

There are two kinds of journalism: journalism and stenography

non-political discussion. Why? First – and it’s not just *The Guardian* – those who call people like myself and Assange “internet activists” do not understand the potential to harm us. When you call me an internet activist [as *The Guardian*, which he formerly wrote for, recently did] it breaks my heart. You put me under threat of going to prison for the rest of my fucking life. All journalists are activists for the truth. Activism should never be used as a pejorative term. It suggests that participation in a democratic society is somehow outside of normal behaviour. Fuck that!”

He slated former *Guardian* reporter David Leigh and its former editor-in-chief Alan Rusbridger. Leigh, he called a despicable human being “because of the way he had lied, saying Julian Assange had suggested that informants ‘deserved it’, which he did not say”.

Appelbaum complained that Leigh had released encrypted files because he had not understood the difference between encryption and authentication. And he had done so in a way that published information [even] previously withheld by WikiLeaks, then blamed WikiLeaks.

Appelbaum said Leigh had “put Assange under a bus so that the bus could run him over instead; a political betrayal of Assange”.

In early days of the Snowden affair Appelbaum had worked with Glenn Greenwald, who won the Pulitzer Prize for his series of reports in *The Guardian* on the leak of classified information. But when Appelbaum asked *The Guardian* for a letter to say he was working on classified documents that Greenwald had passed to him, specifi-

cally technical ones, so he could analyse what sort of crimes the NSA was committing, the newspaper had flatly refused to do so.

“And when *The Guardian* was raided, they did not call me... [or the two other journalists working with him] to tell us that GCHQ [UK intelligence headquarters] and other police and political powers in Britain had come to destroy source material. They left us to find out in public, left us to hang, did not protect us, or care.”

He complained that the newspaper had been “willing to compromise and give editorial control to the state”.

Appelbaum concluded by urging his audience to encrypt all their communications. “Also, it is important to fight sexism in journalism quite seriously and, I hope, replace most of the male editors in journalistic rooms around the world with women, who have better sense and are stronger and will stand up to these fucking fascists.”

● Celebrated US investigative journalist and political writer **Seymour Hersh**, most famous for his reporting on military and security matters for the *The New York Times* and more recently the *The New Yorker* magazine, said: “The world is increasingly being run by despots and people without character... so this new wave of journalism that will soon take over... as the printing press is over... this whole new wave of communication is the job we have. It is our job at least to be a facilitator, a moderator or medium to do something about the madness of the world.”

● **Anas Aremeyaw Anas**, undercover TV journalist, attorney and private detective uses bugging devices and hidden cameras to secure the evidence for his exposes of wrongdoing in Ghana and elsewhere in Africa. (See future *Noseweek*.) He delivered his speech in typical disguise to survive and continue his work, no one may ever see what he really looks like. He might appear ludicrous in disguise but his TV exposés are certainly not.

“I name, shame and jail the bad guys. I go undercover and collect my video evidence, I testify against wrongdoers and they get jailed. I do it because of the impact it has on my society.”

● Readers will find video footage of some of the speakers on *Noseweek’s* website. ■

The Waste Land

Dirty work at the crossroads alleged as the nation's biggest medical detritus trial looms. **By Jonathan Erasmus**

EDGAR ADAMS, ONCE A LEADING figure in the lucrative medical waste industry has been fired from the company he founded. And he alleges that he has been coerced into selling his shares to a competitor.

Adams has launched interdict proceedings in the Western Cape High Court against the current directors of Solid Waste Technology (SWT) Holdings to stop the sale of his shares, claiming that an investor who provided capital for his business while it was under business rescue was part of a devious corporate takeover strategy.

The alleged conspirators deny this, claiming he willingly agreed to the sale of his shares.

The hearing was set down for 26-27 April.

SWT Holdings' trading subsidiary, Solid Waste Technologies South Africa (Pty) Ltd (SWT SA) was, by 2006, the largest waste processor in the country, with collection depots in various centres and two treatment plants – one in Killarney Gardens, Milnerton, and in City Deep, Johannesburg.

But by August 2015 the company, which employed 600 people and had annual revenues of R150 million backed by government loans and political connections [*Allan Boesak had been a director*], was placed under business rescue. SWT SA owed creditors R28m; inter-company loans of R15.5m were deemed irrecoverable and there was no cash flow.



Johannes Cronje



Edgar Adams

SWT SA also had a growing list of environmental transgressions and was notching up penalties at its facilities in Bloemfontein, Kimberley and Durban. In November 2014 the Department of Environmental Affairs found that SWT's City Deep plant had flouted regulations over several months, turned a blind eye to the pollution and environmental degradation it was causing and ignored the risk that it could spread disease by its illegal disposal practices. Medical waste lay rotting in broken fridges. Adams blamed Eskom's loadshedding (*nose189*) for the problem.

The new partner that came to his financial rescue was Driftwood Developments, an investment company owned by Johannes Cronje, a multi-millionaire from Welkom who likes to hunt, fish, watch rugby and race cars. As one former associate, Gavin Brasher, put it: "He doesn't take shit" and he "likes to use lawyers".

In 2011 Cronje once took former Northern Cape Premier Thandi Modise to court for stopping a R93m road construction contract awarded to his other company, Down Touch Investments. It had been rescinded by Modise on the

grounds that there were 25 irregularities. The case was dismissed with costs. In February 2015 Cronje had the accounts of Welkom Municipality frozen for non-payment of a R59m bill owed to Down Touch Investments.

The rescue plan, accepted by creditors, saw Cronje take ownership of the Killarney Gardens and City Deep properties at a combined value of R22m. He also made capital available and took a 50% equity stake in the SWT Holdings (Adams owns the other 50%).

Shortly after the deal had been concluded, Adams told *Noseweek*: "I have just come out of meeting with the BRP [*Business rescue practitioner*] and we have saved the company". Adams remained CEO.

But by February 2016, Mazars, the firm undertaking the BRP, released a note: "It is hereby noted that the CEO, Mr Edgar Adams, was put through a disciplinary hearing and the outcome was that he was dismissed from the service of the company." *Noseweek* is reliably informed that this related to some financial misdemeanour.

Cronje then began negotiations to

He believes Cronje was sent to buy into his company as a Trojan horse

sell his own and Adams's shares to Wasteman Holdings – a massive competitor in the market – a move Adams now claims was illegal, despite having signed the sale agreement himself.

In his court papers he alleges he was coerced into signing and wants the

agreement to be set aside as invalid.

He is fighting his dismissal as CEO separately at the CCMA.

Cronje, who believes Adams is a "dangerous man" denies having had any role in his firing. He told *Noseweek* he wanted to sell "the whole company" to Wasteman.

Mazars would not reveal the reasons for Adams's dismissal.

Adams claims – without specifying – that the charges, were "unrelated to the business". He is convinced that "Wasteman and Cronje go way back", and believes Cronje was sent to buy into his company as a "Trojan horse".

"He was sent in to strip down the company and sell it cheap to Wasteman. Wasteman wanted my plants as I had been taking business away from them for years."

Cronje dismisses Adams's claim as "absolutely not true". Wasteman too denied the accusations of a prior relationship and of a collusive plot to take over SWT and has joined Cronje in opposing Adams's interdict application.

Adams's prior-relationship claim goes back to 2009 when the Department of Environmental Affairs uncovered several illegal dump sites in the Free State. Then, Wasteman was accused of dumping and burying 18,000 tonnes of medical waste at a brick factory in Welkom, among other sites. The brick factory is where a link has appeared: Cronje had owned Maximus Bricks, through Down Touch Investments. But, he told *Noseweek*, that he had "sold Maximus Bricks, before the dumping, to [Gavin] Brasher" – prior to the 2009 DEA raid.

When *Noseweek* asked Brasher if the dumping had pre-dated his ownership, he asked to be left alone. "Let the matter rest. I am trying to get it behind me. I am stressed to death and have lost everything [*due to the dumping*]. Why bring this matter up?"

It was the biggest medical waste dumping scandal in the country with a criminal trial likely to begin this year. The accused include former Wasteman CEO Olivier Meyer. Brasher is also charged. Cronje is not.

The DEA, which, in an earlier interview with *Noseweek* had described the medical waste industry as "dominated by organised crime", "driven by greed" and involved in "tender corruption", is seeking jail terms. ■



"Sure, it may be great for us, but it's hell on the markets."

Africa probes the Panama connection

FOLLOWING THE LEAK OF OVER 11 million company files from the Mossack Fonseca law firm in Panama on 3 April, many African activists and law enforcement officers have been searching the documents for evidence of malfeasance.

Curiously, registering such shell companies off shore remains legal in many African countries [*including South Africa*], despite everybody knowing that they are generally used – in fact designed to be used – as part of a scheme to misprice transactions deliberately, to launder or hide the proceeds of crime, or to hide true ownership in order to evade tax.

Driving those investigations are the effects of the commodity price crash, which has sharply cut state revenue in resource-rich countries, and the campaign led by ex-President Thabo Mbeki to staunch the illicit financial flows from Africa which his United Nations-backed investigation says are running at over US\$60 billion a year.

South Africa is rated third amongst the top ten African countries for illicit cash outflows, with Nigeria top of the list by a large margin, and Egypt, second. These three countries way outstrip all the others. [*See editorial on page 9.*]

The Paris-based Organisation for Economic Cooperation and Development reckons that illicit financial flows – deliberate trade mispricing and tax evasion – out of Africa are running at three times the level of foreign aid coming in.

Sierra Leone is the first country to launch an investigation into claims of deliberate trade mispricing following the Mossack Fonseca leak. It will

cover transactions between the biggest diamond mine, Koidu Holdings, which is owned by Octéa Group, a subsidiary of the Guernsey-based Beny Steinmetz Group Resources (BSGR), and Standard Chartered Bank and Tiffany Diamonds.

The investigators will be looking into whether BSGR or Octéa or others have extracted additional, undeclared value from rough diamonds once they leave Sierra Leone, in contravention of their contract with the government. They will also want to know how much Standard Chartered and Tiffany know about these transactions.

Indications are there may be wide discrepancies in the prices of diamonds valued in-country and the prices they are sold for abroad. If so, it would mean the country has been losing tens of millions of dollars of value from its diamond business.

“These are burning issues,” Mines Minister Minkailu Mansaray told *Africa Confidential* on 11 April. “The Panama Papers are of grave concern to the government, particularly as it relates to Sierra Leone’s minerals sector.”

The Panama Papers reveal a complex, many-layered offshore business structure behind Sierra Leone’s biggest diamond mining company, the deeply indebted Octéa. Israeli billionaire Beny Steinmetz is an advisor to Octéa’s parent company, BSGR, but insists he has no executive role in the business.

Mossack Fonseca’s files raise questions about whether Sierra Leone is receiving the correct value for its rough diamonds. “Dodgy dealings within the Steinmetz Group seem to indicate undervaluing of diamonds,” concluded



Beny Steinmetz

the International Consortium of Investigative Journalists (ICIJ), which has access to the leaked files. A BSGR spokesman said that the company had “no formal or informal response” to make about any of the files which might have leaked from Panama. But he added that: “PricewaterhouseCoopers fully audited the transfer pricing of all the Octéa diamonds produced and sold. There are no dodgy dealings, so any investigation on this will be welcomed by Octéa.”

Independently of the Mossack Fonseca leak, *Africa Confidential* has obtained other documents that suggest there is a wide discrepancy between the price per carat of diamonds valued in Sierra Leone (at the central bank in Freetown) and the price per carat when they are sold on through a chain

of companies owned directly or indirectly by companies whose owners are related to Beny Steinmetz.

In October 2014, Standard Chartered Bank, which acted as financial advisor to BSGR for the sale of its 100% stake in Octéa, wrote a confidential note to investors. It described Octéa diamonds, all of which are sourced from Sierra Leone's Koidu mine, as offering "high grade, quality & value per carat".

"Koidu is one of the highest revenue per carat diamond mines in the world," said the Standard Chartered note. It contained a graph titled "Koidu Historic Sales Profile", which showed that diamond values from the mine surpassed an average of \$450 per carat in 2011. It sourced these figures to "Company data". Overall, the 2014 note put average per carat values at the mine at \$410, the second highest in the world. Industry insiders say the diamonds are sometimes being valued in Sierra Leone at up to \$140 a carat less than that, leaving a potentially mammoth profit margin for the exporters.

As the main creditor of Octéa and Koidu, Standard Chartered would not discuss concerns about transfer pricing or the discrepancies in carat prices in its own documents. Its Regional Head of Business Communications, Lauren Callie, said that it was a confidential matter between the Bank and BSGR.

But while Standard Chartered says Koidu Holdings diamonds are worth an average \$410 per carat, if they are being valued at over \$100 a carat less in Sierra Leone, it would be paying far lower taxes and royalties. If Koidu is using average prices running as low as \$270 a carat, that would give the exporter a mark up of around 50%.

"We are not aware of any transfer pricing, this is why we were astonished," Mansaray said "We will therefore conduct a thorough investigation in collaboration with the NMA [National Minerals Agency]. If what they [Octéa and in-country diamond valuers] are doing is not in line or not in conformity [with the rules], then we will take necessary or appropriate action."

Sierra Leone's mining lease agreement with Koidu Holdings, dated 2010, includes several safeguards against transfer pricing. If local diamonds are being undervalued in-country, it could also prove uncomfortable for local officials. Three sets of valuers determine

After a stormy meeting in London between officials from Sierra Leone, Standard Chartered and Octéa, a three-month standstill was agreed

the price for export. One is BSGR's own nominated valuator; the second is the government's and the third is independent.

Sierra Leone's independent valuer is Diamond Counsellor International, run by Britain's Marriott family. It is also the government-mandated valuator for diamonds exported from Guinea and Liberia. If diamonds are being undervalued to facilitate transfer pricing, experts say it would require collusion between two or three of those groups. Acknowledging this risk, Mansaray said the investigation would spotlight the entire valuation process.

Mansaray is already preparing a response to BSGR's Octéa over another matter at the Koidu mine: fears that the company faces bankruptcy and is mining a final slew of easy-to-reach diamonds at its Koidu mine in a bid to "cut and run". After a stormy meeting in London between officials from Sierra Leone, Standard Chartered and Octéa, a three-month standstill was agreed pending BSGR's submissions of more

credible plans for the mine. "We are being very patient to wait for them [Octéa/BSGR], such that when they finish, if we believe they have not met [the standards], the government will take necessary and appropriate action."

Meanwhile Freetown officials are looking at the paper trail coming from the Mossack Fonseca leak. The Panama Papers reveal that BSGR is owned by "several foundations based in Liechtenstein and Switzerland such as Nysco and Balda". It counts the Steinmetz family as beneficiaries.

Steinmetz himself left the Steinmetz Group's main diamond business, Swiss-based Diacor International, which is separate from BSGR and focuses on value-added part of the chain from manufacturing to retail, after allegations of corruption in Guinea surfaced in 2013. He sold his 37.5% share in the Steinmetz Group's diamond segment, Diacor International, to his brother, Daniel, in 2014. Diacor is now owned by Nir Livnat and Daniel Steinmetz via different offshore holdings in the British Virgin Islands (BVI) and Liechtenstein.

Leaked emails referred to in the Panama Papers investigation reveal that Beny Steinmetz retained power of attorney in Diacor International until it was revoked in June 2015. Its revocation was subsequently backdated to 2013, in coordination with Mossack Fonseca. "We urgently want to finalise the cancellation and back-date the cancellation to the date mentioned in our initial request in 2013. The POA [power of attorney], dated 05.07.2007, was not only issued to Benjamin Steinmetz but also to Daniel Steinmetz and Marc Bonnant," said one email. Another, dated 24 June 2014, shows that Mossack Fonseca then agreed to backdate the revocation of his power of attorney to 2013.

However, according to documentation *Africa Confidential* has seen, Octéa Diamonds Limited, one of four subsidiaries of Octéa Ltd and which was previously known as BSGR Diamonds Ltd, regularly consigned Koidu Holdings' diamonds via Geneva to Penford (Israel) Ltd. At Penford, the stones were washed – deep-boiled in acid – and the final prices determined before selling on to final buyers, including Belgium's Laurelton Diamonds, the Tiffany and Company subsidiary that deals in rough diamonds and manufac-

turing based in Antwerp, as well as others in Belgium, India and Israel.

Penford (Israel) is part of Diacor International, the Steinmetz company which works with De Beers and Sotheby's and for which in 2015, Beny Steinmetz retrospectively gave up power of attorney, backdating it to 2013.

Steps in this chain are also now overseen by Infinite Diam Ltd, a diamond sales and marketing agent founded by Patrick Saada, who was previously chairman of Koidu Holdings, director at Octéa Diamonds and is also Beny's brother-in-law. Saada set up Infinite Diam, known as a rough diamonds distributor, in 2013, after Octéa abandoned grand plans to list the diamond group in Hong Kong. Saada worked for Steinmetz Diamond Group for 17 years until 2007. Infinite Diam, also headquartered in Israel's Ramat Gan diamond district, sells diamonds on behalf of Octéa and coordinates each step of the sales chain.

Previously, Koidu's diamonds were consigned to other Steinmetz outfits, including R. Steinmetz and Sons, a Steinmetz Diamond Group subsidiary, and then, from 2007, to Global Diamond Trading (GDT) Ltd, a BVI-registered, Guernsey-based, Steinmetz outfit previously known as BSGR Diamonds Trading Ltd. Currently, they are consigned to Octéa Diamonds Ltd.

The ultimate values achieved by this web of intermediary entities is unknown but indications from Standard Chartered and others putting average prices at \$410 per carat may indicate that a chain – all under the auspices of Steinmetz-related entities – is achieving far higher prices per carat abroad before final sale than that achieved by Sierra Leone at the valuation stage.

That would mean that while Octéa may be in dire financial straits, the value of Sierra Leone's high-quality diamonds could be realised elsewhere, beyond BSGR vehicles but still in companies that are part of the Steinmetz empire. Meanwhile, BSGR is mining Koidu's remaining easy-to-reach diamonds at a pace, exporting 44,000 carats last month.

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● Now see *Noseweek's* earlier report on Beny Steinmetz's dealings with South Africa's diamond authorities here: nose188 "Secretive State diamond deal sparks legal drama". ■

When is a freebie something else?



Ryk van Niekerk in Absa kit on last year's Cape Epic. (How did Investec sneak into the picture?)

DOES IT SIGNIFY ANYTHING IF A journalist is given a free ticket to compete in a major cycling race?

The question was put to Absa, sponsor of the annual Cape Epic, and Ryk van Niekerk, editor of *Moneyweb*. The race, which takes eight days, is, according to David Wingfield from Absa parent Barclays "considered the toughest mountain bike race on the planet". It is also highly prestigious and attracts entrants from all over the world.

The Absa Cape Epic is the most televised mountain bike stage race in the world and the only eight-day mountain bike stage race classed as *hors catégorie* by the Union Cycliste Internationale (UCI).

Places are highly restricted. Most interested potential entrants don't get to go. This year the entry fee alone was R60,000 per team of two people. While no cash changed hands, this is what Van Niekerk and his friend, the other member of his team, were given.

Wingfield explains that as part of the sponsorship of the Absa Cape Epic, Absa has a team of 120 riders (60 teams) called the Absa Pride. This, says Wingfield, comprises "colleagues, partners, clients, development riders, some people that just inspire us, a few sports and entertainment celebrities and several industry players."

As part of the experience, Absa

By *Noseweek's* cycling correspondent

hosts the riders in its hospitality tents and provides them with branded riding gear and technical and mechanical support. This kind of gear, it is no secret, costs up to thousands of rand for a single-day outfit. Servicing the kind of bicycles associated with the race – some of which cost more than R100,000 apiece – can cost more than servicing a car.

A number of keen cyclists put the cost of competing in a single Cape Epic at R250,000 a person – but at least the bicycle can be used again, after a service that costs an absolute fortune.

Van Niekerk says that his participation in the 2016 event was declared to the *Moneyweb* board through appropriate channels. He asked: "May I inquire why you request this information?"

The entry fee for the 2017 Cape Epic – which is once again highly restricted as to acceptances – is R67,900 (US\$5,490) per team of two.

Carli Cooke of Barclays Africa Media Relations says: "We believe that fair and uncompromised media reporting plays an important role in society and it is in our interest to support this. We do not expect anything in return from the riders we invite, which also include underprivileged riders."

Noseweek did wonder whether Absa perhaps had been hoping for a complimentary ride on *Moneyweb*. ■

Blood and sand

Suspend Wild Coast mining, demand leading health academics in urgent appeal to Minister of Mineral Resources

FOLLOWING THE RECENT ASSASSINATION OF EASTERN CAPE ANTI-MINING activist **Sikhosiphi Bazooka Rhadebe**, the heads of health schools at five universities wrote to Minister of Mineral Resources Mosebenzi Zwane, calling for the suspension of mining in the Amadiba area of the Wild Coast. A similar letter was sent to the Minister of Health, Aaron Motsoaledi.

This is their letter:

31 MARCH 2016

DEAR HONORABLE MINISTER ZWANE,
We write to express and bring to your attention our shock and sadness at the brutal murder of the chairperson of Amadiba Crisis Committee, Mr Sikhosiphi Bazooka Rhadebe last week. As chair of the ACC, Mr Rhadebe was helping lead the struggle of Amadiba residents on the Wild Coast in opposing open-cast titanium mining by the Australian mining company Mineral Commodities Limited (MRC).

According to Amadiba Crisis Committee: "The hitmen came in a white Polo with a rotating blue lamp on the roof. Two men knocked at the door saying they were the police. Mr Rhadebe was shot with 8 bullets in the head."

We join the Rhadebe family and the Amadiba community in their great sadness.

This is not the first case of intimidation or violence against those who have opposed mining in the area.

A memorandum drawn up by the community, which we attach, documents numerous instances of intimidation and murder and the challenges they have faced in getting the local police to take up these cases.

As leading Schools of Public Health in universities around the country, we wish to state that:

1. The mining of titanium in this

area, against the wishes of a large section of the community, is likely to impact negatively on the ability of people in this area to continue their agricultural activities and improve food security and that it will be to the detriment of the health and wellbeing of a poor and vulnerable rural community.

2. The mining is targeting an eco-sensitive area of the country and bodes



Sikhosiphi Bazooka Rhadebe

ill in the light of global climate change that also impacts on population health in general and more especially those of vulnerable communities.

3. Levels of violence are extremely high in South Africa and the pattern of violence that has culminated in Mr Rhadebe's murder is an example of the epidemic of violence, as a key health and social problem in the country that needs to be addressed.

We are extremely disturbed at the attitude of Mr Mark Caruso, the director of the Mineral Commodities Limited (MRC) the Australian listed company of which the South African TEM company that plans to mine in the area is a subsidiary. Although he denied involvement of MRC in the killing, he was reported in the *Sunday Times* of 25 November 2016, as threatening local opponents of a similar mining venture near Vredendal in the Western Cape. In an email to local stakeholders, he warned "And I will strike down upon thee with vengeance and furious anger those who attempt to poison and destroy my brothers. And you will know that I am the Lord when I lay my vengeance upon you."

He went on to invite his detractors to continue their "campaign" against the mine by indicating: "I am enlivened by [the] opportunity to grind all resistance to my presence and the presence of MRC [the South African subsidiary of Mineral Commodities] into the animals [sic] of history as a failed campaign."

What can we make of such language when a vocal opponent of MRC is gunned down in cold blood for campaigning against sand mining in the Wild Coast? The mining company denied any links with the violence.



Anti-mining protest in Xolobeni in September

However, it is clear that such a statement from the company's director is very irresponsible in encouraging violence. We are alarmed at the lack of respect for human rights, enshrined in our constitution, encapsulated in this statement.

We support and would like to urge you, particularly, as Minister of Mineral Resources, to take an active stand in initiating calls for:

1. The suspension of all plans for the company to proceed with titanium mining in the Amadiba area.
2. The company abide by the Bill of Rights in our Constitution and take responsibility for the violent actions of its proxy representatives.
3. An independent enquiry by the Human Rights Commission into the string of murders related to plans for mining and speedy arrest and successful prosecution of the killers of Mr Rhadebe and others related to these events.
4. To reconsider plans for mining in this region, taking into consideration an environmental impact assessment through an independent body such as the Human Rights Commission and

the Public Protector, given the potentially serious negative health, environmental and human rights impacts.

5. The murder of Mr Rhadebe has

The murder of Mr Rhadebe has catapulted this issue on to the international stage

catapulted this issue on to the international stage with publicity and opposition emerging in Australia, the US, the UK and elsewhere.

We urge you to clarify the government's position on this matter.

Yours sincerely,

Professor Helen Schneider,
(Head of School of Public Health, University of Western Cape)

Professor Mohamed Jeebhay
(Head of School of Public Health and Family Medicine, University of Cape Town)

Professor Usuf Chikte
(Acting Head of Department of Community Health, University of Stellenbosch)

Professor Laetitia Rispel
(Head of School of Public Health, University of the Witwatersrand, Johannesburg)

Professor Ziyanda Vundle
(Head of Department of Community Medicine, Walter Sisulu University, Mthatha)

This letter was first published online by GroundUp, and is republished here with their permission. ■



Mercy mission. Woman of quality

IN THIS LAND OF PREJUDICE, THE LAZY MIGHT argue that another (seemingly minor) one won't make much difference. But it certainly does in the case of *The Compassionate Englishwoman* (sub-titled *Emily Hobhouse in the Boer War*). This is a tough-minded historic portrait of a tough-minded heroine, and provides a stinging rebuke to cynics who assume that obstinate do-gooders are, by definition, foolish idealists.

Apparently the PC language gestapo now object violently to the employment of the word "heroine", but the book preserves the honorifics vocabulary of the educated woman of the period, and shows that politeness gained her certain important advantages in the deadly battle fought with the British high command in South Africa and war ministers in London.

Her gracious manners masked steely upper-class resolve in the urgent campaign to save thousands of Boer families dying of starvation and disease in British concentration camps. Hobhouse, pictured on the cover wearing one of those feathery millinery nuclear explosions favoured by the nobility of the day, was a lady. And she exacted her social due from the likes of lords Kitchener and Milner. Well, she did till the authorities took to censoring her reports and vilifying her in the Mother of Parliaments as a traitor to the British war effort.

The invaders were intensely embarrassed by military reverses at the hands of farmers who melted into their landscape after wreaking havoc among the troops. So the British invented concentration camps to prevent the Boer raiders gaining food, fodder and other supplies from their homesteads.

As the death rates at the pitifully inadequate concentration camps soared, Hobhouse undertook increasingly dangerous investigative journeys through war zones, forays often forbidden or obstructed by the army. She compiled statistics, tried to console mothers of starving children and begged that sense would prevail against senseless destruction. All this by a woman

THE COMPASSIONATE ENGLISHWOMAN
By Robert Eales
(UCT Press/Juta)



gently raised, not in her first youth, but determined to salvage some kind of decency from the carnage.

Author Robert Eales tells a moving, lively tale of a remarkable being who bravely represented the best of Britain at a time when the empire was beginning to weary of conquest. She never achieved popular acclaim in her homeland after the scurrilous, partly successful, attempts to discredit her via the newspapers and in parliament.

But she is honourably remembered in South Africa. A plaque on the National Women's Monument in Bloemfontein marks the location of her ashes.

Imagine what this principled, articulate and intelligent woman would have accomplished for humanity if she had been able to lay her hands on a laptop. Given her endless lonely treks to remote concentration camps, confrontations with hostile officialdom, and physical exhaustion after long months on the road, she makes the Christiane Amanpours of this world look self-indulgent.

The total Boer population of the two little republics at the onset of war was 195,000. Some 14% died in the camps. The proportion of children was much higher. Historians found that hardly any children in the first years of life survived starvation, typhoid and other miseries. The worst month in the poorly documented black camps was December 1901, when 3.2% of the residents died. Of the thousands of recorded deaths, only 913 white deaths had been officially reported by the authorities at the end of May. And no black deaths were reported. ■





Bibliotherapy. Novel treatment

AUSTRALIA HAS APPROVED THE biggest coal mine this country has ever seen, in Queensland. Former chief scientist at the Institute of Marine Science, Dr Charlie Veron, says it is “akin to evil”. “There is no single action that could be as harmful to the Great Barrier Reef as the Carmichael coal mine.” The \$21.7 billion scheme is projected to generate 5,000 jobs during construction and 4,000 during operation.

On the subject of mines, despite a story in *The Sydney Morning Herald* last year warning of impending disaster on South Africa’s Wild Coast (precipitated by the battle between an Australian mining company and many of the people of the Amadiba region, which includes the mine site Xolobeni) it has taken the death of Sikhosphi Bazooka Rhadebe for the issue to become big(ish) news here, reported on *ABC News* and in *The Guardian (Australia)* online and in social media. Lawyer Richard Spoor had warned in the *SMH* article that, should mining plans proceed, “there will be police, there will be batons, there will be bloodshed”.

Panama papers aside, 567 of Australia’s highest earners paid next-to-no income tax in 2013/2014 although earning more than A\$1 million each. Twenty-seven claimed about A\$46m for the cost of managing their tax affairs, averaging about A\$1.7m each.

Meanwhile begging, which is on the up in Australia, is illegal in Victoria (a Melbourne legal service reported clients seeking help for fines totalling up to \$50,000) and in South Australia (where the fine is \$250).

Columnist Walleed Aly says that, while some argue that begging is a disincentive to finding something useful to do, or fuels drug habits and encourages cycles of homelessness, the real reason for punishing beggars is that it makes people look at poverty,

and “poverty is ugly”.

“Maybe our real objection is the guilt we are forced to carry away with us when their poverty is rubbed in our face,” he wrote.

At disadvantaged schools, bright students who start out well suffer the most academically, lagging at least two years behind those from wealthier schools, a testing programme has revealed.

Sydney’s most prestigious private school, Sydney Grammar, has rid itself of laptops in the classroom. Headmaster Dr John Vallance said it seems a waste to distract students lucky enough to have a good teacher and a good group of classmates, because teaching is about interaction between people, discussion and conversation. The government’s multi-billion-dollar investment in laptops for high school students benefited only tech giants Microsoft, Hewlett-Packard and Apple, he said, adding that handwritten assignments in creative writing in junior years produce better results.

Australia has spent \$5.67m making and promoting a telemovie to discourage asylum seekers. Commissioned by the Department of Immigration and Border Protection as part of its anti-people smuggling campaign, the 90-minute *Journey* depicts Australia’s tough policies and intentionally displays the hardships and tragic fates faced by asylum seekers trying to cross the Indian ocean by boat.

The movie has screened in Afghanistan, Pakistan, Iraq and Iran. After Syria, Afghanistan was the world’s second-largest source of refugees and migrants in 2015. Over 96% of them reaching Australia by boat were found to be refugees legally requiring protection and had their refugee status upheld.

Whatever your (First World) problem, professional bibliotherapist Susan Elderkin will assist. Co-author



Author, psychoanalyst, feminist and social commentator Susie Orbach

of *The Novel Cure*, the Cambridge-educated Elderkin will offer private ten-minute sessions in the “literary healing room” at the Sydney Writers’ Festival in May, where she will recommend books to soothe the body and soul.

“We all need a shift in perspective,” she says. Literature has restorative qualities: for example, the bereaved might want to read *The Spare Room* by Helen Garner, while *The Transit of Venus* by Shirley Hazzard might work for “not wasting time on somebody when it’s not working out”.

Bibliotherapy is this year’s festival theme and Susie Orbach, psychoanalyst and author of *Fat Is a Feminist Issue*, will put writers on the couch to discuss their personal and creative dilemmas. ■

Letter from Umjindi

BHEKI MASHILE



Vote rote. In the swing

MY MY MY, DA, WHY DO YOU consistently miss the boat when it comes to contesting elections, especially local elections? Your posters call for “change”. Change from what? ANC this, ANC that, and of course now, change from the fiasco that has been created by Zuma and his Gupta shenanigans and the crème de la crème presented by the Constitutional Court judgment on Nkandla?

Unfortunately, these matters can safely be categorised as national issues. And besides, when it comes to the Constitutional Court judgment, I’m afraid it is Juju and his little red berets who will reap any benefits. Alas, the man on the street is still more concerned about bread and butter issues – particularly drugs and the extremely violent youth gangs terrorising nearly every township in the country.

These two problems have been publicised very well by television news programmes such as *Special Assignment*. Watch these, DA, so you can learn what communities are dealing with, if you want their vote. Clearly your black members who live in the townships are failing, or are not being listened to regarding problems faced in our communities.

You made a bugger-up of the action against amalgamation of municipalities. Your concerns were political – ward demarcations – rather than looking at the municipalities separately. As a result, you lost. Stop aiming to rule the country and instead look at what the DA can do for the people. Then, maybe at some point you might win them over so you can rule the country.

Now, why would I, a staunch ANC supporter, care that you DA bunch are missing the boat? Well, because my loyalty to the ANC is strictly confined to national elections. Sorry, I simply do not trust that if you led the country

you would maintain the progressive programmes necessary to undo past imbalances: BEE, land reform etc.

I consider myself a swing-voter when it comes to my local interests and the wellbeing of my community. As we know, local government under ANC councillors has been a dismal failure in too many municipalities, and a headache for the ruling party.

Why should I care, as a staunch ANC supporter? Well, thanks to the *Sunday Times* of 3 April for its article, “Big Brother joins Mother City crime arsenal”. What a brilliant crime-fighting initiative! All Mzansi could use such measures – and people such as Cape Town’s mayoral committee member JP Smith.

With these factors in

mind, the DA is not convincing me and millions of others as to what it is going to do for my community and municipality. Stop telling us about national issues. Those are already being handled, thanks to you DA, EFF (which I hate with a passion because of their radical approach – but, great job on the Nkandla matter) and of course other organisations such as Corruption Watch – and let me not forget my no-fear, no-favour colleagues in the media.

morons but you still want to vote for them. They need a wake-up call”. Well, do not think that the man on the ground is not fed up with Zuma and his shenanigans. The Constitutional Court judgment has given the ANC a wake-up call. And unless the DA can assure the electorate that it is committed to maintaining and continuing with those progressive programmes designed to undo past imbalances, there is no way I can vote for them. And that is despite the fact that I would love to see two strong parties in this country, like in the USA.

DA, once again, when your local elections campaigning goes full steam ahead, talk to me and my fellow countrymen and please don’t tell us about this “register/vote for change” bullshit, it’s not working or convincing in any way. Rather tell us what you are going to do for us locally. I think you guys could use an Eli, the campaign manager character on the television drama *The Good Wife*.

The best thing that has happened regarding your local elections campaigning is the article in the *Sunday Times*. Because of that, when I go into the booth there will be two deciding factors: what you are doing with this crime-fighting initiative in Cape Town, and my respect and admiration for your councillors here in Umjindi – Elsabe Jacobs and Philip Minnaar – who I find to be highly committed people in serving their community. Man, those two will go out of their way for the community. I certainly cannot say the same for our ANC council idiots.

Yes, I think I’ve been swung, but only locally. Nationally, forget it. Not as long as you have anti-BEE idiots like Black Like Me founder Herman Mashaba in your ranks. Black like me! He is certainly not like me. Who next? Sushi king Kunene? Stop recruiting idiots to boost your ranks. It is only hurting you, DA. ■



A *Noseweek* reader has written: “For so many years you have been rambling on and complaining about these



Bang! Gunpowder plot

WE USED TO DO POETRY AT school, see, also English grammar and Latin and stuff, which I suppose puts us old toppies somewhere back with *Australopithecus Africanus*, but I tell you, man, when it comes to expression of the emotions we couldn't be beat.

Ja, when I got to about twelve maybe thirteen I said to my friend Andrew Kreis, aka Cheese, Cheese, said I, I feel strange things moving within the soul, indeed within the body, and now is the time for us to write some poetry or something, know what I mean? Indeed indeed, he replied, especially in the morning when it's all cold outside and the bed is nice and warm. Indeed I have the beginning part of a poem in mind, said he, which only this morning in bed I thought of polishing up. So we went our ways and returned on the morrow with our rough drafts. Cheese's went:

*"When dawn of day is due
I long to be with you."*

Is that all? said I, rather clumsily, for clearly his feelings were hurt. Well it's just a beginning for now, said he, which I'll make a sonnet of as I go, and what have you got, anyway? Mine went like this:

*"O! bring the Cup of Youth,
that I mightst drink
And take up arms against
a sea of troubles."*

That's a load of crap, man, said Cheese, and anyway you nicked half of it; my sister Cynthia is doing that thing for matric. Well one can't avoid the influence of other artists, said I, but I take your point. And I yours, said Cheese, for he was ever a gentleman. So we returned to our sessions of sweet silent thought, and when we met on the morrow Cheese's poem went like this:

*"When to the sessions of sweet silent
thought*

I dare not waitst upon I would

Like the poor cat i' the adage."

What bollicks! said I, and what the hell does "waitst" mean anyway? Well you wrote "mightst", didn't you? he replied. Yes, that's the first person singular present tense of the verb "may" said I. Oh balls! said Cheese; and fell to yet further s. s. thought. Then af-



ter a bit he says Cynthia knows how to make gunpowder, she learned it in History. So you're going to write a poem about gunpowder? say I. No, says he, I thought in between art creation we could do a bit of science creation. I take your point, say I.

So Cheese furtively scans his sister's mind in a conversational kind of way and from this secret scrutiny gets the recipe, we go to an industrial chemist's place down Victoria Road and get

a fair whack of potassium nitrate for our pooled pocket money; now all that remains is to get right by experiment the proportions of charcoal and sulphur. Piece of cake!

We find an old bicycle pump and whip the bottom part round and round with copper wire for extra strength and make a wooden mount with wheels for this our cannon. We look around for a nice heavy projectile and find that a torch battery fits exactly down the barrel, so we pour about half a cup of powder down there, then plug it solid with a wad of toilet paper and shove in the battery. We dip a piece of string in gunpowder and stick it in the connection-hole of the pump and take the gun to the far side of our yard and light this fuze. An earsplitting blast ensues, with billowing brown smoke, and a frightful great bang far away on the tin roof of Mrs Mullin's house over the road, whence issue terrible screams and the thump of feet fleeing a scene of disaster. My ma drags Cheese and me into the bathroom and beats us about the ears till they're bloody red and locks the door and busts up the gun with the back of a hatchet; Mrs Mullin is 150 yards away, so nobody has seen it. The police say there's been an act of God, probably Thor. A bolt of lightning.

Now I tell you this baleful story because of the soul-searching of Dezzie Tutu who declares we have lost our high idealism and the Moral Path andsoforth, but the blokes I remember from MK days didn't carry all that Christian and Marxist priestly lumber; the low-blow potassium nitrate we just replaced with ammonium nitrate, proper bastardly stuff, and if we didn't pull off a moral utopia we did bejasus give the regime 'n lelike vokken spook, soos die spreekwoord sê. ■

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Mel, Noah, Adam Lots of love Dad.



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