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All That is the Case

A novel work

by Jeremy J.G. Clark

As part of the requirements for the degree of Master of Arts by Research (Creative Writing), submitted to the Faculty of Arts, University of the Witwatersrand, Johannesburg .

6th June 2018

The text of the novel element of the work comprises 98,692 words, excluding title and contents pages, author's note, glossary, bibliography and footnotes. This figure also excludes the accompanying reflective/reflexive essay. All inclusive, the novel element comprises 102,123 words, once again excluding the reflective essay.

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2018

Faculty of Humanities

School of Literature, Language and Media

SENATE PLAGIARISM POLICY

Declaration by Student

I, Jeremy James Gardiner Clark, Student Number 7839175, am a student registered for MA in Creative Writing for the period 2015 to 2017 (last thesis submission date being 15 February 2018).

I hereby declare the following:

1. I am aware that all plagiarism (the use of someone else's work without their permission and/or without acknowledging the original source) is wrong.
2. I confirm that all work submitted for the assessment of the above course is my own unaided work except where I have explicitly stated otherwise.
3. I have followed the required conventions in referencing the thoughts and ideas of others.
4. I understand the University of Witwatersrand may take disciplinary action against me if there is a belief that this is not my own unaided work or that I have failed to acknowledge the source of the ideas or work in my writing.

SIGNED:



Jeremy James Gardiner Clark

6th June 2018

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Author's note

1. This submission for examination for the Master of Arts in creative writing at the University of the Witwatersrand, Johannesburg comprises two main sections: (i) the work *All That is the Case*; and (ii) the reflective/reflexive essay, both of which are bound in this submission.
2. The title of this work, *All That is the Case*, is taken from the first proposition in Ludwig Wittgenstein's *Tractatus Logico-Philosophicus,* "(1) The World is All That is the Case." The words in the penultimate sentence of this the work are taken from the concluding proposition in the *Tractatus*: "(7) What we cannot speak about we must pass over in silence."[1]
3. The inclusion of lawyerly headnotes and footnotes in the main body of the work is intentional and meant to be permanent, not merely to assist the examiners, but to provide another layer of reading for the ultimate reader. They mimic law reports or legal textbooks. Therefore there is a bibliography to the work and a separate bibliography to the reflective/reflexive essay.
4. I am contractually bound by my clients not to disclose their names in this work, which has also meant that I have not used the names of their late mother. For the same reason, some addresses or other identifying characteristics have had to be changed.
5. The names of some other persons and enterprises in this work have been changed, either because they blend characteristics of more than one living person or enterprise, or because they encompass characteristics of both living and fictitious people. The names of the deceased have been retained.
6. This is a true story. It is also a work of fiction. While many people and places described in this book are real, and many events actually took place, the author has taken creative liberty in the reconstruction of dialogue, employed a compression of time for literary effect, and made small clerical changes to letters and journal excerpts. Names of most characters have been changed, except those of public personalities.

[1] Ludwig Wittgenstein. (1974) *Tractatus Logico-Philosophicus*. English translation by D.F. Pears and B.F. McGuiness; introduction by Bernard Russell. Oxford. Routledge. (Wittgenstein, 1974)

Part 1 Reading in

1 Prologue: In the beginning

In search of water and adventure, Lydia, somewhat short and stocky, made her way cheerfully through savanna grass with her older brother, bobbing and weaving in quick bursts from one copse of bush to another, alert for the cats, dogs and snakes that terrified them. They would visit their usual pan a short distance from home. It was warm for the time of year, but a dry cooling breeze blew from the east, whipping up dust and sending it tumbling on towards the open desert far to the west.

Looking up at the vast bowl of sky, she saw birds of prey circling, held high above the dry plain on thermal updrafts. They might spend hours aloft, patiently watching for small game to scurry from cover to cover, or waiting for the large predators to finish at their kill and then, sated from gorging on the prime parts, slouch toward sleep under a thorn tree. Then the birds would descend briskly onto the carcass and work their way inside the rib cage where the predator females and cubs could not follow them, devouring the entrails and stripping the bones bare.

Her brother was impatient for the water and reckless of cutting himself on a sharp stone or stepping on an adder or invertebrate. Lydia was more cautious and moved with care in his path, struggling to keep up as she hopped and stepped where he had stepped and scoured the ground for little nasties, as she thought of them. The ants were especially troublesome as they could make their way up her legs and give her sharp bites behind her knees.

Looking across the plain, Lydia could see several pools of water shimmering at a distance in the heat, tantalisingly cold, clean and blue. It was a puzzle to her why her brother always stopped her from rushing ahead to those pools - instead calling her back to play in the same warm muddy pan as they always did - but he knew better and it didn't help to complain. She was not hungry or thirsty, so she went straight out into the shallow water, enjoying the feel of the cool mud squeezing between her toes. She stooped and splashed joyously. As she came out on the other side she marvelled at how the pale ochre mud had baked and cracked on the bed of the pan as the water receded. By sticking her fingers into the cracks she could prise a block of hard mud out of the pan, releasing a stink of rotten vegetable matter. Losing track of time, Lydia probed and prised more cubes of mud from the dry pan, throwing them over her right shoulder and into the water as she did so.

At the approach of a growing shadow, Lydia looked up and shrieked in alarm. Her brother was chipping stones on the other side of the pan and barely had time to see before it was all over. The raptor feathered and trimmed its wings for pinpoint contact, neither slowing nor changing course on its final approach. Death must have come instantly as the bird swooped and drove its talons forcefully into her skull, snapping her head back and breaking her neck in an instant, before lifting her and moving on with several flaps of its great wings.

2 The whole text

Law is a literature which denies its literary qualities.

– Peter Goodrich[2]

Practice — affidavit — answering — inclusion of all necessary allegations — relevance — prolixity and inclusion of unnecessary matter — Rule 23 — striking out irrelevant or inadmissible evidence

Struck out text — status of as regards privilege, admissibility, publication — narrative importance — right to quote — documents in the public domain

On reading the advocate's letter, the part that struck Clark most was:

> *Firstly, I think the answering affidavit is far too long. This is not a complicated matter and parties need, courts increasingly hold, to litigate expeditiously and proportionately. ...*

Well, that was blunt, but probably correct. At 52,000 words the draft came to 240 pages, and that was before the annexures that you would also have to plough through. More than a book in its own right.

Was his clients' draft affidavit far too long? Too long for the judge who might have to hear the matter because judges have said that court papers must be concise and to the point. It seemed that Clark would have to cut out long sections of the story – dozens of

[2] Peter Goodrich. (1996). *Law in the Courts of Love: Literature and Other Minor Jurisprudences.* London. Routledge. P112. Quoted in Mark Sanders (2007) *Ambiguities of Witnessing: Law and Literature in the Time of the Truth Commission*. Johannesburg. Wits University Press. p22. (Goodrich, 2007)

pages - and stick closely to the *facta probanda*, the facts that a party has to prove in order to win the case.[3] Counsel was saying that Clark was too long on the *facta probantia,*[4] the facts tending to prove the *facta probanda*, (in short, the supporting facts, sometimes juicy and interesting, that might interest you, my dear reader), and it was going to annoy the judge who ultimately heard the dispute. Lawyers, and especially judges, are supposed to be able to cut out all the fat and get down to the bare bones in no time at all. Storytellers see it differently, trying to cut out all the dull legalese, but bringing in voice, mood and perspective to make the story human.

This was all to ignore the narrative necessity of the parties. You might appreciate that judges have big caseloads and that every litigant is clamouring for a court date and then, when they get one, they feel that too little time is allotted to them to ventilate all the issues properly. That's where the storyteller comes in, both cutting down on all the dreary verbiage in the court papers and expanding on the narrative for your purposes, to make it into a proper story, along the lines of notorious cases like those of Winnie Mandela, Dominic Kebble and Oscar Pistorius.

How many words do we need to tell the story of the attempted sale of Steve Biko's autopsy report? You could say Clark's clients, Garth and Tessa Niemand, were naive, but they had been abused by important people who Clark had always held in high regard. And they were friends of his sister and friendship still counted - must count - for something.

In any case, if he made the cuts counsel wanted, not much of the story would remain. And that would leave only a dry, crisp legal question or two to show how the judge came to his, or today less improbably her decision on the case. Allowing for any appeals, that would dispose of the matter; the judge would be *functus officio*[5] and the court file would be sent down to the stacks to gather dust and be forgotten, or be despatched to the national archives in Pretoria for all time. One might as well just read the law report of the case.

But a judgment is not the last word on a case. Take the magistrate's 1977 finding in the inquest into the death of the great anti-apartheid and black consciousness leader, Steve Biko. In a verdict delivered in only a few minutes, Mr Marthinus Prins, chief magistrate of Pretoria, pronounced that no one was to blame for Biko's death. Was that the last word, the definitive finding? Far from it. Instead it was the object of scorn and

[3] Lawyers are some of the only relics who still use the gerundive, tossing out terms like *memorandum, addendum, agenda* and *quod erat demonstrandum* (QED).
[4] And here they show off the gerund, or present participle, here used adjectivally, not adverbially.
[5] I.e. the court would have decided the case finally and the matter could not be reopened.

ridicule. We'll come back to Steve Biko's inquest, but let's say for now that, widely dismissed, the verdict found its way down to the lower depths of our jurisprudence. Where can you find someone today who will defend it? Is there an annual Marthinus Prins Memorial Lecture held at any reputable law school? Are there monuments to the state doctors who failed to care for Biko, or to the security police who held and murdered him?[6]

So much for court judgments; the judges don't have the last word for ever. The underlying stories still rise to the surface and it is the stories we will talk about.

We can't look only at the legal efficacy of the affidavits, but must look to the story that the parties want to tell, or are forced to tell in response to the stories that others put up against them. Our legal system prescribes that one party will win, the other lose.

What should Clark do with all of the words, all that text, that counsel wanted deleted from the draft affidavit? This posed a problem – if the words weren't in the affidavit by consent of his clients, they wouldn't be in the court record and if they weren't in the court record, they would not be in the public domain.[7] And that would mean that he could not reveal any of what his clients had told him or the advice he gave them. Legal privilege is that one most sacred of rules – no attorney may reveal the content of what his or her client has imparted to get the advice, nor may the attorney disclose the advice he gave to the client.

And so, Clark had to say that he was disappointed to hear how much of his clients' draft affidavit counsel wanted excised, just as you might yet be disappointed to see how little of this story remains after his clients, their opponents, the judge and the editor have put their blue pencils through it. I, on the other hand, do not want it floating around in the ether, neither public nor disclosable, yet incapable of use in this story that I would like to share with you. What might be irrelevant to the case was by no means irrelevant to the story. And should the case go against the Niemands, the full story would at least survive for you to adjudicate, just as you adjudicate the judge, the applicants, the respondents, the lawyers, the mass media and me.

[6] No, but the security police were awarded medals – for courage - for murdering anti-apartheid activists, like Clark's cousin Jackie Quin, but we'll come to that.

[7] *Governing Body Hoërskool Fochville & others v. Centre for Child Law* 2014 (6) SA 561 (GJ). (Governing Body Hoerskool Fochville & others v. Centre for Child Law, 2014)

3 You and I (1) – First

- Your first impression of a legal case is shaped by how the information first comes to you and what power you perceive the parties to have. That's natural, but you still have to look at the facts and see what you think. At least, that's how it works in the law and will be the way it works for you. *Audi alteram partem*, they say: in short, it means you must also listen to the party on the other side of the dispute before reaching a conclusion. That's as old as Solomon. Have a look at this Biko case. At first Clark thought it was a storm in a teacup, but there was more to it and it will illustrate some things you should know about how a writer sees it. The Biko family, who surely need no introduction, were incensed that some people, the Niemands - Clark's clients - had the effrontery to try and sell the post-mortem report about Steve Biko. At least that's how they put it.
- Wasn't that quite reasonable of them? I mean, who would do that? All right, I understand that people jump to conclusions, it's only natural. They believe what fits comfortably in their world view. If I think back to the trial of Oscar Pistorius, it was like the parting of the Red Sea; the whole country was immediately fixed on one side or the other, innocent or guilty. And they held on to those opinions to the very last - and will do for ever. How do people go forward once they've latched onto a mental image of what they hold as the truth?
- That's not the lawyer's concern, it sounds like something for psychologists. Because this is an application to court on notice of motion, backed up by the affidavits and annexures, the judge will decide the case on the common cause facts and the respondent's assertions in those sworn affidavits[8] without hearing oral evidence. In going through the court file, observe the construction of the story, building the case up from its foundations. Then you win or lose – the judge will decide which and after any appeals have been heard, that should be the end of the story.
- But we're here to discuss what really happens, aren't we. The story goes on after the case.

[8] Plascon-Evans Paints (TVL) Ltd. v Van Riebeeck Paints (Pty) Ltd. (53/84) [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620 (21 May 1984) p235 E-G. (Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd., 1984)

- Read the court file when all the papers have been filed. They will show you what the parties want to say and to emphasise, but they can also show you what the parties want to evade, to play down and even to conceal. I would also like you to see behind the text, the better to understand the case, so we'll follow Clark, the attorney who is acting *pro amico* for the Niemands, the people who want to auction the autopsy report. At first you might think they are bad, but never make too many assumptions too quickly. Make enquiries instead. Time will tell; you will have to keep an open mind.

4 Urgent application

Practice — application — urgent relief — degrees of urgency — non-observance of time periods — rule nisi — interdict — seizure of documents

Ownership — movable — vindication — onus of proof

Clark got a call at about 2:15 on Wednesday, 3rd December. Tessa Niemand had got caught up in some legal business and needed help. She and her brother Garth were cited along with their auctioneers in an urgent application to the High Court to stop them auctioning their post-mortem report of the late, great Steven Bantu Biko. The applicants were Steve Biko's son Nkosinathi, his widow Nontsikelelo and the other trustees of the Steve Biko Foundation – we'll refer to them together as the Bikos - who claimed that the document was their property, being the long-lost original independent report that the Biko family had commissioned from Dr Jonathan Gluckman, the pathologist who they appointed to attend the post-mortem examination on their behalf in 1977.

Tessa brought the court papers round to Clark's office and said that she and her brother Garth wanted advice. She and Garth had given the Bikos written undertakings not to sell or otherwise deal with the autopsy report and had consented to a court order being made to that effect. She had to get back to work, but would come in with Garth the next day to brief him more fully.

Clark read the documents and saw that the Bikos said it was rather they themselves who owned the autopsy report and wanted to recover it.

The top document in an application is the notice of motion, containing a set of claims the applicant is asking the court to grant.

1 BE PLEASED TO TAKE NOTICE that on Wednesday 3 December at 08h30 or so soon thereafter as the matter can be heard, application will be made to the above Honourable Court for an order in the following terms …

1.2 The respondents are interdicted from auctioning the Steve Biko Autopsy Report pending the final determination of legal proceedings which proceedings will be instituted by the applicants within 30 days of the grant of this order. …

1.4 Costs.

1.5 Further and/or alternative relief. [9]

The next document in the pack is the founding affidavit.

I, the undersigned, Nkosinathi Biko, do hereby make oath and say that:

THE PARTIES

...

4 I am the son of the late Steve Biko and official representative of the family. The late Steve Biko was an anti-apartheid activist in South Africa in the 1960's and 70's. He was a student leader and later founded the Black Consciousness Movement which would empower and mobilize much of the black population. He died in 1977 from injuries sustained in police custody.....

7 The Steve Biko Foundation raises and expends funds for the purposes of advancing human rights and democracy in South Africa in accordance with the values that Steve Biko promoted. In practice, this involves the protection of the Steve Biko legacy and the Foundation works closely with members of the Steve Biko family to achieve this.

8 The first respondent is Westgate Walding Auctioneers (Pty) Ltd. ("Westgate"), a company duly incorporated and registered with limited liability according to the company laws of the Republic of South Africa having its principal place of business address at 35 Scott Street, Waverley, Sandton. The second respondent is an adult male businessman of (address). The third respondent is an adult female businessperson and sister of the second respondent whose address is unknown. The second and third respondent are the son and daughter of Mrs Niemand the secretary to Mr Gluckman described ion paragraph 11 below.

NATURE OF THE APPLICATION

9 This is an application to interdict the auction of the Steve Biko Autopsy Report ("the Report"). The auction is due to take place on Wednesday, 3 December at 10h00.

[9] Notice of motion (urgent application). pp45-6.

10 The application is urgent. ...

11 The Report is described on the first respondent's web site as follows

> *"*101. GLUCKMAN, DR JONATHAN – THE STEVE BIKO AUTOPSY REPORT, Pretoria 1977, in original ruled paper covers, pale green pages, containing certificate from the relevant pathologists, Certificate in Terms of the Criminal Procedure Act of 1977 and the Report of the Medico-Legal Post Mortem, this copy is not signed and the photographs referred to in the text are not present, however the autopsy of Biko's brain has the cyclostyled signature of Dr N.S. Proctor on each page, the autopsy consists of 43 pages, a unique document of the struggle era of great historical importance that gives the full details of the autopsy/post mortem. It is unknown if another copy of this document exists. The history of the document is of interest – it was given to the vendor's mother, Mrs. Norma Niemand, who was employed by Dr Jonathan Gluckman as his personal private secretary from June 1969 to February 1978. Dr Gluckman was very concerned about the safety of such documents as his offices had been bugged and he had received numerous death threats. He therefore asked Mrs. Niemand to keep the copies of such documents. The Biko autopsy was attended by Professor Johan Loubser, Chief State Pathologist; Professor I.W. Simpson – Department of Anatomical Pathology at the University of Pretoria; Dr Jonathan Gluckman – pathologist appointed by the Biko family; Professor Neville Sydney Proctor – Anatomical Pathologist of the University of the Witwatersrand, at the request of Dr Gluckman and Professor L.S. de Villiers. R70 000/100 000*"*

RELIEF SOUGHT

13 The applicants seek an urgent interim interdict pending the institution of legal proceedings to finally determine the ownership of the Report (insofar as this fact may be disputed).

14 At the time of my father's death the Biko family, represented by their attorneys appointed Dr Gluckman to attend the autopsy conducted on my late father. To the best of my knowledge and belief the autopsy was conducted by the South African Government at that time for the purposes of finalising the inquest proceedings. Dr Gluckman was appointed by the family because we wanted an independent report as the police had claimed that Steve Biko had died as a result of an extended hunger strike, a claim which later proved to be false.

15 *I, as a representative of the Biko family, maintain and claim that the Report belongs to and is the property of the Biko family. The Steve Biko Foundation, by its very nature and purpose, has a direct interest in preserving and securing possession of the Report in order to preserve the Biko legacy. The reason for this is that the Report will form part of the family archives which are held under the custody of the Steve Biko Foundation for their preservation. These archives are stored at the Steve Biko Centre which is open to the public and is a national legacy project as designated by Government.*

16 *In the circumstances the applicants' claim and assert that the Vendor is not the owner of the Report. The Vendor has no right to auction the Report and has no claim to ownership of the Report. Moreover, the Vendor cannot transfer ownership and title in the Report to a third party.*

URGENCY

18 *I respectfully submit that this application is urgent.*

19 *Neither I nor the second applicant had any knowledge of the existence of the Report prior to 1 December 2014. I came to know of the existence of the Report at approximately 13h00 on 1 December 2014 when I was informed of the advertisement …*

20 *On acquiring this knowledge I immediately tried to verify the information and then we set about contacting our attorneys with express instructions to take the necessary steps to prevent the auction and sale of the Report. We contacted our attorneys at approximately 15h45 on 1 December. After discussions and telephonic consultations with our attorneys we authorised our attorneys to contact the auctioneers and then dispatch a letter to the first respondent calling on them to undertake not to proceed with the auction.*

21 *… Prior to sending the email, the applicants' attorney, Mr Marc Mouton, also tried to contact the first respondent telephonically.*

22 *The applicants' attorney then also made telephonic contact with Mr Christopher Bolton a representative of the first respondent at approximately 08h30 on 2 December whereupon Mr Bolton confirmed that the auction would not proceed but that a letter confirming this would be sent 'by attorneys' to Caine & Matthews. This letter has not been received. Mr Mouton then had contact from the second respondent who sent an email confirming that auction* (sic) *would not go ahead. Marc Mouton could not get in contact with third respondent and was informed*

that she was not contactable. Consequently there is no adequate comfort or confirmation that the Report will not be sold by auction and it remains advertised on their website at 11:18 2nd December.

23 *Without this confirmation, the applicants have little choice but to approach the court for appropriate relief.*

24 *If the auction proceeds the Report will be sold to the highest bidder. In almost all auctions the identity of the purchaser is not disclosed. Moreover, the purchaser could be a foreigner that will, on payment of the purchase price, be entitled to take possession of the Report and remove it from the jurisdiction of this Court and for that matter from this country.*

25 *It is common cause that the Report is "of great historical importance". It is symbolic of the struggle for freedom from oppression and forms an integral part of South African history. Moreover, it is a document that requires preservation in the interests of every South African. It is a part of our nation's heritage and as such every South African should be entitled to view and share in the significance of the Report. Indeed, this would be one of the objectives of the applicants achieved through the Steve Biko Centre, as described in paragraph 16 above.*

26 *It is also my late father's autopsy report. At the very least the Report is emotionally sensitive and of familial significance to the Biko family and to the Steve Biko Foundation. It is a Report that the Biko family wishes to preserve and display to all South Africans to further the legacy of my late father. It is also a Report that was created as a result of the Biko family's appointment of Dr Gluckman to attend at the enquiry. It is the property of the Biko family.*

27 *If this Honourable Court does not grant the interim interdict it is highly probable that the Report will be purchased by an unidentified party. It will be very difficult if not impossible for the applicants to take legal action to recover the Report. There will be additional complications in that a sum of money would have been paid for the Report which would of necessity require compensation and protracted legal action.*

28 *If the Report is sold to an overseas purchaser there is a real and substantial risk that the applicants will not be able to recover the Report and secure its return to South Africa. Furthermore, even if the Report is sold to a local purchaser and remains in the country, it may be hidden, destroyed, manipulated, defaced, interfered with or resold. The fact is that the Biko family would have no control over the Report, which would be to the detriment of all South Africans.*

29 As the respondents have refused to undertake to stop the auction the applicants have no other satisfactory remedy available to them other than to seek the assistance of this Honourable Court. …

33 In the circumstances I pray for an order as set out in the notice of motion to which this affidavit is attached.

Signed and sworn to on this 2nd day of December … etc. [10]

So there it is. I'm sure you agree that on the face of it, or *prima facie* as lawyers like to say, the Bikos had made out a case for the Niemands to answer. What on earth were the Niemands doing selling the Bikos' private and sensitive property?

[10] FA, urgent application. pp49-59.

5 You and I (2) – A breather

- It is a pretty standard urgent application - what lawyers call a *rei vindicatio*, or a vindicatory claim. A getting-back-of-one's-property, you could say. The Bikos only have to establish three things: (i) the Niemands are in possession of the document; (ii) the document belongs to the Bikos; and (iii) the Bikos want it back. The first and the last requirements are already established, so we only have to consider why they believe the document belongs to them.
- I see the Bikos stated that they own the document, but they don't have any evidence to back it up, as far as I can see.
- They have not revealed any evidence; they rely only on the text of the lot description in the auction catalogue, phrased by the auctioneers. I happen to know that both Dr Gluckman and Mrs Niemand are dead, so there are no direct witnesses from whom they can take affidavits. So, let us listen to them and say nothing for now. But it does not look too damaging. In all they say, they claim it is the original document.
- I got emotional at paragraph 26 of Nkosinathi Biko's affidavit. The poor man is in pain, man. He has no memories of his father; this report is a rare link to his past.
- If it is Dr Gluckman's independent report to the Biko family, I'm quite sure the Niemands will give it back to them. Still, I am puzzled by some aspects of the papers and Clark will have to go down to the auctioneers and look at the document. It might all just be a good old-fashioned mix-up. Then he must consult the Niemands and get the facts from them.

6 Lot 101

That afternoon, Clark drove down Corlett Drive, under the M1 overpass and around to the rooms of Westgate Walding Auctioneers in Scott Street. Their weekly house sales were opportunities for bargains, especially when there were old books gathered up with the household contents of deceased estates and taken there for quick disposal. The books were displayed on shelves to the side of the auction room and were cried shelf by shelf, instead of book by book. If the shelf was knocked down to you, you took them all, the good with the bad.

On arrival he went upstairs to Dominic Bolton's office. Dominic handed Clark a document and offered him a seat at a table. He was annoyed with the hectoring way the Bikos' attorneys had treated him so far and he was not in a good mood.

At first sight, the whole document was an old carbon copy or stencil copy of an original document, slightly faded with age. The staples were somewhat rusty, but overall the document was in good condition.

The pathologists' certificate was in English and appeared to have been compiled by two state pathologists and by the Biko family's pathologist, Dr Gluckman and was purportedly signed by them on the 20th and 21st October 1977. It mentioned that the post-mortem report must be regarded as the only representative of each of their factual findings.

The second certificate in English of 20th October 1977 stated that Professor J.D. Loubser had examined Biko's corpse in the morning on 13th September 1977 and again in the afternoon after he was joined by Dr Gluckman and Professor Simpson. After summarising his findings, Loubser concluded that the death took place approximately twelve hours before his examination and the cause of death was head injuries.

Professor Loubser signed a third certificate in Afrikaans on 20th October 1977 in terms of the Criminal Procedure Act, 51 of 1977, qualifying himself and confirming that he had received the corpse and conducted a pathology examination on it. That third certificate bore an impression of his actual signature.

There then followed the main report of the pathologists' findings, headed "(Second Edition. Received 7.10.77) Translation of Professor Loubser's report. Biko", which referred to photographs of the corpse, but which were not included with the document.

Next there was an unsigned histology report and finally, a signed report of the findings on the examination of the brain.

I am sure you can tell from the Afrikaans certificate - with the title "Sertifikaat ingevolge Subartikels (4) en (8) van artikel 212 van die Strafproseswet, 1977 (Wet 51 van 1977) …" – and from the tenor of the other texts that they were copies of other documents which were themselves state documents.

Clark then began to read off sections of the lot description in the court papers against the artefact in his hand. The title of the lot description on its own – "101. Gluckman, Dr Jonathan – the Steve Biko Autopsy Report" - did suggest that the document at auction could well be the original autopsy report penned by Dr Gluckman, but headings are not always accurate pointers to what follows on. Lawyers don't always attach much importance to them because the headings are often no more than road signs to assist the reader in navigating long documents.

The Bikos had latched onto the interpretation that Dr Jonathan Gluckman was the sole author of "The Steve Biko Autopsy Report", but it could equally mean that the document was once possessed by Dr Gluckman, or was linked to Dr Gluckman in some other way.

The document was then described as being "in original ruled paper covers." Clark glanced at the white folder into which the green pages had been stapled, scored with double red lines at top and bottom, left and right. They were ordinary red-ruled covers that were used every day for covering and containing documents of a legal nature, but the Bikos had evidently read this to mean that the whole document was original. Dominic Bolton explained that this description meant no more than that the covers dated from that time, 1977.

Regarding the "pale green pages", Clark remembered how his mother had typed letters and documents for his father in duplicate or triplicate on her Olivetti, using pale green, yellow, pink or blue paper for the carbon copies. If anything, pale green pages were a red flag indicating that the document was not the original.

Then there were the words:

> *… containing certificate from the relevant pathologists, certificate in terms of the Criminal Procedure Act of 1977 and Report of the Medico-Legal Post-Mortem.*[11]

Clark paused: shouldn't this sentence have dispelled any remaining doubt about the status of the document? Being made under the Criminal Procedure Act, together with the

[11] FA (urgent application), pp52-3 & 66.

words “the Report of the Medico-legal Post-Mortem” signalled that this was an official report and not a private report by Dr Gluckman to the Biko family.

What about “… this copy is not signed and the photographs referred to in the text are not present …”? Surely, the document was a copy and not an original document? And a copy that did not bear any of the relevant signatures and was not supported by any of the photographs referred to in the text.

Clark was not familiar with the cyclostyle process mentioned next: “… however the autopsy of Biko’s brain has the cyclostyled signature of Dr NS Proctor on each page ….”

“Excuse me, Dominic. What is a cyclostyled signature?”

“Oh, that? It’s an old stencil process. You remember those Roneo mimeograph machines? The typist would put a waxed sheet into the typewriter and type out whatever the document had to say … the key hit the waxed sheet and made an impression through the wax, … separating the wax around the key and pushing through to the backing … impressing an a, b, c etc.” Then, gesturing a turning action with his hand, Dominic continued, “You would wrap and clip the stencil around a drum in the Roneo machine and turn the handle. It was like a crank handle, pulling a sheet into the machine. As the drum went around, ink would pass through the gaps where the keys had pushed through the wax and seep onto the backing … after a few turns the ink would dissolve the paper backing and pass through onto the sheet of paper below. Then the paper would come out the other side of the machine, inked up. Every time you turned the handle, another replica of that page of the document would roll out.”

“Could you do that with a signature, too?”

“Ja ... I suppose so. There’s no reason why not. The guy must have signed his signature by pressing down hard on the waxed sheet. He most likely used a ball point, not a fountain pen. Then they put it through the Roneo and there was his signature. Gestetner was another brand of copying machine.”

Clark remembered those old replicating machines. They’d used them at school and university to replicate lecture notes and for things like club newsletters.

“That stencil process was widely used for copying, until photocopying took the market by storm in about the 1970’s; faster, cleaner and more efficient. I haven’t seen one of those old machines in years.”

Then, “… the autopsy consists of forty three (43) pages, a unique document of the struggle era of great historical importance that gives the full details of the autopsy/post-mortem.” Clark wondered how important one of a dozen or more stencil copies could really be, but he had to ask if those words conveyed a sense to the reader that the Niemands’ document was the original document, or that it was the family’s private

report. There was some auctioneer's puffery in the description – they knew better than anyone it was a mass-produced copy – but you might still think that, taking those words on their own, the document was the real McCoy.

And the words "… It is unknown if another copy of this document exists" were clear enough.

The next three sentences appeared to be the crux.

> … *The history of the document is of interest – it was given to the vendor's mother, Mrs Norma Niemand, who was employed by Dr Gluckman as his personal private secretary from June 1969 to February 1978. Dr Gluckman was very concerned about the safety of such documents as his offices had been bugged and he had received numerous death threats. He therefore asked Mrs Niemand to keep the copies of such documents*.[12]

You could read this several ways. Firstly, that Dr Gluckman had given the document to his secretary and in doing so he had passed ownership to her – he had given it to her for good. Wasn't the most common meaning of the word "give" to pass ownership in the item to the recipient? Clark thought one could say this was "on a proper construction of the passage" – its true meaning. But to be fair, there was still room to argue that Gluckman had only given it to her "for safekeeping."

What did it mean that, "… he therefore asked Mrs Niemand to keep the copies of such documents"? Couldn't the words elaborate Dr Gluckman's motivation, not his intention, in giving the document to Mrs Niemand? There was a difference between motivation and intention; motivation would have behavioural consequences, intention would have legal consequences. The good doctor might have feared his own detention by the security police before the contents of the medico-legal report became public.

Putting yourself in the position of Dr Gluckman, do you not think it obvious that he decided to spread his risk, to hedge his position and to give a copy to Mrs Niemand, knowing that she would handle it in a correct manner if circumstances required. For example, by taking it to the press.

It was a strange thing to do, to give such a document to his part-time secretary. And how could he prepare his testimony for the inquest if she was holding the document? As a key witness, he needed it for himself, to go through all the findings and prepare to answer questions in court. In his shoes, would you give the document to Mrs Niemand

[12] FA (urgent application), pp52-3 & 66.

and then not have one of your own to work from? Surely, Dr Gluckman must have had another copy, his own copy and probably with photographs. It stood to reason. Strictly, the question he had to ask himself was if there was another copy, not if there must have been one. He would have to guard against assuming it existed merely because it might advance his clients' case? He would wait to see what the Biko witnesses had to say about it.

Nowhere in the lot description was Dr Gluckman said to have given the autopsy report to their mother "for safekeeping", as the Bikos claimed, but their interpretation was not entirely far-fetched and it would have to be addressed.

If the Bikos had still been in any doubt, the last passage of the lot description should have made it clear that the document was a public document and not a private or independent report.

> *… The Biko autopsy was attended by Professor Johan Loubser, Chief State Pathologist; Professor I. W. Simpson* (sic) *– Department of Anatomical Pathology at the University of Pretoria; Dr Jonathan Gluckman – Pathologist appointed by the Biko family; Professor Neville Sydney Procter – Anatomical Pathologist of the University of the Witwatersrand, at the request of Dr Gluckman and Professor LS de Villiers.*[13]

As a minor collector of Africana and ephemera about the struggle, Clark knew that rare documents could change hands for large sums, but the Bikos had simply assumed that nothing less than the original document would command a price of R70 000 to R100 000 and therefore reasoned that the Niemands' document had to be the original document?

He looked over at Dominic Bolton. "Your price estimate seems high, Dominic. What would the original Steve Biko autopsy report go for?"

"Oh ... four to five times as much, I'd say."

That came to a big sum, but such was the stature and legend of Biko. No doubt the Bikos, like you, were lay people in this area, but if only they had asked Dominic Bolton, he could have told them that the original document could have fetched R280 000 to R500 000. Wouldn't you have asked?

Clark asked Dominic if he could make a copy of the autopsy report and give it to him to take away and work on, but Dominic refused, pointing to the wording of the

[13] FA (urgent application), pp 52-3 & 66.

undertakings that prohibited the copying of the autopsy report. It was pathetic that he couldn't even make a copy to conduct the Niemands' case.

It was time to go back to the office, but Clark thought the Bikos and their lawyers were barking up the wrong tree. It looked like a simple case of mistaken identity; it would not be too difficult to clear it up and move on.

Back at the office, he saw that *The Star* had come in. It led on its front page with a story headed "Autopsy Outrage Averted – 11th Hour Victory as Auction Stopped."[14]

> *… Earlier today, (Nkosinathi Biko's) family prevented the children of one of his pathologists from selling his autopsy report at a public auction. Biko's family was under the impression that the report was in the state* archives …

Clark also thought that inquest files must have ended up in the state archives. And the Niemands were not the children of Dr Gluckman.

> *The Steve Biko Foundation's Thando Sipunye (*sic*) said this morning the family was dumbfounded. Although they knew a report of Biko's autopsy existed, they had not anticipated it being in someone's private possession. … The sellers are the children of Norma Niemand, a private secretary for Dr Jonathan Gluckman, one of the doctors who attended Biko's inquest. The Biko family asked Gluckman to be at the inquest and he had given the autopsy results to Niemand for safekeeping. … The Biko family and the foundation said that the document belonged to the Biko family and should not be sold for private gain by third parties. …*

There was something odd there. Sipuye was saying the Niemands' document was the official autopsy report, which should not be in private possession. The post-mortem report of a state autopsy would normally belong to the state, not the deceased's family, their private pathologist, or anyone else. Would Dr Gluckman have been permitted to give the autopsy report to his secretary? No, one would have thought it belonged to the state pathologist, who had to identify the results and hand the report in as evidence at the inquest.

[14] *The Star*. Johannesburg. 3 December 2014. (The Star, 2014)

> *Nkosinathi said: "the autopsy report of any deceased person is central to the dignity of the deceased. An action by an unrelated party that amounts to auctioning off national history for private commercial reasons fails the nation at the level of morality and decency, and certainly fails to honour the memory of those who laid down their lives for that very nation.*

Biko and his trustees were wrong, implying it was the original report. He'd been to see it and it was not the original. Why were they now pouncing on the Niemands' stencil copy?

7 The Niemand archive (1)

Garth Niemand had brought his mother's file of papers in case it helped in the case. It was time to get down to work and Clark opened the file with a sense of anticipation. Most sheets in the file were press clippings, yellow with age and pasted onto white A4 sheets.

> *Crowded universities turn away students by the hundred. … Students should respect the fact that the university regarded them as responsible adults, free to do as they wished and subject only to the discipline they imposed on themselves, Dr G.R. Bozzoli, vice-chancellor and principal of the University of the Witwatersrand, said on Friday when he addressed the first year students in the Great Hall.*[15]

Recently a student movement had started up at University of Cape Town, called Rhodes Must Fall, dedicated to the removal of a statue of the imperialist and racist Cecil John Rhodes and the eradication of all colonial-era regalia, statues, names and even architecture on that campus. Things were hotting up.

> *Lenkoe inquest - I believe burn is an electric one. Dr J. Gluckman*[16]

> *Lenkoe hanged himself*[17]

> *Vorster to be sued by Mrs Lenkoe*[18]

Clark felt a pang; he had forgotten the story of James Lenkoe, another man who died in police detention when he was a young boy. Do you remember Lenkoe? His memory has not been kept alive like Steve Biko's.

> *New school of pathology is a big advance*[19]

[15] Unidentified newspaper clipping.
[16] Unidentified newspaper clipping.
[17] *The Star*. Johannesburg. 21st June 1969. (The Star, 1969)
[18] *The Star*. Johannesburg. 27th June 1969. (The Star, 1969)
[19] Ibid.6th December 1969. (The Star, 1969)

Private man at autopsy[20]

Timol sensation. Eye not gouged out. Doctor denies mutilation story. Allegations that the body of Mr Ahmed Timol, the Indian school teacher who fell to his death from the tenth floor of John Vorster Square last October, was badly mutilated have been denied by a pathologist acting for the Timol family.[21]

Pathologist questioned on brain injury[22]

Ernie Wentzel. Prominent Johannesburg lawyer Mr Ernie Wentzel (52) died at his home yesterday after a long illness.[23]

Smear attempt predictable - Gluckman[24]

Gluckman's offices bugged.[25]

Gluckman will live in France. Gluckman going.[26]

Pathologist Gluckman dies after surgery.[27]

Wits awards justice fighter Bizos hon LLD[28]

As Clark started flicking further through the pages a story of two people emerged. There were various testimonial letters regarding Norma Niemand in her early career. After being head typist and confidential secretary to a company chairman she took a break from work for twelve years in order to start a family. Mrs Niemand returned to work until May 1969, when she was employed as a part-time secretary by Dr Jonathan

[20] Ibid. 29th October 1971. (The Star, 1971)
[21] *Sunday Express*. Johannesburg. 13th February 1972. (The Sunday Express, 1972)
[22] *The Cape Times*. Cape Town. 28th November 1977. Also reproduced in David Attwell (2015), p114. (The Cape Times, 1977)
[23] *The Star*. Johannesburg. 10th April 1986. (The Star, 1986)
[24] *Saturday Star*. Johannesburg. 5th December 1992. (Saturday Star, 1992)
[25] *The Star*. Johannesburg. 11th December 1992. (The Star, 1992)
[26] *The Citizen*. Johannesburg. 15th January 1993. (The Citizen, 1993)
[27] Ibid. 27th May 1993. (The Citizen, 1993)
[28] Ibid. 26th May 1999. (The Citizen, 1999)

Gluckman, a prominent Johannesburg pathologist. You could say this is where our story starts. She held this position until soon after her divorce, leaving Dr Gluckman's employ in February 1978, when she resigned to take up full-time employment.

There was a bundle of letters, postcards, Christmas cards and notes written between Mrs Niemand and Dr Gluckman over many years. Clark flicked through them, pausing where Gluckman's handwriting left him puzzled.

The years in which she worked for Dr Gluckman were evidently very interesting to Mrs Niemand because of the cases in which he was involved. The two most prominent of these must have been those concerning the late Mr Ahmed Timol (ob. 1971) and Mr Stephen Bantu Biko (ob. 1977), both of whom died in horrible circumstances while in detention by the South African Police.

It appeared that Mrs Niemand was proud to be associated with Dr Gluckman, who was dogged in his determination to get to the bottom of the deaths in detention. This had rubbed off on Garth and Tessa and they too were proud to be associated with the stand taken by Dr Gluckman, however tangential the link.

While working for Dr Gluckman, Mrs Niemand occasionally did typing and secretarial work for his family. On 17th October 1970, the son Paul Gluckman, sent her a note of thanks and appreciation for assisting him in a university project of his.

> *Dear Mrs Niemand, I would like to thank you very much indeed, for all the time and care which you put into that university project of mine. It really could not have been presented in a more impressive form - securing the script finally in the folder was a superb idea! … I am quite sure that its immaculate presentation will put a great deal of pressure on the markers!! And for this I say a very sincere 'thank you'.*[29]

Clark noted Paul's emphasis on Mrs Niemand's immaculate presentation and that he attributed the idea of containing the document in a folder to her, an echo of the lot description of the autopsy report.

During these years Dr Gluckman travelled widely on business, for medical treatment and for pleasure and he often wrote to Mrs Niemand from abroad to keep her informed of his progress and to ask her to attend to a variety of small and large matters in his absence.

[29] Gluckman, Paul. Letter to Mrs Norma Niemand. 17th October 1970. (Gluckman P. , Letter to Mrs Norma Niemand, 1970)

On 16th September 1972, Dr Gluckman sent Mrs Niemand a postcard from Rio de Janeiro in Brazil to wish her well, and also to ask her to attend to a small matter of detail.

> *Arr. here after a good trip. This is a most wonderful city and sad I'm not here for more than one day! Forgot to say, please ring Le May and say stuff is all waiting my house for uplifting. Best wishes, JG.*[30]

Two years later, on 26th February 1974, while in flight over the North Pole, he wrote a short letter on stationery of the Orly Airport Hilton hotel in France.

> *Dear Mrs Niemand - There should be a letter for me from Athens, from Mary, containing a tape cassette and some papers relating to Greek/Mediterranean cruises. Please open this and hold the tape for me. All the cruise dope please put in an envelope and send by hand to my next door neighbours … as soon as possible – forgive scrawl – plane a bit rough. Hope all is well with you.*
> *J.G.*[31]

I'm sure you agree, he was a man of detail.

[30] Gluckman, Jonathan. Postcard to Mrs Norma Niemand. 16th September 1972. (Gluckman J. , Postcard to Mrs Norma Niemand, 1972)
[31] Gluckman, Jonathan. Letter to Mrs Norma Niemand. 26th February 1974. (Gluckman J. , Letter to Mrs Norma Niemand, 1974)

8 Some confusion

No story will ever be told again as if it were the only one.

– John Berger[32]

That evening at home, Clark sat down to watch the evening news. The state broadcaster carried a report on the urgent court application, in the course of which the reporters interviewed Nkosinathi Biko and George Bizos.

> *The South Gauteng High Court has granted an urgent interdict against the auction of the original autopsy documents of the late Black Consciousness Movement leader, Steven Bantu Biko.*[33]

Well, that was wrong, it was no original document. Where did the SABC get that idea from?

> *Steve Bantu Biko's autopsy reports are being cared for by the family of Garth and his sister, Tessa Niemand. They are the children of Norma Niemand who was the PA to former Doctor Jonathan Gluckman. He was the pathologist who conducted the independent family post-mortem on Biko in 1977. He gave Norma Niemand files for safe-keeping at her home because his office was bugged at the time. Both Dr Gluckman and his secretary have since died.*[34]

Bizos obviously thought it was the original too, but would one of many Roneo copies be a national asset and why did they think it was an independent family post-mortem? It was the official state post-mortem.

[32] John Berger. (1992) *G.: a novel*. Vintage Reprint. (Berger, 1992)
[33] SABC 3 News. 3rd December 2014. (South African Broadcasting Corporation (SABC), 2014)
[34] Ibid.

> *Veteran lawyer, Advocate George Bizos says Biko and other anti-apartheid activist Ahmed Timol's files are national assets and not private property for auction. Timol's files were also stopped from being auctioned today. Bizos was cautious not to criticise the Niemand family.*[35]

That was an interesting idea: that the document could not be private property. George Bizos said:

> *I think that the reaction of the people of South Africa, of the judge this morning who, without any hesitation, gave an order in our favour will bring home to them that they were not wise. I don't want to condemn them – sometimes ignorance is a factor to be taken into consideration.*[36]

Like the journalist from *The Star*, the newsreader stated that the auction of the original documents had been stopped. As Garth and Tessa Niemand had not spoken to the media, and only they and Clark had seen the document, that error must have emanated from the Bikos' camp, even though Garth had told Mr Mouton that their document was only a copy. Likewise, the characterisation of the arrangement as one of "safekeeping" could only have come from the Bikos, or their lawyers.

Bizos's interpretation of the judge's order was misleading; the judge granted an order without any hesitation because the respondents consented to the order, not after the judge made a finding on the merits. Where did wisdom come into it? And it was disappointing that a renowned human rights lawyer could say he didn't want to condemn them, but immediately condemned them for their supposed ignorance.

Another interesting coincidence in the matter, as everyone knew, was that George Bizos, Mr Sydney Kentridge SC and Mr Ernie Wentzel had represented the Biko family at the inquest into Steve Biko's death, back in 1977.

Clark skipped to a cable news channel and saw that the Biko story was headlining there too. The bulletin was introduced with the words:

> *And tonight, Steve Biko's family says it's appalled by attempts to sell his post-mortem result. The court has slammed the brakes on an auction featuring the document. The black consciousness leader died in police*

[35] Ibid.
[36] SABC 3 News. Interview with Mr George Bizos. 3rd December 2014. (Bizos, Interview, 2014)

> *detention 37 years ago. His family say it would be immoral to make money from the event.*
>
> *... And 'sheer greed!'; that's how Steve Biko's family describe an attempt to sell his post-mortem results.*[37]

Next, the TV news reporter showed George Bizos on the steps of the High Court, *en route* back to his chambers after getting the interdict against the Niemands. He looked authoritative, even priestly in his advocate's bib and court jacket and said:

> *These documents prove that the capturers were really to blame for the deaths and if the originals fall into the wrong hands attempts may be made to alter what is now accepted as historical fact.*[38]

There was something strange about this interview. Bizos was also identifying the Niemands' document as the original, but why would - how could - anyone alter historical facts by getting hold of the document? Everyone knew that the inquest magistrate had found that no one was to blame for Steve Biko's death in detention, but they also knew that over time it became clear that the security police and the state doctors had colluded in his death and the subsequent cover up. That was now accepted as historical fact.

Could Bizos have had in mind the old Soviet and communist Chinese practice of erasing the faces of revolutionary heroes from photographs as soon as they were purged and shot, turning them into "previous people"?

But here we had Bizos afraid that after 37 years people might try to rewrite Biko's story and deny that he died from assaults while in detention. This seemed far-fetched. Or was Bizos trying to protect the past from intrusion by new actors and their truths? Who owned Biko?

Mr Bizos had read the Bikos' court papers and had just moved their urgent application in the High Court. There were two possibilities.

Had Bizos been referring to Gluckman's so-called independent report he could be excused for thinking that it was the original, but in that case he would have totally misread the description of Lot 101, which clearly said the document was a copy of a public document prepared under the Criminal Procedure Act.

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[37] ENCA News. 3rd December 2014. (ENCA, 2014)
[38] Television interview with George Bizos. 3rd December 2014. (ENCA, 2014)

On the other hand, if Mr Bizos was referring to the original of the Steve Biko autopsy report, he should have remembered – from his appearance at the inquest - that the original report was handed in as evidence according to court practice. The inquest could not have proceeded without it. In short, the Niemands' document could not be the original autopsy report.

Clark felt there was another strange feature about Mr Bizos's words and deeds, but the idea was elusive and he needed time to put his finger on it.

9 Moulding man

Joachim Schönfeldt's studio was at the Speedy Bag Factory, where the industrial area of Newtown met the mixed use suburb of Fordsburg, west of the double decker freeway. Clark regarded Joa as a friend in art and, as they were both embarking on postgraduate studies, they had decided to explore a collaborative project. It was still early days and the first step would be to make a prototype of the final object, to test it out and see what larger problems could be anticipated when it came to the final product.

Pulling up outside the Bag Factory, Clark saw Joachim with his arms folded over his stomach, sunning himself in the doorway to the studios. He affected his usual ensemble of white shirt, black shorts and jacket and sandals with khaki socks. He had brought a small café table and two folding chairs out to the pavement and was watching the locals streaming in from the surrounding warehouses, flats and shops in response to the call to Friday prayer. A plastic bag containing take-away lamb curry and some bottles of Coke indicated to Clark that they would have lunch outside, sitting on the pavement in the elbow of the Oriental Plaza. Openly drinking beer or wine was not really an option in that environment, but it turned out that Joa had pre-filled some bottles with a mix of brandy and coke, a beverage Clark had never tried, despite its fabled status as a national drink. It made a good accompaniment to the spicy food.

With help from his wife Bev, Clark was prepared for the session like a cyclist or a swimmer, pre-shaven more or less from head to toe, save for the sparse hair on his head and the area of his groin. The shave had been excruciating, like hearing a piece of chalk scrape down a blackboard for a solid hour. Here and there he had taken a slight nick from the razor. As he enjoyed the lamb curry and rice with sambals, he mused on what was to come and the awkwardness he would feel, laid out on Joa's workbench; he had run somewhat to fat in recent years and that would be obvious to anyone who saw him.

Joa took a pad of paper and sketched the stages of the lost wax casting process that he was going to follow. It all looked quite complicated to Clark, but that lay further down the road and all they needed to do then was to make plaster moulds of his body and pour a mixture of hot wax, paraffin wax and beeswax onto the moulds to cast Clark's body parts. After cooling and setting, Joa would pour successive coatings of wax to the back of the casts to give them added bulk and strength. Later, Joa would prise cast from mould and assemble the parts, fusing and smoothing the joints to create a model man.

Clark had expected the effigy to be solid wax, but that would have made him too heavy and so he was only to be a hollow man.

When they had finished lunch with some espresso, they took everything inside to Joa's studio. Joa directed him to strip down, smear himself liberally with Vaseline, climb up onto the workbench and lie supine with his arms against his sides. Clark was not going to let Schönfeldt make a mould of his genital area, so he kept his underpants on and otherwise did as he was told.

While Joa was setting up, Clark looked around the small studio. It was lit by natural light through high south-facing factory windows, but still required the electric globes hanging from the roof. Apart from the workbench, there was a trestle table piled with works in paper and the hammers, chisels and power tools that Joa used to craft his large sculptures from *bloekom* and jacaranda. Pieces of junk were piled on a divan in one corner, objects for which Clark could think of no use. The floor had a thick coating of sawdust, which together with old newspapers, assorted paints and solvents on the shelves amounted to a significant fire hazard. Clark was pleased that the studio was close the main entrance and relieved to see a portable fire extinguisher next to the studio door.

Joachim started to dip the gypsum bandages into an enamel bowl of water and apply them to Clark's body, starting with the upper torso and working down to the feet. Joa had said he was to keep still, but on each application, Clark flinched at the cold wet bandage on his skin; this was soon followed by the burn of the chemical reaction in the plaster of Paris. In no time at all he felt constrained by his carapace.

"This stuff is burning, Joa. How long is it going to take?"

"That's the problem with plaster of Paris, but don't worry, you'll get used to it. At the doctor he would first wrap you in cotton wool, but here we need skin contact for a close fit. In half an hour you will be set."

"Then don't try that in my groin area."

"Don't worry, I know how to fill in the gaps around your balls and butt. I'll do that later and will even augment you if you would like that – to beef you up and round you off. At the end you'll look like a life-size Oscar statuette."

"Hmm. Don't try any funny business that I won't see until it is unveiled on the big night."

"Are you sure you don't want me to mould you down there in full attack position?"

"Christ, no. You'll upset the feminists and prudes and we'll go off message. Just make it look like I'm wearing a cricket box. That'll do."

"All right, leave it to me."

The whole exercise took a few hours and Clark took several shots of espresso coffee to stay warm. Schönfeldt started to prise off the mould pieces that had already set, even as he applied the gypsum bandages to new parts of Clark's body. He left seams between adjacent sections of the mould so that he could prise and lift them off Clark's body without having to saw at them, but here and there he needed to cut them apart with a small circular grinder. The pieces came away fairly easily and Joa placed them in a corner of the floor to finish drying out.

When the exercise approached its end at the head, Joa said, "Now I could pull the wool over your eyes and wrap the bandages over them, but I got hold of these to achieve a better effect." He produced a pair of swimming goggles and a plastic swimming cap. "This will also give your head an abstract quality, like your groin. I'll do the eyes last by inserting some prosthetic eyes – blue, of course – and pouring some hot wax around them to create the eyelids. The ears also need to be carved out of the wax – the bandages just go over them in a general way, so they will just be suggestions of ears until I do that."

When at last Clark could sit up on the bench, he swung his arms and legs, hunched and relaxed his shoulders and turned his head to relieve the stiffness and get his circulation going again. He stood on the floor and accepted first an espresso coffee and then a glass of muscadel from Joachim. The window light was fading and he moved to dress as quickly as possible before the cold set into him. It was time to head home for a hot shower and another coating of Vaseline to sooth the abrasions.

On stepping out of the Bag Factory, Clark was surprised to see a ruddy elderly man shambling towards him along the pavement on the other side of the now empty street. In his left hand he carried a small suitcase and a plastic bag. In the curled fingers of his right hand he held his pipe, emitting white smoke and the scent of strong tobacco tinged with cannabis. He looked like a vagrant, moving along with his few meagre possessions. Could he be headed to spend the night somewhere in this run-down part of town?

"Good evening," the man called with a cheery wave as he crossed to the near side of the street. Clark reciprocated with a wave; it always paid to be civil.

As the elderly man approached he put his pipe in his mouth, stretched out his right hand and after a brief bony-fingered handshake continued, "Harrison is the name. I am newly arrived in your fine city, which is most extraordinary. I am from a much quieter part of the world altogether."

"How do you do. Jeremy Clark. Yes, it is a great place and fine and clear at this time of year with only the occasional hot days."

After the exchange of further genial pleasantries, Harrison said, "I appreciate that this might sound a little forward, but I am at something of a loss for accommodation in your great city and I wondered …, do you think …, could you do me the greatest service by putting me up for a short while …, until I am back on my feet again?"

Clark shuddered. There really was something off-putting about this man, though it was hard to say what exactly.

Harrison continued, "I don't need anything more than a bed and a table on which to rest my trusty old typewriter. I can't write any more … it's the hands; old age I'm afraid. What do you say?"

Even at close range he had the look and feel of the vagrant, the vague and the poorly defined. His clothes were frankly unacceptable, both as to style and condition. Although clean, they were in sepia shades, more like the clothes of a tramp. He sported khaki shorts and a short-sleeved cream shirt, but of an obscure and evidently old style. His shirt had a floppy collar, whether by design or constant wear, and a worn and charred pipe protruded from the pocket. The strangest items of apparel were his heavily scuffed and oft-repaired *velskoene*, worn without socks, and a red felt fez, also showing signs of many years of wear. Loose threads emerged along every seam of cloth, which, taken with the sun-lined face, the hairs sprouting from his nose, ears and cheeks, his scraggly hair and thick moustache, blurred his outline and gave off an impression of someone half-present. More of a Struwwelpeter than a neat Pete and, in short, a strange old bird in his eclipse plumage. It was partly that his appearance – at least as to his clothing and coiffure – was shabby and the fez altogether too much in this day and place. Just what did it indicate? Was he a rare white Muslim returning from a long session of prayers, or was he something else? His demeanour and speech those of an English gentleman of a slightly rough colonial sort, all flat vowels and permanent tan. Whatever it was, Clark didn't take to this Harrison.

"Umm …, pardon?"

"You see, I am rather adrift here and I thought you might see your way clear to admitting me into your company and your home for the short while I will abide here."

This was a shocking thought and Clark scrambled in his mind for an excuse he could use to fob him off without appearing churlish. The truth was he had a guest cottage on the grounds of his home, to say nothing of two bedrooms inside the house, unused while son and daughter were away at school and college, but the very thought of having the man to stay was appalling and perspiration started to rise on his upper lip and at his temples. He couldn't bear the forwardness of the man?

"Well, no, I'm afraid …"

"I really don't think it would be for more than three weeks or thereabouts. Could you?"

"Er …, no, I'm afraid we don't have any room at home, we're scaling down and it would …, it would be very difficult to …, well to place an added burden, oh, … no, don't get me wrong, not that you would be a burden of any kind, of course, but my wife …, Bev, that is. Yes, she already has a very heavy load without worrying …, er …."

Harrison's blue eyes had a calm, but knowing look. Clark felt he had been exposed and found out.

"What a great pity. Well, there it is, then. I quite understand. I will turn to Joachim Schönfeldt. I was told this is his place of work. Is it inside?"

"Oh, yes. I'm just leaving. Through this doorway and first studio on your right. Just one thing, though, Mr Harrison, while I remember," Clark added. "I wouldn't smoke that pipe in Joa's studio, or you'll go up in flames. The place is full of inflammable materials."

"Sir, you make a sound point, and thank you for your concern towards me." Could this be tinged with a whiff of sarcasm? "In that case I shall be sure to come outside to the pavement before I partake."

Joa hadn't mentioned that he this odd Harrison man. What was afoot?

10 From the banks of time

Clark had engaged another researcher in Pietermaritzburg and she had dug out two files pertaining to John Harrison Clark III, grandson of the first settler at Algoa Bay, in the national archives there. One was his 1889 application to marry Helen Agnes Cox[39] by licence and without the reading of banns. His application was duly approved and, with the consent of the bride's mother, they were married in All Saints Church, Ladysmith on 25th June 1889. Helen was a spinster aged 20 and John, 22, described his occupation as "Gentleman", which was quite a grand way of describing a member of the Natal Mounted Police. The second file was Helen's 1901 High Court application to sue her husband for divorce by way of edictal citation.[40] The researcher had photographed each page of the papers and emailed them to Clark.

Helen Agnes Clark attached an original handwritten letter from her husband, probably written in about February 1897, to her application to sue by edictal citation.[41] With difficulty and by enlarging the photograph on the screen, Clark managed to decipher and transcribe the handwriting, inscribed in blue ink on pages taken from an accountant's ledger book.

Budgemore
Zambezia

Dearest Birdie,
I received your welcome message - never too late to mend - a few days ago from my mother. I was indeed glad to receive it. I assure you I have been trying to mend, but I have had the most cross grained luck that I think it

[39] Born Helen Agnes Cox (1868 - 1944), first child of William Glendinning Cox and Mary Anne Burchmore of Ladysmith.
[40] L deV van Winsen, JPG Eksteen & AC Cilliers. (1979). *Herbstein and Van Winsen. The Civil Practice of the Superior Courts in South Africa*. Cape Town. Juta. P226. (L de V van Winsen, 1979) A practice that originated in the Roman law, a court will grant leave to sue by edictal citation where it is necessary for the plaintiff or applicant (i) to obtain directions as to the method of service of process and/or (ii) to obtain leave to bring the proceedings themselves. Such leave is sought in an application to sue by "edictal citation" if the court is satisfied as to the applicant's cause of action, its jurisdiction over the applicant and that the application is necessary to enable the applicant to institute its claim.
[41] John Harrison Clark III (10th May 1867 – 9th December1927), son of John Harrison Clark II (6th December 1842 -) and grandson of John Harrison Clark I (4th August 1814 – 24th January 1883).

> *possible for any man to have. I shall give you a resumé of my doings from July 1895 since my residence here. I also received the Photograph of our dear boy.*[42]

It was curious that the man was able to receive and send letters out in the wild. Was it sent *poste restante* to somewhere like Tete in Mozambique, or Salisbury in Southern Rhodesia, two weeks ride away? In admiring his little boy, the correspondent likened him to his wife, but also claimed a likeness to himself, before expressing his longing and unalterable love for Helen. Acknowledging his temper and pride, he asked for her forgiveness.

> *For more than a year, I should say within a few days of a year, I have been absolutely alone, that is I have not seen an Englishman, and during that time I have had time to think soberly and seriously of my past and all the wrongs you dear loving and true wife have suffered at the hands of your villainous husband.*[43]

That was telling; he was surrounded by tribespeople, to say nothing of appealing women.

He arrived at the confluence of the Zambezi and the Luangwa in 1895 in company of Captain Brewis and Thomas H. Clark and was recognised as chief of the party. Wanting to go south, but hearing that Mashonaland was dangerous, he remained, trading ivory and gold, the place being the outlet for the interior, including the Congo.

> *I was away about six weeks, and when I returned I found to my disgust that B & C had during my absence been drinking a Kaffir liquor called Chitaso distilled from a wild fruit called maron. The consequence was they both had the fever badly. A day after my arrival I went to see the Chief and he said that during my absence B had attempted to strike him. In a country like this these kinds of things can't last, I thought to myself. So I told Brewis and Clark since they could not leave the Chief alone, and since the Chief had complained about them that they had better go, this I easily arranged with*

[42] Letter from John Harrison Clark III to Helen Agnes Clark ca. 1897. National Archives, Pietermaritzburg. (Clark J. H., 1897)
[43] Ibid.

them, and a few days after I packed them off to Tete, from thence they went to Salisbury. …[44]

After Brewis and Clark left, Harrison Clark continued, he procured hunters from the chief and sent them off, three parties of twenty each, to his profit and set himself the task of learning the language. On his travels he took notes and compiled a map of no-man's land to the north. In December 1995, one James Box arrived at Budgemore from Salisbury, went into prospects with Harrison Clark and then invited him to spend Christmas at his camp, eight days north of Salisbury and eight days south of the Zambezi. This led to James and Duncan Box entering into partnership with him, they putting in £1,000 and paying him £200 cash down to enter it on account of his knowing the language, his influence with the chief and his knowledge of where the gold was. He headed north to trade a large amount of corn, experiencing difficulty in obtaining canoes for transport. When he returned, the Box brothers were not at Budgemore, as expected.

The following morning I called on the Chief and told him to call in 50 boys as I had decided to go to Shipurero myself. He declined as he said that he believed it was dangerous, as during my absence he had learned that there was war in Mashonaland. I had no news - this was the first I had heard of any disturbance. I do not even now know full particulars owing to papers not arriving and not being in communication with Salisbury.[45]

Here it sounded like he might even have been used to receiving newspapers, seemingly from Salisbury or Tete. The chief agreed to send four of his men and if the road was open, he would allocate more. Not wanting to quarrel with the chief, Harrison Clark sent the men off with a letter for the Box brothers.

They arrived all right. They said Box was very glad to receive my letter and told them to wait as he was leaving for Budgemore in two days time. The following morning he had all the loads made up ready for starting. Just as he had all ready, they were taken by surprise before they could handle a gun and were both killed. One of my boys were killed three escaped. Of

[44] Ibid.
[45] Ibid.

> *course everything went, some £1,200 of trading stuff, 30 guns, some very expensive ones and a large amount of ammunition. I wrote an account in the Telegraph, but my mother did not send it you as she had already told you I was getting on and did not wish to disappoint you love.*[46]

He was evidently in communication by post with his mother, probably in Port Elizabeth, who clung to the idea that her son would emerge from the interior and resume married life with Helen.

> *As my hunters did not return in July I decided to go to Tete about several business matters and also if possible to get in communication with Salisbury. But owing to the unsettled state of affairs on the Zambezie I was delayed by the Portuguese. Account will appear in Telegraph. Owing to this delay I went west to prospect some gold at Chouar I had heard of and was away about a month. I was only waiting for Box Bros. to open this up. Now I shall leave it for some time, and open up the Murhonga which I have recently heard of, and possibly the Msingiva, but I must play a waiting game owing to the unsettled state of affairs in Mashonaland. Chouar and Murhonga are truly unknown being north of the Zambezi. I also have some valuable Concessions, but they are subject to Government approval. I am in English territory and what gold I have discovered is also in English territory.*[47]

That was doubtful. The territory north of the Zambezi did not come under British sovereignty until later.

> *I hope shortly to leave for Tete and possibly Quilimane. I allude to my premise how it is that I have heard that my hunters have been killed by the Arabs, but I know nothing for certain yet. …*
>
> *The trade to be done here in ivory is immense. I took a list or rather kept an account of what ivory passed here this year and it totals 671 tusks. This is only what I have seen, what I have not seen must be double. In starting a trading business here the Portuguese would be completely alone but would do no business, at present all the business is done in Tete, but if a business*

[46] Ibid.
[47] Ibid.

was started here, the goods could be got in transit for Quilimane or Chinde, and could be sold here at almost the same price as in Tete. You will gather by this that my prospects are bright, but owing to the present unsettled state of affairs I am tied. In one year's time from date of this letter, expect to see me or expect a Draught. Draft. I'm not sure how it is spelt.[48]

Harrison Clark concluded by acknowledging that Helen had borne all bravely for many years cajoling her to find the strength to wait one more.

Sweetheart kiss my boy our Budge a thousand times for me and let him kiss you for me. Tell him to be kind to his mother for his father's sake. Oh love may this year be as free as possible from trouble and care for you, and may you be kept free from all sickness and trouble also, our boy. This place is named after our boy Birdie, so you are never forgotten, you or him dear.

Good-bye love with fondest love to you and Budge.

Your ever loving and fond husband,

J. Harrison Clark

P.S. Write soon sweetheart. I long to see your handwriting once again. The blank page is ground sketch of Budgemore.[49]

The attached page contained a floor plan of the house-cum-store and its site at the confluence of the Zambezi and the Luangwa rivers, as well as a description of its method of construction.

Clark had struck paydirt. This was an authentic relic (or at least a photograph of it) of the man and for once it was in his own voice. Its importance was immense. He only wished he had more time to follow his research, but his practice beckoned all the time.

[48] Ibid.
[49] Ibid.

11 The Niemand archive (2)

Snatching twenty minutes between consultations at the office, Clark dipped into Mrs Niemand's file again. Dr Gluckman was absent from his practice for a long time in 1974, travelling to Stanford University in California to undergo medical treatment. On 11th March 1974 he wrote to Mrs Niemand from the Stanford University Medical Center.

Dear Mrs Niemand,

... Thank you very much indeed for your letter giving me those various addresses. I just cannot imagine what has happened to that silver notebook of mine; it is a complete mystery. It was thoughtful of you to send me these addresses and I was able to establish the necessary contacts.

There are a number of isolated things that I would be glad if you would do. I have a trout weekend scheduled for some time in April, so I would be glad if you would telephone Mrs Walker and tell her that I am unable to take it up. It really seems that I am having a bad season, doesn't it?

... From the cabled message which I sent to my partners, I confirmed that I should like you to send all mail from Oxford – whether addressed to me or Michael – to me here at Stanford. I have asked Michael to come and be with me during part of this time and I hope that he will be arriving within a few days. Obviously we have to keep our finger on that Oxford situation.

It really looks as if you are going to have to handle Reciprocal largely by yourself for the next couple of months. Obviously you are going to keep in close touch with Mr Schneider and I am sure that you will solve all the problems. I just cannot remember whether we organized the Annexure B's for all the last shipments. Obviously Mr Schneider is not as familiar with these matters as I am so he is going to be very dependent on you in this regard. However, I have every confidence in you and I'm sure that you will be able to cope completely. At least you won't have me bothering you every few hours with this and that and interrupting your work.

Please make out all the relevant cheques in respect of your salary and so on dated the end of this month and let me have them immediately and I shall sign them and send them back to you. You should also include the usual check for Optical Instruments for Mr Giesler.

I shall be writing myself to the Branch Council and to Federal Council asking for leave of absence from the forthcoming meetings so I don't think you need bother yourself about it. Anyway I shall enclose the carbon copies of the letter with this.[50]

There was a man who kept tabs on the copies of his documents.

Please keep in touch with me regarding anything that you think that I ought to know about.

I do hope you are feeling better and that you are having no further troubles with your eyes.

I have also decided to enclose these two letters for the Medical Association and I shall be glad if you will pass them on appropriately.

With kindest regards.

Yours sincerely,

J. Gluckman

Please also send me two blank cheques from my cheque book.

There may be a package for me from Singapore, sent by Michael, containing a pipe – please keep safely.

I hope you are as well as I am! When do you go on leave?[51]

The Reciprocal Wine Trading Company, a wine importing and distribution business that he started back in 1969, was still in business under different ownership. As a wine connoisseur, Dr Gluckman imported wines mainly from France and sold them to his customers in South Africa.

It was a fine detail to send Mrs Niemand the carbon copies of his correspondence written while in California. Do you see some irony in there? He made a point of asking Mrs Niemand to keep his pipe safely. In other words, specifically in the Bikos' oft-repeated word, in "safekeeping." Would any of the other letters provide any evidence that he similarly made a point of putting the autopsy report in her "safekeeping"? Gluckman's letters would reveal the answer to that question in time, but Clark had to hope the answer would be, "No."

[50] Gluckman, Jonathan. Letter to Mrs Norma Niemand. 11th March 1974. (Gluckman J. , Letter to Mrs Norma Niemand, 1974)

[51] Ibid.

On 12th March, Dr Gluckman sent a handwritten letter to Mrs Niemand, in which he asked her to check that Rita Oosthuizen of Fragrance Florist had sent Susan Graham some flowers he had ordered on the birth of her baby. From halfway across the world he was attending to small details and fine etiquette.

Then on 2nd May 1974, he wrote again from Stanford, giving Mrs Niemand detailed instructions about a number of things, covering petrol books at Cargo Motors, the Medical Association of South Africa (MASA), his Diner's Club charge card, payment of the license fees and instalments on a vintage Ferrari, reports for clients, practice accounts, a follow-up on the flowers sent to Susan Graham, his income tax certificates and the non-renewal of a subscription to a magazine.

Dear Mrs Niemand,

Thank you very much for your registered express letter of April 25th which arrived this morning. As you say the news about Michael was a tremendous relief to all of us. He is now in Singapore packing up and by the time you get this letter he will have returned to Taipei where he will remain until he is ready to go to Oxford but will probably do so via South Africa. Mrs Giesler sent on the various letters as you requested. …

<u>Diners Club</u>

I am aware about the renewal fees but I have no particular recollection of the Royal Festival Hall. Was it Paul? …

<u>Estate late R.A. Blyth</u>

I don't know what is going on here because I undoubtedly issued a report in regard to this and I seem to remember that not long before I went away there was a letter asking for some further detail. I can't remember what this was about and I recall thinking that I would handle it in a few weeks pulling out the original reports. Certainly I do not think that this is a matter that can now be started up anew by one of my partners. Obviously a report must have gone astray and some letters. I also had a telephone conversation with Mr Sohn in which I explained that there was absolutely no evidence to support the allegation that the trainee died of excessive exercise as the parents had felt. I am afraid they simply must wait until my return which will be at the end of June, as I said just now, I think it would be quite wrong for anyone else to start up on it. In the meanwhile I do not know what has

happened to the report originally sent; and there were also several telephone conversations in which I amplified it. …[52]

Could this be an instance of a national serviceman being pushed too hard in basic training? I expect you remember from time to time over the years army recruits had died, sometimes as a result of being drilled too hard and pushed too far. Mr Sohn was an attorney and this paragraph showed that Dr Gluckman was professional in his work and would not bend his enquiries or findings to please his clients.

I was sorry to hear on the telephone that you had been ill and hope that by now you are fully recovered. What was the matter? I do hope that it is not a recurrence of that nasty allergy that you had.

As for myself, I am making progress slowly just having to endure this long drawnout treatment. It makes one feel very lethargic and very depressed but one just has to stick it out. …

With kindest regards,

J.G.[53]

Lethargy and depression notwithstanding, Dr Gluckman showed a command of all the relevant facts of his life right down to minor details and a determination to follow up on all loose ends.

On 4th June 1974, he wrote to Mrs Niemand again from California.

Dear Mrs Niemand,

I must thank you for your long letter …

First of all I am sorry to hear about your trouble and I do hope that it is completely cleared by now. I wonder whether this has anything to do at all with the peculiar possibly allergic episodes which you had before I went away. It all sounds most peculiar to me and I haven't a suggestion in the world as to what it was all about. Anyway, I am so sorry that you had this trouble and this worry and I hope that it is the last you ever hear of it. You

[52] Gluckman, Jonathan. Letter to Mrs Norma Niemand. 2nd May 1974. (Gluckman J. , Letter to Mrs Norma Niemand, 1974)
[53] Ibid.

shouldn't be so distressed about a lumbar puncture. It is a minor procedure – just sounds awful, but it isn't at all bad I assure you.

Thank you for drawing my attention to the date in respect of your service with me. You will remember I asked you to remind me about it. Would you please write yourself a cheque for the annual bonus and as this is a five year anniversary for an increase of your salary at two notches. You can either do this with your cheque at the end of the month or you might prefer to do it as a separate cheque. In fact I think the latter is a better idea so let me have that as soon as possible and I will sign it and return it to you. Just attach a chit indicating how the cheque is made up. While on the same subject, you were very late sending me your salary cheques last month and I think that you should send them to me this month in good time to reach me here by the 20th of the month. That will enable you to have the money in your possession at the end of the month. …

<u>Federal Council</u>

Thank you for your congratulations. No, I don't think it is likely to throw much of a burden on me. I am already a member of the Executive Committee and it is just a question of wearing a gong around one's neck. Some time next year there is likely to be extra duties in relation to the Congress and so on and a speech or two but for the rest I don't think we need worry about it. I certainly don't think it is going to put any extra burden on you.

From what you tell me about Reciprocal it seems that the latest circular has produced a good spate of orders. …

Within the next day or so I am going to send you several belts of letters from me to various people for you to type and sign on my behalf.
Ring up the Houghton Golf Club, tell them I am overseas and that I will be dealing with the matter on my return in July. …

And that is all for now. My very best wishes to you.
J.G.[54]

He then followed up on points of detail he had raised in his previous letter, including the petrol account at Cargo Motors, a Malta property, some shelving for Reciprocal, a

[54] Gluckman, Jonathan. Letter to Mrs Norma Niemand. 4th June 1974. (Gluckman J. , Letter to Mrs Norma Niemand, 1974)

query on his American Express card and details about Michael's admission to Oxford University.

12 Some tit for tat

At their consultation on Thursday afternoon, Garth explained that the first he had got wind of a brewing storm was the previous Monday afternoon when Marc Mouton telephoned him about the document and the auction. He had pointed out to Mr Mouton that their document had been in their mother's possession until her death in 2011, whereafter he had kept it. He also told him that it was a copy of the original report. Shouldn't that have given Mouton pause – two days before moving the Bikos' urgent application – to go around to the auctioneers' rooms and inspect the document in question?

At 8.20 on the Monday night, Mouton had sent Westgate auctioneers a letter, claiming ownership of the document on behalf of his clients and adding:

> *[4] Furthermore, as mentioned in your description of the lot, the Steve Biko Autopsy Report is "of great historical importance" and is a document whose contents are extremely sensitive and potentially, provocative. Consequently, for this and other reasons, the unlawful auction or sale of the Steve Biko Autopsy Report could have significant ramifications and expose you to potential liability as well as significant adverse publicity. …*
> *[6] We place you on notice that unless we receive your undertaking by return email by 10pm, we will have no choice but to seek an urgent interdict and costs against the said auction.*
> *[7] We urge you to consider the adverse ramifications that may ensue if you refuse to comply with our request, the significance of which is not only a matter of concern to every South African but also to members of our international community.*[55]

The attorneys served a copy of the Bikos' intended urgent application on Garth on Tuesday afternoon and Garth sent an email to Mouton to remind him that they had withdrawn the document from the auction earlier that morning. Mouton had not been prepared to accept his word over the telephone and asked that he confirm it via email.

[55] FA, pp 93-4.

Mouton then asked that Garth and Tessa sign some written undertakings that he had drawn up, to which they agreed because it would suspend the auction and give the parties time to investigate the facts. Garth sent his signed undertaking to Mouton that night and Tessa sent him hers early next morning, Wednesday 3rd December. Westgate Walding did the same.

So, by 7.00 on Wednesday morning 3rd December, Garth, Tessa and Westgate Walding Auctioneers had given written undertakings to the Bikos that they had withdrawn the autopsy report from the auction and would not sell, alienate, destroy, damage or otherwise transfer possession or ownership in the autopsy report.[56]

Garth and Tessa hadn't known their document might be valuable until a member of Tessa's walking group suggested they put it up for auction and they then spoke to the auctioneers about it. They were just two ordinary middle-class citizens and the idea of getting involved in High Court litigation was a terrifying prospect. Wasn't it reasonable of the Niemands to feel they were no match for the distrusting and imperious lawyers who had descended on them, threatening retribution and talking down to them as if they were criminals? They felt brow-beaten and bullied by Mouton. Garth had been at pains to tell him that their document was only a copy, not an original document, to which Mouton's dismissive response was: "That's what you say." Mouton had himself threatened that he would "not withdraw (his) threat of urgent action" until they had signed his undertakings. As you will see, the Niemands complied with his request, but Niemand nevertheless carried out his threat. Most of all, they were very afraid of the legal expenses they could be getting into if they opposed the application. From their reading of the court papers, all the Bikos wanted to do was to stop the auction until they could set out their case, showing that they owned the document. Garth and Tessa were happy to go along with that until the Bikos came forward to prove their ownership, if they could. They now had until 31st January to do that and the Niemands thought they would use that time to clear up the misunderstanding about the document.

When Mouton gave them his pre-drafted written undertakings to sign, they could see that he had gone further than the relief claimed in the notice of motion, but they just wanted to find a solution without incurring enormous legal costs, so they signed. The written undertakings did not at that time prevent Garth and Tessa from copying the document.

Placing their faith and trust in the rectitude of the legal profession and the reputation of the Bikos' attorneys firm, the Niemands felt that they had acted very reasonably

[56] FA, pp 96-9.

towards the Bikos and did not expect the lawyers to take any further prejudicial steps against them.

In the High Court later that morning, 3rd December, the Bikos, represented by Mr George Bizos SC, moved to have the Niemands' undertakings made an order of court. So far, all according to plan, but an extra word, "copy", was somehow inserted into paragraph 2 of the undertakings without the Niemands' knowledge or consent. When Judge Victor granted an order making the amended undertakings an order of court the inclusion of the extra word "copy" amounted to an additional, distinct interdict placed on the Niemands and Westgate Walding Auctioneers. Garth and Tessa were offended by the insertion into their undertakings without any reference back to them for their consent. This would make the litigation difficult – they would have to go and prepare their affidavits at the auctioneers' rooms – and it showed a grand contempt towards them.

Clark wrote to Mouton to ask for details about how the word "copy" came to be inserted into the Niemands' undertakings and said "We do not understand how an extra proscription could have been added to the order of Judge Victor in the absence of our clients and Westgate Walding Auctioneers. Please explain how this amendment came to be made to the draft order, at variance with the notice of motion and signed undertakings." As the Bikos had barred Clark from making a copy with which to conduct the litigation, Clark asked Mouton to send him a copy of the Bikos' own copy of the autopsy report for use in preparing their case. Mouton replied the next day, "… the Judge inserted the word 'copy' in her order" and "… we do not have a copy of the Steve Biko Autopsy report, but wonder why you need it."

This evasive and elliptical answer called for a direct follow-up: "[3] We can see that the judge initialled the word 'copy' on the order, but we want to know if she did this of her own accord, or at the instance of your firm or your counsel. Please tell us. [4] We don't see how our clients can be subjected to an additional injunction of which they were not given notice and to which they did not give an undertaking."

Mouton simply wasn't going to give a straight answer: "As indicated in our email earlier today, Victor J inserted the word 'copy' into the undertakings when she made them an order of court. You will note that the notice of motion included a prayer for further or alternative relief."

Mouton was playing the old hidden agent trick; it was the notice of motion that did it.[57] If there are two times when you need to be most wary of lawyers is when they use

[57] J.M. Coetzee. "The Rhetoric of the Passive in English" in David Attwell (ed.) (1992) *Doubling the Point: Essays and Interviews.* Johannesburg. Jacana. p147. (Coetzee, 1992)

the passive voice and the agentless sentence. Judges don't ordinarily give parties more relief than they pray for, unless it is fully motivated in court and the other side has been given an opportunity to oppose it. If the judge had inserted the word 'copy' into the order *mero motu*, of her own accord, wouldn't Mouton simply have said so, to satisfy that enquiry decisively? Wasn't the only conclusion - or the most probable conclusion - that Mr Bizos or Mr Mouton had moved for the inclusion of the word 'copy' in the order? Mouton was dissembling.

Mouton said that the Bikos did not accept the Niemands' assertions that they were the owners of the document, adding that the Niemands' claim was false, even on their own version, essentially because the wording of the lot description meant that Dr Gluckman only gave the document to their mother in "safekeeping".

The Bikos used the words "for safekeeping" so many times in their papers that they might have given the impression that those words appeared in the description of Lot 101, or that the Niemands also admitted that Dr Gluckman intended their mother to hold it in safekeeping. Lest the applicants' frequent repetition of these words should give the wrong impression, Garth and Tessa would have to emphasise that the words "for safekeeping" were those of the Bikos and their attorneys.

To round off their consultation with Clark, the Niemands confirmed the contents of the auctioneers' lot description. They also said that to their knowledge Dr Gluckman had never asked their mother to return the document.

In South African law, ownership passes after 30 years of undisturbed, peaceful and open possession of someone else's property, whether movable or immovable. It was by then 37 years since Dr Gluckman gave the document to Mrs Niemand.

There was some discussion by email between the attorneys about finding a way to settle the dispute, but Caine and Matthews expected the Niemands to give up possession of the document and allow it to be held by an independent stakeholder until the dispute was resolved. Clark would not agree to this because the Niemands were still in possession of the document through their agents, Westgate Walding, and the onus was on the applicants to show they had better title to the document than the Niemands.[58] Possession is nine tenths of the law, as the old saying goes.

[58] Hoffmann LH and Zeffertt D. (1988) *The South African Law of Evidence*. Butterworths. Durban. P594. (Zeffertt, 1988)

13 Real people

"*Unhappy is the country without heroes*
No, pity the country that needs heroes."

- Bertolt Brecht

As you can see, the Bikos were going beyond trying to prove they owned the autopsy report. They went to some lengths to attack the Niemands' characters, to portray Garth and Tessa as disrespectful people who did not know how to "*do the right thing*". It was possible that the Bikos – less confident of their claim to ownership of the Niemands' document – did this to fortify their claim for alternative relief under the Constitution. Clark didn't know Garth very well, though Tessa a little better, so in an effort to reverse this demonization he asked them to give him some background and context to their lives.

Garth said he was born in Johannesburg in 1951. When he was three years old he contracted polio during the epidemic that broke out in South Africa. One night he was expected to die or to be paralyzed for the rest of his life, but was fortunately only paralyzed down the left side of his body. Thanks to the loving nursing of his mother, he gradually regained the full use of his limbs and made an almost complete recovery.

Their mother always taught them to respect other people, no matter their race, creed or circumstances. Once, when he was ten years old and trying to be clever, he called a neighbours' son, David, "Four Eyes" because he wore glasses. David was older than Garth and ignored him, but Mrs Niemand had heard Garth and grabbed him by the ear, marched him down the pavement and demanded that he apologise to David. This incident had remained imprinted on his mind ever since and was emblematic of their mother.

Garth attended Roosevelt High School and matriculated in 1968. His parents hoped he would study architecture at Wits University as he was artistic and they had a string of architects in the family. Straight after school, in 1969, he started his national service in the Maintenance Unit at Lenz Military Base south of Johannesburg, having asked to be close to home because his mother was not well at the time. It was then that he decided

he did not want to study architecture and told his parents. They were not impressed, but accepted his decision.

When he was in the army, he met Pieter Swanepoel who was from Orkney. During his time at Lenz, Pieter came home with him for weekends. When they finished training, Pieter came to live with the family and became another son to Mrs Niemand, remaining part of the extended family.

In 1970, Garth's parents bought a newly built house in Roosevelt Park, where he went to live later that year upon completing his national service. At that time, he joined one of the largest advertising agencies in Johannesburg, as a graphic designer. After a spell in Durban, he joined a company in the motor industry as a retail representative and later as a wholesale representative. He spent many years in the motor industry and was then offered a position as the advertising and sales person on a well-known motor magazine. He joined and shortly afterwards they launched another motor magazine.

Mrs Niemand started working for Dr Jonathan Gluckman in June 1969, just after Garth finished matric. They all got to know Dr Gluckman quite well, although he was not very outgoing towards Garth and Tessa, always appearing to be highly focused on his work. On occasions, their mother would work overtime at his homes in Loch Avenue, Parktown and later in Pallinghurst Road, Westcliff.

Garth continued to spend his working life in advertising, marketing, exhibitions and publishing. In 1977, the year in which Steve Biko died, he was divorced without having had any children. At about that time, their mother also divorced their father, who was a buyer for Eskom. In 1982 Garth met Colin Ross, who was a housemaster at St George's Home for Boys and who taught the orphans horse riding as part of their therapy. Garth and Colin became friends and Colin insisted that Garth visit him at St George's Home in Bedfordview. Garth was hesitant because he realized that the moment he did so, he would feel compelled to get involved. He wasn't wrong. Garth went to visit Colin one Saturday afternoon and met the boys. One of them decided that he needed to talk to Garth, so he and the boy sat talking in Colin's flat for hours. When it was time for supper, Colin told him that the boy to whom he had been talking hadn't spoken to an adult from the time he had arrived at the home. He had been there eight years. This boy, Carlos, eventually became Garth's foster son.

Garth kept going back to St George's and eventually became an Assistant Housemaster, teaching the boys technical drawing and English two nights a week. He also met people from the Boys Town house in Observatory and they asked him to teach their boys in the late afternoons after work. Garth fostered Carlos at the end of 1983, when Carlos went to live with him and then went to the South African Air Force for two

years, only coming home at weekends. He got married in 1989 and had two sons, Garth's grandsons, who had since started their own families. Garth had been a father figure to his grandsons for a long time. He stayed at St George's Home for six years until Colin's death in 1988. Since then, he had done fundraising for Johannesburg Child Welfare and the Children's Foundation.

Much later, in 1995 and after suffering a setback in business, Garth decided to move back to his mother's home in Roosevelt Park. His mother was thinking about retiring, but didn't want to sell her house and so they lived together in her house very happily for the next 16 years. He always believed that it was the right thing to do. His mother loved her house and garden so much that it would have been very hard for her to leave. Garth looked after his mother during her last illness and she only finally left the house two and a half weeks before she died. Her illness became too much for her and she felt it had become too difficult for Garth to cope. She was taken to Hospice in Houghton, where she died on 11th February 2011. At the time of his mother's death, Garth was working for his sister Tessa, helping her run the office of her film and commercial costume business.

Garth said of his mother that, among her other qualities, she was a very tidy and organized person. She kept files of her correspondence going back many years, albums of newspaper cuttings about the people she knew or had worked for, photograph albums and the like, all in apple-pie order. One of her last remarks to Garth as she lay dying was that she was sorry that she had not managed to file some of what were – to him – unimportant letters and documents that had come in.

At the time of Mrs Niemand's death, Garth decided it was time to move on after working in Tessa's office for seven years. Although a freelancer, he became sales and advertising director of a publishing company which had written a textbook for high school pupils. He also had a graphics company from which he sold limited edition prints of his oil paintings and drawings of South African wildlife. More recently he had become interested in teaching conversational English as a second language.

His sister Tessa was less ready to talk about herself. She also attended the Roosevelt High School and then the Greenoaks Finishing School in 1975. She had always been obsessed with fashion and started a course in fashion design and management at The College for the Clothing Industry in 1976. This was a three year course and, interestingly for that time, the college was one of the first non-racial colleges in South Africa with British lecturers and exams set by the City and Guilds of London. Tessa later studied at Unisa and obtained her BA. She started her own business in 1987, providing costumes for the commercial advertising and film industries and built it up into the leading

costume business of that sort in South Africa. She was married and had two teenage sons who were at high school.

Clark would write these accounts into the answering affidavit, even though the Bikos' attorneys would doubtless protest that they should be struck out for irrelevance to the case. As Nkosinathi Biko had gone so far as to attack their characters, however, they should surely be allowed to defend themselves? And the story requires that you know something of the Niemand siblings.

14 A national legacy being

The Niemands were feeling the force of the Bikos' reach and depth in the news media. Next day, they were ablaze with the case, quoting Biko, Bizos and others extensively. *The Star* newspaper quoted George Bizos speaking about the Niemands again:

> *They thought wrongly that they were the owners of the documents and would become rich if they sold them. The mother was not the owner of the papers, but what we call the custodian, and she could not pass them on to her children….*[59]

Bizos was doing more than informing the press of simple hard facts; taken with his earlier statements, he was stepping over the bar and becoming a witness in the case, expressing opinions and making assertions about the Niemands as fact. When Clark practised at the Johannesburg bar there had been a rule that counsel were not permitted to give interviews to the press, above all not about matters in which they were appearing.[60]

Why was Bizos publicly pronouncing on the merits of the case and flagrantly attacking their characters? And why would such an imminent advocate impute moral flaws to litigants who had just assisted Bizos's clients by agreeing to sign written undertakings giving them interim relief?

Here you could see the genesis of the Bikos' idea that Mrs Niemand was the custodian of the document. In a custody arrangement, ownership would not have passed from the consignor to the custodian and the latter would have been under an ongoing duty to return the item in question to the consignor.

But it was not for the applicants to assume he was the owner – they had to prove it. They had to rely on the wording of the lot description to show that there was a tacit term that Dr Gluckman made Mrs Niemand the custodian of the document, rather than the owner. In short, they would have to show, on a preponderance, or balance of probabilities that their conduct and the prevailing circumstances at the time were so

[59] *The Star*. Johannesburg. 4th December 2014. (The Star, 2014)
[60] General Council of the Bar of South Africa ("GCB"). *Uniform Rules of Professional Ethics*. ("The Red Book"): "4.21.1 A member must not issue statements to any news or current affairs media in connection with any matter in which he/she is or has been briefed or instructed." (General Council of the Bar of South Africa)

obvious that the parties must have been satisfied that they were in agreement.[61] All Clark had to do was show that the lot description was reasonably capable of two or more interpretations, without having to show that the Niemands' interpretation was the more or the most probable one.

Nkosinathi Biko took a different line in this article in *The Star*, preferring to concentrate on the morality of selling the document.

> *It can only be if you are either a person who really has moral standards that are suspect, otherwise greed that is gigantic or perhaps a mentality of entitlement that is in the superlative.*[62]

Biko was exhibiting some style and flair in his retort to the Niemands. As you and I well know, the word "entitlement" is usually a code word used by whites to characterise laziness in black people, who are often said to labour under a sense of entitlement. Clark felt a little sad having to challenge the Bikos, but Clark had clients to defend and a case to win.

Garth and Tessa were private and publicity-shy individuals, who did not wish to be drawn into the media debate in person, especially given the factual inaccuracies that were already being put about in the media and the disparity in power and media influence between them and the Bikos. A senior journalist advised Clark not to let them speak to any news media; they would be tied up in knots by savvy journalists if they gave interviews. Instead, Clark helped them draw up a press statement and they would otherwise say nothing.

The statement said that the application was based on a case of mistaken identity about the autopsy report. The document had not been made at the behest of the Biko family. Instead the Niemands' document had been in the public domain for 37 years, was dealt with at the Biko inquest and was generated by four medical specialists in the exercise of their public duties. It was generated under the Criminal Procedure Act that would be available to the public at the national archives. The statement added that Nkosinathi's statements in the High Court and in public had been defamatory of the Niemands and public figures had been misled by Biko's statements. It ended with a demand for an apology about the defamation and the false impression he had created.

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[61] GB Bradfield. (2016) *Christie's Law of Contract in South Africa*. Durban. Lexis Nexis. pp 98-101. (Bradfield, 2016)

[62] *The Star*. Johannesburg. 4 December 2014. (The Star, 2014)

As you will see, the media interpreted the statement in a curious way, ignoring Biko's mistake about the identity of the document and concentrating on whether the document was a copy or not. Clark did not operate a press office and did not have the media skills, facilities or access that the Bikos enjoyed. The Steve Biko Foundation was updating its website several times a day with up to the minute press articles. The Niemands' press statement didn't get much traction against the avalanche of faulty news about them generated by the Biko camp.

Clark was still trying to get Mouton to go to the auctioneers' rooms to see the document for himself. Early on the morning of Friday 5th December, Mouton sent Clark an email in reaction to the Niemands' press statement.

> *I must say that I am astonished that your clients clearly do not understand the recklessness of attempting to sell on open auction, a document of significant historical importance with scant regard for the buyer. Their "Statement" is also inconsistent with facts already given to me by Garth Niemand and the auctioneer, and completely ignore the fact that when your clients were given ample opportunity to reply to the papers, they chose not to. Instead they gave my client very little option but to proceed to court. The public reaction is therefore their own doing*.[63] …

Wouldn't you agree, that was breath-taking? After consenting to the court order, pointing out that the document was a copy and confirming they had called off the auction, Garth and Tessa got the feeling that the Bikos were hell bent on obtaining a court order for the attendant publicity, come what may.

> *I want to reiterate that it matters little whether the Report is a file copy or the original. The fact is that it is not the property of your clients and was given to their mother for safekeeping. I should also warn that your own statements to the media could be false if they are based on the Statement...*[64]

[63] FA, p168.
[64] Ibid.

The auction would barely have made the news if Mouton, Bizos and their clients had told the media the wider truth about the document: it was one of many stencil copies of the original Steve Biko autopsy report that had long been in the public domain.

But why then, you might ask, had the auctioneers not described the document in that way in their auction catalogue? Most probably because the lot would not have attracted the same interest at auction. It would have been knocked down for a lower price. The auctioneers had promoted the lot to the maximum, but without telling any lies. Were they to be held to the same standard in their catalogue as the Bikos in their affidavits? Should the sword not cut both ways?

At last, on the fifth day Mouton decided to inspect the Niemands' document. Clark and the Bikos' attorneys met at the auctioneers' rooms, where the document was placed before them. They started off by agreeing the meeting would be without prejudice, or "off the record", the content of the discussions not to be used in evidence against either party.

Had you been a fly on the wall and able to hear what they said, you would be at liberty to disclose the discussion, but the attorneys may not, so the curtain must come down on the meeting and that aspect is not part of the case.

That afternoon Clark replied to Mouton:

> *[5] With respect, I discern a tendency on your part to take a high moral tone in your correspondence, which I believe is misplaced, especially given your clients' failure to inspect the document in question before launching a High Court Application. We could make a great deal of this and your clients' confusion about the identity of the document, which has led to a near-lynching of our clients in public. … For the time being, let's continue on the basis of the facts alone. We can air other views and aspects at the appropriate time, if necessary. …*
> *[7] We do believe that on a proper construal of our clients' copy of the document described as the Biko autopsy report, it should be evident that your clients have mistaken the document for another document described in Mr Biko's founding affidavit as "an independent report" prepared for the family by Dr Gluckman. At least, that is part of our clients' case.*[65]

[65] FA, pp 169-70.

On Friday 5th December, Nkosinathi Biko gave a radio interview. His initial complaint, regarding the fact the Niemands' document was only a copy, was that they were relying on contradictory versions of the truth:

> *Well, I read the statement issued by the Niemands and I read it against the initial citation that they used to promote this very document when they were going to auction. I must say from the onset that like the rest of us, the Niemands are only entitled to one version of the truth. When they were preparing this material for auctioning they have this material listed as "Lot 101, Gluckman Dr Jonathan, the Steve Biko Autopsy Report" – that's what it says and they use in the very citation words like "original ruled paper covers, pale green pages containing certificates from the relevant … pathologists." They use words like "a unique document of the struggle era of great historical importance" and further say "it is unknown if another copy of this document exists" and they say themselves, "Dr Jonathan Gluckman, Pathologist was appointed by the Biko family." And then of course, all of which builds up to a bid price of between R70 000 and R100 000. They really don't have the option of coming back to tell us a different story, not at this stage. … They must not dupe the South African public – only one of these versions is true. It seems to me that when they had the opportunity to extract value out of this they were playing up the significance of this document and now that there's this public outcry about it, they're trying to play down the significance of this document. …*[66]

As Clark was to point out in his own radio interview later, at a key point Mr Biko stopped reading the rest of one sentence, but if he had carried on he would have had to read this: "This copy is not signed." How much clearer could it be? What they meant by "original ruled paper covers" was simply that it was a file cover stapled to hold the content in one place.

The interviewer pressed Biko to know if he meant they were lying on the earlier or the later occasion and Biko said "either they were lying then, or are lying now …" He then dropped a bombshell:

[66] Transcript of radio interview on Eyewitness News, Radio 702. 5th December 2014. (Biko N. , 2014)

> *Now, we've further gone on to establish … that in fact Dr Gluckman's files much later were submitted by the South African Medical Services to the Wits archives, they're there. If you go there … and you look at the Biko file, it's empty. It doesn't have the documents there that should be in there as the original. The statement that they gave to Wits University when they submitted those files – and the South African Medical Services submitted those files – in fact that they had a break-in in their offices in Braamfontein and that file was stolen. It seems that someone has had in interest in this file for a very long time.*[67]

The incredulous interviewer asked him to confirm that the Biko autopsy report was stolen from the Wits archives and if the Niemands' document was stolen property and he got this reply:

> *I will encourage you to call the Wits archives and establish for yourself something we have now come to establish, that the Biko file in the papers that were submitted … is empty. … I don't know what the real story is any more, right. We took their own citations on face value … that the material had been passed on one way. We know for sure that they were in possession of a document, they list it as the "The Gluckman, Dr Jonathan Gluckman" and then "the Steve Biko Autopsy Report" … and we know that if you go to where the rest of Dr Gluckman's files are you will not find the original … Whether or not they were in possession of the original, a copy, a hundredth copy, nobody should go to an auction and try and sell that kind of document. Can you imagine the precedent … that we are setting? … Clearly … here we are dealing with someone who is a national legacy being, he was declared so by the state, so there is a heritage argument, it is an ethical argument … The honourable thing for the Niemands to have done was to simply avail the material and own up to the error of their judgment.*[68]

It could be the case that Nkosinathi did not know that his own attorneys had shown little interest in a human conversation, but preferred to obtain a court order. As the CEO of a foundation that ran a government-funded museum, Clark thought he might have known that the original autopsy report would have gone into the magistrates court file.

[67] Ibid.
[68] Ibid.

On radio, Nkosinathi Biko stressed the words that might suggest that the document was the original, but he omitted those parts of the lot description that showed that the document was a copy of a public state document. He stated the Niemands' document was the original autopsy report, but he also said that the document that went missing from Dr Gluckman's file at SAMS was the original; so he was effectively saying that the Niemands' document was the stolen document from Gluckman's file. In short, he said, or strongly implied that the Niemands were thieves or dealers in stolen property. And by saying the Niemands were only entitled to one version of the truth and were either lying then or were lying later, he directly defamed them. That was a blatant attack on their dignity.

Clark checked with his clients - they knew nothing about a document that was missing from Dr Gluckman's' file on Steve Biko.

Biko had plucked a random fact about the alleged absence of Gluckman's autopsy report from a faraway file to smear Garth and Tessa with the innuendo that they had stolen Gluckman's document, or were dealing in stolen goods. How do you feel about that? You might say it could be a measure of his anger, but it was five days after he learned of the auction, so he had had time to calm down. I don't think the defence of *rixa* - speaking in the heat of the moment – endures as long as five days in such circumstances. Besides, he was very measured in the interview. He was playing dirty.

Even though Nkosinathi had mentioned the stolen report, Clark realised that he too could be reading in the existence of the document to suit his case. He thought of the missing document as the Gluckman document and he would have to think about that properly, for there was something more about this that did not quite add up.

Late in the afternoon of Friday 5th December, Clark gave a radio interview about Biko's earlier statements on air. Essentially, he tried to clarify that the Niemands' document was not only a copy of the original, but was also a copy of a state document made under the Criminal Procedure Act, not a private family report owned by the Bikos. Clark had to point out that collectibles, ephemera and Africana were sold all the time and there was no reason to think it unusual, especially in the case of a state document.

Clark hoped that this interview would help to get public perceptions back on an even keel. Nevertheless, the morality of selling an autopsy report was still in issue and needed careful thought.

15 You and I (3) – Time out

- The Bikos have until the end of January to launch their main application. Then we will know if they have any more evidence. Until then the document stays in the auctioneers' safe. I know you would like to know what was discussed at the auctioneers and I can see its importance to the story, but I can't tell you – it's inadmissible. It is not in the case, so it cannot be in the fiction.
- You have more privilege in this, I see. You know more than the rest of us.
- I cannot say, you know. Privilege.
- Are you sure this "Privilege" story isn't just a cop-out a lot of the time? Anyway, everyone knows that lawyers are the worst gossips. Hypocrites.
- Power talks to truth sometimes. It has to.
- By the way, how far has Clark got on the trail of his forebear?
- Mostly internet research, so far. It's amazing how much you can find. Changa, as he was known, fled north from South Africa to avoid justice after an incident involving the death of an African. He arrived in Feira, an abandoned Portuguese outpost at the confluence of the Luangwa and the Zambezi rivers, just across the Luangwa from another Portuguese outpost, Zumbo, occupied by a few Portuguese and used as a base for elephant hunting and slave trading by mixed race Chikunda, who terrorised the area. Clark raised his own militia from the local population and restored order, suppressing the slave trade and local tribal warfare.[69]
- Another John Dunn, but deeper in Africa.
- Yes, that's about it. He didn't let the grass grow under his feet, but negotiated treaties with local chiefs, "highly favourable to himself."[70]
- Well, that's all right then, one lone man negotiating with the established order. It wasn't as if he had the power of the British Crown backing him.
- For some reason he once crossed over the Luangwa to Zumbo and drove the Portuguese out and raised the Union Jack there. He extended his realm up onto the plateau as far as the Kafue River and came to be a chief, imposing licences and export taxes on traders. He consolidated his position by marrying the daughter of Mapuka, chief of the marauding Chikunda.

[69] http://africanbyways.blogspot.com/2010/01/changa-changa-zambias-john-dunn.html (28 July 2011). (African Byways, 2011)
[70] Ibid.

- An extraordinary character, clearly.
- Yes. He banished a Portuguese man who had set up a fortified post upstream on a tributary of the Luangwa and destroyed his post and later when the Zumbo commandant arrested him the Chikunda refused to guard so great a man, so he had to be released.
- Beyond any law then, even the Portuguese.
- In time he moved up to the confluence of the Lunsemfwa and Lukusashi rivers to establish Algoa, which was more centrally situated in his vast domain. When Cecil John Rhodes's British South Africa Company arrived with its royal charter they refused to recognise his treaties with the chiefs and he lost jurisdiction over the area, being granted only three farms in compensation.[71]
- The rise and fall – a tragedy in the Shakespearian way.

[71] Ibid.

16 A free press

Sunday revealed that the newspapers had still been busy with the story. In *City Press*, Nkosinathi Biko's reference to the instrument of the "Health Practitioners Act" took a bizarre twist -

> *Shocked at the inhumanity – experts say auction of Biko and Timol autopsies violates medical ethics.*
>
> *Two siblings who are trying to sell copies of Steve Biko's autopsy reports on auction are not just 'inhumane' and 'cold', they're violating medical ethics. That's according to Professor Ames Dhai, the director of the Steve Biko Centre for Bioethics at Wits University. Dhai said although Biko's autopsy report had been in the public domain for decades, Garth and Tessa Niemand were not legally allowed to 'profit by selling human data obtained through a medical examination'. … Dhai says the Niemands had no right to auction the reports to start with. 'Section 60 of the National Health Act makes it clear that human tissue can't be sold for commercial gain. An autopsy is a report that contains detailed information and DNA information – therefore, it cannot be commodified, as DNA is part of human tissue,' she explained …. 'Whether the report has been in the public domain for decades or not, it is ethically and morally wrong to profit from it. I am shocked at the inhumanity and coldness of this family. They obviously don't care about the legacy of Steve Biko, but about making money by selling it to the highest bidder.'*[72]

Professor Dhai sounded confused. Section 60 of the National Health Act referred to the regulation of trade in human tissues, actual cells of living persons, while the Steve Biko Autopsy Report was an inanimate artefact. It related to a public post-mortem investigation that by definition could only have been performed on a dead person and on dead cells. It appeared that Professor Dhai had not even read Biko's autopsy report, which did not contain DNA information, nor did it in any way deal with the sale of any of his cell DNA , tissue or organs.

[72] *City Press*. Johannesburg. 7th December 2014. (City Press, 2014)

Clark detected the hand of the Bikos in procuring this quotation from Professor Dhai, the director of their eponymous centre. But he had to check himself; if he could complain about the inaccuracy of the media reports, he should also allow that the *City Press* had misquoted Dhai. She would not have said anything so stupid.

City Press also published an editorial concerning the Niemands that day, which repeated the Bikos' mantra that the Niemands said "the documents were placed with their mother for safekeeping."

The *Sunday Times* named Garth Niemand as its Mampara of the Week in its Hogarth column, wrongly saying:

> *Even after a court stopped Westgate Walding Auctioneers selling Biko's autopsy report, one Garth Niemand insisted he had the right to make money from it as it belonged to the government, and not the struggle hero's family.*
>
> *Niemand's mother, Norma, had been given the document in the 1970's for safekeeping …*[73]

It was dismal that the great namer and shamer had got the facts so wrong.

Of course, these jibes hurt Garth's and Tessa's feelings, probably as intended, but there was not much that Clark could do for them in response. People often think that an action for defamation is the best remedy, but these were protected utterances, classed as "fair comment" and "truth for the public benefit." The newspaper deplored the sale of an autopsy report, whether it was original or not and whether it was owned by the government or not. They should be free to make that comment, even if it was based on a rickety premise.

Nevertheless, Clark was considering an action against Nkosinathi for calling the Niemands liars and thieves, or dealers in stolen property. Those were false and defamatory utterances that were not protected.

Wanting to stem the tide of incorrect and harmful publicity, the Niemands asked Clark to respond to questions from print and broadcast media. This was an uphill battle; the Bikos had sycophantic supporters in the media, evidently reluctant to make rigorous enquiries and ready to believe the worst of the Niemands at every step.

Later, Mouton wrote -

[73] *Sunday Times*. Johannesburg. 7th December 2014. (Sunday Times, 2014)

> *Please inform your clients that we are also exploring their potential criminal liability.*[74]

When Clark told his clients about Mr Mouton's words, they were dumbfounded. Wouldn't you have been shocked? Why would Mouton have made a point of asking Clark to tell them that? If he had been looking into some imagined criminal liability on the part of the Niemands, why wasn't he just going about investigating it and laying a charge? Was he trying to lean on them, to make them think that if they gave up their property, the Bikos would stop their criminal investigation? But by then the Niemands were inured to such bullying and were not going to be cowed by such crude threats.

The Star published another report, "Biko dispute looks destined for court." Sections of the report read -

> *Yesterday, spokesman for the Steve Biko Foundation, Thando Sipuye, echoed Nkosinathi's statements, accusing the Niemands of arrogance. 'The type of arrogance and the sense of entitlement they have towards these items is appalling,' Sipuye said*. '*We would have expected that their sense of humility would prevail, but their sense of entitlement is superseding any morality and logic.*[75]

Entitlement jokes aside, Clark differed with Mr Sipuye; the Niemands did not have a sense of entitlement towards the document, they had a sense of ownership. Like anyone else, the Bikos would have to prove their own ownership of the document if they wanted the Niemands to give it up to them.

By that stage the Bikos' attorneys had at last inspected the document at the auction rooms and had seen what it was. They said nothing in public to acknowledge their error of identity, nor to acknowledge they had taken an urgent application to the High Court on a false premise.

On the same day the attorneys Caine & Matthews posted a report on their corporate website. The article was headed, "*Steve Biko case. A privilege.*"

> *Caine & Matthews is privileged to be involved (in) a case of national and historical importance, alongside Advocate George Bizos, and on behalf of*

[74] AA, p869.
[75] *The Star*. Johannesburg. 8th December 2014. (The Star, 2014)

> *the Biko Family and Steve Biko Foundation. It had come to the attention of the family and foundation that an original autopsy report of the late Steve Biko was scheduled to be sold at auction on December 3, 2014 in Johannesburg. The Biko Family, together with the Steve Biko Foundation, strongly opposes the sale of this historic document and filed a successful urgent interdict to prevent its sale. Delivery of the documents will form part of the next legal application. Describing the case, Marc Mouton, Partner, said "I have had the privilege of working on the Steve Biko autopsy case which has received much local coverage over the last few days and where Caine & Matthews and the advocates (George Bizos SC and Paola Cirone) are acting without charge. It has been a privilege not only to understand and listen to the families and Steve Biko Foundation over a very emotional issue but to get to appreciate that when George Bizos SC (87) explains some of the moments that have made history in our country (including the circumstances of Biko and Timol's death) he literally, at times, cannot speak (without) grief and emotion. It is very easy to forget and this is really what this case is all about – preserving RSA legacies and history (and IP) – and for those with the autopsy report, doing the right thing.*[76]

One of the photographs was taken in the corridor of the High Court building, just outside the urgent motion court and included George Bizos SC and his junior, Marc Mouton and two of his colleagues, Nkosinathi Biko and Imtiaz Cajee, a relative of the late Mr Ahmed Timol.

Mouton also appeared on a news programme on TV on 8th December in which he at last made allowances for what he'd learned from the Niemands' press statement and his exchanges with Clark. Having just said that they had obtained an interdict - consistent with his firm's website - Mr Mouton for the first time then conceded that it was based on the undertakings of the Niemands and Westgate Walding. Caine & Matthews hadn't said that on their website. This differed from his earlier criticism that "when your clients were given ample opportunity to reply to the papers, they chose not to." Nevertheless it was gratifying to see the Niemands' message getting through to the Bikos' lawyers, albeit slowly.

[76] www.adamsadams.com/index.php/media_centre/news/steve_biko_auotpsy_case_a_privilege/. 8 December 2014. (Adams & Adams, 2014)

> *The Niemand siblings were ordered to hand over the report on Monday, but their lawyer has indicated they are not planning to hand over that document.*[77]

Nonsense, the court had ordered no such thing.

> *So, for all of those reasons it's taking a little bit of time just to get all the facts together, but one thing is for sure, we haven't seen any documentation that gives the Niemands any legal title to that document.*[78]

What was he talking about? There were no title deeds on movables.

> *If the state employed Dr Gluckman, then arguably the state have a … a right to those documents, but I think it's undisputed that they were given to Miss Norma Niemand, the mother, the deceased mother on the basis of safekeeping, to be held in custody really for whoever owned it, and certainly not to be handed down to the siblings for sale on auction. … I've been down to look at, inspect the documents, they are an authentic file copy of Dr Gluckman and it appears that way, anyway, from the sight of the documents and also from the lot description, which obviously would have been a collaboration between the auctioneers and the Niemands.*[79]

Well, that was a belated turnaround from their earlier case that the Niemands' document was the original independent report.

On Wednesday 10th December, *The Times* newspaper ran a report, "*Biko papers: family sues.*"

> *Biko Foundation spokesman Thando Sipunye (*sic*) said: 'What we are questioning is the high price that is being asked, which suggest they are original (documents)*.' …[80]

[77] Television report. ENCA News. 8th December 2014. (ENCA News, 2014)
[78] Television interview with Mr Marc Mouton. ENCA News. 8th December 2014. (Mouton, 2014)
[79] Ibid.
[80] *The Times*. Johannesburg. 10 December 2014. (The Times, 2014)

It was a week later and like Biko, Sipuye still reasoned that the price estimate indicated that the document was the original. In Nkosinathi Biko's recent smear, he had said that the original autopsy report was stolen from Dr Gluckman's file on Steve Biko; the file was empty. That was unsolicited evidence from the opponent – and a good example of why it's best to keep quiet, rather than give your opponents evidence they can use against you.

Still, this was tricky ground. Could the Biko camp infer originality from a price estimate and could Clark infer the existence of the Gluckman document from logic and Nkosinathi's radio interview? Both of their cases would be strengthened by the validity of their inferences.

On 10th December *The Times* published a cartoon by the cartoonist, Zapiro. This cartoon, which portrayed Garth and Tessa as vultures stealing the "Autopsy Report" from the grave of Steve Biko, linked them directly to Nkosinathi Biko's statement that they had lied about the status of their document and his innuendo that they had stolen the document, or were dealing in stolen property.

From about this time, Nkosinathi Biko and George Bizos - possibly persuaded by their attorneys, who were possibly by then persuaded by Clark's warnings - stopped calling for the Niemands' excommunication and the story thankfully dropped out of the news media.

From this time, moreover, Garth and Tessa realised that the only way in which they might achieve some "voice" in the drama would be by waiting for the Bikos to make out their case once and for all and then to set out their defence in their answering affidavits.

17 Johannesburg Public Library (1)

Towards the end of the summer holiday season, Clark drove south to Town, pulled off the M2 at Selby and swung around into Sauer Street, where he found a parking bay in the shade of the Johannesburg Public Library. On alighting from his car, he noticed some of the street signs and building names had been scored through with fluorescent orange paint. He wasn't sure what that was for, but there had been a lot of renaming of streets in the last year or two. With a nod to the car guard, he heard the peep as his remote activated the car locks and made his way around the building and into the blazing heat on Dr Beyers Naude Square, formerly the Library Gardens, previously Harry Hofmeyr Square and originally Market Square. Library Gardens would do for Clark, ever the secularist.

Hell, it was scorching. As he climbed the granite steps to the library, he saw the bronze doors were shut: lunch hour. Who closed a whole library for lunch hour? "The doors of learning and culture shall be opened!" he muttered to himself.

Taking a seat on a cement bench in full sun, Clark took in the scene. On the piazza, kids of all races showed off their skateboarding skills, while some drowsy citizens whiled in the shade of the few trees. The square had been cleared of the awkward 1980's structures that obstructed views across to the old City Hall, but now it was hard-baked with patchy grass and little shelter from sun and rain. The ornamental ponds stood empty. In the north-west corner stood the ruling party's head office, Luthuli House. Behind that, the offices of *The Star* newspaper. To the south of the square, several Victorian, Edwardian and modern buildings looked vacant, husks of the former bank and company headquarters that had been abandoned in the move north to Sandton. This was the starting or end point of many trade union and political marches.

Clark looked the library building over. Someone had taken a lot of trouble over the design. The symmetrical Italianate building - completed in 1935 according to the dedication stone - would not have looked out of place on a Mussolini poster. It sat stolidly on a plinth with a flight of steps rising up to a three-level triple arch. Each arch housed a narrow doorway topped off with an ornamental urn. The words *Libri Thesaurus Animi* were carved into the frieze, straddling the triple arch. Moses Kottler's sculptures around the exterior symbolised history, philosophy, art, sculpture, music, literature, medicine and architecture, and the rondels to north and south contained relief carvings of

prominent Western thinkers, right up to Einstein. The neo-classical building enjoyed a view to and from the old City Hall, which had become the Gauteng Provincial Legislature. At the time this library was built, the grandees of Johannesburg must have felt that the rude mining camp had at last matured into a permanent city, worthy of such public expense and grandeur.

The library contained the Africana collection on its top floor and Clark pondered the chances of finding texts there that related to his research on John Harrison Clark. The old court files from the archives in Pietermaritzburg had provided him with a big breakthrough, but there might be even more material be closer to home. He should find time to talk to a librarian about the Africana books and ephemera and delve the labyrinth for word of John Harrison Clark.

Clark looked to the right of the City Hall where the Guildhall bar took up most of the ground floor of Meischke's, a Victorian building that had stood on that site since the earliest days of the city. Beyond that was the back of the old Norwich Union House, where he had served law articles. In his first few days there, not yet knowing anyone in the office, he had bought a pie or sandwich and come to spend the lunch hour on the lawns. Or he had popped in to Thorold's bookshop in Meischke's to browse through their stocks of Africana.

After twenty minutes, a lock turned in one of the ornate bronze doors and it swung open as an attendant shuffled back into the cool of the grand foyer. The citizens got up and climbed the steps after him, heading back to their researches in the spacious reading rooms. Inside, the new escalators were out of order and so was the lift.

Clark had to go up to go down. Having climbed the outside steps, he crossed the foyer and went down a dim staircase and into the semi-basement, where he found the newspaper reading room, pleasantly cool and quiet. Old ceiling fans turned above and the high windows were open, admitting sounds of traffic from Market Street, now Albertina Sisulu.

A woman in late middle-age in a blue dust coat and a trendy young woman in red tackies worked behind a fine timber counter, fetching and returning newspapers for three or four members of the public. Clark opted for the young woman and asked her for back numbers of the *Rand Daily Mail* from September to December, 1977. It seemed this was a rare request, as the woman looked up at the ceiling, confirmed his order and turned to the ancient apparatus behind her. Clark glimpsed down through the opening in the floor where the machine wound down to the second basement and saw the figure of a person in a grey dust coat moving about. The apparatus was an ancient steel

contraption standing below the frosted east windows. Clark was sent to sit at a long table to wait for the newspapers to come up.

He was always struck by the strange types who hung around in public libraries, or at least in the newspaper rooms. Did he appear the same to them? He looked about and spotted that old Harrison character who he'd met outside Joa's studio, sitting at the next table. You couldn't invent anyone like him. The curious man was poring over ancient brown newspapers and making notes in a small notebook, labouring with his curled hand.

There was a clanking and crashing of parts and then a steel basket, fed by hidden hands, rose up from a lower basement, bearing two green canvas-bound volumes: the *Rand Daily Mail*, Jul – Sep 1977 and Oct – Dec 1977.

Clark started at the beginning, reading in date order from the date of Biko's death: 12th September 1977. What had he been doing in the run-up to that day and beyond it?[81] It would have been a beautiful spring day with matric exams looming, though not yet menacing. He still had some photographs taken around the school grounds, capturing the blossoming shrubs and lime-leaved trees. The world could hardly have looked more perfect.

"You say Biko, a prominent black activist, dead? I haven't heard his name before."

———

There it was, on page 2, 13th September 1977, the first report of a death in detention. A man named Biko, who had been held by the security police for a few weeks. Questions would be asked in parliament and the minister of police, Mr Jimmy Kruger, was expected to issue a statement.

Clark paused; what had he been doing on that day?[82] He could go into his trunk of old papers and dig out his letters, or an old diary. Would they acknowledge the death of Biko and the new crisis in the country?

On another page, Mr Kruger said Mr Biko died from a hunger strike, but there were mutterings of doubt and a sense of *déjà vu*. Too many had died in detention over the

[81] (Deleted.)

[82] *12 Mon* Athletics Squad Training
Inter-House Cross-Country
Academic Committee Meeting: 6 p.m.

years. Some stories died like their subjects, but others rose up from the dead from time to time: Ahmed Timol, James Lenkoe …, Steve Biko.

Then a big splash. Helen Zille, reporter for the *Rand Daily Mail* flew to Port Elizabeth and spoke to some of the doctors who had treated Biko in detention: Tucker, Laing and Hersch. "No sign of hunger strike - Biko doctors" screamed the headlines. A splash followed by a whirlpool, threatening to suck Zille and Allister Sparks, the newspaper's editor, down under the surface. The Press Council convened an emergency sitting on short notice. Sparks and Zille were defended by Mr Sydney Kentridge SC, but Judge Oscar Galgut found them guilty of "tendentious reporting."

Then came the state's admission that Biko had died of his head injuries, but now it was supposedly because he had banged his head into the wall of his cell.

He turned the page on 8th October 1977 and there was a short report:

> *A former banned trade unionist, Mr Halton Cheadle has been recommended for the Pro Patria medal, a Defence Force spokesman said yesterday. Mr Cheadle, 27, now a Durban attorney, is serving border duty as candidate officer with the Uitenhage Regiment.*[83]

How amazing. He'd heard about this, but nobody really seemed to know the full story. Halton had lectured them at Wits and was a leading figure in progressive legal circles. Some said he had run towards a burning ammunition truck in order to drag the driver or a *troepie* out of the cab, getting him to safety before it exploded.

But the Pro Patria medal? That was a gong regularly dished out to troops who did three months or longer on the border, not a medal for acts of great valour? Surely, such bravery had warranted the Honoris Crux? Clark was on another line of investigation, but a trapdoor opened in the floor, beckoning. He could step down it and find himself ...

———

In the baking offices of 61 Mechanised Battalion in Tsumeb, South West Africa, the personnel files are piled ready for the poor kids who are scheduled to appear on court

[83] *Rand Daily Mail*. Johannesburg. 8th October 1977. (Rand Daily Mail, 1977)

martial for theft, the loss or sale of their rifles, buggering donkeys and in more than one case, malingering by shooting themselves through the foot. Is that courage too? Anything to get the hell out of here and back to the States.

This December morning an old *oom* brings his young son in from a farm down south. The *laatlammetjie* is only seventeen or so and looks a bit simple. Either that or just shit-scared. What is his father doing here, just a few days before Christmas? He's brought the boy in to hand him over to the SADF to do his national service. Which he's not obliged to do; not being a South African, that is. But in his own words he wants the army to make a man of his boy. I feel like showing the man the files: kids of the same age, mutilating themselves, grotesque acts on civilians, attempted murder of their superiors, suicides ... But he's quite sure what his boy needs.

The adjutant doesn't know how to process this case. It's not in the books.

In a black mood, Wilson and I have invented our own hierarchy of military decorations, which we award to the crazier cases and record them in their files: the Pro Nutro medal, the Order of the Golden Lawnmower, the Ignobilis Crux ... Fiddling with the record, mocking time.

The RSM comes in and tells me that the commanding officer, Commandant Mike Muller, is headed back from the border and is expected back at base tonight. He wants to see me on orders in the morning. This is ominous; the man is a legend, a veteran of Cuito Cuanavale and the other big engagements. What can it mean? And just when I thought I might still wangle a transfer back to Pretoria.

Time drags and the parade ground shimmers in the heat outside. Small desk fans rotate full blast, pushing up sheets of paper in our open files as the heat falls down on us from the iron roof. Tea at the *lapa* in the trees is a relief. The civilian ladies wear light cotton weave blouses and skirts, but still they perspire freely. Yolande is really not my type, or wouldn't be in Joburg, but she's young and I might ask her to join me at the Wimpy in town on Wednesday afternoon, if they'll just give me a pass for once. It could lead somewhere. She could say no, of course, and that would hurt, especially in a dump like this, but she looks as bored as the rest of us and might even consider it. You never know.

In basic training I did my best to learn no more than would just get me by, so my drilling is *sif* and I'm worried about marching into the CO's office and being brought to attention before the great man. The RSM, Kemp, his battle-hardened right hand man looks at me with distaste. I've never marched on carpet before and I nearly fall over as my boots catch in the rough pile and I turn to salute the Commandant. Not a good start. No ceiling fan in here; this man has all the rank and an air conditioner purrs in the corner.

"Clark, stand at ease. I'm glad you've arrived. I put in for a man like you. I have to tell you that I've had terrible difficulties these last months. The troops are too young and ill-disciplined and after our recent operations the stress is starting to show. There have been some serious incidents of ... well, serious incidents. It can't go on – I have to crack down, clean out the stables."

The man is fair, blue-eyed, sun-tanned and lean. About 35 or so, nothing is exaggerated, nothing unnecessary. He is calm, but in command.

"We're standing down now, from full combat to more of a peace-keeping mission. You've heard the United Nations is coming out with observer missions, to monitor the ceasefire. We can't afford to let the politicians' whole initiative go up in flames because our guys are out of control up here."

"I've heard about that, Commandant. The whole situation has changed."

Already, I like this man. He's a career soldier, maybe even prepared to serve the government of the day, of whatever stripe. He's committed to his men – a *bonus paterfamilias* of a special type.

"Yes, man, I want to make you an offer. A serious appeal to you to come up and help me with this situation. I will promote you and put you in my own armoured car. We'll work together - as a team, with my other guys in the car. We have to help our men. We can't be too hard, they're just kids, you know, but we're a professional outfit and we must restore law and order in the ranks. This could be very good for you. What do you say?"

Somehow, I already feel I would go into battle for this man. I've only known him for a few minutes, but it feels as though I've served under him for three proud years. Of course I want to be lifted out of the fucking personnel office, to climb the ladder into his *ratel* car, to be an agent, play a role, help the troops, see man at his best and worst, watch everything and save it.[84]

Is it courage, what I say next? I could go straight from here to the detention barracks and from there to court martial. I don't think I would ever shoot myself in the foot, still less run towards a burning ammo truck. Perhaps it's courage of a sort. I know I'm shitting myself and my neck is trembling as I try to work up some saliva, so I can speak in a controlled voice. It's the moment of truth, as never before. I clear my throat to speak.

———

[84] Cf. Ludwig Wittgenstein: "Because I wanted to go to the front … Standing eye to eye with death will give me the chance to be a decent human being. I'll be doing something. The nearness of death will bring me the light of life" in '44 Essential Movies for the Student of Philosophy', Open Culture, www.openculture.com/2014/10/44 at 5 mins., 10 secs. (13th June 2016) (Open Culture, 2016)

A loud thud sounded behind him. The librarian had dropped another bound volume on the table.

The pages of Clark's newspaper turned and the story of Biko passed under his eyes like a flip book. On the day after Biko's death the pathologists met and made their report. They were unanimous on the cause of death: head injuries from impact, although this only became known. The inquest began. Sydney Kentridge made mincemeat of the security police and smooth paste of the Biko doctors. It looked like an open and shut case of a police assault leading to Biko's death.

Then October 19th; that day at school he did remember. Matric exams were upon him and the newspapers were up in arms. The government had banned *The World* newspaper in Johannesburg and scores of journalists, priests, activists and others had also been banned: Percy Qoboza, Donald Woods, Beyers Naudé ... Things were really getting serious. That sealed it; he would never in his life serve in the apartheid army.

The United Nations, Britain and the US would no longer allow arms sales to South Africa. That was when Armscor really took off, but it couldn't slow the long-term decline of the South African Air Force, whose ageing Mirages were seen off by Cuban MIG's at Cuito Cuanavale, years later in 1988. And then came the end of the border war, if not peace.

You couldn't say Biko died in vain. The world got on side, albeit slowly.

And on, page by page of the *Rand Daily Mail*, until 2nd December 1977. Nobody needed to wait and read it in the paper that day, the news was everywhere: Biko had died of injuries to his head and nobody could be found responsible for his death.

Clark returned the volumes to the librarian in red tackies, wondering if she would work in this crypt until she was as old as her workmate. Please not, he thought.

———

To his alarm, Clark noticed the peculiar Mr Harrison get up from his seat at the end of the table and take a few paces towards him. This did not bode well and Clark got his defences up.

"Pardon me, Mr Clark, but we met a little time ago outside Schönfeldt's studio. I am pleased to see you again and I trust you are in good health. The thing is, I have just come across some important pages in the *Guardian* from way back that I rather badly need to - what do you say? - make photo-thingamies of."

In speech the man was more presentable than in appearance. His accent was hard to place, stuffy old English with an overlay of the Eastern Cape. Was that how early colonials sounded?

"Do you mean photocopies?"

"That's it, exactly. It's just that I am a visitor, newly returned for that matter and without funds in your novel rands. I would be most grateful if you could lend me ten of them, so I can take these newspapers and ask the kind assistant there to make me copies."

Clark hated situations like this and always made a point of declining any such requests. Why couldn't the man bring his own cash with him? He must have anticipated the need to make copies. Still, it was a petty sum and the fellow looked a bit absent minded; perhaps he had just forgotten to draw some cash. He decided to waive his principle, drew his wallet out and passed the man two five rand coins.

"Here you go, then. I didn't know there was a place to make copies."

"I really am most grateful and I will repay the advance next time I see you here in the library. Harrison is the name."

Not likely, Clark thought. It was strange the types who washed up on your doorstep sometimes.

Harrison seemed reluctant to part and continued, "I am sorry for trying to impose myself on you the first time we met, but I was at a loss to know where to lay my travel-worn head. But not to worry, all's well that ends well and your friend Mr Schönfeldt did indeed put me up and it is no worse than what I am used to. It has proved to be a most convenient place from which to go about making enquiries at libraries such as this."

———

Clark decided to kill two birds with one stone while he was in the library and made for the Africana collections on the north side of the top floor. This was a much lighter room with clerestory windows above the bookcases that lined all walls. The middle of the room was taken up with double-sided, chest-high bookshelves arranged in a herringbone pattern.

Clark decided to take in the whole room and meandered around the shelves, getting lost in reveries as he took books from the shelves and pored through them. In time, he came to the Zambian section of books, most of which seemed to concern hunting and safaris, the building of the Kariba dam and fauna and flora. Amongst the books on hunting and exploring, one book with a plain black spine caught his eye and he removed

it to find on opening that it was *Chirupula's Tale* by J.E. Stephenson.[85] The name Chirupula Stephenson rang a bell somewhere in his memory and he turned to the back in search of the index, but there was none. Instead, by flipping through the contents page he found each chapter was listed with a headnote of its contents and skimming the relevant pages in the book it did not take him long before he spotted a reference to none other than John Harrison Clark III, better known in those parts as bwana Changa Changa.

> *After (David Livingstone's) death quite a number of Europeans traversed the land: but only Mr Harrison Clark, who came originally from the Port Elizabeth district of the Cape, had attempted to settle. A queer, interesting character! In the nineties, he established himself at the confluence of the Lukushashi and Lunsemfwa Rivers – at Fort Algoa, as he called it, with local patriotism – and reigned as uncrowned king, the object of great respect. He was just and upright, too, in his dealings with the chiefs, with several of whom he made treaties which were really valid.*
>
> *But of course in the end he had to go! Private "kingdoms" – or private treaties for that matter – weren't smiled on by the Chartered Company. They gave him something by way of compensation: but he died, a few years ago, poor – and honest and respected as he had always been.*[86]

Here was one of Rhodes's own men brushing aside the fact, inconvenient to his boss, that Clark had settled at Feira before Rhodes and his company had so much as crossed the Zambezi into what would come to be known as Northern Rhodesia. It was certainly true that anyone who stood in the way of Rhodes came second. Clark ploughed on and towards the back of the book he found a final reference to Harrison Clark.

> *Fairbanks had made up his mind to live down in the Lwano Valley, and, like Changa-Changa Harrison, to establish his own little kingdom. …*[87]

Clark got the relevant pages copied for his research. He got ready to leave, thinking that it had been a productive morning indeed.

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[85] J.E. Stephenson. (1937) *Chirupula's Tale: a Bye-way in African History*. London. Conrad Bles. (Stephenson, 1937)
[86] Ibid. p24.
[87] Ibid., p192.

18 You and I (4) – It's a privilege

Admissibility – statements made without prejudice – if in the course of bona fide negotiations for settlement of dispute inadmissible in evidence without the consent of both parties.

Admissibility – statements made without prejudice – public policy encouraging settlement of disputes.

Privilege – professional – protects from disclosure communications between legal adviser and client enabling client to obtain legal advice – if advice in connection with contemplated litigation, extends to third party statements for the same purpose

- Mouton wrote to Clark again, calling on him to disclose the Niemands' defence and saying, "This matter is of national interest and we seek to resolve it as expeditiously and judiciously as possible. Please assist us to achieve this."
- That's rich, after all their behaviour. Surely Mouton didn't expect Clark to disclose the Niemands' defence?
- He did, but the Niemands and Clark had had enough of him. You've seen what a slippery character he is. Clark added, "We disagree that this matter is of national interest, though it is of interest to some groups in the nation. With respect, characterising it as a matter of national interest will lead to a clouding of the issues in what is essentially a simple matter."[88]
- That was telling him. How did Mouton react?
- Predictably.

> *(2) Before we deal with the aspects you have raised in these two letters there is a matter of significance that requires comment. We have on numerous occasions, in consultation with our clients and counsel, discussed the events that have unfolded in this matter with utter disbelief.*
> *(3) This disbelief was grounded essentially in our inability to understand why your clients would want to auction a copy of the late Steve Biko's*

[88] FA, p189 at 9.1.

autopsy report (even if they genuinely believed they owned the report). We struggle to understand how this conduct could be justified, bearing in mind our country's history and circumstances of Mr Biko's death.
(4) After reading paragraph 9.1 of your last letter we now begin to understand the difficulties we face. To our utter disappointment we note that your clients, and we hope this view is not shared by yourself, are of the view that this matter is not of national interest but of interest to "some groups in the nation."
(5) What a disappointment to be faced with an assertion of this nature.

Indeed, how disappointing to be told your matter is of less than national interest.

(6) Mr Clark, your clients are incorrect. We believe that the majority of South Africans detest the very thought of Mr Biko's autopsy report being auctioned off, this for a mere R70 000 to R100 000. There is no "group" of people. We are a nation with a horrible past. The autopsy report is symbolic of this horrible past. It is also symbolic of the power of one individual to bring about change, despite insurmountable and unjust obstacles.

How they compel us to shed a tear with them. Except I don't think they are shedding any tears.

(7) We are also not a nation that should condone the sale of a dead man's autopsy report. The act of auctioning an autopsy report, irrespective of whose report it is, is, in our view, improper. …
(9) … You have called on us to explain why we insist that no copies of the report be made. It would appear that the reasons for this should be self-evident. …
(10) The document is an autopsy report. Mr Biko is dead. He was murdered by members of the apartheid police force in 1977. The details of his death and the facts surrounding his personal injuries should be treated with the dignity and respect they deserve.
(11) It is improper for copies of this report to be circulated in the media and the public domain. If copies are freely available there may be other individuals who may try and sell the report for money. The contents may be defiled or reproduced in uncontrolled and humiliating circumstances.

> *(12) … Our clients seek nothing more than to ensure that this report be viewed and displayed under controlled circumstances and in a controlled environment for the benefit of all South Africans. …*[89]

Control, then, a voice from the dark past.

> *(16) The word "copy" was inserted into the undertaking at the hearing of the urgent application for the very reasons specified above. We were bona fide in our belief that your clients would not object to the insertion. Your client is in any event not prejudiced by the insertion. …*[90]

They certainly were prejudiced by it. And note the agentless passive again.

> *(19) Now that we have had sight of the report we agree that it was generated pursuant to the provisions of, inter alia, the Criminal Procedure Act. At the time Mr Biko deposed to his founding affidavit in the urgent application he had not had sight of the report and was guided by the description of your clients provided to the auctioneers and his knowledge of the appointment of Dr Gluckman by the Biko family. …*[91]

Well, at least there is an admission that they'd got off on the wrong foot.

> *(21) We will at this juncture not comment on your disclosure that your clients have not as yet come up with their defence. We were somewhat surprised by the assertions that a different cause of action could "*entail a different defence.*" Perhaps you should reconsider this assertion (insofar as you are able to). Surely you must know on what basis your clients allege that they own the report and believe they are entitled to auction it? …*[92]

- Christ, he still can't quite bring himself to admit it was he who inserted the word "copy" into the undertakings at court that day. And more than a month later, they

[89] FA, pp190-1.
[90] FA, p191.
[91] FA, p192.
[92] Ibid.

admit the Niemands' document is the copy Clark said it was at the outset. Why couldn't he just admit all that in the first place?

- I think he was starting to worry Clark might go and ask the judge herself. Clark fired back:

> *(2.1) With respect, your paragraphs 2 – 7 bring in the very "emotional dimensions" here that you say … you would rather explore in another forum and at another time.*
> *(2.2) From the outset we have eschewed rhetoric and tried to confine the conduct of this dispute to claims and evidence and legal argument, the very stuff of the common sense you look for. …*
> *(2.4) Between lawyers however, the writer believes that your term "a matter of national interest" is best confined to – and is usually applied to – catastrophes like war, invasion, famine, natural disaster and the like.*
> *(2.5) Regrettably, the writers' allusion to Lord Wilberforce's statement in* British Steel Corp. v Granada Television Ltd. 1981 – *that "… there is a wide difference between what is interesting to the public and what it is in the public interest to make known" – was not appreciated. If the allusion led to confusion, the writer withdraws it. Save for saying that, this is a matter of semantics and we do not see the need to discuss it at any greater length here. …*
> *(4.5) Our clients accordingly do not agree to surrender possession of the document, so they are not prepared to conclude an escrow agreement on the basis of your draft. …*
> *(7.1) There is nothing untoward in our statement in paragraph 6.5 … It should be clear that criminal charges against our clients could be defended on a different basis from a civil claim and a civil claim of say ownership could be defended on a different basis from a claim founded on contract.*
> *(7.2) Should your clients proceed only on one of their supposed claims, it would not be necessary for our clients to burden the court with defences to claims that your clients ultimately did not raise. When we see what your clients' claim is, our clients will put up their defence to that particular claim. …*[93]

[93] FA, pp194-7.

That concludes the preliminary skirmishing, pretty much. Let's see what they come up with in their main case. You wanted to raise something?

- Yes. The story requires that a meeting take place between the Niemands' attorney and the Bikos' legal team.
- Will you not listen? I told you, such talk is inadmissible in evidence. I can see where you want to go, but the lawyer must step carefully here, even while the writer may want to rush in. A discussion about possible settlement is "off the record", or "without prejudice." The admissions, threats and statements made in the meeting are inadmissible in evidence against the party who made them, being made in an effort to reach a settlement, a goal which the law endorses and supports.
- Even threats?
- Maybe not threats. A settlement reached as a result of duress would not be entered into voluntarily, so would not be a settlement agreement. The threat would be admissible in evidence, even if it was in settlement communications.[94]
- You say settlement discussions are not admissible in evidence, but are they admissible in fiction?
- No. At least, not unless they are fiction, in which case anything can be included. You can insert a settlement meeting into the story whether or not a meeting was held, but if it was held, and being an attorney, I may not disclose the content of the discussions, unless I make it up.
- But there are no professional bodies for writers, no bodies authorised to discipline them. Not even the old Congress of South African Writers, much as they might have wanted to.
- The lawyer must do what the case demands.
- And the writer what the story demands. So, as a writer, I'll write what I like. You say that quoting the actual discussions does not belong in a novel, but if they didn't belong, it wouldn't be novel.
- I'm not sure I follow you. If the discussions are not admissible, leave them out.
- Moving on, let's get ready for Clark's *uitkakparade*. What about the Biko autopsy report? What advice did Clark give his clients?
- He's not at liberty to disclose that …, it's privileged communication. Only the client can waive legal privilege on the discussion; the attorney can't.[95]
- And the settlement discussions? Can we take settlement discussions from another case and insert them into the Niemands' story?

[94] (Zeffertt, 1988) pp198-9.
[95] (Zeffertt, 1988) pp247-51.

- An interesting question: are inadmissible settlement discussions in Case A disclosable if they are included in a novel about a different actual Case B? They could be used as a model or template, provided there is no prejudice to either of the parties in Case A. You say your scene is fictional, but based on the truth, as you see it?
- Yes.
- Art imitating life?
- Yes, at least until their fictional settlement talks diverge from the actual narrative.
- Accomplish that without prejudicing any of the parties and you should be all right.
- So, we agree, the scene will be fictional. But based on another truth.
- That is acceptable.
- But a little further down the line, when Clark goes to settlement discussions in that matter, can he use this little story of mine as the template for discussions at the meeting? If you squeezed actual events into the shape of the novel, life would imitate art.
- The clients' interests are paramount.
- If the actual discussions have to diverge from the novel, life will no longer imitate art.
- Correct. How will you deal with that?
- I can always fall back on art.

19 On orders

People are always shouting that they want to create a better future. It's not true. The future is an apathetic void of no interest to anyone. The past is full of life, eager to irritate us, provoke and insult us, tempt us to destroy or repaint it. The only reasons people want to be masters of the future is to change the past. They are fighting for access to the laboratories where photographs are retouched and biographies and histories rewritten.

- *Milan Kundera*[96]

"If Nelson Mandela really had won, he wouldn't be seen as a universal hero."

- *Slavoj Žižek.*[97]

Two days after the court granted the order, the attorneys discussed the possibility of referring the dispute to mediation, but the immediately following media storm and disinformation spread by the Bikos and their lawyers had exposed their bad faith, in the Niemands' and Clark's view at least. At the very least, the Biko side had had a hand in creating a false picture of events and of the Niemands' document, aiding an aggressive press, possibly in order to soften up the Niemands before talking settlement. The Niemands had accordingly cut off talks in December, determined to say no more until the Bikos filed their main application, but now George Bizos had asked for a meeting to explore settlement. If settlement could be reached, neither the Bikos nor the Niemands would have to go so far as to draw up further legal papers.

Something else had been tugging at Clark's memory, making a demand on him from the past, you could say. Before going to meet George Bizos, Clark went through to his

[96] Milan Kundera. (1979). *The Book of Laughter and Forgetting*. English translation by Michael Henry Heim. London. Faber and Faber. Part I: Lost Letters. (Kundera, 1979) (p. 7)
[97] *The Guardian*. 20 July 2015. https://www.theguardian.com/commentisfree/2013/dec/09/if-nelson-mandela-really-had-won (The Guardian, 2015)

study and lifted some document boxes down from the shelf. It took some time to go through the press clippings, photos and pamphlets and he paused often to relive a memory that fluttered up from the materials in his hand. There was a news clipping about a forgotten incident. He had been driving home with Damon Bizos, son of, and they had seen a black couple, pulled up on the side of the road, being upbraided and pushed around by a white father and son – an argument about driving. They had intervened and it culminated in them laying charges of assault against the father.[98] Being in the Johannesburg magistrates court, no doubt the file had been destroyed after five years. But what he remembered was that he had fed the story to a sympathetic journalist at the Rand Daily Mail. An inauthentic act. He should go a little easy on George Bizos.

Eventually he came to it:

> *Jeremy Clark, member of the Wits University Students Representative Council said, 'Democracy can also come through the barrel of a gun.'*[99]

It was 1981 and the *Rand Daily Mail* had interviewed him. He hadn't been used to speaking to the press or to large audiences, but in that time, to publish such a statement was to put yourself at risk of prosecution under the Terrorism Act and a term in jail.

So much had changed since then, yet little enough, you could say. The elites shuffled closer together to make space for the new entrants, who aped – even outdid them - with aplomb. It was not much of a democracy for the poor and dejected. The youth were increasingly saying Mandela sold out the cause to placate the whites; at the last minute he just couldn't pull it off. New actors and commentators were saying that the Constitution should be repealed in its entirety, otherwise the status quo would simply continue - unless violence was used to purge the whole of society. In short, justice *could* only come through the barrel of a gun.

As annoyed as Clark was with Bizos and his team, it was a good opportunity – quite likely the last ever - to remind Bizos of his own debt and to thank him for his past kindness.

———

[98] *S v D. Chewins.* Johannesburg District Court, case no. 394/1982. Charge: assault. "*Subpoena issued to appear in person to testify and declare all he knows concerning certain charge(s) preferred against … J. Clark. Volwasse blanke man."*

[99] Interview with Jeremy Clark. Rand Daily Mail. Ca. 1981. (Clark J. , 1981)

George Bizos was old and couldn't move around the city easily, so Clark agreed to go downtown to the offices of the Legal Resources Centre. It was a plain and unattractive 1970's concrete office tower, but they had gone to some trouble to smarten up the reception area and offices. On the 14th floor Clark was ushered in to the presence of George Bizos, his young assistant and a junior attorney from Caine and Matthews.

"Thank you for coming in. Forgive me for not standing up," George Bizos said.

Clark was shocked to see how much Bizos had aged. His speech - always slow and quiet – was huskier and more tremulous than he remembered it. Seeing old George in that state, he decided not to tackle him about his television and press interviews, as he had intended.

He took a seat at the end of a long table and accepted a glass of water. It was a coincidence that Bizos and he were similarly dressed: charcoal trousers, blue shirts open at the neck and cream jackets. George Bizos, sitting at the opposite end, was silhouetted against the M2 and the old industrial areas around City Deep. Clark expressed the hope that their dialogue might forge a way of reaching a settlement.

"As long as it is not a dialogue of the deaf," Bizos said with a twinkle in his eye, looking around the table for affirmation. He then proceeded to say, "Let me begin by asking what settlement your clients are proposing?"

This was strange; the Bikos' team had called for the meeting to explore settlement, so you'd think Bizos would start by suggesting something from the Bikos' side with a suggestion about how to settle the matter without running up legal costs? It was always better to get one's opponents to make the opening gambit and so Clark said, "Well, you asked for the meeting, so we were interested to hear what your clients might be proposing."

Bizos looked thoughtful. "Are you at least prepared to accept that your clients' mother was given the autopsy report as a custodian? For safekeeping?"

Can you spot the trap? If Clark were to say yes, it could be the end of the Niemands' case; if Mrs Niemand was a custodian, she would not have become the owner of the document. In any case, his clients had never told him that their mother was anything like a custodian.

"No" Clark said. "She was not expected to give it back to Dr Gluckman. It became her property."

"But how can you say that?" Bizos retorted. "In the Westgate Walding brochure it clearly says she took it in safekeeping."

"No, not at all. With respect, that's not what it says. And, besides, we've possessed the document for the last 37 years, so your clients must prove their ownership of it in order to disturb our possession."

Bizos pondered for a minute and then took the meeting on a detour through the many inquests and human rights cases in which he and Dr Gluckman had appeared over the years, including the infamous case of Ahmed Timol, who the police said had fallen to his death from a high floor at John Vorster Square, since renamed the Central Police Station.[100]

"So, I had many dealings with Dr Gluckman", George added. "Whenever there was a detainee death in police custody, we always said, 'Get Gluckman.' Some years ago, I wrote a book entitled *No one to blame?* about the inquests into the death of Steve Biko and other detainees. I have called one of the chapters 'Get Gluckman.' Have you read it?"

"No, I haven't."

"Well I suggest that you read it."

The implication was clear. All the same, Clark would look for the book. It might shed useful light on Gluckman and the Biko inquest. It could probably be found in a second hand or collectible bookshop.

"In the Timol case, I appeared with Isie Maisels and Dr Gluckman was our expert witness," said George, picking up a photograph from a side table and handing it across to Clark. "Look at it! Look at it!"

It was a photograph of a much younger Bizos, Dr Gluckman and the late Isie Maisels QC outside the Johannesburg magistrates court. George must have been in his thirties or forties at the time, junior counsel on the Timol inquest.

At that point, Clark's cell phone started vibrating on the table as a text message came in. He'd put the phone on silent for the meeting, in case an important call, email or

[100] Chris van Wyk. "In Detention" is a noted poem that deals with the death of Ahmed Timol in detention.
He fell from the ninth floor
He hanged himself
He slipped on a piece of soap while washing
He hanged himself
He slipped on a piece of soap while washing
He fell from the ninth floor
He hanged himself while washing
He slipped from the ninth floor
He hung from the ninth floor
He slipped on the ninth floor while washing
He fell from a piece of soap while slipping
He hung from the ninth floor
He washed from the ninth floor while slipping
He hung from a piece of soap while washing. (Van Wyk)

message came in, in which case he would ask to step out of the meeting to respond. Clark reached for the phone, reading the message quickly.

"Are you recording this meeting?" George burst out.

"Of course not, George, how could I record a meeting between colleagues?"

"Oh, yes. I withdraw that question."

On they went, the room pregnant with unspoken premises. There was something Clark wanted to know. "May I ask, why is it so important for your clients to get hold of Dr Gluckman's secretary's copy of the autopsy report? You were briefed with a copy of it for the inquest, so you and Sydney Kentridge and Ernie Wentzel all had copies – why don't you give your copies to the Bikos?"

"I would prefer mine to be held at Wits. Have you looked for my copy?" Bizos asked his assistant. "Is it in the storerooms here, or at Wits?"

"I've looked in our storerooms, but it's not there."

"In that case it will be up at Wits. In the Important Papers collection."

Clark wasn't going to get an answer, unless he just had.

George then asked, "Who is your counsel in this matter?"

"We haven't briefed counsel at this stage."

"Well, I strongly advise you to brief counsel."

It was seldom necessary to judge, just as it was usually sufficient to be judged. That was withering, but having been an advocate for five or six years earlier in his career, Clark thought he could do a fair job until he got counsel on brief.

Bizos's assistant intervened, saying: "I would like to suggest that your clients hand over the document to the Bikos, and they will keep it in the permanent collection in their foundation's museum. We could display a photograph of your clients handing the document over to the Bikos."

"I want to be in that photograph," Bizos chipped in.

The discussion had reached an impasse and the meeting would soon end, so Clark changed the subject by saying, "You have forgotten, George, how you helped me many years ago."

"What was that? What happened?"

"I was a student activist on Wits campus, back in about 1981. The *Rand Daily Mail* ran a report that I had said that democracy could be brought about through the barrel of a gun. I was very alarmed and afraid – in those days you could get detained for less – and issued a denial, but I also said I would sue the *Rand Daily Mail* and the journalist for defamation."

"Yes?"

"Well, I went to see Webber Wentzel and they briefed you for advice on how to proceed with a defamation action. We met in your chambers and you advised me not to sue because in all likelihood the journalist had concealed a tape recorder and had made an audio recording of the interview. You said I should stand by my denial and leave it at that. Inaction was sometimes the best action. Then I should lie low for a while. Which is what I did."

"Yes, that would have been best."

"Your advice was good and after a while I returned to my activities. And you waived your fee for me. I have always been in your debt for that – and for the advice, of course."

"Did I really?"

"Yes. I wanted to remind you of this, both to express my thanks and gratitude to you, which puts me in your debt, and also to say that I meet you today as an attorney, representing my clients, and I cannot give you any quarter on account of the past – I must do the best I can for my clients."

"But of course, of course."

"I can't shop my clients for the sake of my gratitude to you."

"That's quite correct."

It was time to leave. "I'll report back to my clients about the meeting, but they feel they have been mistreated. Somehow, we would have to get around that." Standing up, Clark remembered to mention one more thing to Bizos: "Your son Damon and I were on the same SRC at Wits. Damon was at medical school at the time."

"Yes, he's now a professor. Professor Bizos. Well, I'm pleased to hear that you were involved in student politics together. I wish I had known that."

The old man looked a little awkward, even wistful.

20 The Niemand archive (3)

Going back into Mrs Niemand's file, Clark saw that Dr Gluckman wrote Mrs Niemand a letter dated 6th August (year not stated) from the Narai Hotel in Bangkok, Thailand. Once again, his letter concerned matters of small detail.

On Saturday 24th (month and year not stated), he wrote a letter from the Mandarin Hotel in Hong Kong following up on Michael Gluckman's Diner's Club card. In a postscript, he said:

> *Dear Mrs Niemand –*
>
> *Hope all is well with you. We are doing ok but v. hot and sultry indeed. Michael tells me his Diners Card has now expired and I wonder what has happened with the new one. Presumably you will have opened the mail and have the card. If so, please send on to him by registered airpost to Taipeh. No need to send express.*
>
> *All good wishes*
>
> *J Gluckman*
>
> *What I read in newspapers re imports sounds like the end of Reciprocal. …*[101]

And I'd say the mention of Reciprocal was probably a reference to an increase in South African import duties on luxury goods such as French wine.

On 14th October there was a letter from Hostellerie du Lac de Brindos, Anglet – Biarritz, France.

> *Dear Mrs Niemand –*
>
> *Thank you for your various letters and my apologies for delay in writing. … What a pity we have no permits in Reciprocal. I was warmly received, entertained, instructed and helped by Sichel and it was all fascinating. …*
>
> *Also sorry to have missed Susan G. Tell her my French is vastly improved because of all the Spanish I had to speak in Argentina!*

[101] Gluckman, Jonathan. Letter to Mrs Norma Niemand. Saturday 24th. (Gluckman J. , Letter to Mrs Norma Niemand)

I don't know if you are aware that I managed to get to the Inca country, but it was an enormous physical effort – all in 48 hours. You'll see the pictures I have taken. But it also cost me some clothing! Please send the enclosed two letters to C Wagner at Nabeo, but Xerox it first for our record.

My wife is much improved. We are on the Atlantic coast of France, on the Spanish border, about five miles inland from Biarritz, a resort made famous by Edward VII and justifiably. …

JG[102]

I think it's likely that Sichel was the wine merchant in the Bordeaux region of France, don't you? And what does Dr Gluckman's care to make copies of his letters before sending them out - a distinctive personality trait – disclose? That he wouldn't give his only copy of the Steve Biko autopsy report to Mrs Niemand, I would say.

On 3rd December Dr Gluckman wrote Mrs Niemand a note on the letterhead of his rooms in Lister Building.

Dear Mrs Niemand,

Would you please …

I had what I hope was a helpful chat with Garth, suggesting that at first only the boys spoke to their father alone.

Will see you tomorrow a.m.

JG[103]

This could be from the time when Garth and his brother John were very unhappy about their father's conduct, probably because he had left the family home. Clark thought this act of Dr Gluckman's showed that he was close enough to their mother to broach a family subject concerning Garth, his brother and their father in an almost avuncular manner. There was clearly a great deal of trust and concern between him and their mother, going beyond a typical employer-secretary relationship. Dr Gluckman could step into their lives to lend a helping hand.

There was no record of any correspondence between Dr Gluckman and Mrs Niemand during the period from the death of Steve Biko on 12th September 1977 until she left his

[102] Gluckman, Jonathan. Letter to Mrs Norma Niemand. 14th October. (Gluckman J. , Letter to Mrs Norma Niemand)

[103] Gluckman, Jonathan. Letter to Mrs Norma Niemand. 3rd December. (Gluckman J. , Letter to Mrs Norma Niemand (1), 1978)

employment five months later. No doubt this was because they were both working in his rooms in that period. There were some time sheets she prepared and submitted to Dr Gluckman for extra typing work that she did for him in about October to November 1977. Most of this typing related to the Biko inquest, but she also did typing for Michael Gluckman. She attached some pieces of adding machine paper to her timesheets, showing her meticulous calculations of the amounts she was claiming for typing after hours.

Mrs Niemand left Dr Gluckman's employ at the end of February 1978, three months after the Steve Biko inquest hearing. Garth said that she did this because she was going through a divorce and needed to find full-time employment, which Dr Gluckman was unable to offer her. At the time when she left, Dr Gluckman did not enquire into the whereabouts of her copy of the autopsy report, nor did he ask Mrs Niemand to return it to him. In the sixteen years that Garth lived in the same home as his mother, until her death in 2011, she never mentioned that Dr Gluckman had even enquired after the document, still less that he wanted it back.

On 25th February 1978, as Mrs Niemand was leaving his employ, Dr Gluckman wrote two letters.

One of these was a testimonial:

> *Mrs Niemand took care of all my personal correspondence, all my various professional association correspondence, agendas, minutes, and related matters. In addition, she also attended to various associated business accounts with which I was associated and, in fact, assumed almost full responsibility.*
>
> *To all these capacities Mrs Niemand gave her meticulous and full attention and I cannot speak too highly of the quality of her service and work at all times. It seems superfluous to add that she is a faultless shorthand typist.*
>
> *From the foregoing, one cannot recommend her too highly for any similar position of trust and responsibility.*[104]

There was no reason to believe that Dr Gluckman's sentiments were not genuine and heartfelt. In the more personal covering letter, he wrote:

[104] Gluckman, Jonathan. Letter to Mrs Norma Niemand (1). 25th February 1978. (Gluckman J. , Letter to Mrs Norma Niemand (1), 1978)

Dear Mrs Niemand,

Enclosed herewith is your signed UIF card and a testimonial.

In addition, I enclose a cheque for R15.00 from Intercare for the special work that you did with Michael just prior to your departure. Also a cheque for R200.00 is enclosed which I send as a small token of appreciation for all that you have done.

I hope that you are happy and successful in your new post!

With kind regards,

Yours sincerely

Dr J. Gluckman[105]

Mrs Niemand went to work full-time in commerce and was persuaded to study for her Chartered Institute of Secretaries qualification. After finishing work at 5.00 p.m. each day, she would walk through central Johannesburg to Damelin College, where she attended classes. Garth would fetch her at 8.00 p.m. and take her home. He always admired her for studying at that advanced age; she was 59 years old when she started and she qualified with her CIS at the age of 62. When she reached retirement age she was quickly offered a position with Coopers and Lybrand, where she worked as a company secretary until finally retiring in 1996 at the age of 73.

Even though Mrs Niemand had left Dr Gluckman's employ, she continued to follow his career and they stayed in contact. Dr Gluckman must have sent her a Christmas present at the end of 1979 because she wrote him a letter of thanks on 23rd January 1980. This was 23 months after she had left his employ.

Dear Dr Gluckman

Thank you very much for the Christmas gift which I found waiting for me when I returned from leave. It was a lovely surprise and kind of you to think of me.

I am sure you will be interested to hear that I studied by correspondence last year and succeeded in passing the first year examinations of the CIS. I wrote Communication, Principles of South African Law, Economics, and Accountancy. It is a four year course which means that plenty of work lies ahead of me! I find it very tiring but at least it keeps me occupied and leaves no time for regrets about what might have been.

[105] Gluckman, Jonathan. Letter to Mrs Norma Niemand (2). 25th February 1978. (Gluckman J. , Letter to Mrs Norma Niemand (2), 1978)

I hope that you, your wife and children are all well and that 1980 will be a particularly happy year for you all.

Thank you once again,

Yours very sincerely,[106]

The letter seemed to indicate that they had not had much contact in the previous year, 1979, but there was no mention of the document which, given Dr Gluckman's almost obsessive attention to small points in earlier correspondence over the years, you might have expected her to raise.

[106] Niemand, Norma. Letter to Dr Jonathan Gluckman. 23rd January 1980. (Niemand, 1980)

21 You and I (5) – A public defence

Property – movable – ownership – transfer of – by delivery to transferee.

Property – movable – ownership – transfer of – constructive delivery – transfer *brevi manu.*

Property – movable – ownership – acquisition by prescription – peaceful, open and lawful possession for a period of thirty years.

Evidence – quantum of proof – civil standard – proof on a preponderance of probability – more probably than not.

- Here is a bit of Roman law for you, which is still part of our law. Ownership of movable property - like a book, or a document - is transferred by actually delivering it to the new owner, when the transferor (that's Dr Gluckman) physically hands the thing over to the transferee (i.e. Mrs Niemand), intending to pass ownership to the transferee, who takes it with the intention of acquiring ownership in it. With a book or a document delivery is simple, but sometimes with a large object like a haystack it is done *longa manu* (long-handed delivery) by pointing out the property to the transferee.[107] As usual, there are exceptions and movable property can also be transferred by constructive delivery, where no physical handing over of the thing takes place at the time ownership is transferred to the transferee. This is called transfer *brevi manu* (by a short hand) and it takes place when the transferee is already in possession of the movable thing of which she will yet become owner. For example a tenant, lessee, borrower or custodian, or Mrs Niemand while she was keeping the document out of the hands of the security police. So, if the thing is later donated or sold to the transferee (Mrs Niemand), it is not necessary for the transferor (Dr Gluckman) to get physical possession back from her first and then physically hand it to her a second time. That's redundant because she is already in

[107] Barry Nicholas. (1962). *An Introduction to Roman Law.* Oxford. Oxford University Press. (Nicholas, 1962) p118. "*Traditio longu manu.* In the case of immovable or of bulky movables, a physical transfer in any literal sense is obviously impossible. If I wish to give you possession of a pile of logs, it is sufficient if I point them out to you; to require that you should touch them would be simply pedantic."

possession and here ownership will pass to the transferee as soon as the parties have the necessary intention to transfer and acquire ownership respectively.[108]

- Ah, and that's what the evidence shows, right? After all, Dr Gluckman had his own copy: Nkosinathi said it existed …
- … Nkosinathi should not have opened his mouth on radio like that. It was hurtful, but also manna from heaven for the Niemands.
- … and that's convenient because Clark needs it to exist, doesn't he?
- Let us say it would be useful because it would explain that the Niemands' document paled into insignificance in Gluckmans' mind. There is that shred of evidence to start with – what Nkosinathi said, which can be backed up by the SAMS and Wits archive staff, if necessary. The letters are the best evidence of their intentions and they show two meticulous characters at work. Dr Gluckman would have retrieved the document if he thought he still owned it. And it's obvious that Mrs Niemand was the sort of person who would have returned the document to her boss if she had thought for even one minute that he had only given it to her for "safekeeping", or if she ever thought he wanted it back from her. I think that's clear from her papers.
- But can you be sure?
- Pretty much, yes, and this is a civil matter where the Bikos' bear the onus of proving on a preponderance of probabilities that the document was Dr Gluckman's and remained his. I am giving you the version Clark will use to refute their case. So, what is this preponderance of probabilities, or balance of probabilities, as it is colloquially called? If you picture a set of scale balances, or a children's see-saw, the Bikos have to put enough evidence on their side of the fulcrum to weigh it down on their side; then they would have proved their case on a balance of probabilities. But if the Niemands then put enough evidence on their side of the pivot to bring it down on their side, then the Bikos have not discharged the onus of proof and they lose the case.
- What if the two sides are level?
- Good question. The Bikos have to bring the scale or see-saw down on their side, even if only to a small degree. If the two sides are level, they haven't brought it down on their side and they lose the case. All Clark has to do is put enough evidence on the

[108] Ibid, p119. "*Traditio brevi manu.* I lend you a book and later agree to sell it to you. Must I take it back from you and then hand it over again? Clearly not, … Some lawyers simply conceded that this was a case of delivery *animo solo*, but it is better analysed as one in which *corpus* and *animus* are separated. The physical delivery precedes the intention." DG Kleyn, A Boraine & W du Plessis. (1983) *Silberberg and Schoeman's The Law of Property*. Durban. Butterworths. (DG Kleyn, 1983) pp243 - 255.

Niemands side of the fulcrum to cast enough doubt on the Bikos' version, to leave the scales level or weigh the scale or see-saw down on their side.

- Okay, but let's go on. Gluckman left his Reciprocal wine business in the hands of Mrs Niemand for four months or more. He knew she would be able to cope completely.
- That is a strong inference. And he admitted his tendency to bother her every few hours with this and that minor detail and to interrupt her in her work. Like Mrs Niemand, he was a stickler for detail. We can see it in his medical practice, in Reciprocal and in all areas of his life.
- It's looking good.
- Dr Gluckman passed ownership in the document to Mrs Niemand when he handed it to her, that's the first string – or Gluckman abandoned ownership in the document when its contents became public, that's the second string – or, three: Gluckman left the document with Mrs Niemand on or about 14th November 1977, so Mrs Niemand slowly acquired it by acquisitive prescription from that date. From that date, Mrs Niemand kept the document quite openly with regard to Dr Gluckman, and anyone else for that matter, and Dr Gluckman knew that he had given it to her. From that date she was in peaceful, open and lawful possession of it, so she acquired it by acquisitive prescription thirty years later, on 13th November 2007 to be exact. This can get a little tricky because in the second and third cases Mrs Niemand would have had opposite states of mind – in the second case she believed she was the owner (and was indeed so) and in the third case she knew she wasn't the owner, but was in lawful possession as custodian - but we'll get into that later.
- OK. If I can look back at the Caine and Matthews' website again, I know you legal guys try to maintain professional decorum, but I'd say that the Bikos and their lawyers scripted the publicity in advance. To any layman, it's telling that while they didn't bother to go and look at the Niemands' document before the court hearing, they didn't miss the opportunity to appear in the photographs outside the court room.
- It does look cynical, but they are entitled to pose for news photographs these days. They wanted it for their firm's website.
- Come on, the firm's website post is not a report by a journalist, it's a report generated by Caine & Matthews itself. It's the firm's face and statement about itself to the world, yet they too call the document an "original autopsy report of the late Steve Biko." Lies, man. Mr Mouton or a colleague must have fed this version through to the firm's publicity officer. Where else could it have come from? They implied that Garth and Tessa hadn't cooperated. That's more than cynical, it's plain bullshit. They just wanted

the publicity a court order would bring. Did they think that was "doing the right thing"?

- Actually, they probably did.
- But, hey, asking the Bikos for an apology was really stupid, you must admit.
- I suppose I must concede it was a tactical blunder and I think it led them to harden their attitudes, just as their blunders hardened ours.
- You should know that under the new rules of engagement no white person can demand an apology from a black person, least of all the scion of one of the new ducal houses. Nor can you question a high priest performing a ritual of the new civil religion.
- Nevertheless, one big blunder I did not make was to give up possession of the document to a neutral stakeholder, or escrow agent. Possession is indeed nine tenths of the law. They have until the end of January and nothing much will happen on the legal front until they bring their main application. In the meantime the Niemands will maintain their silence.

22 Collectors Treasury

Clark frequented Johannesburg's many second-hand and collectible bookshops, so he looked in on several of them in search of George Bizos's book *No one to blame?* Meeting with no success, he sent an email to Conrad Walther at Collectors Treasury, asking if he had a copy. Clark was a pedant for spelling and grammar and lamented the absent apostrophe, but when all else failed, Conrad could almost always find a book. Many times Conrad had ferreted about in the stacks and emerged with an obscure title Clark had asked for.

Clark headed for the Diamond District east of old city centre, turned off Joe Slovo (formerly Harrow Road) and headed down Market Street, now Albertina Sisulu Road, before turning around along Commissioner Street and stopped outside no. 244. Despite its glittering name, the precinct was marked by rust, grit and graffiti.[109] Collectors Treasury, a plain eight storey building with brick infill and steel window frames was a rabbit hole if ever there was one. It was packed with old books and other collectibles on every floor.

It was another case of having to go up to go down: eleven steps up to the shop entrance and then a full flight down to the semi-basement, where Clark's favourite collections were. Even entering the building one was at risk of taking a tumble or spraining an ankle; the steps leading up from the street to the entrance were piled with books, and above that the books had been densely packed on the stairs like a fortification, obscuring the staircase and blocking access to higher floors.

Inside the shop, Clark asked Alfred, the middle-aged assistant in a khaki dustcoat, where Conrad was. Clark wouldn't go so far as to say Alfred was shifty, but he did avoid all eye contact with Clark in directing him down to the basement. There he found Conrad Walther and reminded him of his request for *No one to blame?* Conrad got a faraway look on his face and then headed for the creaky old lift in the back corner, saying, "I think I know where it is. Stay here, I'll be back soon."

[109] The most prominent graffito was that by the artist Above: "Diamonds are a woman's best friend and a man's worst enemy", painted along a whole block, creating awareness about blood diamonds in Africa. http://www.graffitisouthafrica.com/news/2012/04/16/above-in-johannesburg (Graffiti South Africa, 2012)

The lift itself was stacked to the ceiling with books and Conrad had to squeeze himself in. The trellis doors slammed shut with a clank and a crash and the ancient lift ascended its dark shaft.

Clark was left to browse happily amongst the collectible books that crammed every aisle and covered every surface, but Conrad could be gone for ages and Clark might be blown off course. This was his favourite section, filled with collectible books of southern African interest, literature, classics and old LP records, but it was no place to get caught in a fire. You wouldn't have enough space to turn around without knocking over a tower of burning books. And the stairs could only be used in single file because books covered most of the treads.

Clark noticed a short, bespectacled woman about five years younger than him, browsing the Jewish-interest section. She tilted her head from time to time like a cockatoo and clucked in irritation at the prices marked in some of the books. In South Africa, people needed a little latitude against international price parity.

A book with a blue spine caught Clark's eye: a first edition, hard back copy of *Thoughts in a Makeshift Mortuary*.[110] He had always avoided reading it, suspecting that it somehow adulterated the story of Jackie Quin and Leon Meyer. He pulled the book off the shelf and, thinking the time might have arrived to read it, he started to flick through its pages. With the turning of the pages he found himself …

———

At Neil Aggett's funeral at West Park Cemetery, under the shade of a plane at the edge of the throng, it's another February scorcher and I'm feeling tired and thirsty after the march from St Mary's cathedral in town. Speakers are using a puny megaphone to address several thousand mourners.

Unbelievably, the flag of the ANC was being waved openly outside the cathedral – the first time I've seen it.

It was nice to bump into Jackie in the procession. She must have come up from Cape Town with the union people. She is so beautiful, with a moon face and long, shiny auburn hair and just a little blush in her cheeks. Her brown eyes are round and prominent, her lips full and her complexion fine and fair.

[110] Jenny Hobbs. (1989) *Thoughts in a Makeshift Mortuary.* London. Michael Joseph. (Hobbs, 1989)

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The whirring sound of the lift machinery brought Clark back to the present. Getting louder, the lift came down slowly: 7th, 6th, 5th … and arrived back in the basement. Conrad emerged from the lift, holding a paperback. “It’s out of print, you know, but here’s your title.”

“That’s a relief. I need to read it – the Biko part - as background to a case I’m fighting.”

“Oh. These local books have such short print runs - they often go straight out of print. It’s frustrating, I know.”

The birdy woman was looking across at them, clearly eavesdropping.

“Have you ever thought of making an inventory of your stock, so you know what you have at any time? It would really be a help. We could just look on the internet to see what you have.”

“No, that would be impossible. We have over a million books here. I just keep it all in my head.”

And that would be impossible too, Clark thought. It was all a bit hit and miss. Nevertheless, he was relieved to see the book was not marked in dollars, although it was still steeply priced at R350.

“And have you had any luck with that book I asked you about ... oh, a year ago now.”

“What is the title?”

“I’m afraid I don’t know for sure.”

"Who wrote it?”

“Um …, John Harrison Clark.”

“I haven’t found it, no, but I will come across it sooner or later. I remember you telling me about it, but the print run for something like that a century ago would have been very short – not even one hundred. Your author probably got it printed in a basic way and dished it out to his friends and associates. After a few years the remaindered copies might have been pulped or incinerated and the ones that did actually sell would have been dispersed into the homes of colonials, some of whom may have packed up and returned to England or Johannesburg. You know how it went.”

“Yes, I can imagine.”

“But quite a few people ask for *Chirupula’s Tale*, you know … by Chirupula Stephenson and that might be helpful. I could go and see if I have it in stock for you.”

"Not to worry, thanks Conrad, I recently copied several pages of it at the Johannesburg Public Library. It refers directly to Clark."

"Okay, then, I'll just keep looking for your book." With that Conrad excused himself, made his way back to the lift and ascended again. Clark turned to a shelf of magazines and was intrigued to find a section of Northern Rhodesia Journals relating to Zambia, as the country was later renamed.

As Clark was about to go upstairs to pay for his books, he noticed the birdy woman peering at him through a low bookshelf, less than a metre away, in the gap between the top of the books and the shelf above. This was a bit unnerving and he frowned instinctively at her, at which she raised her right eyebrow and turned her head with another twitch. Who knew, perhaps she had one glass eye?

He would have carried on towards the staircase, but he got the feeling that with each yank of her head she was actually gesturing to him to follow her. She was moving along a narrow aisle, elbows brushing books to left and right, heading for the corner. That was in the opposite direction from the way out, but he thought he might at least give her some useful tips about bookshop etiquette before he went on his way. She slipped around a row of shelves and he lost sight of her. He wasn't sure what to do, but he decided to follow and see what she wanted to show him. Clark edged his way down the aisle and turned to the right, near the lift in the corner. The woman pressed the lift button and turned to face him.

"Who sent you?" she asked.

"What do you mean? I came on my own, I'm a free agent. Or I came on a mission, you could say. A personal mission."

"That's promising. …"

"Why? Do you work here?"

"As a matter of fact I do, though not in the employment sense. I dig around for titles that we can't find anywhere else. In case one or two have slipped through the net."

"We?"

"The Wits library. I help them look for old, obscure titles. I'm busy with my PhD. Mostly I research in the Landau Collection of Hebraica and Judaica, in the William Cullen Library, but sometimes I need to spread my wings. Conrad helps us and we help Alfred, but we don't need to go into that just yet."

"All right, but why do you keep staring at me?"

"We don't have much time, so I'll give it to you straight: we could use your help."

"The Wits Library?" He was starting to think he had made a mistake by following this woman into the corner.

"Not the library. In this case we are BARK and we should talk. My name's Rhoda. Rhoda Rosen."

"Well, we are talking, Rhoda, and I'm pleased to meet you", Clark said - though not really, he thought.

"How would you describe your legal practice, your area of specialisation?"

"Oh, general practice, but I try to specialise in the law of literature and language. It's quite tough; there aren't many clients who need help in that area."

"Yes, I suppose language does have its laws, but I have an idea you're the man we need. I heard you on the radio … with all that Biko fuss, remember?"

"Yes, I don't like to talk to the media, but …"

"You don't need to explain. We're butting heads against the authorities and our trial is coming up next month. It's in the Jozi magistrates court. And then there's the trouble we're having with the Level Library and African Archive activists at Wits."

"Well, this isn't how I usually find new clients. Can't you come and see me at my office?"

"No. I just need to know if you'll take us on. We're rebels for a good cause, but under the radar. We wage war against mediocrity and decline, preserving the past for the future. We also protect the texts."

"That sounds noble, but precisely what's your beef?"

"We're on trial in the magistrates court in March. The police claim that they caught us in the act of vandalising a sign outside the government garage in the early hours last week. But it wasn't us. Honestly."

"Of course not." Clark thought she was a bit old for hijinks like that. "So you do a lot of this sort of thing with the students, then?"

"We have to make a stand. Now – for the first time in centuries - the authorities have correctly spelt umpteen landmarks across the country. You know, the *Thukela River* instead of the *Tugela*, *Mthatha* instead of *Umtata* and so on. But when it comes to names around Jozi, any old spelling will do."

"I like you already. Yes, I'll take you on. Come and see me in my office."

"That's grand – will do. Anyway, gotta go. I have to speak to Alfred, to make sure he's in position."

"Position? For the future?"

"No, to protect the past. We'll be in touch soon."

The lift shuddered down, bearing the middle-aged man in the khaki dustcoat.

"Ah, Alfred," Rosen said. "This is Mr Clark. He's going to help us. Let's go up to your cubby hole, I have something for you." With that, Rhoda opened the sliding trellis and

with difficulty squeezed herself up against Alfred and slid the trellis home. Looking extremely embarrassed, Alfred kept his eyes on the floor and with a clank and a whir they disappeared out of sight, rising up through all the ages, an elevating fire hazard.

Clark was pleasantly impressed by the interaction, which lifted his mood and promised a new spirit, a new outlet offering some relief from the grind of legal practice. Would this Rhoda follow up, as he hoped?

It was time to go. After paying for the books upstairs, Clark negotiated his way gingerly through the great jumble on the outer stairs and managed to reach the street without tumbling. Driving past the entrance a minute later, he spotted the mysterious Mr Harrison walking down the pavement and turning into Collectors Treasury.

On getting home, Clark took up *No one to blame?* and started reading the chapter on Steve Biko. Looking at the notes at the back of the book, he saw there was another reason why Bizos should have doubted that the Niemands' document was the original autopsy report:

> *Records of proceedings in the magistrates courts, including inquest proceedings, are destroyed within five years of their date of occurrence. I have thus had to rely on copies of the proceedings in private collections or, when those did not exist, newspaper reports. The latter have proved an invaluable aid in reconstructing the past and supplementing my own recollections.*[111]

Overleaf, he found confirmation of the conversation at the LRC:

> *Dr Gluckman's files are held by the Department of Historical Papers, University of the Witwatersrand. Related papers are to be found in the LRC library.*[112]

That also tied up with what Nkosinathi Biko had said on radio. If Biko's attorneys knew Dr Gluckman's files were held at Wits at the outset of this case, why hadn't they immediately checked to see if the original Steve Biko autopsy report was amongst them, instead of at auction? It was odd, but maybe they would still go up to Wits to take a look there. They already knew the documents weren't at the LRC.

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[111] George Bizos. (1998) *No One to Blame?* Cape Town. David Philip. (Bizos, No One to Blame?, 1998) p241.
[112] Ibid. p242.

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Clark knew that George Bizos had more recently written another book, a memoir called *Odyssey to Freedom* and it was quite likely that he covered the Biko inquest again in the later book, so he went in search of it. On finding it in Exclusive Books, he looked in the index for references to Steve Biko and read several extracts. He was surprised to see that Bizos had written:

> *The Rand Daily Mail's Allister Sparks, published the post-mortem report given to him by Dr Jonathan Gluckman, the pathologist who attended the examination on behalf of the Biko family. ...*[113].

That was odd. Clark had not seen a copy of the Steve Biko autopsy report in the *Rand Daily Mail* at the Johannesburg Public Library, even though he had gone through the newspaper page by page.

[113] George Bizos. (2007) *Odyssey to freedom*. Cape Town. Random House Struik. (Bizos, Odyssey to Freedom, 2007) p426.

Part 2 Finding the words

23 The principal case

They do not prevent speech, they wish to
compel a certain speech (confession) of us.
They need to reinstantiate their power.

– Barthes

Applications – rule 6(1) – application to be brought on notice of motion supported by an affidavit as the facts upon which the applicant relies for relief

Ownership — movable — vindication — onus of proof

Human dignity - Constitution – s10 – everyone has inherent dignity and the right to have their dignity respected and protected

The Bikos delivered their main High Court application on 30th January under a new case number. Garth and Tessa Niemand and Westgate Walding Auctioneers were the respondents, as before. The new founding affidavit was much the same as the one in the urgent application, but Dr Gluckman's three children had now been added as applicants. The applicants asked the court to declare that the Niemands were not the owners of the Steve Biko autopsy report. They did not claim possession of the document, but Clark was relieved to see that they still averred that "the Report belongs to the Biko family", so they would have to prove that issue.[114]

Nkosinathi informed the court that the Steve Biko Centre was designated a "National Legacy Project" by the cabinet in 2002 and was built and run with substantial contributions from several government departments.

[114] (Zeffertt, 1988) p594.

Nkosinathi attached a memorial lecture that Sir Sydney Kentridge gave in honour of Steve Biko in Cape Town in 2011.[115] Further on, Nkosinathi said that to the best of his knowledge, the Niemands' document was the only bound copy of the original autopsy report, excluding the missing photos. He added "The second applicant (i.e. the Steve Biko Foundation) has an incomplete copy of the autopsy report."

The applicants then took the court on a revealing detour, saying that they had never been able to find the original autopsy report and that it was an accepted fact that the apartheid government destroyed records on a massive scale. He attached extracts from the Truth and Reconciliation Commission report dealing with that aspect, but saying he did not know if the autopsy report was destroyed in that process.

Clark remembered George Bizos writing that the inquest records were destroyed after five years. If the George Bizos had settled the affidavit, why was it necessary to suggest the record was destroyed by the security police, if not to place the protagonists at the centre of a topical political drama? According to Nkosinathi Biko, it was only on 22nd January that his attorneys visited the State Archives in Pretoria, where they reviewed the contents of Steve Biko's files. It sounded like that was the first time anyone in the Bikos' world had troubled to go to the archives to look at the records on Steve Biko. That didn't say much for their role as diggers up of truth. More interestingly, the younger Biko continued:

> *[47] On 27 January 2015 Mr Mouton and Mr Lester visited the Wits Archives and inspected the Steve Biko related files in this archive which were made available to them. There is a copy of the autopsy report in this archive. The appearance of this copy however, differs from that of the Report. For example, it is not bound.*[116]

And about time too. Clark didn't like the applicants' use of the short passive and felt he should go and see these important files for himself.

Tellingly, Mr Mouton's reply to an email of Clark's in which he threatened, "Please inform your clients that we are also exploring their potential criminal liability", was withheld from the court.[117]

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[115] Kentridge, Sydney. "Evil Under the Sun: The death of Steve Biko." FA, pp109-132. The Steve Biko Memorial Lecture. 12th September 2011. (Kentridge, 2011)
[116] FA, p21.
[117] FA, pp27-9, paras 66 – 68. Cf. AA, p869.

As to the Niemands' argument that acquisitive prescription had run, Biko said "Mrs Niemand did not possess the Report openly as if she were the owner thereof. … She was not, I am advised, a 'predecessor in title' …" That was really a legal argument and Clark would deal with it in the answering affidavit.

The applicants attached copies of Mrs Niemands' last will and testament, her executor's liquidation and distribution accounts and the estate inventory, none of which mentioned her document. To Clark, Mrs Niemand's estate documents merely showed that neither Mrs Niemand nor her children regarded the document as being of sufficient value to be separately mentioned as a distinct asset owned by Mrs Niemand. He wasn't too worried about that legal point.

Mr Biko next made the curious claim that "the Report, which is a copy of the original autopsy report, was made by or for Dr Gluckman in his capacity as the Biko family's appointed pathologist. It is therefore the property of the Biko family."[118] What did they mean by this?

Biko then went on another curious detour:

> *[85] There were at least two opportunities where Mrs Niemand and for that matter the first and second respondents could have publicly and openly declared their ownership of the Report. The first was after our first free and democratic election and the second was during the 1997 Truth and Reconciliation Commission ("TRC") public hearings relating to the murder of Steve Biko.*[119]

These comments were baffling. Why would the Niemands have announced their ownership of a document after the hurly burly of a national election campaign? What was the link? And the TRC was set up to investigate gross violations of human rights in the struggle era and, where appropriate, to grant perpetrators amnesty and victims reparation. It was never a collection point for copies of old state documents.[120] Nkosinathi Biko presumed that people in the Niemands' position would make some sort of confession about their property, but why would they? They weren't criminals, nor had they committed any human rights violations. Yet he judged them for that.

[118] FA, p33, para 81.
[119] FA, pp34-5.
[120] Promotion of National Unity and Reconciliation Act, 34 of 1995. (Promotion of National Unity and Reconciliation Act, 34 of 1995, 1995)

More than that, some special quality was being vested in the Niemands' document, making special requirements of Garth and Tessa Niemand. There seemed to be an inarticulate premise at work that Clark couldn't quite identify.

> *[86] The name of the commission is telling of its objectives. In fact the TRC would have been the appropriate platform through which to have realised what must have been Dr Gluckman's noble wishes in protecting the file from the apartheid security establishment – to safeguard the truth he had witnessed. Yet despite this and its objectives neither the Biko family nor the TRC was presented with the Report or advised of its existence.*[121]

Clark pondered these lines. Just what sort of confession were Mr Biko and his lawyers trying to compel from the Niemands? Dr Gluckman's wish to keep the copy from the security establishment had long since been realised. And the word "presented" in the passive voice called for delivery up to some sort of deities. The Bikos saw the auction as an act threatening their domain, or control, as Mouton put it.

To round off his affidavit, Mr Biko averred:

> *[94] I am advised that a dead person has no constitutional rights. The idea that a person would want to auction a dead person's report on the grounds that the deceased is a famous person is contrary to the* mores *that our Constitution promotes. The preamble of the Constitution makes specific citations that are telling in this regard, namely,*
>
> We, the people of South Africa,
> **Recognise the injustices of the past;**
> **Honour those who suffered for justice and freedom in our land;**
> **Respect those who have worked to build and develop our country;**
> and
> Believe that South Africa belongs to all who live in it, united in our diversity.
> We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to –

[121] FA, p35.

> Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;
> Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law.[122] (Original emphasis.)

> *[95] In relation to the first, the murder of my father was a gross injustice of our past against his person, his family and all freedom loving people. In relation to the second citation, my father is generally regarded as one of the prominent leaders of the resistance movement. The facts of his suffering are well recorded in South African history and are referenced in part in the autopsy report. Lastly, my father paid the ultimate price as his contribution towards building this country.*[123]

This was moving rhetoric and Clark couldn't take issue with Mr Biko on this, but he was doing some special pleading, making an exceptional case for himself by saying that it was because Steve Biko was a freedom fighter that his autopsy report should be privileged. On the other hand, weren't the Niemands doing the same, making an exceptional case for the document precisely because it was the autopsy report of a famous freedom fighter? That was an uncomfortable thought and Clark would have to think it over. There it was:

> *[96] Therefore, while personal memorabilia such as autographs, clothing, paintings of "famous" persons are auctioned on a daily basis the sale of any autopsy report, particularly against the founding ethos of our Constitution, is deplorable to say the least.*[124]

Yes, it was a case of special pleading, pleading "particularly against" a sale that did not "honour those who suffered for freedom and justice in our land." A tenet of the struggle had been that all were equal and there would be no new aristocracy. It was precisely that feature that marked the new society. The affidavit continued to say the public auction of the document was an infringement of the Biko family's right to dignity, being both humiliating and degrading to them, especially "when considering the

[122] FA, pp36-8. Mr Biko's emphasis in bold type.
[123] FA, pp36-8.
[124] FA, p38.

invaluable contribution that Steve Biko made to this country's struggle for freedom …, preambled in the constitution."[125]

Once again, Nkosinathi reinstantiated his power, but there would be no point arguing that the Bikos shouldn't feel upset by the auction, even if they inclined towards a claim of special privilege.

> *[99] My late father was murdered by members of the apartheid police force in 1977. He was arrested a healthy man and died a violent death. Throughout the period of his detention he was in the company of his captors, who were the only witnesses to his death. His death in detention meant that he was never able to tell his story. It is however telling that all the police who were implicated in his murder were subsequently denied amnesty by the TRC for, amongst other reasons, failing to make a full and truthful disclosure about his torture.*[126]

There was no quarrel with that – a very serious point. Clark believed passionately that every person should be able to tell their own story, which was why he was helping the Niemands tell theirs.

> *[102] Therefore, at the very least the Report is emotionally sensitive and of familial significance to the Biko family. It is a Report that the Biko family wishes to preserve and display (governed by proper archival protocols) to all South Africans to further the legacy of my late father. …*
> *[103] The first and second respondents have demonstrated that they have no respect for the fact that the Report is the autopsy report of a man who was murdered in the struggle for freedom. They want to sell the report for money. This is insulting and disrespectful to my dignity and the dignity of the Biko family.*[127]

Yet again, the heir of a man who was murdered in the struggle for freedom deserved special treatment. That gave cause for concern because it would lead to comparing different people's commitments to the struggle and a ranking of its heroes. But what

[125] FA, pp38-9.
[126] FA, p39.
[127] FA, p40.

about the money, the mercenary aspect? Clark needed to turn this over some more, but the question of sale for money was important.

Under South African common law, a dead person cannot suffer an affront to his or her dignity. The applicants had tried to get around that by alleging that the sale, the act of selling, particularly by public auction, was an affront not to Steve Biko, but to themselves. Being alive, they found the sale insulting and disrespectful and felt that they should be protected from that under the Constitution. That could prove to be a short, crisp point for discussion on its own in court.

To Clark, the Bikos and Gluckman heirs had changed their case. All they had to go on was their interpretation of the auctioneer's description of Lot 101, viz. that Dr Gluckman gave the document to Mrs Niemand, supposedly "for safekeeping", or pursuant to an agreement of custody.

No, that wasn't right; they had a lot more to go on – evidence from Sir Sydney Kentridge, George Bizos and others who were involved in the inquest in 1977 – yet they had chosen not to go there.

24 You and I (6) – Life after death

- So what do you make of this main application, as a lawyer? I was expecting them to come back with much more evidence from the witnesses they could have interviewed.
- Let us look at it. What they have done is admit that the Niemands' document was a copy of a state document made under the Criminal Procedure Act. That is a pivotal moment: the Bikos admit the Niemands' version of the document and change their case, yet offer no apology for having started the case on a false basis.
- I spotted that too. So, we shouldn't hear any more about independent reports, or original documents?
- Correct.
- I see that Mouton and Lester visited the national archives in Pretoria and the Wits archives, where they found a copy of Steve Biko's autopsy report. They are quite evasive and elliptical when they say it differs from the Niemands' document in that "it is not bound."[128]
- There is something unfinished, something incomplete in the way they express themselves. We've seen how slippery they are, so we will have to follow the trail to the archive ourselves.
- How are the Bikos going to win the case?
- That's where the *facta probantia* come in, remember? Here we have the good old-fashioned gerundive - you remember it from your Latin days? - the evidence that goes towards, or tends to prove that which must be proved.[129]
- To my untrained eye, Kentridge's speech doesn't add anything new to Nkosinathi's allegations. Did they attach the speech more for purposes of rolling out a very big gun, in the form of Sir Sydney? His authority could barely be questioned.
- Perhaps, except everyone's authority can be questioned, now that we are a constitutional democracy. Strictly speaking, a transcript of a speech is hearsay evidence and should have been confirmed by Sir Sydney in an affidavit. I'd like to winkle out some more from that quarter.
- So, now will you get Clark to start drafting the Niemands' answering affidavit?

[128] FA, p21, para 47.
[129] (Zeffertt, 1988) There are more recent books on evidence, but that is the book the writer used in Professor Zeffertt's classes.

- Yes. Given their puny reach in the mass media, it's their only opportunity to tell their story, set out their defence and make an impression on the judge, who will never even see them.
- Okay. Now have a look at this, I got it off the internet this morning for you. Rather gruesome, don't you think?

> *Iraq: "Bidders vie" for Saddam Hussein execution rope*
>
> *By News from Elsewhere … as found by BBC Monitoring*
>
> *The rope used to execute former Iraqi president Saddam Hussein has attracted numerous bids from people who want to own it, it's been reported.*
>
> *Bidders from Iran, Israel and Kuwait are said to be vying to get their hands on the grisly memento, according to the London-based AL-Araby Al-Jaweed website. It's currently held by Mowaffak al-Rubaie, Iraq's ex-national security advisor. In 2013, he was photographed with the rope on display in his living room, slung around the neck of a bronze statue of the former president. That prompted a flurry of interest in the rope, a senior Iraqi politician tells the website. He says among those bidding are two Kuwaiti businessmen, an Iranian religious organisation and a wealthy Israeli family, and that an offer of $7m (£4.6m) has been made. Mr al-Rubaie has not commented on the report.*
>
> *Human rights activists have criticised the alleged bids, and activist Ahmed Saeed tells the website that if a sale does happen the money should go to the Iraqi treasury as public funds. In April 2013, Mr al-Rubaie told The Independent he was keeping the statue and rope until a museum was made to house the relics of the former regime. "I had my men bring me back a segment of the rope after they cut Saddam down," he said. "I thought it appropriate to put it around the neck of Saddam's statue."*[130]

They pulled his statues down all over the country, then tried him and hanged him. Surely, that was just going too far? He was a living man.

- Yes, there is no doubt about it, that was an outright infringement of his dignity.

[130] BBC Monitoring news website. 4th February 2015. (BBC Monitoring, 2015)

- But according to you, only for a few seconds, from the start of the news clip until he was dead. Not enough time to apply to the High Court for an interdict. There must have been traces of Saddam's DNA on the noose.
- One thing I would have explored if I was acting for the Bikos, is that Steve Biko is their ancestor whose wrath about the sale of his autopsy report must be assuaged and appeased – that the court should therefore grant them relief by stopping the auction and giving them the document. Instead, Nkosinathi follows a modernist line of argument, saying he is advised (and seemingly accepts) that the deceased have no personality rights after death. That's Roman-Dutch law. I wonder if that isn't a weakness.
- How so?
- He doesn't say that the sale of his father's autopsy report is an offence against African culture, but explicitly says it is against universal values. The problem is that in many modern cultures, it is quite common to sell artefacts and ephemera of the dead. The value is far from universal. If he appealed to traditional culture, in which the deceased ancestor is still a virile force to be appeased, it would be difficult for a white voice to come back against it. It would give the Constitutional Court more room to come to his assistance and grant some respect rights to the dead?

25 At Thorold's

It came as a pleasant surprise to learn that Neillen van Kraayenburg, who Clark thought of as a friend in books, had bought the Thorold's Books business. The name usually included an apostrophe, but for purposes of its website, was merely Thorolds. Neillen had sold him most of his law books when he was at the bar and had also bound his law reports very well, each volume hand sewn and covered in black and green leather with his name embossed in gold letters.

Unfortunately, Neillen had moved the business from its period Victorian rooms in Meischke's Building in the old city centre all the way out to a peri-urban plot in Kya Sands, at the northernmost limit of the city. It was at least half an hour's drive away. The law books were scattered through the 1960's ranch house, the general interest books filled a newly built warehouse-cum-showroom and the collectible books were housed in an air-conditioned shipping container.

Clark didn't need a particular reason to visit any bookshop, even one so distant, but apart from tracking down Africana he would use the opportunity to look for some parallel texts he had been looking for on and off for some time.

"Do you by any chance have a copy of a book by a man called John Harrison Clark? It was and written by an early white settler on the Zambezi and Luangwa rivers."

"Could do. What's it called?"

"*Luangwa*. I don't know if it was ever printed and published, but I know there is at least one typescript of it."

"That doesn't ring a bell, but it might come in. Why don't you fill in a card here and if we do get it in, we'll phone you."

"Will you please try to call me as soon as it comes in – I have an idea I am in a race to find it - and you know me well." Clark set out the details of the book on a card and then asked for a chair and made a start at browsing in the general interest warehouse. The market inefficiencies and arbitrage opportunities were tantalising. Someone could buy a metre's length of books at Westgate Walding for say R200, or R3 to R10 per volume. The next time you saw them was at a place like Thorold's, Collectors Treasury or a smaller dealer, where they were marked at R30, R100 or R2500 each, but still cheap.

Clark moved on to the collectibles and Africana in the shipping container, where he settled in for a few hours, paging through the wide range of rare books and journals on southern Africa. He came across old copies of the *Northern Rhodesia Journal* and

whipped through them, pausing in one to look at a photograph of none other than John Harrison Clark opposite a letter to the editor concerning the same man. The photograph showed a powerfully built middle-aged man with enormous forearms and a commanding expression sitting in a chair outside a basic looking house built in the iconic African veranda style. Clark couldn't help thinking he had seen someone very much like him before. The exterior walls were festooned with animal skulls topped variously with the horns of wildebeest, sable, waterbuck, hartebeest and other antelope. The two most striking things about the moustached man in khaki trousers and a cotton shirt were the leopard pelt covering his chair and a fez of indiscernible colour sitting at an angle on his powerful head. The correspondent, a Colonel N.O. Earl Spurr, claimed to have worked for this man at the copper mine in Broken Hill toward the end of his life. He sought to correct the impression that Harrison Clark had held a lowly job at the mine

> *… as far from being the case he held, in partnership with the late Lester Blake-Jolly, the much coveted sole concession for making and selling beer in the whole Broken Hill area. This was a very remunerative concession - I know this as I was his "man of affairs" keeping his books and accounts up to the time of his death and once a month I used to assess the profits and make out the cheques for the two partners.*[131]

He spent his money as he made it, was a pillar of society ready to head any subscription list with a large cheque for a good cause, sponsored a gold medal for motor cycle racing and was one of the few owners of a motor car, a dark green model T Ford. Changa Changa attended most social functions in Broken Hill and, notwithstanding his rather worn looking apparel in the photograph - was always immaculately dressed. Most intriguingly for Clark, the letter continued to say:

> *"Changa Changa" was very busily engaged on writing a book on his life – the actual writing was being done by old man Davey, at one time a newspaper editor of the Torquay Times in Devon. Under most mysterious circumstances the thatched house near the Broken Hill Compound in which "Changa Changa" lived was burnt down and all the papers, etc., lost in the fire. "Changa Changa" swore to his dying day that this fire was engineered by the British South Africa*

[131] Colonel N.O. Earl Spurr. *The Northern Rhodesia Journal*. Volume II, no. 6, 1954. Letter to the editor. (Spurr, 1954) pp91-3.

Company who, he said, were scared of what he might publish in connection with the early days of the company's administration.[132]

Thorold's rivalled Conrad Walther's collection for rarity, range and condition. Many of the books were marked in sterling or American dollars and none was cheap. He was impressed to find signed first editions by David Livingstone, Frederick Courteney Selous, James Stevenson-Hamilton and then J.E. Stephenson's same *Chirupula's Tale*.[133] This volume had obviously been Stephenson's own copy and was signed, annotated and overwritten by the author with additional texts and an epilogue, also containing a signed photograph of Stephenson and carbon copies of the author's correspondence with Gen. J.C. Smuts, British prime minister Clement Attlee and the princesses Elizabeth and Margaret.

Flicking through, Clark caught his breath – at the last reference to Changa-Changa and one that he had already read in the Johannesburg Public Library, there was a handwritten note inscribed by the author.

Fairbanks had made up his mind to live down in the Lwano Valley, and, like Changa-Changa Harrison,[1] to establish his own little kingdom. …[134]

Footnote 1 was marked in blue ink in the text and referred to a handwritten note at the bottom of the page:

1. James Harrison Clark of Port Elizabeth whose memoirs were accidentally burned in Broken Hill when an Indian set the house on fire![135]

Now that was serendipity: in one room and one morning, two references to a house fire and two references to an elusive book – or here the actual manuscript, it seemed. Calling him James was obviously an error; for sure, it was John Harrison Clark. By what extraordinary good luck had he stumbled on the very same text in this second copy and found the author's own personal notes and updates? And by what ill luck had Harrison Clark's manuscript been destroyed all this time? Could the book still have been

[132] Ibid.
[133] (Stephenson, 1937).
[134] Ibid. P192.
[135] Ibid. P192, n 1, in the author's hand annotated copy.

published? No, Stephenson would have said if it had. The trail ran cold at this point – what a terrible blow.

This author's copy of the book was nevertheless unique and very collectible and most importantly the author's handwritten notes would help Clark with his research. Looking inside the front cover, he saw that the book was marked at £55 in pencil. That seemed pricey – at the prevailing exchange rate it was about R1 100. He would have to think it over, but he would buy the periodical in the meantime.

As Clark drove away he realised with some relief he had not been suborned into any funny basement business – there was no basement at Thorold's.

26 You and I (7) – The Constitution and *The Odyssey*

> ... the surest defence against Evil is extreme individualism,
> originality of thinking, whimsicality,
> even – if you will – eccentricity.
>
> - Joseph Brodsky[136]

- Moving on, what's Clark going to do now?
- He has a grip on the case, but ultimately it will come down to whether or not something like an autopsy report should be sold at all.[137] That is the Bikos' last stand and they have appealed to the Constitution to say, "No." The Constitution expresses our new *Zeitgeist*, but it will be difficult for a court to constrain an owner of property in that way. The precedent could lead to all sorts of complications. Judges have to develop the common law in accordance with the values of the Constitution,[138] but judge-made law should not do excessive harm to centuries of settled law – that's a job for the legislature. Going back to the Preamble, it's the new myth of origin, our Garden of Eden, our Fall and Rise. There was hell, but our freedom fighters delivered us from evil and founded the new, just society.
- Yes, but to what extent do we have to bow down to them for that and give their descendants privileges? Isn't the present a *tabula rasa*, a clean slate?
- We must remember the freedom fighters, that's important.
- And we cast a nod in the direction of those who have worked to build up our country. Would that be the white farmers, engineers, builders, scientists, lawgivers … or Cecil John Rhodes?
- No, they're pulling his statues down all over the country. No, I'd say that's the African workers, who did the grunt work in building the place up. But it allows two interpretations, at least. Something for everyone.
- It's a new *Odyssey*, man. We have the escape from war and foreign occupation, the long sea voyage to the new land, followed by a long and valiant struggle for justice

[136] Joseph Brodsky. (1984) "A commencement address." (Brodsky, 1984)
[137] Sandel, Michael J. (2013) *What Money Can't Buy*. London. Penguin. pp93-130. (Sandel, 2013)
[138] (Constitution of the Republic of South Africa, 1996) Section 39.

and liberation. An epic tale told anew with a beginning, a middle and an end. But what about all the other shipping in the Aegean and the Mediterranean at that time and ever since, all coming and going in different directions across the water, all following the course of their own stories.[139] Some were sailing from Troy, others fleeing Nazi occupation; some were delivering cargo to Byzantium and yet others were steaming into battle. Every voyage was its own story, moving about and not always coming back to port. Imagine if the wake of every ship was left etched on the glassy sea – it would look like pick-up-sticks for giants. All the stories criss-crossing each other, fanning out from every port and homing in on all the ports of destination.

- Except for the lines that ended abruptly, where Scylla and Charybdis, or enemy submarines, got them and they sank.
- On the subject of submarines, their voyages would also be etched only for short stretches as they left port and headed out, coming to an abrupt end when they submerged. The scratch on the glass sea would stop and you wouldn't know where to expect it to pop up again.
- It is an eerie thought, a bit like Clark going down into the archives here and popping up years before over here, or years later over there. What's the meaning of the missing wake?
- It's a major advance on the galleys or tramp steamers etching their ocean paths. I mean, if you looked down on the ships from a Spitfire, you could predict their courses from their wakes etched on the glass. No ship turns on a tickey – the plot is predictable. But with submarines, we get a whole new level of sophistication. You look down and see the sub heading south-southwest for Tripoli and then, zippo, nothing. It's gone under. You laugh and say, "Ah-ha, it's going along the same course, only now it's under the water. I'll go in and drop a torpedo half a mile ahead of its wake. That'll get him!" Not so fast, my friend. A sub can just about turn on a shilling, if not a tickey. By the time the torpedo hits the surface and speeds ahead, the sub has long since veered off southeast, homing in on Alexandria and then at night it pops up in the most unexpected place to run its diesels and charge its batteries. Literature got a big shot in the arm with the invention of the submarine. The narrative went haywire.

[139] George Bizos and his father left their village on mainland Greece in the middle of the last week of May 1941 and sailed the Aegean in a small boat until they were picked up by HMS Kimberley, which was on its way to Crete to evacuate the Allies from Sitia. After that, the ship sailed on to Alexandria in Egypt, where they disembarked. They then travelled by train to Cairo and on to Port Suez, where they boarded the "Ile de France" and arrived in Durban harbour on 8th August 1941. See: George Bizos. (Bizos, Odyssey to Freedom, 2007) pp 35 – 38.

It starts along a course nicely enough, then disappears out of sight, then emerges back behind its last known plotting, going the other way.

- Of course, a sub does return to home base, to file its report, refuel and let the men take shore leave. I suppose stories require that. How about aeroplanes, crossing the sky, leaving permanent vapour trails of their courses? That's proper 3-D for you, 33 000 feet above the sea.
- No, that's too obvious – and they can be plotted all the way, until they land or crash. Submarines – no one knows where the hell they are. Even the Russians can hardly find you in a sub, until you pop up under their noses.
- So, in your story Bizos had a tidy script, until the Niemands came along and disrupted it?
- George Bizos got scared that someone might try to use the autopsy report to rewrite history. It sounds paranoid, but his solution was to grab the document and keep it under the Bikos' control, as Mouton put it. If anyone challenges the narrative, they'll bring out the autopsy report and speak down to them, controlling the knowledge. That's very South Africa 1980. We live in the information age now, the more people with the information, the less you can suppress it. But you have to give up sole ownership of it. That's the deal. A single storyline, one true account of what happened, neatly tied up at the end. In this case, it's not as serious, but think of all the grisly people now and in the past who have put a single narrative out there and then gone about enforcing it as the one true line: the British imperialists, the Nazis and the apartheid government. Add Lenin, Trotsky, Stalin and Mao. Today, Muslim fundamentalists: "We have the Book. The one true Book. And having the Book, there is no need for any other books."
- You had better stop there. Remember poor Salman Rushdie.

27 William Cullen Library (1) – The loose-leaf library

Life can only be understood backwards,
but must be lived forwards

– Søren Kierkegaard

To go forward, Clark had to keep going backwards. It was a paradox of progress. The truth lay in the past, but the witnesses were dead. Mouton had said he went to the archives at Wits, so Clark realised he had better go and check up on him. Clark headed to the Historical Papers Research Archive, housed in the university's William Cullen Library.

Crossing the piazza, past a crowd of students protesting noisily and demanding that university buildings be renamed, he slipped down onto the Library Lawns and was happy to see the William Cullen Library again after many years. Now that he had just registered for postgraduate study, he hoped to use it quite often. It had been his favourite place to read and work as a student. The building was not immense, but a rather squat box in the neo-classical style with ground and first floors visible from the Library Lawns and two more floors below. Clark had no idea who William Cullen had been, but his library – flanking the axis made by the Central Block to the south and the amphitheatre and swimming pool to the north – complemented the Central Block and the original engineering buildings. Together, these were the earliest surviving buildings of the university, which had started out in 1896 as the South African School of Mines in Kimberley, before moving to Johannesburg. Aside from a porch supported by Ionic columns, the façade of the Cullen was comparatively plain with none of the sculptures and relief adornments of the Johannesburg Public Library. In later years, the university abandoned the classical style and added a hotchpotch of buildings in styles successively prevalent as time went by, creating a campus rich in architecture and style.[140]

An occasion came back to him from about twenty years earlier when his wife Bev and he were invited to a function held in the Cullen Library. It must have been some sort of

[140] Clive M. Chipkin. (1993) *Johannesburg Style: Architecture and Society, 1880s – 1960s.* Cape Town. David Philip. (Chipkin, 1993) pp 77 – 80 and entries marked under "Wits" in the index.

open day and he could not recall why they had been invited as guests of the Vice-Chancellor, but they were given the rare opportunity of viewing the university's most treasured documents and artefacts, of which the highlight was seeing the fossilised skull of the Taung Child. Professor Phillip Tobias had been on hand to point out the most fascinating features of the fossil and to situate it in the context of the long paleontological record.

Clark had arranged with the principal curator of the university archives, Rosemary Mulholland, to look at the university's copy of the Biko autopsy report that Mr Mouton had inspected. Ringing on the door buzzer in the foyer, he looked through the glass and soon saw a young woman in a khaki dust coat coming along the corridor to let him in. There was something familiar about her, but he wasn't sure what. She guided him to a ground-floor reading room overlooking the Library Lawns. The librarians had lowered some blinds in futile defence against the penetrating heat.

Clark introduced himself to Mulholland, took a seat at a long table and looked around, as he often did when he sensed he was being watched. There was a steel staircase rising up to a gallery, rigged up in recent years to provide more space for shelving against the upper walls. Desks were jammed up against the railing where three or four scholars sat with a vantage down into the main part of the room. One of them was that strange Rhoda Rosen who had accosted him at Collectors Treasury. Was she still going to come and see him about her case? In a spasm, she raised an eyebrow and gave a twitch of her head. Clark gave her a slight wave.

He also noticed a strange old man – none other than Harrison with his nut-brown skin, blue eyes, unkempt white hair and moustache – wearing a red fez. He was standing at the rail, looking directly down at Clark. Clark felt like a bug on a glass slide, supine to this shadowy observer.

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The BARK situation is intriguing. I wonder if it can be a survivor of the Banned Anarchist's Revenge Klub, from way back when I was a student here? A border collie called Gandalf was put up as a candidate in the SRC elections. All spoiled papers went to Gandalf, who did rather well. In fact he beat me at the polls; I failed to make the cut that year, coming in about 14th in the poll.

When the humans on the SRC refused to recognise Gandalf, his owner uttered dark threats about people who didn't respect animal rights and took Gandalf underground with two other collies, Sacco and Frodo. Can this BARK be in the same tradition, kept

going by a small group and regenerated from year to year? I'm not sure that anarchist is a good description of the organisation, but it is good to see the BARK name again after all these years. They seem to agitate for higher standards in all manifestations of public written language, whether on street signs, on buildings or in documents and other media. That's why I like them. BARK tries to destabilise the truth, or more accurately the matrix that conveys that truth, in order to let other narratives emerge and compete for attention.

There seems to be intense competition by protesting groups to make their marks around Johannesburg. The university campuses are coming alive with protest, but today it is under the banners of Steve Biko and Frantz Fanon, rather than Karl Marx. Fanon is intriguing, but Biko seems pretty pedestrian, at least by today's standards. By contrast, BARK stays on the fringes, organising in secret.

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The young librarian in the khaki dust coat returned wheeling a trolley and presented Clark with 15 boxes, each containing a number of folders. Clark unloaded the boxes onto the table and, glimpsing the young librarian's red tackies, suddenly remembered where he had seen her before.

"Of course, you helped me with those old newspapers in the Johannesburg Public Library. I remember now. How are you?" He noted the name on her staff badge: Shibu Bhengu, Assistant Librarian. As before, she was cheerful and a little bashful.

"No, I'm fine. I'm not working that side any more. I always wanted to work at Wits because I get fee relief if I have a post in the library."

"That's tremendous. What a dream life, reading and studying at someone else's expense. What are you reading?"

"No, I'm doing my MA, in history of art. Political expression through the medium of graffiti in a democratic South Africa, concentrating on Johannesburg."

"Well, no shortage of study material then. You should go down to the Diamond District, on the edge of Jeppestown – plenty of graffiti there?"

Shibu Bhengu smiled shyly and withdrew to her own desk next to Mulholland's.

Turning to the first box, Clark saw that Nkosinathi Biko and his lawyers had not disclosed to the court that the Wits archive copy of the Steve Biko autopsy report was contained in the papers of the late Mr Ernie Wentzel S.C.. Either Mr Wentzel or his executor must have sent them to Wits. Everyone knew Mr Wentzel acted for the Biko family at the inquest, along with Sydney Kentridge and George Bizos. There were two more boxes of files on Steve Biko's inquest alone. Each of the boxes contained five or six

folders, each marked with an identifying code. In the first Biko box, in a folder marked *Fa 3.2.6*, Clark found a document almost identical to the Niemands' document, except that it was a photocopy, instead of a stencil copy.

Looking into folder *Fa 3.2.7*, he was even more amazed to find a photocopy of the full autopsy report on Steve Biko, but it was in Afrikaans and was complete throughout with the initials and signatures of its compilers, including Gluckman. None of the English versions had the signatures of the three pathologists, nor did the English versions of the certificates have Loubser's signature. The document was authentic, but not original.

So, the original report must have been – indeed it was - an Afrikaans document, not English. An epiphany. Come to think of it, Clark had not been very vigilant; the Niemands' document at the auctioneers was headed "Translation of Professor Loubser's Report." Luckily for him, the Bikos' attorneys committed the same oversight of what was staring them in the face. Headings aside, it really should have occurred to him from the start; after all, it was a state document dating from 1977. And so, not only was the Niemands' document a stencil copy, but it was a stencil copy of the English translation of the Afrikaans original. And the Bikos and their attorneys had not thought to mention this in their affidavits? This was the most important document in Mr Wentzel's files, the Holy Grail: a photocopy of the Afrikaans original Steve Biko autopsy report, signed by the medical experts.

There was also an identical version of the Niemands' English translation, but it paled next to the more complete copy of the original Afrikaans report. Its importance was immense. Nkosinathi Biko had said under oath that his family wanted to preserve the Niemands' document:

> *[102] It is a Report that the Biko family wishes to preserve and display (governed by proper archival protocols) to all South Africans to further the legacy of my late father.*[141]

They could ask the university and Mr Wentzel's executor to let their foundation display these documents in their museum. How could they refuse? Advocates were duty bound to return their briefs to their instructing attorneys.

"Eureka!" he thought. So what was all the fuss about? But then Clark had to pause and think. Why had Nkosinathi Biko, or his attorneys, chosen not to tell the court that the

[141] FA, p40.

Wits archive had these documents in Mr Wentzel's files? Were the Bikos' attorneys concealing the existence of the Afrikaans copy because it put more distance between them and the Niemands' document, or had they just been slapdash?

Nkosinathi Biko had said in his second affidavit:

> *[81] … the Report, which is a copy of the original autopsy report, was made by or for Dr Gluckman in his capacity as the Biko family's appointed pathologist. It is therefore the property of the Biko family*.[142]

Could he really not know the original autopsy report was in Afrikaans? It was becoming hard to take Nkosinathi Biko seriously. The Bikos would do much better to display this document than the Niemands' document. Clark found other documents in the same folder, the components of which corresponded to the report in the Niemands' document, but whereas the Niemands' document had always been stapled in an original white cover, the components in the Wentzel papers were stapled separately without a cover. He also found two other copies of the English translation in Mr Wentzel's papers. There suddenly seemed to be no shortage of them.

Marc Mouton said the copy of the report in the Wits archive differed from the Niemands' document and gave as an example that it was not bound. Not bound? Was that all?

Ms Mulholland told Clark that the Wentzel documents were not subject to any restriction and were open to viewing by members of the public, who were free to make copies of the documents for themselves. Clark took the reports over to the photocopier, removed the staples and ran off a copy of the full signed Afrikaans report and a copy of an English version, taking care to reassemble and staple each document neatly. He noticed that some pages in the English copy were not in proper page order, so he rearranged them before stapling them back together. Ms Mulholland charged him 38c a page for the copies.

Do you see how this was becoming a paradox of truth and value? The deeper Clark delved into the Niemands' document, the less important it appeared to be. The more facts he unearthed and the greater the truth revealed, the lower the value of the Niemands' copy would be. If only he could stop digging, for his clients' sake.

[142] FA, p33.

Any person making a copy from the Wits archives could disseminate it around the world within a few minutes as an email attachment, a publication on social media pages or on any number of websites.

What would you say privacy means in this day? The Constitution guarantees the right to privacy, but it was enacted in 1996, just before the great wave of information technology and social media hit South African shores. Twenty years on and it didn't seem that many old order privacy rights could still be guaranteed in practice.

Ms Mulholland told Clark he was unlikely to find the original document. In the course of her work she had learned that there was a prosaic explanation for the disappearance of the original report. Researchers, historians and archivists knew that court files of proceedings in the magistrates courts were kept for only five years after the conclusion of each case and then destroyed. The original magistrate's file would have been destroyed as a simple matter of administrative procedure. That confirmed what George Bizos had written in *No one to blame?*[143]

As it turned out Clark had been wrong to state in the Niemands' press statement and on radio that the original autopsy report would be in the national archives in Pretoria. That was a little awkward, but an innocent mistake on his part. He had thought it only natural that inquest records would be stored at the national archives. Serendipitously his remark had acted as an oral Mountweazel: it led the Bikos to reveal that they had never been to the national archives, nor had they done research in the Wits archives. How serious were they really about their research and the displays at their museum – and, being government-funded, were they living up to the public's legitimate expectations?

Clark asked Ms Mulholland if he could also look at the files of the late Dr Jonathan Gluckman. Biko and the news media had said that the contents of Gluckman's files on Steve Biko had been stolen before they got to Wits, but there should be plenty other folders of his many cases over the years.

"Oh, no! I'm sorry, but we can't allow that. If you were a close relative of a deceased person, or an academic researcher, we might make an exception and let you hold a document under strict supervision," she said.

Fair enough, he would write and motivate his request for permission.

[143] (Bizos, No One to Blame?, 1998) p241. "Records of proceedings in the magistrates' courts, including inquest proceedings, are destroyed within five years of their date of occurrence. I have thus had to rely on copies of the proceedings in private collections or, when these did not exist, newspaper reports. The latter have proved an invaluable aid in reconstructing the past and supplementing my own recollections."

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Clark approached Ms Mulholland on another tack, "May I make an unrelated enquiry while I am here? I'm looking for an old book, or it could even be a manuscript, that a forebear of mine wrote about his life on the Zambezi River. It would have been written between about 1905 and 1920. I've never had confirmation that he got as far as publishing it, though he had written a manuscript."

"That rings a bell." Ms Mulholland said. I think it could be the same volume a researcher asked for recently. We do have a lot of books and papers from that era and quite a number about Northern and Southern Rhodesia, as they were called. There isn't much call for them these days, but if it's in our catalogue, you can requisition it. Come over here and we'll see if we have it."

Clark followed her to an old index card cabinet like the ones he remembered in his school library. In this day and age it seemed a little antique. As if anticipating his thoughts, Ms Mulholland said, "With the older titles that are seldom requested, we haven't had the staff to transfer the data onto our electronic catalogue. Let's start with the author, if you have it."

"John Harrison Clark. He died in 1927 in Broken Hill, now Kabwe, and he probably wrote the manuscript ten or twenty years before that. I don't have a title for it."

Mulholland pulled out a drawer of index cards and started flicking through them. "Yes, as I thought, it seems we do have something. It'll be over here," she said, stepping across to a big glass-fronted cabinet near her desk. She produced a key from her desk drawer and turned it in the lock.

"This is where we keep some of our rarest books and papers, ones we cannot let people see, except under the strictest conditions. If you'll put on these white gloves, I'll let you page through it."

The old buff document folder contained many typed foolscap sheets held together by old green ribbon. It was otherwise no older or more remarkable in appearance than any of the other folders or books on the shelf. Clark turned it in his hand and opened it to the title page: *Luangwa: The Journal of a Pioneer on the Zambezi* by J. Harrison Clark. Clark was quite nonplussed and he stared at the title page for what felt like ten minutes. As he gathered his thoughts, he muttered, "So, not burned in the house fire after all." At the end of a long search, here was a typescript in the library of his *alma mater*. He could not believe his luck, but he should have thought to enquire at the archive much earlier. It was not a published book, but a typescript of nearly two hundred slightly yellowed pages, punched and fastened with the ribbon in a folio cover.

A middle-aged woman archivist quietly joined them in conversation. “It’s quite strange. No one has asked for this title in years, but only three days ago I had to get it out for one of our new researchers who has just arrived from Zambia.” With a yank of her head she gestured up to the gallery, where the old colonial oddball was reading, before continuing, “The gentleman spent half an hour typing up notes from the book on an ancient typewriter, but the noise! … You see he can’t hold a pen with ease … and with the little bell ringing and all those keys tapping on the platen, it was driving us mad and disturbing the other scholars. I had to put a stop to it and moved him to a quiet room in the basement where he set up his work table. He’s not finished with it – he said he’d need to look at it again. It’s all about a real scoundrel – sorry, but that’s how he comes across – who set himself up beyond the reach of the law and became the King of the Luangwa. I was so interested to help the gentleman. That’s the only typescript left in existence … that we know of, anyway. I doubt it got as far as being published.”

“This is terrific. At last, *Luangwa*! Rosemary, could I put in a request for it after he has finished? I have to meet someone for lunch, so I can’t start on it now, but if you could reserve it for me, I’ll come back and read it here.”

“Yes, sure. Better give it a few days until our Zambian visitor has done with it. If you’d fill in this card with your name, student number and so on, we can book it for you … when?”

“I’d like to combine it with my next visit to see Dr Gluckman’s papers. I’ll write to you about that, so should we say a week?”

While filling in his request, Clark got the feeling he was being watched. He glanced up at the gallery and saw Rhoda Rosen staring straight at him from her perch at the rail. The light reflected off her glasses, so he couldn’t make out her expression, but there was no doubt that she was looking straight at him, in between twitching her head in that avian way. The old Zambian coot in faded clothes had moved out of sight.

It was a strange place, that library, but Clark felt very positive about what his tumble down the rabbit hole had yielded. The Bikos’ case was still based on a mistake of fact and they hadn’t turned over enough stones. For some reason, they didn’t want the court to know just which copies of the autopsy report were to be found in their own advocate’s files.

He had greatly enjoyed his afternoon in the labyrinth. He would need to come back and follow up on certain ideas that had occurred to him during his visit as there were still some questions hanging in the air. Why did Nkosinathi Biko, or his lawyers, go to such lengths in his affidavit to say that at the end of apartheid, the security police destroyed hundreds of tons of documents about detainees and deaths in detention? Was

it to lay the ground to introduce Sydney Kentridge's speech as an annexure to Nkosinathi's affidavit? And was that to lend added gravitas – the heft of the Kentridge name – to their repossession claim?

He also could not contain his excitement at coming across the *Luangwa* typescript so soon after receiving John Harrison Clark's letter to his wife Helen from Feira. That was a real breakthrough.

From behind he heard a soft voice address him, "Excuse me, Mr Clark, if I may be of assistance to you, I seem to be following a similar line of research to your own." Clark turned and found himself face to face with the old Zambian, who must have come quietly down the stairs while Clark was busy filling out his request. "Pardon me, Sir, but I was standing by and heard you discussing a volume I am familiar with: *Luangwa*."

"How do you do once again?" He would jump right in. "I think you owe me ten rand."

"I beg your pardon? Whatever …, oh yes, my mistake, of course. The public library, eh? I'm so sorry, but the thing is, I don't have my purse with me today, but I shall make a point of carrying the sum on me in anticipation of our next encounter."

Which will never occur, Clark thought and hoped. As he shook hands he felt that Harrison's grasp was awkward, like many an old person, as he could not extend his fingers, but had to offer his hand with fingers curled, no doubt the effect of arthritis and rheumatism.

"I think I may be able to point you in the direction of several other works dealing rewardingly with the same time and place. Shall we go out into the hall, the less to disturb our ladies?" They left the reading room and moved out into the foyer, taking up a position next to Bartolomeo Diaz's cross.

"I must apologise, I should have introduced myself on arrival in your great city, but I have been doing some intense reading and did not want to be side-tracked. As I said, my own accounts of the Zambezi and Luangwa might be of interest to you."

The man made Clark feel acutely uncomfortable and he suddenly wanted to get well away from him. "Well, thank you for introducing yourself. We can certainly swap notes on what we have each found out and I could do with further guidance; after all, mine is merely an amateur interest. You are most kind, but I wonder if we could discuss this another time, if you don't mind very much, I have to skedaddle, I have a meeting with my supervisor and I see I will be late. I'm sure we'll meet here again before long" – but hopefully not, he thought.

28 In the stacks

Turning back to the corridor outside the reading room Clark caught a glimpse of the young librarian, Shibu Bhengu, standing in the doorway at the end of the passage. She had a large canvass bag slung over her shoulder. How had she got there? She gave him a smile and gestured with her hand that Clark should approach her. It was not on his way to the exit, but he was intrigued that a librarian might want to show him something.

As he approached her she slipped away and he lost sight of her. He wasn't sure what to do, but he opened the door and saw that it led onto a stairway landing and the woman was making her way down the stairs. He thought of turning back, but once again she looked over her shoulder and waved to him to follow her down.

It wasn't only the unexpected sight of Shibu beckoning; he was curious to see what went on in the basement of a library. It could be the Holy of Holies. Would there be a special room, a shrine in which the rarest and most precious books were displayed only to the most privileged people?[144] Proceeding could be against some university by-law, or at least a breach of practice, but if he was challenged he would show his student card and make something up on the spot to explain his presence. He'd give it a go. Making his way down the stairway, Clark found himself in a dark passage, off which several storerooms led. Shibu had opened the door to a long room off a side passage and she stood aside to let him go ahead.

"Here we are, sir. After you."

Clark did as he was bid and stepped into a storeroom filled with rows of shelves filled to the ceiling with boxes and books. On a table near the door he saw an assortment of staplers, punches, gimlets and one of those old Roneo machines that he hadn't seen since his youth, dusty with neglect. Shibu closed the door behind her and headed down an aisle between two rows before turning to face him at the far end.

"You're Mr Clark, I know. I've been told to expect you," she said.

"What? Who told you – and what do you want? I'm just here to look up some old documents."

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[144] See: Tobias, Phillip. (2005) *Into the Past*. Johannesburg. Picador Africa and Wits University Press. (Tobias, 2005) "Consequently, I proposed … that … the fossils should be made available in a separate and secured study room, under guards. Authorised scientists alone were to be admitted and good lighting and measuring instruments were to be provided. The visiting scientists would be allowed to take photographs of individual fossils. Each evening the fossils were to be returned to the strongroom." (p233.)

"Yes, you can go on with your work, but I have to pass on a message from the others."

"What others? What is this?"

"Quick, stand over there, someone's coming." Shibu took a step back, ushering Clark around the corner, past two rows of shelves.

Clark retreated around the end of the row, close to the frosted windows, and turned to watch the door. Peering through the shelves, he saw Rhoda Rosen come in, carrying a document box in both hands. He couldn't be certain, but he thought he saw her place the boxes on a shelf near the door and then withdraw a red lever-arch file and an old book from the top box. Then she walked down the long aisle towards their end of the room, but two aisles away. She placed the red file and book in another box, near the end of her row, just short of the windows. After leaving a green cardboard strip jutting out of the box, she looked around quickly, moved back to pick up her document box and then left the room, closing the door behind her.

"That's our secret letterbox. The mail has arrived."

"It's not very secret if you've already told me about it."

"Yes, but I'm telling you in confidence, as a client to her lawyer."

"What? I've only just met you. How can I be your lawyer?

"It's Rhoda, she said you are taking BARK on as clients. That includes me."

"Oh, all right then, but can't you come and see me in my office. We need to be proper. And can't you just use text or email?"

"No, we don't like to leave any traces. And sometimes we have to hold a thing in our hands, to see it in the flesh and to hear if past events speak down to us, or is it up to us?"

Shibu gestured to Clark to follow her and went to the aisle where Rhoda had left the book and red file. Lifting the lid of the document box, she pulled out the file and book and then removed the green strip of cardboard and placed it under the box. Clark looked over her shoulder and found himself staring at an early twentieth century Portuguese atlas of Africa. He turned to the page on Mozambique, Northern Rhodesia and Nyasaland. There it was; he placed his finger first on Feira at the confluence of the Luangwa and the Zambezi and then on Algoa further up a tributary of the Luangwa. In the modern era those names had been erased and replaced and their only use in newer atlases would be as paper towns. He loved atlases and could spend hours poring over them. His father had also had the habit, and he had joined him in retracing his voyages across the pages – the Arctic convoys from Scapa Flow to Archangel with supplies to relieve Leningrad, from the RN Beirut base on cruisers and submarines across the Med to Malta, on midget subs in the North Sea and finally on large subs from Trincomalee to the waters off Singapore.

Shibu said, “It’s from the Oppenheimer collection upstairs and rare, though it’s possible that another one or two might pop up in a deceased estate somewhere. We have to watch house sales and auctions.”

“So why are you moving it around the building? Won’t they miss it?”

“Unfortunately not. They can hardly take in all the new materials – struggle magazines, posters, pamphlets, funeral pew sheets – so they have less and less of an idea of where the old stuff is. Anyway, nobody researches this sort of thing anymore. At least, not at Wits.”

With that, Shibu placed the book and the red file in her sling bag and fastened it. It was time to go. As Clark opened the door of the store room, he said, “Look here, I’m not sure what you’re up to, but I should warn you that I can’t assist you in the perpetration of a crime. In fact, I must advise you against it. Legal ethics, you know.”

“There’s no need to worry, it will all become clear. Rhoda told me you are already in position.”

Turning to go, Clark started and found old Harrison standing in a doorway across the passage - a rather unpleasant surprise.

“That’s where Mr Harrison is doing his typing,” Shibu said. “He refuses to get a nice quiet laptop like everyone else. He says his work … it has to be authentic.”

Clark shuddered. He got the uncanny feeling that Harrison had been listening in on them.

29 Replica

Clark left the William Cullen Library and headed across the Library Lawns to the Wits Art Museum, where he had a lunch date with Julia, an old friend and one time housemate. WAM was the polar opposite of the Cullen and enjoyed a site on the busy corner of Jan Smuts Avenue and Jorissen Street, the gateway between Wits and Braamfontein. Fashioned from some line shops and a remodelled Shell filling station, the architects had redeveloped lofty, light and modern exhibition spaces, a café and offices. Presenting the university's best face to the city, the complex had become a busy meeting place and the café a popular lunch venue.

Julia bustled down from her office of senior curator of the art museum. Taking a seat opposite Julia, Clark said, "I have a case in which I need to know something about documents, artworks, books and ephemera. Under what conditions are they donated and housed on short- or long-term loans and so on. What are the Wits policies about this? It seems to be fraught with politics."

"It is political, to say the least, but there are three main ways in which benefactors endow us. Firstly, donations: we get offered lots of pieces, but we have an acquisitions policy and each one has to be approved by the acquisitions committee. It requires quite a bit of 'stakeholder management', basically walking a line between taking in a lot of junk and pissing off important donors. If there is one great piece that we badly want, we might have to take their junk in too. This whole art complex is still new, but we are already running out of storage space. If we accept a piece, we have to keep it in perpetuity and that can become a hassle. Sometimes, though, we can fall back on our de-accessional events and policies."

"Next, there are loans. Works are often lent to us short-term for specific exhibitions, mounted along with WAM's own pieces. That way we can exhibit and rotate some of the works in our storerooms. Lastly you get long-term loans, which we don't accept very often, unless they are lodged in perpetuity. If a donor dies, the heirs sometimes get involved and claim the work back and that becomes a giant headache, but long-term loans can be good for the museum as they grow the collection and increase its status. The lender gets free storage and added provenance, especially if it's pictured in an exhibition catalogue, which increases the value. Sometimes the long-term lender wants the work on permanent display, which we can't agree to; it would skew our subsequent collecting policy away from that area in future. Naturally, nearly all benefactors want

their loans and donations to be acknowledged in the exhibition catalogues and on tabs placed next to their exhibits. That's normal museum protocol."

"So you must have an enormously valuable collection?"

"Yes, very. Everything is insured on the university's mega policy in case of theft or damage, but the biggest risks are run in transit. That's where things get damaged."

"What about artists' correspondence and documents? Would you accept them?"

"Oh, yes, but so would the Cullen archives and the Wits library. Historical Papers have their own practices and procedures."

"I've just been over at the Cullen and I remembered an occasion many years ago when Bev and I were invited to view the university's treasures there. Your mum and dad hosted it and it was unusual because we wore smart clothes – a suit and tie, I think – on a Saturday. The highlight of the display was the Taung Child skull, but there were many other old objects, artefacts, documents and the like. Did you go along too and can you remember what the event was?"

"No, I don't remember it, but it could have been an open day or other event to drum up awareness of the collections in the public mind, or to promote the university. But are you sure it was the real Taung skull?"

"It must have been. Why do you ask? Are there fakes about?"

Julia smiled. "No, not that, but these days the skull is kept in a bomb-proof safe, up at medical school, under tight security. They had a replica made and when the skull has to be moved around the city, they have an escort of guards and curators going along, making a bit of a show of things, but it's actually not the original skull, it's the replica. They sneak the original out of the back door and drive it off in a small Toyota, or something like that."[145]

"That's fantastic! Why the subterfuge? Is it really so valuable?"

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[145] See (Tobias, 2005). p234. "It is very exceptional and unusual for original fossil hominid treasures to be put on display. These specimens are not merely rare, but unique. Instead, beautiful casts, accurate as to size, shape, detail and colour, are available to view in museums, university departments and institutes. … A specimen such as the Taung child skull, for example, is irreplaceable. Historically, it provide the world's first striking evidence that the early hominids had evolved in Africa and what manner of creatures our early ancestors were." (p228.) "The workshop in the Wits Anatomy Department made up a strong, but lightweight 'carrycot' for the Taung baby and its relatives. In crossing the Atlantic from the west African coast to John F. Kennedy Airport, we had one of the most turbulent flights I can recall. My anxiety over the 'child's' state of health allowed me very little sleep. At JFK, I was met by security guards (the American Museum had left no stone unturned), taken through the formalities ahead of the other passengers and into a 'stretch' limousine with darkened windows. On the back seat sat the Taung skull's carrycot … with outriders escorting us. We were rushed through the streets of the awakening city to the American Museum's side-entrance. Again with armed guards covering our arrival, we were taken into a strong-room where I unpacked the carrycot to check that there had been no loss or damage in transit."

"It's priceless, but it's not that. They're not scared about theft so much, more that a crazy right-wing Christian or other fundamentalist will seize and destroy it. Some people hate any evidence of evolutionary theory and see it as their divine duty to destroy the idol. They think they're on a mission from God."

"By the way, I've been working with Joa. We've got something up our sleeve. You must come to our little event later this year."

30 You and I (8) – In and out of the case

- Look here, we can't have undigested legal argument in the work. There's an absence of nuance and a lack of feeling.
- I find the legal analysis interesting.
- Can't you see, the law is only interesting up to a point? What we're missing is a broader issue. We need greater characterisation regarding Clark. In your draft papers, we never get his emotional response to facts that pop up, or to other characters. And does he ever doubt what he discovers? It would be more of a novel if he had some of his own flaws.
- He has many flaws, but you're asking a complicated thing. You're asking for more selective dealing with the legal material.
- Exactly, I want to see the characters. Less law, man. The reader is not seeing the narrator seeing. And instead of an obsessive tabulation of ownership issues, we want to see Clark ruminating on his friendship with the Niemands as he goes through their self-accounts. The information is presented as a lawyer would, but we want to observe Clark assessing each letter and going to work. And the reader will want to know about the Niemands as people, to feel what they are, to care about whether they win or not. And then there's the interesting question about the document as an asset.
- Ah, the Niemands' copy is a contemporaneous artefact, not original, but authentic nevertheless - an authentic replica. It has provenance in the way that an artist's numbered etchings do – but this one has more value than the others in the series because the famous pathologist was in fear and gave that particular copy to his secretary to evade the security police.
- Sure, I get it. That's what gives it human interest and economic value. If it was just another spare copy lying on a shelf for 37 years, it would have no value. But think over what I've said and we can come back to it. In the meantime, I thought I would show you another report I came across. It should be significant for the case: President Kennedy's own autopsy report at auction and bought by Fergie himself:

  JFK autopsy is Fergie's joy

  Soccer supremo Sir Alex Ferguson told yesterday of his most treasured memento – the autopsy report on John Kennedy.

> *The Manchester United manager made it clear the bizarre souvenir was his pride and joy – taking precedence even over the countless footie trophies he has won.*
>
> *Fergie, 63, outbid hundreds of auction rivals to land the report, compiled after US president JFK was assassinated in Dallas in 1963. …*[146]

- It still had to be the owner who sent it to auction.
- Anyways, the narrator won't get away without asking some hard questions of the Niemands. You can't just leave their motives unexplained. You are very hard on the Bikos, but seem quite satisfied with the Niemands' conduct.
- In our adversarial system, litigation is all-out conflict and the lawyer doesn't have to help his opponents. The affidavits are not journalism, nor are they fiction.

[146] *The Sun*. London. 14 February 2015. (The Sun, 2015)

31 From the interior

Mathias shrugged. After all, a criminal lawyer is not concerned with the facts. He is concerned with probabilities. It is the novelist who is concerned with the facts, whose job it is to say what a particular man did do on a particular occasion: the lawyer does not, cannot be expected to go further than to show what the ordinary man would be most likely to do under presumed circumstances.

Mathias, as he connected these paradoxes, smiled to himself a little grimly. It would never do to give utterance to them.

- Richard Hughes[147]

On 19th February, Clark drove over to Unisa to look at the Biko files in their library archives. On the side of the hill, the brutalist university buildings were massive and imposing, projecting knowledge, skill and power across the valley. It was sweltering hot in Pretoria, two degrees warmer than Joburg, as always. This time the archive was a sepulchre in the sky and he had to take a lift up many levels to reach one they described as "Ground." The enormous atrium rose still higher, articulating many levels of books and records.

He remembered his work as a freelance editor of study guides and textbooks when he came out of the army. He had needed some extra cash and had written their exam and submitted samples of his text editing before he was appointed to the university's panel. The work was fairly easy, but in those days before the internet he had to drive his marked proofs all the way over to Pretoria.

He went up to the archive section and requested the Biko files. This time he was given a fat roll of film and directed to a microfiche reading machine. As he fitted the roll onto its spindle, it occurred to Clark that the images contained were better protected against tampering by the reader than the stapled papers in the Cullen library, but here you had to rely entirely on the integrity of the librarian - the totalitarian of texts - who had transposed the original documents into the microfiche medium. He started to scroll

[147] Richard Hughes. (2002) *A High Wind in Jamaica*. London. Vintage. (Hughes, 2002)

his way through the inquest record, simply pressing a button to make printed paper copies as he went along. Curiously, the first page of the inquest transcript was marked "Adv. G. Bizos" in handscript.

On the first day of the inquest, 14th November 1977, Advocate Klaus von Lieres und Wilkau, evidence leader for the State, handed the original Steve Biko Autopsy Report up to the presiding magistrate, Mr Marthinus Prins, in the Old Synagogue building in Pretoria.

It was confirmed; so simple. The Steve Biko autopsy report had gone into the inquest record, marked Exhibit A. The accompanying photographs were Exhibit B. From that moment on it was in the public domain, a document of public record. Mr Kentridge, appearing for the Biko family, commended the state pathologist, Professor JD Loubser, for his autopsy report and stated that the Biko family's legal team had every confidence in it. It was unusual in the drama; a definitive text, a document on which everyone agreed.

He looked down at the microfiche screen again. Some of the classic lines of Kentridge's cross-examination were transcribed, just as they had been reported all those years ago in *Time* magazine. From that day, Dr Gluckman would have had no further fear that the security police might yet break into his rooms and steal his copies of the autopsy report.

No, the pertinent period had to be between the date of the post mortem examination, 13th September, and this cut-off date, 14th November 1977, a period of about ten weeks. But the police would have had copies of the report in Afrikaans within a day or two of it being finalised. They must have been impatient to see what it said, so they could cook their evidence, and the evidence leader would have distributed copies to all parties' lawyers as soon as he could.

What do you think the police could then have done about the report? Even allowing for their reputation for brutality and malice, how would it still have helped them to steal Gluckman's copies, or to detain him?

There were well over twenty lawyers, medical experts and others who took part in the inquest and who would have been given a copy of the report. Surely, there were too many illustrious people who had the unanimous report for the police to try to eradicate it?

He looked up and out of a tinted lateral window, onto the Fountains valley and the traffic passing below. It took him back to another visit to Unisa, many years before.

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It's interesting and anomalous to see William Kentridge addressing the intelligentsia at the very heart of oppression and repression, Pretoria. I've been following his work in recent years, from the time he burst onto the Johannesburg art scene. At nineteen and at Wits, I was captivated by one of his first exhibitions of etchings at the Market Gallery in Newtown, a series of pit scenes with protagonists confined below while murky observers huddled around the perimeter above. In his address today he is sketching an interesting world view and one that I and many people in Johannesburg share. He conjures a scene, looking north over the suburbs of Joburg from his boyhood home in Houghton Drive. Even though the Voortrekker Monument is just visible on the horizon from his coin of vantage, he doesn't see it. Instead, beyond the northern outskirts of Johannesburg, his next great landmarks are Big Ben, Buckingham Palace and the Tower of London – and then the rest of Europe. Only further north does Pretoria figure in his mind – it might as well be in the Arctic. Even further, at the *ultima thule*, lie the Limpopo, the Zambezi and the rest of Africa.

I like the cartography of that image. Pretoria beyond the pale; it really is another country.

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Looking back at the screen, it seemed to Clark that Gluckman was somewhat paranoid about the fate of the report, but he well remembered how even uninvolved observers were terrified of what the security police might do in any given case. Was Gluckman simply being prudent, or was he showing a touch of grandiloquence towards his secretary? He had made a bit of a show about writing to her on the letterheads of exotic hotels and universities. He could bring a bit of dash to an occasion. Did he like creating a feeling of intrigue and importance in handing the autopsy report to Mrs Niemand?

On the other hand, he had shown modesty about being elected to the head of MASA and having to "wear a gong" at their events. His letters were devoid of exaggeration and affectation. No, he would give him the benefit of the doubt; he had been in fear. The other attorneys, advocates and witnesses might not have been, but Gluckman had been.

Unisa was known for its art collection, libraries and archives and certainly, that library looked better resourced and run than Wits or the public libraries in Johannesburg. Clark felt very loyal to Wits, but he had to say he didn't think the Wits archives were very secure.

One might have thought that an artist like William Kentridge would place his archive and all his papers in a local collection, but he had already donated his film, video and digital works to the George Eastman Museum in Rochester, New York. The University of Texas at Austin housed the archives of Olive Schreiner, Alan Paton, Herman Charles Bosman, Roy Campbell and J.M. Coetzee. It seemed that world renowned people donated their works to world renowned archives, where geographical boundaries were eliminated.

32 Johannesburg Public Library (2)

George Bizos's statement that the Steve Biko report had been published in the *Rand Daily Mail* in 1977 puzzled Clark. He didn't remember seeing the autopsy report in the newspaper's pages, so a bit more digging was called for. Besides, he could not resist the call of the library, even if it meant leaving his work.

After attending a meeting in the old city, he passed by the public library once again. Through the door, into the foyer of the library – noting that the escalators and lifts were still out of action – and down to the basement. He knew what he wanted, scribbled the dates of the *Rand Daily Mail* on a scrap of paper and handed it to the middle-aged woman in the blue dust coat, now working on her own.

Being back in the reading room reminded Clark of Jackie Quin and Leon Meyer and that awful photograph. He could ask the librarian to bring up the *Sunday Times* from December 1985 too, but instead he pulled out his iPhone and googled it.

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I'll see if I can find a link to the incident, something that is wiser with hindsight. Here we are, the Archival Platform link looks like a good place to start:

> *As all archivists know, every record has a life. It's created, used, filed and then appraised to determine whether it should be destroyed or consigned to the archive. The life of this particular picture took a couple of unexpected turns as it made its way in the world. It didn't, like others published in the same edition of the newspaper slip quietly into obscurity, to lie dormant in the archive. It left its mark on the family and on the photographer and it took on another life, inspiring a novel and being implicated in some way or another in a bombing. …*
>
> *After shooting the photograph Samson went to a hotel in Maseru, and wired the image directly to AFP in Paris. … It was picked up almost immediately by the Sunday Times and published with the lead story headlined in the newspaper two days after the murders.*
>
> *Some of those who saw this photograph must have been enraged, seeing it as a flagrantly disrespectful invasion of the rights of the victims and their*

> *families to privacy and dignity at a time when they were at their most vulnerable. There must surely have been heated debate about this issue in the newsroom. When does the right to know and to tell override the right to privacy?*[148]

A question that Clark and the Bikos were grappling with.

> *Questions must have been asked about what motivated the Sunday Times to publish this particular photograph. Was it because of the human-interest angle – a mixed-race couple at a time when marriages across the colour bar were forbidden and a baby that had survived a bloody massacre? Did the publication of the photograph imply tacit support for the ruling party's "total onslaught" or was the newspaper trying to drive home another message: that the struggle for liberation transcended the barriers of class, colour, and creed. Was the Sunday Times trying to bring home the horror of atrocities committed by the apartheid regime believing that it was in the public interest to override private sensibilities?*
>
> *The photograph enters the world next in 1989, when Thoughts in a Makeshift Mortuary, a novel by Jenny Hobbs is published. Like Zondo, Hobbs recalls seeing the photograph in the Sunday Times saying, "It was a Sunday morning just before Christmas. We were on holiday and there was this awful photograph, the worst I've ever seen, of this young couple who had been shot by cross-border terrorists." …*[149]

Clark thanked Hobbs; for once, the culprits were properly described for what they were. He remembered he had kept the cuttings from that paper, but hadn't looked at them in over thirty years.

> *The novel is dedicated to "Jackie, and to the many young South African women like her who follow their convictions and their hearts through the barricades that so artificially divide us." Although Hobbs has been diligent in asserting that her narrative is fictional and the characters "imagined, not based on the people involved," Jacqui's family are uncomfortable with it and*

[148] Duggan, Jo-Anne. http://www.archivalplatform.org/blog/entry/jacqui_quin_and_leon (7th August 2014.) (Duggan, 2014)
[149] Ibid.

> *her mother has chosen not to read the novel. She and other family members feel bitter that the author is capitalising on their pain and appropriated their tragedy for her own purposes. … Quin's mother, in her testimony to the TRC, asked for a memorial to ensure that Jacqui and Leon's story and the reasons for their deaths are remembered. Hobbs' novel may bring this to mind but can a work of fiction ever be a fitting memorial?*[150]

Somehow, he still couldn't get to grips with that incident, the whole story. It emerged at the TRC hearings that Eugene de Kock had led his Vlakplaas unit over the Caledon River and into Lesotho to commit the murders.

What was taking them so long with the papers?

———

After another five minutes, Clark heard the old contraption clanking its way up from the second basement and into the reading room, carrying the large green volumes in a steel basket. His memory was still fairly fresh and he quickly found the newspapers he wanted. Taking his time to survey and turn every page from 12th September to 2nd December 1977, he could find no copy of Steve Biko's autopsy report, whether in English or Afrikaans.

Clark accepted the honesty of Bizos's intentions, but what did this say about the reliability of his evidence, delivered through his books?

The title of Mr Bizos's book echoed Mrs Ntsiki Biko's question to him at the end of the inquest. There was a convention verging on a rule at the bar that advocates should never testify in court cases because of the danger that they might be found to be unreliable, or worse still, dishonest witnesses. Short of getting Mr Bizos to make an affidavit, the texts in his books would be useful in defending the Niemands.

———

You can imagine how surprised Clark was to see Harrison walking up the steps from the second basement. It was all too much of a coincidence; was he being followed about? What was this odd bird of passage up to?

[150] Ibid.

"Eh, hello Clark," Harrison called, sounding chipper, if a little out of breath from the climb. "Fancy you being here too."

Yes, just fancy, Clark thought. This fellow was cropping up unexpectedly a great deal these days. What was his game?

"You see, I needed to find old newspapers from the turn of the century – the proper century … 1900, not 2000, to verify some notions I have had. I scarcely know what I'm looking for and it was too difficult passing messages down through that hole in the floor, so the kind lady let me go down into the second basement to get to grips with it all in person. There's a strange figure down there, moving around in the basements – quite helpful, but he doesn't say much. He did say he's the keel under the craft, the steady hand at the tiller. He doesn't feel the need to chip in every time any of us pipe up – a lot of what we say is silly and trite, or so he says - but he steers the undertaking and keeps its heading. I was rather pleased to meet him. I think we have a good deal in common. He was very cooperative, I can tell you and he even made me some of those photo-ma-thingies. Look here, a report in the *Guardian* from 1896 by an explorer recently returned to the Transvaal from Southern Rhodesia …, erm … Zimbabwe today, I hear you call it."

Clark took the photocopy and read the article written by a visitor to the Transvaal in 1896. Could the author be John Harrison Clark III? Harrison had scored a coup to dig it out and he kicked himself for neglecting to follow up there himself, but was it merely coincidence that they were both researching the same subject, or were they linked to each other by some prior relationship?

Clark looked up at the frosted glass windows and heard the buzz of a motor bike passing in the street only five metres away. When was the first time he'd been down in this basement? In 1986, maybe twenty nine years to the day, certainly also in sweltering heat and on his return from a beach holiday and …

———

It's lunch hour and I need to be quick. I ask the prim blonde librarian in a blue dust coat for the *Sunday Times*, 21st December 1985. It's quite a recent edition, so she has it on the shelves behind the counter. No need for that sadistic looking contraption that reaches down into the earth.

I've read the article already, of course. Few would have missed the *Sunday Times* only a few days before Christmas? A raid in Lesotho by unknown figures on a birthday party celebrated by ANC members in exile. Late at night, armed men appeared at a house on

the edge of Maseru and gunned down the last guests. They weren't satisfied with that, and still barked out, "Where is Leon?"

Leon and Jackie had left the party a little earlier and gone to their own house a short distance away. An ANC member led the assassins to their house. The men barged in, shots were heard and a baby's crying. Footsteps retreated.

The photograph of Jackie and her husband is sickening. What sort of man could take it? What sort of journalist would publish it? Aren't there journalistic norms against this? Eyes half closed in an intimate moment of wakening, Jackie lies on a cement floor. Leon, or the ANC's "Joe", lies next to her. Blood marks them and seeps onto the floor. Heroes gunned down, like prey, or vermin.

Was I any better, tacking Che Guevara's morgue photograph to a door while I was a student? A murderer to some, an iconoclast and martyr to others, he was either a liberation figure or just another image for a kitsch Western t-shirt. I can't imagine anyone putting up Jacky and Leon's morgue photograph at home.

I seethe with anger at the photographer and the editor. This image is horrible, a violation of Jackie and Leon, of her baby daughter, of the whole family. I will write to the editor, often said to be a BOSS agent, and ... somehow tell him how disgusting he is, how bad at his trade, how insulting to us all and to decency. It's nauseating. The tone is sensationalist, but also smug: This is what happens when white girls consort with terrorists.

But it's too much; I cannot find measured words to attack the newspaper and defend the cause, the family. Defeated by the text and the image, I retreat back up the dim stairs, through the iron doors and into the blinding sun and the lunch time crowds.

33 You and I (9) – Property and liberty

- Granted, there will be some risk of Clark skipping over Busango's file. He could flick past it. You might think that Ahmed Timol's file would be a dead cert, but that's all the way down at "T" – somewhere around about Box 22, or so.
- You mean he might get tired of the exercise long before that?
- Yes. Remember, this is not a democracy, I'm the writer. As the lawyer, your job is to get a grip on things. The case, that is.
- Leaving aside the files and what not, Clark will write up the answering affidavit.
- If you could go down and put the necessary things in his way, we can give the story a little nudge. It could help the case too. But keep him away from too many more libraries and archives. Otherwise, it'll be down and around once more and who knows where he'll pop up next time.
- As it is, ownership of things is not what it was, nor is dignity. It's all *ubuntu* in the future. The Chief Justice has said so.
- *Ubuntu*? He has?
- Yes, the law report is just out: *City of Tshwane Metropolitan Municipality v. Afriforum*.[151] The CJ said we all have to embrace the African philosophy of *ubuntu*.
- I'm really not used to being told what philosophy I should embrace. We had enough of that before.

[151] *City of Tshwane Metropolitan Municipality v. Afriforum and Another.* [2016] ZACC 19. (City of Tshwane Metropolitan Municipality v. Afriforum and Another, 2016)

34 William Cullen Library (2) – Binding man

A book is either autobiography or a novel. If it's autobiography you evoke the past, you try as scrupulously as possible to stick to your recollections; it's a matter of extraordinary importance that you write everything down exactly the way it happened, as it's usually put: that you don't varnish the facts one little bit. A good autobiography is like a document: a mirror of the age on which people can "depend." In a novel, by contrast, it's not the facts that matter, but precisely what you add to the facts.

- Imre Kertész[152]

Clark had explained to Ms Mulholland that he did not want to read any of Dr Gluckman's autopsy reports, but only to see how they were bound, to compare their physical states to that of his clients' document. The Bikos were laying emphasis on the feature that the Niemands' document had been bound in original covers. Ms Mulholland agreed to the inspection.

Returning to the William Cullen Library – the student activists had ramped up their protests and were confronted by riot police on the piazza – Clark wanted both to inspect Dr Gluckman's other papers and to look at the *Luangwa* volume. Now that he was a postgraduate student, it was much easier to come and go on the campus by showing his student card to gain access to libraries and collections.

In the Historical Papers room, he greeted Rosemary Mulholland, who was sitting at her desk in the corner and said hello to Shibu cautiously. As you can imagine, he thought it better not to mention Shibu's activities in the basement. The young librarian nodded in recognition and fetched a trolley stacked high with document boxes. Clark unloaded a few boxes onto his table, impressed with how busy the staff had been on his account. His idea was to look at the bindings on each of Gluckman's documents, to see if they were bound in so-called "original paper covers."

[152] "Imre Kertész Speaks to Himself" in *The New Yorker*. New York. Condé Nast. 2nd May 2013 (Kertesz, 2013)

He was enjoying his role as document detective and relished time out of the office, whatever the cost. With Mulholland keeping an eye on him, Clark started to flick through the many autopsy reports penned by Dr Gluckman over a long career. Some of the names were familiar, famous even: Aggett, Berange, Biko (indeed empty) … the list went on.

Skimming over the stapled autopsy report of one Busango, Clark happened to see that it contained a letter to Dr Gluckman from his old law firm. That was an interesting coincidence, so he paused to skim the page and caught his breath; he himself had penned the letter to Gluckman in January 1986, which he happened to remember was the same month he had been to the public library to reread the *Sunday Times* article about the deaths of Jackie Quin and Leon Meyer. He could not remember writing to Gluckman, but the case started to come back to him; a sad matter of patient death under anaesthetic in Baragwanath hospital. Time seemed to be melting as Clark read and remembered the case of Dr Rieux, the young French surgeon whose patient died on the operating table. It was only natural that Ms Busango's file would be in the second of Dr Gluckman's alphabetically arranged boxes, yet some higher order of coincidence seemed to be at play. Who knew what more he would dig up if he could keep going through all twenty-five boxes, he might find himself …

———

Up at the new Wits medical school on the Parktown ridge, sitting in the waiting room with Dennis Sapire, a rising young counsel, and poor Dr Rieux, I'm starting to worry about the doctor's chances. Professor Karp, professor of pharmacology at Wits is just about our last hope. So many people already interviewed and nobody can tell us why Ms Busango died on the operating table. Dr Jonathan Gluckman has gone through all the hospital records, but he hasn't been able to figure it out, nor has Professor Van Dongen, professor of anaesthesiology at Wits.

It's starting to look quite bad for Rieux. I like him. He's about thirty-two, earnest, straight up and down and wanting to do well here. It's nice to meet a doctor immigrating to South Africa, rather than one emigrating to Australia. For some reason to do with being on the job for only a few days, Rieux's registration with the SA Medical and Dental Council hadn't been confirmed and he didn't have their compulsory insurance. That's why he's not being represented by the usual professional indemnity insurance law firm in Pretoria. The case is quite a break for me, but if he goes down on culpable homicide people will say I was too junior to put on such a case.

Rieux had barely started work at Baragwanath Hospital when this happened. Only minutes into the operation, the patient went into shock and her heart rate plummeted. The surgeon stopped his work and left her to Dr Rieux to stabilise. It was all action stations with an oxygen mask to the face and heart massage while Rieux prepared a shot of lignocaine and gave it to her. That's the drug that dentist's give you in the chair; nothing too hectic, you would have thought. It didn't do the trick, though. Far from it. The patient slumped further, her pulse vanished and three minutes later she was dead.

That's how we come to be waiting here. The doctor has been racking his brains ever since, wondering what went wrong. He's taking a lot of strain on this, suspended from his job, facing an inquest next week and then possible disciplinary action.

"Mr Clark?" A middle-aged man of middle height is standing in the door, wearing a white coat with his hands in his pockets.

"Yes, Professor Karp? How do you do? This is Dennis Sapire, our advocate and this is Dr Rieux."

The Professor shakes hands silently, turns and leads us down a shiny corridor to his office, overlooking the remains of old Parktown and across to Hillbrow. I used to ride my bike down there when I was in prep school, all along the ridge, before they tore the old mansions down to build this horror hospital.

Karp – terse, blunt and formal – motions us to sit on hard institutional chairs, facing him across his desk. Behind him is the Hillbrow tower, beaming its signals to the platteland.

Dennis: "Professor, thank you for seeing us. We have been on a long trail of investigation and have not managed to learn what killed Dr Rieux's patient. Not even Dr Gluckman, nor Professor Van Dongen have been able to diagnose the cause of death. You've read the file – is there any light you can shed on her death?"

Karp: "I'm disappointed to hear that my esteemed colleagues were none the wiser about this case. Doctor, you made one fatal mistake that killed your patient on the spot."

I gulp. This guy is a bit rich, but has he really put his finger on the cause of death? It doesn't sound good for my client.

Rieux isn't looking too good. His face is tense and I can see sweat rising on his brow.

"Yes, the one drug you should not have administered was lignocaine, or any other drug from that group. It belongs to the same group as the anaesthetic, so, instead of counteracting it, it enhanced the decline the patient was already in, resulting in cardiac arrest. That shot killed her stone dead. End of story."

I'll have to ask him to repeat that, but does he have to be so blunt? My client is holding his hand to his forehead.

"Of course, of course. I should have thought of that. Everything happened so fast."

Dennis is scribbling, while I'm getting the drift that we're in deep trouble now, thanks to Dr Dangerspeak here. Why do we always go out there and try to find the truth? Just let it be.

Dennis pauses and asks Karp to elaborate. While Karp stands up and walks around to the wall of books behind us, my attention is drawn to some very beautiful hand coloured illustrations – etchings by the look of them and originals too, evidently – exploded views of the stomach, liver and kidneys, I'd say, with tables and a key in the corner. Karp pulls out just about the biggest book in his library: Martindale on Pharmacology. He carries it back past us and opens it on the desk in front of him.

"The drug has marked vasodilator and antiarrhythmic properties. There are two other recorded cases like this in the literature. In a certain type of patient with an allergy to this class of anaesthetic, administration of lignocaine will enhance rather than counter the initial adverse reaction and death will follow quickly."

Karp points to a tiny footnote at the bottom of the page. "Here you are."

Dennis is starting to look a little brighter. "Two cases in the literature, you say?"

"Yes. Martindale is where these things are written up."

"But if there are only two recorded cases in history, it's not something that a doctor or anaesthetist of Dr Rieux's education and experience would know? Or could reasonably be expected to know?"

"It is very rare, I agree with you there, but I would have hoped that practitioners and experts would know this. Strictly speaking they should teach it in the medical schools."

"But it's not something that an anaesthetics intern would be told to study, or be examined on."

"They could well, but I suppose it would only form a very small part of a very large syllabus."

Okay, I can see where Dennis is going with this. It's going to be all right – the lawyers are back in control. And I don't think we'll be calling Professor Karp to testify at the inquest.

———

"I'm afraid I must ask you not to look in the files. We'll get into trouble if you do."

Clark started and looked across the table to Mulholland's desk. "I'm sorry, what?"

"The contents are confidential – you can't look at them without permission from the family."

"Oh, yes. Of course. Let me explain …. If I could just show you …," he got up and took the folder over to her desk. "It's my own document, you see. That's me there as the reference on the letterhead. I'd forgotten – I wrote the letter to Dr Gluckman when I was an attorney in that firm. The doctor here, Dr Rieux … he was my client."

"But still, apart from your letter, it's confidential."

Clark looked at Shibu, who looked alarmed and turned away.

"Yes, all right. I don't need to look at the file now. I'll write to you and ask for permission another time."

"That would be best."

Clark returned to his seat, amazed at the chance of stepping back in time like that. On he went through Gluckman's folder: Campos R, Cele J, Cele T, Chipeya, Chizonono A, … Timol A.

Timol would certainly be relevant, but it would have to wait for another day.

It took a while to work through 25 boxes of folders and the work was mundane, but Clark did observe that none of Dr Gluckman's many other documents, of which Mrs Niemand must have typed a good number, was bound into a white, red-ruled cover like the Niemands' document was. This would give Garth and Tessa more reason to believe that it was their mother who enclosed their document in the so-called "original covers", as she liked to keep her belongings neat and tidy.

When he was finished with Gluckman's papers Clark went to the glass-fronted cabinet to look for *Luangwa*. The cabinet was locked and Mulholland had stepped out of the room. Peering through the glass, he could not see the folder he wanted. Going over to the index card catalogue, he looked up John Harrison Clark and *Luangwa* to be sure he had looked in the right place in the cabinet, but found no cards for it by author or title. Feeling stumped, he returned to the cabinet and spotted another book where *Luangwa* had been on his previous visit to the library. By squinting through the glass and raising his hands to block out reflected light, he made out the title on the spine: *Zambezia: The Life of an Exile amongst the Luangwa* by a Rev. R.S. Hamilton. That struck him as extraordinary. Could it also be about John Harrison Clark? To pass the time until Ms Mulholland returned, he went back to the catalogue and looked up *Zambezia*. He found no trace of it in the catalogue, neither by author nor title.

By the time Mulholland returned, he was feeling quite irritated and raised the absence of *Luangwa* with her. "The last time I was here, I looked at it, a buff folder with a loosely bound typescript – of an earlier manuscript, I would say. We discussed it and you said you'd keep it ready for me. It was typed only on one side of each foolscap sheet, you know

how those old typewriters made type look. Here, I made a note at the time: *Luangwa: The Journal of a Pioneer on the Zambezi."*

Ms Mulholland shook her head and looked over to the cabinet. "I remember showing you the book …, or a typescript, more accurately. Yes, I got it out of the cabinet, but no …, if it's not in the catalogue, that would normally indicate that we've never had it, it doesn't exist. …." She was flustered and at a loss for words.

"How can this be, Miss Mulholland? This new *Zambezia* book is locked in your cabinet, but it's not in the catalogue, while the *Luangwa* folder was in the cabinet and its index card was in the catalogue, but now both the index card and folder have vanished.

"I can't explain it, other than to say we have had a lot of upheaval, sending a lot of books down to the stacks to make way for our new acquisitions. I'll do my best to get to the bottom of it and let you know what I find out."

"Well, can I at least look at *Zambezia*, now that I'm here?"

Mulholland moved to fetch *Zambezia* for Clark, who surveyed his surroundings and, as before, got the feeling that he was being watched. He looked up to the gallery and saw Harrison – for once without his fez – standing up and gathering his belongings while he sucked on his unlit pipe. Harrison paused to stare at him with his inquisitive blue eyes. Clark remembered Harrison had worked on *Luangwa*. Had he listened in on his interaction with Mulholland? Harrison donned his fez, nodded at Clark and made for the staircase.

Zambezia was not what he had hoped it might be, merely a superficial diversion. Everything he had unearthed over several years led him to believe that John Harrison Clark's account was his memoir of his arrival at Feira in about 1895 and his progress after that. He had had his run-in with Rhodes, culminating in his expulsion from Feira and move north to Algoa and then Broken Hill. This book was the counterbook, the contra to everything in *Luangwa,* not even a valuable opposite perspective, but a weak attack on John Harrison Clark, possibly sponsored by Rhodes himself, or Lord Milner, or the British South Africa Company.

Feeling frustrated, Clark returned the book to Ms Mulholland after half an hour and made his way out of the reading room. It was time to find Shibu.

35 Trapbook

As Clark trotted down the back stairs he could hear the carriage return bell ringing and keys thudding on Harrison's ancient Remington typewriter in the room opposite what he now regarded as "their", or BARK's storeroom. Judging by the sound of things, Harrison was making slow progress typing up his notes – no doubt due to arthritis in his claw-like hands - banging on the keys in a laboured hunt-and-peck manner. Harrison preferred to work with the door open, so that he could see people coming and going and sometimes get up to collar a passer-by for advice about a reference, for a friendly chat or merely to touch them for some tobacco or snuff. He looked up as Clark approached, gave him a wave with his awkward hand and beckoned him in from the corridor. He was looking a little more spry than on Clark's previous visit, as though he had his tail up for some reason.

"Your little sweetheart is looking for you, Clark. She's across in your club room …, your usual rendezvous by now, I would say. Quite a brisk business you seem to have going. What will it be today?"

"Not at all, Harrison, really! Shibu is merely helping me find some research materials. I am indebted to her for taking time out for me and coming down from her post upstairs. Still, I see the staff have been kind to you, letting you feather this little nest, if birds can nest in basements, that is, … rusks, chocolate, soup powder, teapot and cup, no less."

"I'd be glad if you didn't mention my little cache of victuals to anyone," Harrison said, sweeping his supplies into a desk drawer and closing it, "but yes, they complained about the noise of my typing and kindly brought me down here. It's a pity I can no longer write, I always enjoyed the sight and feel of my pen floating along the page, leaving its shiny trace. But you'd be surprised by all the unexpected goings on in the basement, I don't mind telling you. I sometimes feel as though I'm reading a mystery novel down here. Oh, by the way, I found this book that is bound to fascinate you; Brelsford is the man. I took the liberty of making photographs - is that what they're called? – of the chapter in question."[153]

With that, Harrison passed Clark half a dozen sheets, which he took with some reluctance. The first page was headed "Chapter 3. Harrison Clark, King of Northern

[153] W.V. Brelsford. (1965) *Generation of Men: The European Pioneers of Northern Rhodesia.* Salisbury (Harare). Stuart Manning. (Brelsford, Generation of Men: The European Pioneers of Northern Rhodesia, 1965)

Rhodesia." No doubt, this would be interesting and would touch on his research. It was kind of the man to think of him, but Clark didn't want to become indebted to him in any way.

Murmuring his thanks, Clark caught a glimpse of one of those old wax stencils in the carriage of Harrison's typewriter. Now that was odd – he must be planning on distributing his notes quite widely, but why didn't he just use a personal computer and printer like anyone else? Perhaps he was too old and set in his ways to make the conversion.

Still, Harrison was not wrong that their storeroom was their frequent rendezvous point. Were they too obvious? They should guard against being conspicuous. He went into the BARK room and found Shibu looking agitated. She went to the end of the aisle where the green tab was sticking out of the document box. Something was up.

After taking a leather-trimmed, cloth-bound volume and a fat envelope out of the box, she then retired to a dark corner away from the window and opened the envelope.

"It's worse than we expected – getting really serious now. You heard that the Oliver Schreiner Law Library found gas canisters in their stacks over on West Campus yesterday?[154]

"Yes, I did. Who did it?"

"I don't know, the vandals were wearing masks, but it must have been either the Level Library gang or the Open Archive group. How long before they come across to the Cullen?" Shibu took a computer printout from the envelope. "Look here, Rhoda got this list from Professor Danziger. She's friendly with him."

"Who?"

"Professor Danziger. He's the head librarian. He's been worried that the student members on the acquisitions and disposals committee are getting more militant. They want to change the library policies.

"What are their demands?"

"They demand that white writers be removed from the syllabuses, from as far back as Plato, Aristotle, Berkeley, Descartes and Kant, up to Russell, Sartre and more. The only exceptions so far are Marx, Gramsci, Derrida and only a few of our local white writers: Roux, Wolpe, Turner, Bundy, Lodge and so on. They say the writers and theorists in the libraries must reflect our demographics, from Africa and Asia. It's all part of the campaign to decolonise the university. This is their hit list – the books they demand we

[154] http://ewn.co.za/2016/05/29/Security-beefed-up-at-Wits-following-discovery-of-gas-cylinders. 29 May 2016. (Security Beefed up at Wits Following Discovery of Gas Cylinders, 2016)

remove and destroy. They presented it to the committee yesterday with a demand that the books be gone by the end of the month."

"Or what?"

"Or there'll be big, big trouble, one way or another. They didn't specify, but we know they are building up anger wherever they go."

Clark took the list from her. There were about three hundred titles on the list. As far as he could see, most were renowned authors and titles from the canon, or rang a bell somewhere in his memory. Others concerned early exploration, flora and fauna, settlement, social anthropology and missionary work relating to sub-Saharan Africa.

"I wouldn't have credited them with the diligence to compile such a long list, but I suppose they just sorted them by searching under words like exploration, pioneer, tribal and missionary on the database and printed this out."

"Professor Danziger thinks there will be more. This is just the first list. Many of the titles could be replaced fairly easily, but it would be very expensive. On the other hand, a lot are very rare, almost unique to the Wits collections. Prof thinks they'll purge the Landau and Oppenheimer collections from the library altogether."

"That's so mad. Just crazy. What do you plan to do?"

"We are scared now. We can't carry the books around … you know about their spot checks on students, emptying our bags onto the ground, going through our belongings. We have to organise ourselves and outsmart them."

"Yes, you need a tightly organised cell. What's that book?"

"Rhoda was snooping in the discard room – you know her – and she stumbled on it. She thinks it could be the work you were asking about. The manuscript you were looking for – about the Luangwa."

Clark took the old accountant's ledger book, trimmed in leather on the spinet from her and opened the cover to reveal a long copperplate manuscript written in blue ink. A title appeared to have been written in at the top - *Luangwa: The Journal of a Pioneer on the Zambezi*. He caught his breath and reached out for a shelf to steady himself. Here it was, not the typescript but this time the manuscript he had sought far and wide, somehow kept in the university library and now apparently on its way out to the scrap heap. And not merely the typescript that he had seen upstairs, but the actual manuscript, supposedly a diary or memoir by John Harrison Clark III. The whole work was in longhand, but there were extensive notes in the margins in different inks, footnotes written in at the bottom of the page and superimpositions above sections that had been ruled through. Now he would be able to compare this handwriting with that in John Harrison Clark's letter to his wife Helen – also written in blue ink on ledger

paper. He remembered from Chirupula Stephenson's handwritten footnote that the memoirs were said to have been burned in the house fire.[155] How had the manuscript survived after all?

There was another strange feature about the manuscript: it hadn't been registered in the library catalogue – at least, not in the index card system. When Mulholland looked for *Luangwa* and John Harrison Clark in the catalogue that day, she only found the typescript, which was in the locked cabinet. So, who had taken the typescript and where had the manuscript been all this time?

"The title is on the list, even if no one ever looks at it. You must take it. If you don't, it will be lost for ever. It's unique, even more valuable than the typescript. Take it, or it could vanish from the record."

Clark looked back at the list and yes, there it was itemised. He supposed the title alone was offensive. He felt unsteady and needed to sit down. Taking a seat on the floor, he flipped through the pages, stopping here and there to make out some difficult handwriting. He couldn't yet say if it was in the same hand as the letter, but it was surely likely.

"We don't have much time. You have to help us, not just with advice. We … there is a plan to get the rarest and most valuable titles off the campus. Don't ask me how, it's on a need-to-know basis, you know how we have to work. But some of these books are too hot to handle. We've been doing a bit for the last two months, in anticipation, the most … some of the ones that are a priority … they've already gone. We've had help from Rhoda, Alfred at Collectors Treasury …"

"That's good, they'll never find anything there. Hiding in plain sight, right under their noses."

"Yes, and some of the collectibles bookshops. But that's not enough. We need to spread them more widely. You're an attorney, you can keep lots of books and documents at your office library, can't you, in trust? It's urgent now. Nobody can come in and search your library, you're privileged."

"That's not how it works. I've told you before, I can't participate in the commission of a crime and this looks like theft. We'd lose all privilege if I did." Clark was appalled. The manuscript could not have been of any real interest to anyone in the world except him. When would anyone last have requested it? Apart from that odd Zambian, in about 1935 or thereabouts. How did those gangsters even hear about it? He had engaged researchers to scour libraries and archives here, in Zambia and the UK for it without any luck. He'd

[155] (Stephenson, 1937) p192, n1.

written to distant relatives, studied old wills from the Master's offices …, you name it. But he couldn't just whisk it out of the library and make off with it. Were Shibu and Rhoda really removing titles from the library?

"Look, you mustn't worry, we have it under control. Danziger knows about it, pretty much. I think some of the volumes come from him via Rhoda and she moved them on to her friend Alfred at Collectors Treasury. Think of all those men who wrote these books so long ago, they expect it of us, don't they? At least take your manuscript. It's the right thing to do."

"An interesting choice of words, Shibu. I've explained it to you before – while I might sympathise with your goals, I cannot help you commit a theft."

"It's not a theft. We just want you to bury the books somewhere safe until things die down and we can go back to normal. That day will come. Can't you see? It's for future generations, to know about their past. They won't search you, in such a suit and car and all that, but if they find us out they'll just take the books and destroy them and then we'll get their violent 'discipline'. We aren't strong enough to stand up to them – we're only librarians."

Clark looked away from Shibu for what seemed an age, but then took the folder and quietly slipped it into his briefcase. When he looked up and towards the door, now slightly ajar, Clark saw Harrison looking in and eying him. Before he could say anything the old man turned on his heel and left.

36 Loving that guy, Hitler

I regard as kitsch any representation of the Holocaust
that is incapable of understanding or unwilling to understand
the organic connection between our own deformed mode of life
and the very possibility of the Holocaust.

- Imre Kertész[156]

As Clark left the library building, he picked up a free copy of the student newspaper, *Wits Vuvuzela.* You can only be shocked to read what it said:

> *Wits' SRC president, Pius Shabangu caused controversy this weekend after he posted a Facebook status regarding whites and the state of Israel: "I love Adolf Hitler". Following his Facebook comments, he told Wits Vuvuzela that he admired the German leader, who sent millions to death camps, for his "charisma" and "organisational skills".*
>
> *Pius Shabangu, Wits Student Representative Council (SRC) president, posted the statement "I love Adolf Hitler" in a comment thread below a graphic comparing modern Israel to Nazi Germany.*
>
> *Responding to a commenter who wrote "Hitler new [sic] they were up to no good", Shabangu replied "I love Adolf HITLER".*
>
> *When contacted about his comments on Hitler, Shabangu restated his admiration of the fascist leader of Nazi Germany.*

[156] https://www.washingtonpost.com/news/worldviews/wp/2016/03/31/imre-kertesz-nobel-prize-winning-novelist-and-holocaust-survivor-dies-at-86/?utm_term=.579e85d579bc (Washington Post, 2016) (31st March 2016). "As he said when criticizing Steven Spielberg's blockbuster 1993 film, *Schindler's List*, the point of Holocaust-related art was to emphasize that fundamental immediacy: 'I regard as kitsch any representation of the Holocaust that is incapable of understanding or unwilling to understand the organic connection between our own deformed mode of life and the very possibility of the Holocaust.' Auschwitz, in other words, is everywhere."

"What I love about Hitler is his charisma and his capabilities to organise people. We need more leaders of such calibre. I love Adolf Hitler," Shabangu told Wits Vuvuzela.

As the leader of Germany, Hitler is generally blamed for triggering World War II and sending over 6-million Jews to death camps as well as Roma, communists and homosexuals.

"I have researched about President Adolf Hitler. I have read books about President Adolf Hitler. I have watched documentaries about President Adolf Hitler," Shabangu told Wits Vuvuzela defending his knowledge of the former German dictator.

In the same comment thread, Shabangu wrote that every white person has "an element of Adolf Hitler".

"I have had numerous encounters with white chaps. From primary till today I live with white chaps … As I said, they are not Hitler but there is an element of him in all of them. I connected the dots," Shabangu said.

Shabangu further defended his remarks and suggested that his love of Hitler had "nothing to do with white people".

"I find it very absurd that people expect me to regard their enemies as my enemies," Shabangu said. "The same way I love Robert Mugabe, it has nothing to do with white people."

Shabangu told Wits Vuvuzela that "I will write what I like on my Facebook" and was not on the social media platform to "nurse Jewish people's feelings".

"Who told them they deserve special treatment? This is an academic space, we must debate issues not silence individuals," he said.

In the comment thread, Shabangu said his post had been reported to Facebook. Shabangu responded: "Shame nxaaaaa fok am not removing it…..truth hurts…face it murderers.[157]

I'm sure you are wondering just which books Shabangu had read about Hitler. He could have done with some advice from George Bizos: deny the content of the report, shut up and lie low for some time. Other stories would soon capture the public mind. On the other hand, today most news reporters got everything down on audio, if not video too, so there was less room for plausible denial. And it wasn't as if Shabangu had any

[157] *Wits Vuvuzela*. Johannesburg. 27th April 2015. (Wits Vuvuzela, 2015)

regrets or felt any shame; he soon followed up with another stab in retort to being dismissed as SRC president:

> *Shabangu said he'd been removed from his position only because Habib had given into pressure from Zionists.*
>
> *He said this decision showed Habib was weak.*
>
> *"It's proof to everyone that white supremacy is putting its boots on the neck of the black child."*[158]

[158] http://ewn.co.za/2015/05/05/Habib-cant-remove-me-because-hes-not-god. 5th May 2015. (Eyewitness News, 2015)

37 You and I (10) - Where there's a will

Property - ownership – transfer of – intention of transferor and transferee

Wills – liquidation and distribution account – estate inventory – omission of mention of item of small value therein – inference to be drawn as to ownership

- You will recall that Caine and Matthews obtained a copy of Mrs Niemand's last will and testament from the office of the Master of the High Court. It's a public document and the public have access to it and there's nothing you can do about it. Dr Gluckman's will and estate inventory might shed light on his intentions he gave the document to Mrs Niemand, so Clark got copies of Gluckman's estate papers from the Master's office. Strangely, they showed that Dr Gluckman died insolvent. That was a surprising fact, given the high life he led, or perhaps its natural result. He bequeathed specific movables to his sons Michael and Paul and to his daughter Mary, particularizing items to go to each.
- So, no mention of the Steve Biko autopsy report?
- None at all, but like Mrs Niemand he did leave the "… whole of the rest, residue and remainder of my estate of whatsoever nature and wheresoever situate … to my administrators upon trust ...." That's a general disposition, very much like Mrs Niemand's. Now, by applying the Bikos' logic to those similar facts, Dr Gluckman would not have thought he was the owner of the document. Most importantly, Gluckman didn't even mention his own copy of the autopsy report, what Clark calls the Gluckman document. As he sat there signing his will and codicils – in 1984, 1986, 1990 and 1993 – he must have had his own copy of the autopsy report and all the other files of a long career, the ones that would go to SAMS after his death[159] and then on to the William Cullen library. Nkosinathi said 25 boxes of his files first went to SAMS – from where the Gluckman document was stolen - and later to the Wits

[159] Nkosinathi Biko said that Dr Gluckman's files were sent to SAMS, South African Medical Services, the medical arm of the old order South African Defence Force (SADF), but that was most unlikely and it was more likely to have been the South African Institute of Medical Research (SAIMR), which did have offices in Braamfontein, unlike SAMS.

archives, but none of them, nor any of their contents was mentioned in his will. Sauce for the goose has to be sauce for the gander.

- All very interesting, but getting back to Clark, he's offered Thorold's £55 for *Chirupula's Tale*. He asked Dominic Bolton, who told him that an ordinary first edition would sell for about R500. This volume was the author's own annotated copy, so he felt it should go for R1 000. Clark was prepared to pay the price marked in the book. That's about R1 100. Anyway, have a look at this article, which I bring in furtherance of my quest to show you how auctions are handled in other jurisdictions. It touches on the issues of the Niemands' case.[160] There's a legal battle going on over Oskar Schindler's documents, including personal copies of the lists of the 1 200 Jews he saved from the Holocaust. You must remember the movie, *Schindler's List*. The case is about a fight over his estate and who owns documents that once belonged to important people. Mrs Rosenberg, is suing the Yad Vashem Holocaust Museum in Israel for a suitcase holding thousands of Schindler's documents. She says she owns the documents because she is the heir of Schindler's late wife Emilie. On the other hand, Yad Vashem says they never belonged to Emilie, but that Oskar Schindler to another person before he died.
- Hmm, isn't that a tacit acceptance by Yad Vashem that the papers could have been owned privately, that they were capable of ownership by Schindler's wife Emilie?
- It looks like it.

> *During World War II, Schindler, an ethnic German from then Czechoslovakia and a member of the Nazi party, persuaded German officers – through bribes and other means – to let him employ Jews at his factory, saving them from the death camps. ….*
>
> *After the war, Schindler emigrated with his wife to Argentina, but in 1968 returned to Germany alone and died there in 1974. She remained his legal heir. …*
>
> *In 2001, Emilie Schindler returned to Germany where she died, childless. In the last decade of her life, Emilie Schindler became close to Rosenberg, her biographer, and designated her as heir to her estate.*
>
> *Yad Vashem claims that Rosenberg is a "serial suer" who is seeking to exploit Schindler's memory for her personal gain. …*

[160] Baddiel, David. "Oskar Schindler's papers in legal battle" in *Financial Times*. London. 12th March 2015. (Baddiel, Oskar Schindler's Papers in Legal Battle, 2015)

Naor Yair Maman, who represents Ms Rosenberg, said "… I've no doubt that the issue of ownership is very clear. Even if you believe that from the historical-academic point of perspective, it would be preferable that the documents remain in Yad Vashem, you have no right, whatsoever, to claim title to someone else's property."

- If only Maman was giving the Bikos advice.

The museum says the disputed documents "belong in the public domain". Yad Vashem insists it is legally entitled to the documents and has not acted in an underhand manner, denying claims by Ms Rosenberg's legal team that it had "grabbed" the suitcase.

Yad Vashem … expressed opposition to "trading in Holocaust-era documents".

"We will hold our debate with Rosenberg in court to ensure these documents do not reach private hands …"

- Yad Vashem appear to be acknowledging that the Schindler papers were capable of private ownership, but deplore the thought.

38 Inspection 1

Rule 35(12) - Discovery, inspection and production of documents – notice to produce document or tape recording for inspection and to make a copy or transcription thereof.

Rule 35(12) – failure to comply with notice – party not to use such document or tape recording in such proceeding- proviso that other party may use such document or tape recording.

Biko the younger had made a point of saying that the Niemands' document was the only bound copy of the original autopsy report that he was aware of, which was to ignore the starker difference that the original report was in Afrikaans and signed. And what would the Bikos' incomplete copy of the autopsy report look like? Would it be in English or Afrikaans? In what way was it incomplete? Was it only for the missing photographs, or were there some other absent features?

Biko had not attached a copy of their autopsy report to his affidavit, but rule 35(12) of the Uniform Rules of Court provided that where any party referred to a document in his affidavit, he could be made to produce it for inspection by the enquiring party, who could then make a copy or transcription of it. As you might expect, Clark felt it would be a good idea to give them notice to produce their document for inspection.

On 27th February, Clark went by arrangement to the office of Caine & Matthews to inspect the Bikos' document. As he got to Sandton Central, the news came on the radio, headlining a story that the Taung Child skull had been stolen from the Hunterian Museum at the Wits medical school. He turned up the volume to listen to the full report, but details were scanty: the disappearance had been spotted that morning by the curator, who had immediately contacted the police. There were no leads on the theft, but the reaction by the public had been quick and harsh; this was the university museum's most prized fossil and its theft was simply unthinkable. Clark was appalled and somehow he felt that a part of himself had been lost. Wits should have taken more care.

The Caine and Matthews offices were in a new block in central Sandton, grey in wall coverings, tiles, carpeting and furnishings. Mouton began by stating that the Steve Biko Foundation had not sent him the Biko's actual copy of the autopsy report for inspection, but had scanned it at their offices and put it into a Dropbox link for him to download at

his office. Mouton had opened the link on his computer and printed off a copy of the document.

Mouton gave the copy to Clark. It resembled a photocopy. Clark dubbed this the Dropbox copy and complained that this was not in accordance with rule 35(12): he had expected – and still wanted – to inspect the artefact referred to in Biko's founding affidavit, not some scanned facsimile. At this, Mouton said he would have to take instructions from his client, whereupon the inspection session was adjourned until a date to be arranged.

Mouton wrote to Clark on 11th March, saying

> *(4) We have made a copy of the document available to you as requested in your Rule 35(12) notice and you have now requested sight of the actual document. We believe that this is another attempt to delay this matter but nevertheless have the actual document available for inspection at our offices. …*[161]

So, Clark was to blame for Mouton's failure to comply with the rules of court. How could a printout from the Dropbox copy be the actual artefact? Did it show the texture and precise colour of the pages, the different shades and colours of ink, the staple holes from earlier disassembly and photocopying, and the depth of impression made by any handwriting?

[161] AA, pp95-6.

39 Poo man

I'm sure you will find this gross. The university campuses were coming alive with student protests. At the University of Cape Town, students had been protesting for several weeks for the removal of a statue of Cecil John Rhodes. They had occupied the administration building and one student had harvested faeces and urine and thrown them over the statue.

> *Chumani Maxwele's decision was not an impulsive one. The sight of the statue of British imperialist Cecil John Rhodes had pained him for years as he went about life at the University of Cape Town (UCT). But even he never expected that throwing faeces at the statue would have had such enormous repercussions. However, he has no regrets.*
>
> *The "student spring" is long overdue, insists the 30-year-old, who was born in Mthatha in the Eastern Cape.*
>
> *"What's been happening here is that we're giving birth to new politics. I'm amazed by black and white students who have been here, occupying that building for eight days. It's special."*
>
> *Maxwele's reaction is not surprising. He's a follower of Steve Biko and Afro-Caribbean revolutionary Frantz Fanon, who believed in and advocated for change.*
>
> *"How do you decolonise Africa? Fanon made it clear decolonisation must happen through violence. I think it is highly unlikely South Africa can avoid this."*
>
> *What many South Africans like to consider our country's miraculous transition to democracy in 1994, Maxwele labels a failure.*
>
> *"We didn't experience violence then due to the failure of our political elite while negotiating," he says. …*
>
> *"It was on a Monday night and I went to Khayelitsha to steal the poo from the portable flush toilets. Seeing the statue every day pained me; it made me very angry. …*
>
> *"It is not just a statue, as many claim – Rhodes didn't want black people. Remember that, at some point, UCT also didn't want black people. …"*

> *"… This thing is about black people. It is about the history of black people; it is in front of you. It is a political blunder that this issue is even up for debate. In this country, we artificially dance around race and racism and don't address it," he says.*
>
> *Maxwele says students are pushing for change in the curriculum, culture, employment of black academics and the names of buildings.*
>
> *"There is Jameson Hall, Jan Smuts residence and others. We don't identify with them – they symbolise our pain and hurt. White people are so arrogant and don't want to acknowledge that black people have been suffocated.*
>
> *He called for students at the universities of Pretoria, Stellenbosch and the Free State to rise up and be counted. …"*[162]

You wouldn't like to shake hands with him, would you? I'd say it was a clear case of the end not justifying the means, but the means shaping the end.

[162] Sipho Masondo and Biénne Huisman. "Student Spring is Long Overdue" in *City Press*, Johannesburg. 29 March 2015. p9. (Huisman, 2015)

40 Chapter 1 Books

Clark had told Rhoda that Chapter 1 Books was keeping Macpherson's book about the British conquest of Zambia for him.[163] It wasn't an easy title to get hold of, so he'd go down there without delay. Chapter 1 Books was another second-hand and collectible bookshop Clark liked to visit, occupying a nondescript 1940's or 1950's line shop on the Norwood high street. It was always a pleasure to visit one of the city's many scattered shopping precincts with their inviting owner-operated shops. With Chapter 1 he never knew just what they might have in stock on the day. At least here you could enquire about a book on their website and get an immediate answer about availability and price. Unfortunately, they also practised dollar pricing, but Clark was usually able to negotiate a modest discount to compensate for the sliding rand.

He was returning from his top-to-toe medical examination - complete with CAT scan, x-rays, gastroscopy, colonoscopy and MRI scans for use in his master's project, but more of that later - and was passing nearby, so he headed to the shop in Norwood. He parked his car and made for Grant Avenue. As he turned the corner he noticed that the newspaper posters on the lamp posts still blared the story of the missing Taung Child skull; the police had not come up with any leads, but given the tight security and limited access to the museum, suspected it was an inside job.

Looking around, he had good memories of riding his bike on these roads after school with his KEPS friends. It was a lot quieter back then. Ahead of him he saw Harrison leaving the shop carrying a packet of books in his awkward hand and heading up the pavement towards him. Clark had no way of avoiding him. He wondered what the nutter was doing there in the first place. Frankly, Harrison was too often under foot and was becoming a bit of a nuisance.

"Ah, it's Clark. Good day," he said and put his hand out to shake.

Clark winced at the bony handshake and thought he discerned a slight change in attitude from Harrison, just a hint of cautious reserve. Had the man been insulted by Clark's refusal to put him up at home? At least he had cleaned up a little – he had trimmed his hair and moustache and seemed to have a new pair of full-length khaki trousers,

[163] Fergus Macpherson. (1981) *Anatomy of a Conquest: The British Occupation of Zambia*. Harlow. Longman. (Macpherson, 1981)

chinos actually, and a fresh white shirt, but the old fez remained on top. Was he trying to make some sort of comeback?

Harrison continued, "I have just been talking to my very lovely young lady friend in the bookshop. Would you believe, she is from my neck of the woods, or should I rather say, my bend in the river? Talking of which, the other day I could not help overhearing you asking Miss Mulholland for the *Zambezia* volume. Of course I understand your need to read all the books available, but I must warn you that that old Rev. Hamilton's book is very one-sided. Don't allow yourself to be fooled by it, it's just a red herring and carries no weight." Harrison placed his packet between his feet on the pavement and began to light his pipe, which smelled of cannabis, as before.

"I did flip through it and will have to read through it more carefully, but it didn't seem that interesting at first sight."

"Oh, he was weak, that man, his mind addled by liquor," Harrison said, drawing on his pipe and exhaling a large cloud of smoke through his nose. "When it all got too much for him, he was removed from his mission and left to dry out as a company man at Broken Hill, where he took to writing tracts favourable to his new masters, the British South Africa Company. I must accept that you need to have a look at his book, but it's very partial. It was written in anticipation of my *Luangwa*, which I have also heard you requesting at the library desk."

"Well, I will bear that in mind while reading it. Thank you for tipping me off." What did the man mean, his *Luangwa*?

Clark couldn't make out what was in Harrison's packet, but he was anxious that he might just have bought Macpherson's book in the shop, in which case he would need to get it off him somehow. On the other hand, if Harrison did not have the book he shouldn't raise the issue and alert him to its existence. So, as he often did, he decided to keep his silence and figure something out later if the need arose.

Clark had been feeling uncomfortable about declining Harrison a room at home and for politeness sake said, "I'm so sorry I could not offer you accommodation. Did you manage to find a place to stay?"

"Yes, yes," Harrison said a little forlornly. "Schönfeldt very kindly let me use the chaise-longue in his studio. It was perfectly comfortable and there was even a sink at which I could perform my ablutions, so I was well and truly back on the road."

"Was?"

"Yes, well, he asked me to move on, you see, on account of my smoking in his studio and a little fire I might have started. If only I had listened to you. There was some charring to something he was working on, the merest blemish I tell you. Still, he didn't want his

life's work to go up in smoke – and of course, your wax man too - which I entirely understand and I didn't mind, really. It was very Christian of him to put me up at all. A friend of his – Tessa Niemand, she says you know her - has offered me a new spot, quite central too and with one of your wonderful new bathrooms at my disposal. I've never known such luxury."

What was going on? What had Joa been thinking, sending him to stay at Tessa's? Clark was peeved, but tried not to show it. "Oh, good, I am so relieved. I was worried about you."

"Oh, no need, no need at all. God's in his heaven and all's right with the world."

This Harrison seemed to say by way of excluding Clark from the world, or at least that was how Clark took it. It was a good thing he hadn't offered him accommodation at home; who knew what might have happened.

"But one thing you could perhaps do for me is to advance me a small sum. Nothing too large, say R10 000?"

Clark stared at him, aghast. Now the man was trying to sponge a much larger sum, neither so large as could be dismissed with a laugh, nor so small as to be merely the button off his cuff.

"I can give you some very promising gold concessions in Zambia as collateral," Harrison tendered. "They date back a long way, I'll grant you, and there may be some trickiness from my so-called successors in title, but they are sound, take my word for it. All you might have to do is issue a summons to vindicate the claims – no longer in the courts in London, thank heaven, now we can do it in Lusaka, it's just up the road from here, really – and, being a lawyer yourself, you'll find it a doddle. What do you say? It would assist me greatly, I'm in a bit of a tight corner just at present."

To refuse would appear excessively tight, but to agree might admit Harrison into a greater degree of intimacy than he could stand thinking about. Play for time and be a bit conditional - that would be best.

"Ha, ha. I'm a little short myself at the moment, what with ..., what with one thing and another, but let me see if I can rearrange some of my affairs, in which case I might be able to help you out. Ha, ha, I'm sure there would be no need to dun you for the money, hey?" he added with a weak chuckle.

"That is most kind of you. It's always good of a gentleman to help a fellow in need," Harrison chimed in.

A palpable pauper, he could never repay the sum and the very idea of the gold claims was delusional. How could he even mention them in a serious conversation?

Yes, there had been a change in attitude. As to the *Luangwa* volume that Clark had slipped into his briefcase in the Cullen basement, Harrison said nothing, so Clark was careful to say nothing too.

After bidding Harrison farewell and entering the shop, Clark found that the young assistant, who was indeed pretty, was busy on a call, speaking English in an accent he didn't recognise. He fancied a collection of short stories by the Argentinian writer, Jorge Luis Borges, a writer he had somehow never got around to reading. It was time to fill that gap.

To his relief, when the young woman assistant put down the phone she came across to him and with a warm smile asked if he was there for the Macpherson book. On his confirmation, she handed the book to him. Clark opened it to the index; there appeared to be quite a bit on John "Changa-Changa" Harrison Clark and this looked like a more scholarly work than the Brelsford. He should take it.

Clark disliked talking to strangers and seldom broke his own rule against initiating conversations, but he couldn't waste this opportunity to find out what Harrison was up to.

"I just bumped into my dear old friend Harrison in the street. Such a charming fellow and I think he had just stepped out of your shop."

"Oh, yes, Mr Harrison is a very charming man. A friend of yours, yes?"

"Yes, yes, dear old fellow," he answered with a slight stress on the "old."

"Ah, you are very lucky then. He is an important man in Zambia. I couldn't believe it when he walked into the shop, it was amazing."

"I believe he is. So, what interests my dear friend these days? What has he been reading and buying from you?" He had to hope he wasn't coming to the point too quickly.

"Hmm, he likes old books about African customs and beliefs, culture and such. That's what be bought today."

While Clark paged through the Macpherson, an email from Neillen van Kraayenburg pinged its way into his cell phone. He had been waiting to see what Neillen would think of his offer to pay the £55 marked in Chirupula Stephenson's book. That copy was unique and he needed the author's additional notes for his further study.

Neillen's reply was short: "Many thanks for your email. My price for the book is R 1 500.00 (One Thousand Five Hundred Rand)."

Clark felt stung, but what could he do? He simply had to have it. He had been all the way out to Kya Sands to look at it a few times, so there was no pretending he had no more than a passing interest in the book and he couldn't run the risk of it being sold to someone else. He would have to pay Neillen his price.

That was quite an extra expense, so he took the Borges and the Macpherson and moved to the desk.

41 From his hospital bed

The *Sunday Times* carried a foreign news report:

> *He has nothing to offer but blood.*
>
> *Almost anything linked to Winston Churchill can be collectible, down to the butts of his cigars. But it is hard to imagine an artefact rarer or more intimate than the one scheduled to be auctioned on March 12: a vial of his blood.*
>
> *The sample, long since turned from red to amber, was collected in 1962 by Patricia Fitzgibbon, a student nurse at Middlesex Hospital in London, where Churchill was being treated for a hip injury. The vial was supposed to be discarded after his stay, but Fitzgibbon got permission to keep it, according to a statement by Duke's Auctioneers, which is organising the sale.*
>
> *Fitzgibbon kept the vial, which is 7cm long and labelled "Sir Winston S. Churchill WWB9" in black ink, until before her death, when she entrusted it to a friend who decided to sell it this year, the 50th anniversary of Churchill's death. …*
>
> *The market value of the vial "is a very difficult thing to estimate", said Timothy Medhurst, an auctioneer and appraiser at Duke's. He noted that Churchill's cigar butts have been known to change hands for £500 (about R8 000), but the blood sample "is the closest you can get to Churchill". …*
>
> *Churchill fractured his hip falling out of bed on holiday in Monte Carlo in 1962. He was flown to London on a Royal Air Force plane for treatment and spent several weeks at the hospital, recuperating and bedevilling the staff.*
>
> *"I remember he would never settle at night until after he had read the first edition of all the daily newspapers which he had specially delivered," Fitzgibbon said in an interview in 2010, according to the auction house. "He habitually smoked cigars in bed." Churchill's recovery was slow, hampered*

> *by bronchitis and pneumonia, which developed into thrombosis. He died three years later, in 1965, at the age of 90. – NYTimes.com.*[164]

Well, that was really selling DNA for you. Would you be able to clone rows of chubby little Churchills from the blood plasma? It would be interesting to know what the Steve Biko Centre for Bio-ethics would have to say about something like that.

It was also curious that the nurse "*got permission to keep* it". Permission from whom? Once the blood was drawn into the syringe and taken away for testing, it can't have remained the property of Sir Winston. He must have abandoned his claim to get it back. Apart from anything else, it would place too heavy a burden on the hospital to monitor the progress of every sample and return it to the right patient after testing. I would say it must have become the property of the hospital, or the National Health Service, or some such. It wasn't usual to think of ownership of things like blood samples, but the law should be applied all the way down the chain. It was more likely that the hospital, rather than Sir Winston, had given the nurse permission to keep it. In the modern era, when people could be cloned from DNA, this sort of thing surely couldn't happen, or would at least be regulated.

Yet again, Clark had the uneasy feeling that he had overlooked something. Like so many others, the thought passed and he went about his business.

[164] "He has nothing to offer but blood" in *Sunday Times*. Johannesburg. 1st March 2015. P16 (Sunday Times (Johannesburg), 2015).

42 Inspection 2

It was time to resume the document inspection. At Caine and Matthews Lester tabled two scarlet bound volumes of A4 documents, embossed "Medical Reports" in gold on the spines. Lester told Clark that there were two copies of the autopsy report in the red volumes and pointed to one, being the actual physical report from which the Dropbox copy had been scanned, which Clark dubbed the second copy.

Gratified, Clark placed his Dropbox copy alongside the second copy in the red volume, turning and comparing each page with the corresponding page in the Dropbox copy. He only needed to turn three or four pages to see that the Dropbox copy was not a copy of the second copy in the red volume.

He pushed the red volume away. "You are wasting my time. The Dropbox copy is not a copy made from this one in the red volume."

"Why do you say so?"

"Look here, the pagination on each page of the Dropbox copy was done in a different hand from that in the red volume. The handwriting is quite different. And look at the initials in each document. The one you got by Dropbox has different initials from those in this – let's call it the second copy for now – in the red volume too."

Lester flushed and made a quick comparison. "Yes, I can see they are different."

"So, the Dropbox copy is a facsimile of some third copy of the autopsy report, not this one here."

"Yes … I'll have to take instructions from our client."

"The signature on the Dropbox copy just isn't on the second copy. How do you explain that?"

"I don't know."

"How can you send me a copy made from the Dropbox link, then table a different so-called original, this second copy, from which it was not made? I'm starting to get very suspicious about this whole exercise. This is the second time you have failed to table the actual document for inspection. Are you trying to hide something?"

"As I said, I'll have to take instructions from client."

"While you're waiting, please give me copies of the autopsy reports in these red volumes."

"No, I can't do that without client's instructions."

"Well, can we agree sitting here that the purported copy, the Dropbox copy, is not the same as this supposed original?"

"No."

"You're denying that the documents are different? We're not meeting off the record here, it's not 'without prejudice'."

"I'll have to take instructions."

"Take instructions to say that the two documents are different? This is getting ridiculous. And I'd like copies of this second copy that you've shown me today, in these nice red covers."

"We'll have to get back to you with them."

The second inspection session was then adjourned so the Bikos' attorneys could take instructions.

Clark complained to Mouton later about their successive failures to produce the actual document for inspection as so odd and so serious as to call for an explanation and he asked for a photocopy of the second copy in the red volume.

43 You and I (11) – Second take

- This is great. Deliberate concealment of the actual document. Set it out very clearly in the papers, so that I can deal with it.
- I'm sure you want to, but sometimes faint signatures don't come out in photocopying.
- For crying out loud, you're just too charitable. It's as clear as daylight. They withhold key evidence – not once, but twice – and you think they still have plausible deniability? You may be a decent document sleuth, but sometimes you have to react, to come out fighting, calling them liars and cheats for a change. Clark'll never win the case like this. Mouton is supremely pleased with himself. All they have to do is appear in a matter and there is an assumption that they're on the side of the angels. And the Bikos too; all they need to do is say: '"Hoy, that document of yours has my father's name on it, so I am going to wrest it from your hand and make it my property."
- You have a point.
- The case looks like a vanity project for the lawyers. They took such pleasure from representing a glamour client, posting themselves on their website, appearing for 15 minutes on TV. The stakes are too high now, they dare not back down, or they'd look like fools. The Bikos too; after what they've said in the media, they have to win, or the Biko mask will slip. Donors will be upset.
- But do you think they would withhold, or fabricate evidence? They're decent people. That would be going too far.
- It's too early to tell. But when pride is at stake, people start to cut corners. Either way, you need to bust them. Then I can write about it. Deceit can't be privileged.

44 Inspection 3

Clark returned to Caine & Matthews for the third session under rule 35(12), taking the Dropbox copy and the second copy with him. Once again, Lester produced the two red volumes, explaining that the Dropbox copy and second copy were composites, or compilations of documents spread around in the red bound volumes. He led Clark to the various places in the two red volumes where the component documents could be found.

The demonstration was to Clark's mind so far-fetched as to be farcical, the suggestion being that someone at the Steven Biko Centre in King Williamstown had stood at the scanner, passing to and fro between the red bound volumes, selecting pages in order to make up the second copy of the autopsy report. Worse, two of the pages in one document in the red volume were in a different font size from the pages immediately before and after them, being much smaller. Yet in the second copy – and the Dropbox copy, for that matter - there was no such characteristic. In order to produce the Dropbox copy and the second copy with the same font sizes throughout, the official at the Steve Biko Centre would have had to contrive complicated enlargements of those two pages to make them appear in exactly the same scale as the rest.

You can imagine Clark was close to losing his temper, but he composed himself and told the attorneys he was apprehensive that, given their far-fetched explanation, the Steve Biko Foundation was misleading its own attorneys and was trying to hide something about the documents in its possession. From the piecemeal revelations he drew the inference that the Bikos were determined to hide the mysterious actual documents from which the Dropbox copy and second copy were made. Was it possible that they did not want Clark to know they had yet another document? There was a good chance that the Bikos were hiding their own possession of an identical stencil copy of the English translation on pale green pages and that they had possessed it even before they launched their urgent application.

Clark would demand that the applicants take the two red volumes to court, so they could re-enact the way in which the Biko Copy was supposedly compiled.

45 You and I (12) – *Hrönir*

If only there were evil people somewhere
insidiously committing evil deeds and it were necessary
only to separate them from the rest of us and destroy them.
But the line dividing good and evil cuts through
the heart of every human being.
And who is willing to destroy a piece of his own heart? …
From good to evil is one quaver, says the proverb.
And correspondingly, from evil to good.

- Alexander Solzhenitsyn[165]

- George Bizos latched onto a *hrön*, it's as simple as that.
- What in the world are you talking about?
- It's his *hrön*, the autopsy report. That's why Clark wasn't satisfied with George Bizos's statements on television. He said he was worried that if the originals – the originals, mind – fell into the wrong hands people might try to rewrite history. You know, that Soviet and Maoist thing about previous persons erased from photographs. Back in December, on the steps of the High Court, Bizos believed that the long-lost original autopsy report had surfaced at auction.[166] But when the TV journalist interviewed Bizos on the steps of the court – it was the Wednesday morning in December – Clark had not yet told Mouton, nor had he stated in his radio interviews that the Niemands' document was only an unsigned stencil copy. Think back to the USSR. Instead of erasing, the artist Sokolov painted Lenin's triumphal return by train to the Finland Station and inserted someone who had not been there, but who by then needed to have been: Stalin. A *hrön* if ever there was one, he is painted in, standing just behind

[165] Solzhenitsyn, Alexander. (1974). *The Gulag Archipelago*. Collins. Part 1, chapter 4. p168. (Solzhenitsyn, 1974)
[166] AA, pp390-2 & 852.

Lenin as if he too had just rolled into town.[167] Although Bizos should have known better, he still latched onto the copy as if it was the original. Look here, I'll read it to you. Let's go back a page to get the intro.

> *Century upon century of idealism could hardly have failed to influence reality. In the most ancient regions of Tlön one may, not infrequently, observe the duplication of lost objects: Two persons are looking for a pencil; the first person finds it, but says nothing; the second finds a second pencil, no less real, but more in keeping with his expectations. These secondary objects are called* hrönir*, and they are, though awkwardly so, slightly longer. Until recently,* hrönir *were the coincidental offspring of distraction and forgetfulness. …*[168]

- What is that?
- It's this Borges story, so good. Up to a point totalitarian kitsch explains the public reaction and Bizos's conduct, but it doesn't go far enough. What was the Niemands' copy if not a secondary object, better than the missing original in certain ways, or for certain purposes, one having the history of Gluckman's hand and the added charm of subterfuge and secrecy? Better still, it had the benefit of putting George Bizos at the centre of the drama. And so, in the absence of the original, the replica will stand in for it. Now it can be what Bizos and the Bikos can make it be. Never mind that they already have several copies of their own, as do the lawyers and Wits University and unknown others. But Borges goes on –

> *The first attempts were unsuccessful, but the* modus operandi *is worth recalling: The warden of one of the state prisons informed his prisoners that there were certain tombs in the ancient bed of a nearby river, and he promised that anyone who brought in an important find would be set free. For months before the excavation, the inmates were shown photographs of what they were going to discover. That first attempt proved that hope and greed can be inhibiting; after a week's work with pick and shovel, the only* hrön *unearthed was a rusty wheel, dated some time* later *than the*

[167] http://www.newyorker.com/culture/culture-desk/lenin-and-the-russian-spark. (20th April 2017) (The New Yorker, 2017)
[168] Borges, Jorge Luis. "Tlon, Uqbar, Tertius Orbis." English translation by Andrew Hurley (2000), in *Fictions*. London. Penguin. P19. (Borges, 2000)

> *experiment. The experiment was kept secret, but was repeated afterward at four high schools. In three of them, the failure was virtually complete; in the fourth (where the principal happened to die during the early excavations), the students unearthed – or produced – a gold mask, an archaic sword, two or three clay amphorae, and the verdigris'd and mutilated torso of a king with an inscription on the chest that has yet to be deciphered. Thus it was discovered that no witnesses who were aware of the experimental nature of the search could be allowed near the site.*[169]

Nor would witnesses who were aware that the Niemands' document was a copy be encouraged to testify? We heard from Sipuye, Bizos, Caine and Matthews – they were supposedly unaware it was a copy, though they should have known better. Why didn't they get affidavits from Karel Tipp, Allister Sparks, and Helen Zille? See here:

> *Group research projects produce conflicting finds; now individual, virtually spur-of-the-moment projects are preferred.*[170]

- I see. You could say the Bikos' urgent application was a spur-of-the-moment thing and they and their lawyers were unaware of the project in which they were unwitting participants. Go on.

> *The systematic production of* hrönir *… has been of invaluable aid to archaeologists, making it possible not only to interrogate but even to multiply the past, which is now no less plastic, no less malleable than the future*.[171]

- Exactly, it's always been a case of mistaken identity and about people who are trying to reshape the past. I've been so blind, so deaf to the obvious!
- Well, that does sound neat, but how can it work to the benefit of the case?
- The whole team – counsel, attorneys and clients – had a blind spot. They've seized on the *hrön*, being supremely self-satisfied or just too lazy to dig about and ask some simple questions. More than that, by repeating so often that it was the original document, the idea began to take over from the facts in their minds – idealism

[169] Ibid.
[170] Ibid.
[171] Ibid, pp19-20.

influenced reality. And you just go and ask a member of the public what the document was that they interdicted and ten to one they'll say it was the original autopsy report. And that the Niemands stole it.

- I have to give you credit, but how am I to put across a literary point in court? The judge will want statute and precedent – case law. There's no room for fiction.

Part 3 Paper cadavers

46 William Cullen Library (3) – Fictitious book

One must not confuse the rich life of a person
with its thin archival record – its paper cadaver.

- Kirsten Weld[172]

Clark thought he should go up to Wits and meet Shibu and Rhoda to take more detailed statements for BARK's upcoming day in court. Shibu and Rhoda would only ever meet him in the stacks or other out-of-the-way places where there was minimal chance they might be seen together. He had an uncomfortable feeling that Harrison was getting a little too fresh with them and he didn't want them fraternising with him too much. After all, it was Rhoda who had told Harrison that Chapter 1 Books was holding the Macpherson book. Clark was put out that Tessa Niemand had taken Harrison into her home. She had mentioned it to Clark in a recent email, making it somehow sound as if she was doing Clark as much of a favour as Harrison. What on earth had Harrison told her about Clark? Yes, it was kind and hospitable of Tessa to put the man up, but there seemed to be a blurring of the edges going on, of edges that should rather be clearly delineated. He preferred to keep the Niemands out of the mix. The next thing, Harrison would be giving her legal advice, contradicting his own. That bloody man had somehow slid his way in with quite a few of his close friends and associates: Joachim, Shibu, Rhoda, Ms Mulholland and now Tessa and Garth – and young Thandi, who Clark would still like to befriend. The thought even crossed his mind that Harrison might be the culprit in the disappearance of the *Luangwa* typescript; after all, he had already started working on it when Clark paid his first visit to the Cullen and he didn't enter the discussion when Clark discovered it was missing on his second visit. One might have expected him to protest against its loss. Clark would also use the library visit to double-check a few details in the Biko case and to finalise arrangements for the art performance evening, which was coming up fast.

[172] Weld, Kirsten. (2014) *Paper Cadavers: The Archives of Dictatorship in Guatemala*. Durham. Duke University Press. (Weld, 2014) Quoted in Dlamini, Jacob. (2014) *Askari*. Johannesburg. Jacana. p25. (Dlamini, 2014)

Getting down to the case in the reading room, Clark started with the archive registers, inventories and receipt book for the first time. In the register and inventory kept by the archive, the Wentzel documents were recorded as donated by Mr Wentzel's widow without any restriction as to who might copy them and not being subject to any copyright. Moreover, they were described as all being photocopies, except for the court documents, which, from Mr Clark's observations, were stencil or Roneo copies of the transcripts.

As so often happened with Clark, his eyes were drawn to the tall windows and the lawns beyond. In the distance he saw the Social Sciences building, an appropriately industrial, yellow brick affair with an iron roof repeating of south lights. The architect was Steffen Ahrends, better known for his arts and crafts homes in the suburbs, where Clark lived in one of the few remaining examples. Looking up to the Piazza in front of the Great Hall, he saw a large group of protesting students facing off with riot police and engaging in running battles, each side respectively throwing stones and tear gas canisters.

Turning back to pressing matters, Clark decided to see if there was an index card for the manuscript volume of *Luangwa*. Moving over to the catalogue, he made a search, but there was neither a card for the manuscript version, nor for the typescript folder.

Having finished his enquiries, Clark thought he would manufacture a bit of cover for himself in case the *Luangwa* situation flared up. It did not appear that anyone knew the original manuscript book was missing from the discard room, or even knew it existed, but the disappearance of the typescript folder was well known in that circle. He would anticipate and deflect any suspicion from himself. After checking that Harrison was not in the room - and speaking more loudly than usual - he asked Ms Mulholland if her staff had found the typescript.

Rosemary Mulholland looked embarrassed and said, "I'm sorry, we still haven't found it. As I mentioned we are inundated with papers and ephemera left to us by elderly activists of the struggle era. That's our main line of acquisition these days. Your folder should be down in the basements somewhere, from where we'll be able to call it up as soon as we are straightened out."

"In that case, could I look at *Zambezia* again, please?"

"No, I'm afraid not. It wasn't in the catalogue, so we had to treat it as lost property."

"But it was not lost; if anything it was found. It was in this cabinet just here."

"Even so, we have protocols for acquisitions and disposals that we must adhere to, so I asked Shibu to take it over to the Wartenweiler Library. It sometimes happens that students forget to take their personal reading materials away with them and the book

could have been placed in our cabinet in error. Thanks to you, we spotted the alien invader and uprooted it. With luck you might be able to track it down at lost property in the Wartenweiler Library."

"But that's …, that's preposterous. *Zambezia* was a rare book in its own right. I turned its pages and noted its sources." How could it be gone? Why had he not made photocopies? He was so stupid.

And what was Shibu playing at? Had it not occurred to her that he might want to have *Zambezia*?

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On his way out of the reading room, Clark saw a pile of leaflets on a table by the door; a statement by the university council.

> *The Council of the University of the Witwatersrand today learned of the outcome of the review of the disciplinary decision against the former Students' Representative Council (SRC) President, Mr Pius Shabangu.*
>
> *There were two charges relating to events which occurred in 2014.*
>
> *On the first charge the independent Appeal and Review Committee confirmed the finding of the Student Discipline Committee that he was guilty of misconduct. The Committee did not uphold a second charge relating to another 2014 incident. On the basis of the confirmation of the first finding, the Council hereby confirms the Vice-Chancellor's decision to require him to stand down from the SRC. He will remain a student at Wits.*
>
> ***Hitler Complaints***
>
> *This process has nothing to do with Mr Shabangu's 'Hitler' comments. After complaints were received, the University's Legal Office undertook a thorough investigation. On the basis of existing case evidence, the Legal Office found that Mr Shabangu's utterances did not breach the exceptions to the Constitution regarding freedom of speech. There are grounds for him to be charged for failing to meet his fiduciary requirements as SRC President. However, given the fact that he has already been removed from this capacity, the University does not deem it appropriate to charge him in this regard.*
>
> *Obviously, the University still holds the view that Mr Shabangu's remarks were abhorrent and not in standing with the values of this*

institution. The University remains embarrassed that one of its own could have made such comments. However, given its commitment to freedom of speech as espoused in the Constitution, the University is committed to providing a space for the free exchange of ideas, whether or not it agrees with those ideas.

While on this occasion, the matter is not being taken any further, the University takes allegations which infringe on the dignity of members of the Wits community and wider society very seriously. It also takes its reputation very seriously. The University will therefore continue to engage with all stakeholders to ensure that we all act within the broader interests and values of the institution.[173] (Original emphasis.)

Clark was uncomfortable that the SRC President, elected by the student body in properly monitored elections, had been removed from his position by administrative act of the Vice-Chancellor. That sounded unconstitutional, but he was not sorry for Mr Shabangu in any way.

———

As he made for the stairs en route to the BARK room, Harrison came through the doorway, fixing Clark with his pale blue eyes. He stood in Clark's way, blocking him from going through and down the stairs. Clark felt awkward; he knew this old loon had seen him putting the old accountant's ledger into his briefcase on his last visit to the Cullen, but he couldn't say for sure if Harrison knew that it was the *Luangwa* manuscript, which he had taken only for its own protection, of course. It would be best not to let on that he had long since possessed it, so he stood to one side, as if to let Harrison through the door. It was to no avail.

"We simply have to speak," Harrison said in a low voice. "I feel as though I'm not getting through to you. You know I share your interest in *Luangwa* and I was very peeved to hear that the manuscript was lost. In fact, my …, the letter to Helen and the *Luangwa* papers are the chief reasons for my visit here. It is a matter of the greatest personal importance to me. The manuscript would certainly verify my …, the author's hand. I appeal to your better nature. Are you not able to help me?"

[173] Council of the University of the Witwatersrand. Johannesburg. 14th July 2015. (Council of the University of the Witwatersrand, 2015)

Clark looked past Harrison as he felt the hairs on the back of his neck stand out. Just who was this man? Was he suggesting there was some close link between them? Could Clark be related to the old goat? After all, he did call himself Harrison. He certainly couldn't be John Harrison Clark III. Was he a cousin of some sort? How grotesque. Clark remained silent, trying to think of something to say.

"Oh dear, it's a little sad," Harrison said. "You leave me no choice but to put the kibosh on you. You see, I saw you. I know you took the original volume and I expect to have it from you, or you will be in for the high jump. My hands are clean, but as for you, my friend, the police will be interested in having a little chat with you."

Clark felt his stomach burn and his loins tighten; god damn it, what could he do? He wasn't going to let this relic get his hands on his *Luangwa* manuscript. "Whatever do you mean, Mr Harrison?"

"Now, now, as you well know, that bent librarian friend of yours gave you the manuscript – the ledger book - and I saw you take it and you know I did. Surely, sir, you will not stand in the way of me bringing my own, ancient story up to the surface. So many villains, all in the service of that thug Rhodes and his ilk, have written so many colourful lies about me."

Clark had one last stab at acting innocent: "Ms Mulholland told me that it is somewhere in the basement and they are sure to find it, eventually."

"Don't be ridiculous, man, I'm not talking about the typescript, but the manuscript. The ledger book you got from your little Shibu. The game is up. I have to have the manuscript and please make it snappy."

Clark was feeling hot, he was sweating and he feared Harrison could see it. It was like having to buy Chirupula's book – he had no choice and he would have to go through with it, but he could still play for time.

"All right then, you've got me. I am sure I can accommodate you, but it will not help you to share our little secret with the authorities. The very survival of the book would be threatened in the hands of others. They were busy discarding it, you know."

"I am aware of the risk, sir. My word is my bond, I only wish to read it through for my own research."

47 *A. africanus*

Clark had to get back to the office, but Rhoda had sent him a message via Shibu to say that she urgently needed to see him in the basement. There was no time for document boxes and the green tab.

Leaving Harrison behind, Clark made his way downstairs to the BARK room where he found Rhoda, strutting from foot to foot like a parrot on its perch, at the end of the row that he and Shibu usually used. She wore a t-shirt with the familiar slogan printed on the front, "I think therefore I am."

"I'm sorry, but I'm so exhausted," – and with her back sliding down the wall until she was seated on the floor – "we were out again last night, late. Would you believe, three spellings in one road: Bompas, Bompus and Bompass? And then lots of Melvilles leading away from that road. The Melvill family will have to add an –e to their name if they want to re-enter history." Finally she said, "We're running out of spray paint, by the way."

"I'll see what I can do, but at your age you should be in bed at that time. Leave it to the kids, man. What are you eating?"

Rhoda stuck her nose in her bag and pecked about before pulling out a packet of biltong and a small parcel wrapped in a yellow dusting cloth, indicating to him to take them.

"We need you to take this and keep it safe."

"What is it?" Clark helped himself to a stick of biltong and unwrapped the parcel. He was aghast to see what it was: the Taung Child itself, *Australopithecus africanus*. The floor seemed to slide away and he leant against the wall for support.

He had only seen it once before, but he knew it straight away. This time he was moved by its beauty and unfamiliar feelings of protectiveness and pity welled up within him. Somehow, he thought of the child as a girl … and silently named her Lydia, a name that simply came to him there and then. He rested her jaw on his right palm, cradling the endocast and face in his left. He was surprised by how dense and small she was – the size of a small melon. The child was dumb, rather flat-faced with pronounced eye sockets and strong teeth in a lipless grin, more Marlowe than Moore. Yet, she looked vulnerable. Clark felt for the raptor's claw marks on the skull, impressed in the last moment of her life. What had made the long lateral scar across the top of her head? Did the bird take Lydia up into the air and drop her onto some crags to kill her? And what did an eagle or vulture look like three million years ago?

"Her discovery turned science another degree or two further from Adam and Eve and the Garden of Eden," he murmured.

"It's gruesome and quite beautiful, I can see that too," Rhoda said. "But it's also under threat and we need to move fast. The past expects it of us."

"And so does the future, I'd say, but are you crazy? I can't take her away," Clark said. "She's millions of years old – unique – important to science globally and quite priceless. How ever did you get her?"

Rhoda explained that Professor Danziger and the Hunterian Museum curator were anxious that militant students were out to capture it and use it for their own ends, or to destroy it. "Some students - Level Library, that's Shabangu's gang - refuse to believe they have a common ancestor with these hominids and want to distance themselves from the head."

"To brandish her and humiliate her. That would be terrible."

"The others from the Open Archive accept the science, but reject the white construct put on it by Dart, Tobias, the British palaeontologists and the Americans."

"Christ that is mental. But given a choice, I'd go with the Open Archive."

"Most definitely, but we don't know that they would protect it any better."

"Her. Protect her."

"All right."

"I understand the threat. What about the *Homo naledi* bones and fossils? And *sediba*? Aren't they just as important? Where are they?"

"I think their discoveries are still too recent. Scientists take ages to reach a consensus and there are far too many specimen pieces – over a thousand – so we'll try to get them out later. Dr Motshekga, the politician, says humanity did not evolve from the animal kingdom, especially not the apes - the *homo naledi* find is just pseudo-science, to say that we are descendants of baboons. He points to ancient literature about the universe that offers a broader perspective."[174]

[174] http://www.news24.com/SouthAfrica/News/Its-pseudo-science-Motshekga-stands-by-his-views-on-Homo-naledi-20150911. (11th September 2015.) (News 24, 2015) "Palaeontology seeks to establish that humanity evolved from apes. This is based on the Western materialist world view which says 'the world is all that is'. This idea is contained in the Kemetic law of correspondence which says 'As above, so below'. A human being is both spiritual and material and pre-exists its material shape. Attempts to link human ancestors and apes are a futile exercise." Motshekga said a total paradigm shift was needed to educate people. He also referred to the ancient text of Egyptian philosopher Hermes Mercurius Trismegistus, The Divine Pymander. The document has been hailed as the book of all books in which the true knowledge of God and nature was contained. "It provides a different view on how we understand evolution," he said. "I challenge them [scientists] to a debate on this."

"Why do the media give those nuts exposure and air time? Science is for all and the same for all."[175]

"But for now, as BARK, we have to take matters into our own hands. It's very important to get the skull off campus and keep it – I'm sorry, her - in a safe place until things calm down. Then we can return her to the university."

Clark could not do this; he was unworthy and it was a crime to boot. It was all too crazy and he had known Professor Philip Tobias back in the day. He could not do that to his legacy.

But Rhoda was adamant. "Stop all that now, it's an emergency. There's what you'd call a clear and present danger and we have to protect her."

"I'm sorry, but it's out of the question. Enough is enough and the university can look after its own assets a lot better than I can. Take her back to … whoever gave it to you … with my compliments. I'm out."

Tenderly, he returned Lydia to Rhoda.

[175] https://www.scientificamerican.com/article/a-fossil-find-gets-entangled-with-south-africa-s-apartheid-past/ (23rd October 2015.) (Scientific American, 2015)

48 Some clarity

Advocate – in case in which he appears - making statements or giving evidence in relation to any matters in dispute – to be avoided as far as possible

Advocate – making affidavits or giving evidence – permission of Bar Council must first be sought

After three months the applicants served more affidavits, one by Nkosinathi Biko and another by Sir Sydney Kentridge SC, QC. You might think that Clark was trying to impugn Sir Sydney's credibility when he asked the Bikos' attorneys to cure their use of hearsay and add his confirming affidavit to their papers, but that's not so. There was nothing contentious or improbable in the speech Sir Sydney gave at UCT. Instead, Clark was trying to close the applicants into a single version in their founding affidavits. It might put Sir Sydney to some small inconvenience to make an affidavit in London, but the applicants were obliged to put up their whole case in their founding papers and not to make their case later on by introducing evidence in their replying affidavits. Clark's request was also reasonable because of what Sir Sydney must have known about the inquest, the whereabouts of the original Steve Biko autopsy report and how the Biko team had obtained English translations of the report.

Sir Sydney confirmed that he had read the affidavit of Nkosinathi Biko. That meant he had also read the Niemands' press statement and the early correspondence between Mouton and Clark, attached to Biko's founding affidavit in the main application.

Sir Sydney then said:

> *[4] … The autopsy report was put in as an exhibit at the inquest. …*
> *[6] I confirm that I gave the lecture referred to in paragraph 36 of the affidavit. My account of the events relating to the detention, treatment and death of Steve Biko was founded on the evidence produced at the inquest, at which I was present throughout.*[176]

[176] FA, pp243-5.

Earlier, Nkosinathi Biko had stated that "Sir Kentridge (sic.) is an advocate of the above Honourable Court and there is no reason to question or doubt the veracity of the facts stated in his memorial lecture." You may remember the convention at the bar that advocates should not make affidavits or testify in litigation in which they are involved, thought to be lest they be found under cross-examination to be unreliable, or worse, dishonest witnesses.[177] Nkosinathi was right, though not merely because Sir Sydney was a senior advocate and barrister. Clark had recently attended a memorial service at Wits for Kentridge's late wife, at which Sir Sydney, 93 at the time, had spoken for half an hour without notes, holding the audience rapt with a moving, insightful and amusing eulogy.

I would say that that cosy bar convention had to be swept aside with the enactment of the Constitution, under which all people were regarded as being equal and advocates were no longer more equal than the rest of society. Certainly, Sir Sydney showed no sign of such pomposity or self-importance as to claim any special rights for himself and he appeared to make his affidavit readily.

By stating that the original report was put in as evidence at the inquest, at a stroke Sir Sydney put paid to all the Bikos' earlier mendacious claims about what became of the original report. It was a pity that Mr Bizos did not remember events as clearly. It could have spared Garth and Tessa a lot of anguish.

Of course, Sir Sydney – seeing Bikos' concern about the whereabouts of copies of the autopsy report - could also have told the court what became of the autopsy report with which he had been briefed at the inquest. He had not done so, but it was still open to the Bikos to tell the court where their attorneys' and advocates' autopsy reports had ended up. Advocates did not become the owners of their briefs. If the Bikos had allowed their lawyers to retain their brief documents, they should have told the court why and also given reasons for their different treatment of different role players.

Clark believed that Sir Sydney's affidavit made the Niemand's case for them. He had confirmed that the original autopsy report had been handed up as evidence at the inquest, rendering the applicants' evidence unreliable, even lacking in credibility.

[177] (General Council of the Bar of South Africa): "4.5.1 Counsel must avoid, as far as is possible, putting himself in any position where he may have to make statements or give evidence in relation to matters which are in dispute in the case in which he is appearing. 4.5.2 In all cases, before counsel may make an affidavit or volunteer to give evidence concerning matters which became known to him while acting in his professional capacity, permission of the Bar Council must first be sought."

49 Chatham House chat

Past presidents of the Wits SRC and the Black Students Society convened a meeting to discuss the crisis at the university. At the start of proceedings, the chairman ruled the meeting would be held under Chatham House rules, meaning that none of the participants would be permitted to disclose the content of any matters discussed at the meeting. The reader can't know all that transpired and only this report appeared later:

> *HISTORIC ASSEMBLY OF FORMER STUDENT LEADERS*
>
> *Seventeen former student Presidents spanning five generations met at the Wits Club complex on Thursday, 28 May 2015 to discuss transformation at Wits. Past Presidents of the Black Students' Society (BSS) and Students' Representative Council (SRC) from 1965 through 2014 attended the inaugural BSS/SRC Presidents' Forum. The impetus for the meeting came after 34 former Presidents endorsed a statement on 17 May condemning the controversial "I love Adolf Hitler" comments made by then SRC President Pius Shabangu and affirming a commitment to non-racialism and an inclusive, diverse and welcoming learning environment for all students. Former Presidents then established the Forum to facilitate engagement with the University and student leadership.*[178]

As you can see, there appear to be privileged people in every situation and some conversations simply cannot be brought to the surface.

[178] *Wits Review*. Johannesburg. July 2015. Vol. 32, p6. (Wits Review, 2015)

50 You and I (13) – Case closed

Constitution – s33(1) - right to procedurally fair administrative action

Administrative law - Promotion of Administrative Justice Act, 3 of 2000 – s3(2)(b) – s3(3)

Administrative law – judicial officers carrying out administrative tasks – focus on nature of the power he or she is exercising

- Take a look at this letter of from the Deputy Judge President, sent just before Clark served and filed the Niemands' answering affidavit, 25th September. Mouton has lied to the Deputy Judge President.

> *[1] Kindly find enclosed a copy of a letter dated 23 September 2015 to Caine and Matthews as well as a copy of a letter dated 23 September 2015 to the Chief Registrar.*

That's it. The judge's letter to Caine and Matthews reads:

> *[1] A copy of your letter dated 23 September 2015 has been delivered to the Chief Registrar, as custodian of all court files, who is able to secure court files with sensitive contents in a safe which is only accessed by him.*
>
> *[2] Kindly approach the Chief Registrar to arrange for him to secure the court file in the safe.*

- What does the attached letter from Mouton to the DJJP say? I see it's dated 23rd September, addressed to the Deputy Judge President. It says it was also copied to George Bizos and to Clark.
- It reads:

> *[2] The matter concerns a dispute over the ownership of the late Stephen Bantu Biko's Autopsy Report ("the Report"). The Report has historical significance and also contains information that is particularly sensitive to the family and preservers of the legacy of Steve Biko. …*

- But he's misleading the judge. It's about a copy of the autopsy report. Mouton implies to the DJP, who doesn't know any better, that the Niemands' document is the original artefact - after all his ducking and diving about the original and the copies.
- Slithery in the extreme. Here:

> *[4] The Report is currently in the possession of the third respondent and held subject to undertakings that prevent it from becoming part of the public domain. …*

- That's simply rubbish. It's already in the public domain and Mouton knows it. Nkosinathi Biko admitted under oath that the Niemands' document is a copy, yet here Mouton misleads the DJP that "the Report" is the original. Christ, that's dishonest.
- Aha, at last! You can call a spade a spade! Is there no duty to play open cards when writing to a judge?
- There is. They go on:

> *[6] We are concerned that once the Report becomes public record in this way it is at risk of being copied and distributed irresponsibly. As there has been considerable interest from the media and the public generally in this case, we believe this is a real risk.*

- That is downright misleading – they know very well the report in whatever form has been public for 37 years. So why deceive the judge?
- Carrying on:

> *[7] We therefore request that the content of the court file for case number 03320/2015 is sealed. …*
> *[9] Should you deem it necessary or useful for us to discuss this matter with you in person, please let both us and the first and second respondents' attorneys know. We can then be reached by email at …*"

That's in very bad faith. They whipped up the media storm when it suited them, but now want to put a lid down on the media. Mouton deceived the Deputy Judge President, it's as simple as that. Etiquette aside, that's a lie. Pretty dumfounding, really? I thought yours was an honourable profession. Now this?"

- And for the DJP to forget the most elementary principle of law, *audi alteram partem*, remember, is all wrong. It looks like a stitch-up. The case law is clear: the unanimous decision of the Supreme Court of Appeal is that all court records are public documents, open for viewing, reading and copying by the public at all times. That is the default position and the rule must be observed. If it is not, it must be justified.[179] I confess, looking at the conduct of their whole case, I have to be suspicious this time. And I wonder why did Mouton need to copy George Bizos in on the letter? Attorneys don't often let their opponents see their letters to their counsel.
- You mean they were showboating their virtue to the Deputy Judge President?
- I regret to say it's possible. I don't know the DJP, but he might have felt the need to lend George a hand. I suppose someone as senior as George can expect to call in a few favours.
- Do you think Bizos phoned the DJP and asked for a favour?
- Please, please don't let that be the case.
- What's worse, it doesn't look like the DJP even asked to see the document that was so 'particularly sensitive.'
- What are you getting at?
- In reacting to Mouton's request, the DJP was not acting judicially, he was acting administratively. It's clear.[180] The man failed to observe the *audi alteram partem* rule, failed to give adequate notice of his action, failed to give the Niemands an opportunity to make representations, gave no notice of the right to review or appeal, nor the right to request reasons - his decision to lock the file up was irrational.
- Will you take it further?

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[179] *Cape Town City v South African National Roads Agency Ltd & others* 2015 (6) SA 535 (WCC) (Cape Town City v. South African National Roads Agency Ltd. & Others, 2015) and *South African National Roads Agency Limited v City of Cape Town* (66/2016) [2016] ZASCA 122; [2016] 4 All SA 332 (SCA); 2017 (1) SA 468 (SCA) (22 September 2016). (South African Natonal Roads Agency Limited v. City of Cape Town, 2016)

[180] (Constitution of the Republic of South Africa, 1996) Section 33(1) gives everyone a right to procedurally fair administrative action. Sections 3(2)(b) and 3(3) of the Promotion of Administrative Justice Act, 3 of 2000. (Promotion of Administrative Justice Act, 3of 2000, 2000) *President of the RSA v SARFU* 2000 (1) SA 1 (CC) (President of the Republic of South Africa v. SARFU, 2000) para 141: "What matters is not so much the functionary as the function. The question is whether the task itself is administrative or not. It may well be … that some acts of a legislature may constitute 'administrative action'. Similarly, judicial officers may, from time to time, carry out administrative tasks. The focus of the enquiry as to whether conduct is 'administrative action' is not on the arm of government to which the relevant actor belongs, but on the nature of the power he or she is exercising."

- No, we have never courted publicity in this matter, the other side have driven it. If someone – a member of the public – ever wants to read the court file, they'll have to take it up with the Deputy Judge President.
- There is no end to the line of people who don't want your case to be in the public domain.
- Now with this, there's no way that people will know all that is the case.
- Moving on, then. I need to send you on a mission.
- A mission? I'm afraid it means a trip to the library.
- The library?
- Quick now, down you go.
- No, just a[181]
- In the footnotes of course.
- [182]
- Right, down to business.

[181] - minute please. Damn. He's done it again. Where am I?
- Poke about a bit and find out. Just remember, it's the … Got to go.
[182] Yes, I know that, but what's going on?

51 From the border

While sitting at his office desk, an email came in, informing Clark that an online collectibles auction would start soon. One lot – a letter - caught his eye.

Autographs and Manuscripts/ Lot 243

A sad reminder of the SWA/Namibia war. Original letter from a father to a friend announcing the death of his son in Angola (at the hands of the MPLA) on 11 December 1975. …

A R WILLEMSE
PO Box 66
Ladysmith
3370
Natal

1976 – 1 -12

Armoedsvlakte Research Station
PO Box 14
Vryburg CP

Dear Charlie and family,

I have not heard from you for a long time. Hope this letter finds you and yours in good health.

Our son Bokkie was killed in Angola while on military action against the terrorists/MPLA. He was wounded by mortar fire on the 10th December. He died on the 11th December while being flown by aeroplane from the border to Pretoria. The funeral was at Geluksburg on 17th December (on a farm Grave-yard). This is one terrible heavy cross to bear. He was only 19 years old.

I have a holiday home at the Hendrik Verwoerd Dam. We must arrange to holiday together there at some time in the future. There is not enough furniture. But the home is big enough to accommodate both families. The

kids can sleep on the floor. Let me have your views on this. If I can't make it you can use it. Just let me know in advance.
Yours faithfully
Robbie[183]

Clark remembered that time in 1975-6, listening to the few scraps of news about the Angolan campaign. The SABC only aired official military releases on radio, or wireless as his father called it. Everyone knew they were lying, placing the deaths in action on the near side of the border. People talk and young national servicemen certainly did – and so did their parents.

———

Clark kept remembering his stint on the border many years before. Something was nagging at him and he needed some confirmation, a scrap of text or the like, to be sure how well he remembered his interview with the unit commander. He thought he was sure, but time could play tricks with memory and he wanted to be clear about events.

[183] https://antiquarianauctions.com/ (25th May 2015.) (Antiquarian Auctions, 2015)

52 You and I (14) - Answer

Applications – Rule 6(5)(d)(i) – person opposing grant of an order to give notice thereof

Applications – Rule 6(5)(d)(ii) - person opposing grant of an order to deliver his answering affidavit

Applications – Rule 6(5)(d)(ii) – respondent not to resort to bare and unsubstantiated denials – respondent to eschew indignant argument and expostulation

- It's your move, counsellor. Five months late, the applicants have completed their founding papers with affidavits by the Gluckman children[184] and Sir Sydney.[185] On the defence, I see two ordinary middle-class South Africans with no great wealth, or powerful presence in the mass media. They don't have a government-funded foundation to protect their family name, nor do they have automatic respect in public forums for everything they might say.[186]
- As a starting point, Clark should have the Niemands concede that Steve Biko's autopsy report, in whatever form, was emotionally sensitive and of familial significance to the Bikos.[187] That is the bottom line and if they don't want to admit that the judge could be forgiven for taking a very hard line with them. The Niemands must likewise make other admissions, to get the static out of the air and home in on the issues where they stand on firmer ground.[188]
- The interesting part is respect and dignity.
- Finally, they must say they will deliver peaceful and undisturbed possession of their document to any interested buyer.[189]
- That's a lot of admissions. What will Clark have left to go on?

[184] FA, pp232-240a.
[185] FA, pp241-245.
[186] AA, pp426-7, para 152.
[187] AA, p301, para 7.
[188] AA, p506, para 223.3.
[189] AA, p427, para 155.

- Clark must concentrate on their weaknesses and the Niemands' strengths. So, Garth should make certain denials. For example, the document was not created as a result of the Biko family's appointment of Dr Gluckman.[190] The Niemands did not break the law by sending their document to auction.
- But it was an awful thing to do.
- Opinions on that differ. Look at all the auctions you have found around the world.
- But you've said that the distasteful attempt also hurt the Bikos.
- True, but even the Constitution can't protect you from people hurting your feelings.
- I've been wondering – as a writer, that is - … well, we like to say "Africa is not for sissies" and so on. Growing up here involves taking knocks and scrapes on the playground, literally and figuratively. You need to develop some basic resilience to make a go of life here, to become a hardy optimist.
- Yes?
- It's a harsh world - and a harsh part of the world. My question is, how can you develop a level of resilience - of grit, if you like - if no one is allowed to hurt your feelings, if you don't have to figure out for yourself how to "suffer the slings and arrows of outrageous fortune"? Are the Bikos saying the Constitutional Court must protect us from all that?
- We should hope not.
- And you say *ubuntu* is now prescribed by the Constitutional Court, so it is all for the personal dispropriation of *ubuntu*.[191] That brings in a lot of diffidence and deference to the group – no one wants to step out of line. My question is, what about good old-fashioned *chutzpah*, the motive force of progress for a millennium? Why can't we cock a snook at Biko's piety?
- *Ubuntu* v *chutzpah*? Will self-effacing ubuntu make us less innovative, original & progressive?[192]
- Yes, how does selling the father's autopsy report impair the son's dignity? It's a serious question. You can go into any archive and rummage around in other people's lives - coming across their ailments, diseases, peccadillos – and then write up books and articles about them.
- Researchers do that every day, I suppose.

[190] AA, p507, para 224.1.
[191] (Sanders, 2007) Mark Sanders. (2007) *Ambiguities of Witnessing: Law and Literature in the Time of the Truth Commission.* Johannesburg. Wits University Press. Paragraphs 6 – 11, pp23-8.
[192] (Sanders, 2007). Paragraphs 6-11 on pp23-8.

- Somehow - and I can't put my finger on it exactly - it still just seems wrong. Why didn't the Niemands just hand their document to the Bikos and go to Wits and make another copy for 38c a page?
- They might have done, if George Bizos and Nkosinathi hadn't reacted the way they did. Who would reward the Bikos in such circumstances? And when the Niemands realised the document might be valuable,[193] – the estimate was R70 000 to R100 000, remember – they knew it would make a big difference in their lives. Hell, man, they're only middle class, like all the rest of us.
- I'm going to treat it differently when all this legal stuff is out of the way.
- And that's your right; you can make your own truth out of it. But don't confuse it with legal truth.
- There's another paradox here. It's a paradox of publicity because it was the very publicity given to the autopsy report in 1977 that forced the police to abandon their initial lie that Steve Biko's death was the result of a hunger strike. Had the original Steve Biko autopsy report never been made public and had the inquest been held in camera, the security police might well have got away with that lie. As it was, South Africa and the world were informed of the circumstances of Steve Biko's death through the publicity given to his autopsy report.[194]
- So, what is your point?
- The Bikos became the famous Bikos because their husband and father died, but also because of the publicity given to the autopsy report and the inquest. They rose to fame on publicity. Now they want to control access to the public report. In Nkosinathi's own words, "It is a Report that the Biko family wishes to preserve and display (governed by proper archival protocols) to all South Africans …" They want to put the lid back on the document.[195] Mouton said "Our clients seek nothing more than to ensure that this report be viewed and displayed in controlled circumstances and in a controlled environment for the benefit of all South Africans."[196]
- That's an understandable sentiment from the heart in the bereaved person …
- But surely it goes against the ideals of your free and open society? It just doesn't seem authentic or consistent. If the document was born in publicity, why shouldn't it live on in publicity? The report should be made as public as possible, as a mark and guarantee of a free society. You can put a private document into the public domain,

[193] AA, p483, para 208.2.
[194] AA, p505, para 222.2.
[195] AA, p502, para 219.8.
[196] FA, p191, para 12.

but how can you take a public document and change it into a private, restricted document? It's lost its virginity. The bird has flown!

- You could say it is about the sacred and the profane.
- If it's sacred, then it can't be exchanged for money. That's how most religions deal with things like this. I'm not sure it is the document that they are upset about, it's more about the Niemands attempt at selling it. They've said so in their affidavits.[197] Nkosinathi went so far as to say the Niemands should consult their spiritual advisors rather than their legal advisors.
- For heaven's sake, isn't *ubuntu* enough without assuming people have to have spiritual advisors? What about good atheists?
- There is a premise afoot that says "No"? People do feel that the right to privacy is more important than ever.
- Why have the Bikos drawn attention to the Preamble of the Constitution? I mean, it could have extolled the antiquity of South Africa in geological time, its heritage as the home of key fossil records of early hominids, its majesty of landscape, abundance of natural and human resources, its voluptuous diversity of animal and plant life, its famed beauty and then the record of its more recent shift to historical time - South Africa as a site of advancing civilization and development, working for the ascent of humankind in this part of the world. As it is, the Preamble reflects sentiments and sensibilities of modernity, positing history as linear and no more than about a hundred years old.
- Moving on, let's see how Clark compiles the affidavit.
- I see it's written in Garth's voice.[198]
- Yes, we lawyers select the witness with the most knowledge of the facts, or the one who is the most representative of the group, and write the main affidavit in his or her voice. Garth lived with his mother in the last sixteen years of her life, so he knows the most.[199]
- To argue that, he'll set out the correspondence between Gluckman and Mrs Niemand?
- Yes, it gives such a clear picture of the two of them, but we're getting ahead of ourselves.
- Okay, but mustn't the Niemands still put up their evidence to rebut anything the Bikos manage to fix in the judge's mind - to bring the scale or see-saw down on their side?

[197] FA, p40, para 102.
[198] AA, p300.
[199] AA, p349, para 61.

- Yes. The sale of a national hero's autopsy report will not trouble many lawyers because ownership is a simple matter of law and fact, but some judges may react to it in the same way as many of the public did: an unconscionable act, *contra bonos mores.* Nkosinathi Biko has also run the Niemands down at every turn, so Garth must build up his and Tessa's image up, establish them as ordinary, rational and decent South Africans. For that, he'll tell a bit of his life story and his sister's.[200]
- The correspondence between Dr Gluckman and Mrs Niemand is so rich, to say nothing of a little quirky, that Clark must use it in Garth's affidavit. The letters show that Mrs Niemand was a dutiful employee who Gluckman trusted completely. He left her to run his wine business and she had duties and responsibilities going far beyond those of a half-day secretary.[201] On Gluckman's side, he was a stickler for detail and correctness. If he'd given the document to Mrs Niemand in custody, he would have made a point of getting it back. And when the autopsy report fell into the public domain, as Clark believes, he was not so petty as to think a stencil copy was still his property.
- That just sounds like conjecture, like the other side's own inductive reasoning.
- The Bikos can simply adduce evidence from their witnesses to refute it; Gluckman's children, the advocates, etcetera.
- What will a judge say about 'traversing' so many letters? They don't seem to add any hard evidence. It's very rich correspondence and I want it in the book, so it must be in the record.
- Strictly speaking they are hearsay, but they could be admitted in evidence under one of the exceptions to the hearsay rule.
- Never mind that too much, it's very rich correspondence and I want it in the book, so it must be in the papers.
- All of what we've discussed is still background. Clark has to perform the laborious task of traversing each and every one of Biko's paragraphs, as the rules say: admitting, denying, or confessing and avoiding. That last one is the "yes, but" defence. Biko effectively says there was a tacit term that Gluckman gave the document to Mrs Niemand as a custodian. There are reasonable possibilities other than that. The common cause facts don't necessarily mean she became custodian. The conduct of the parties and the surrounding circumstances still allow that Mrs Niemand might have understood him to mean that she became owner.
- Then there's the human angle, so I'll come in there.

[200] AA, pp321-7.
[201] AA, pp340-1, para 50.

- They will not be able to deny they gave media interviews. They can only deny the transcripts are accurate and put up their own version of the content of the recordings. With print media, it is hearsay that is mediated by the reporter. With TV and radio transcripts, there is no such mediation, they are video and sound recordings. Very hard to refute. And we will quote the reports to establish that Biko, Bizos, Sipuye and others thought the Niemands' document was the original. Bizos will be back in court, leading the team – how will he be able to deny that he gave the interviews that were reported?
- How will that help?
- It will cast doubt on their reliability, even their credibility, and that is very important. It will also box them into a very narrow ambit.
- You also said something about a counterclaim for defamation.
- A lot of what the media and Nkosinathi said about the Niemands is classed as fair comment, or truth for the public benefit and the courts will let them get away with it, but where they said, or implied that the Niemands were liars and thieves, or dealers in stolen property, it's different. It is not fair, just because the Gluckman document was stolen from SAMS, to say the Niemands stole it, or that their document is the stolen item. To call someone a thief without grounds is not comment, it's a defamatory accusation.
- I'd love to see Nkosinathi being cross-examined on that part.
- It's not usual to raise a defamation case in motion proceedings; it belongs in the trial court where the judge can hear all the evidence in a live situation, but that would mean starting a separate action, using the same evidence in two different cases. It would be best to include a counter-application with the Niemands' answering affidavit and then ask the court to hear oral evidence about the defamation. In short, the judge hears that part by oral evidence given in the witness box.
- To what extent do you have to explain the Niemands' motives in auctioning the autopsy report? You might be right in law, but the public is still left feeling that something is wrong here.
- Look, they were no more greedy in selling their document than if they had tried to sell their mother's jewellery, her stamp collection or other effects.[202]
- Except that in this case they were doing so over the Bikos' pain and objections.
- I'll give you that.

[202] AA, p427, para 154.

- The starting point is still a grave error, of ethics, taste … call it what you will. I just can't accept it and I would go so far as to say that unless Garth gives a credible reason, some kind of excuse for wanting to auction the document, the judge will not trust his account of the case.
- There is little to say. The Niemands are ordinary South Africans[203] who have mortgage bonds, pay school fees and have dreams. The estimated knock down price would have made a significant difference to their lives. The Bikos' reaction was out of all proportion to their misjudgement.
- But they were being *dof*, in that very white, middle class way.
- Perhaps, but to err is human. The law has to be clear, to lay down a line and warn us that if we cross it, the consequences will be such and such.
- Biko says his father died for the values enshrined in the Constitution.
- That's not an entirely accurate claim. Think about it: not all Black Consciousness values were enshrined in the Constitution and some values in the Constitution are not values of Black Consciousness philosophy.[204] The Constitution is more of a western, liberal, social-democratic tract, which is why it is becoming unpopular with the youth. But, sure, Garth and Tessa themselves support and try to live by the values in the Constitution and they agree that Biko died in the struggle for freedom. The law has to set a limit to the relativity of truth; it has to decide which truth will prevail in any given court case. The court just has to come up with an answer, whatever it is and however difficult it is to do.

[203] AA, p381, para 104.1 and pp426-7, para 152.
[204] AA, p503, para 220.1.

53 ROAR

Something had been gnawing at Clark's mind. He wanted some third party proof for that incident, something that had lasted no more than five to ten minutes, while he was marooned at HQ in Tsumeb. The obvious first place to look was in his military personnel file and after a long round of enquiries at various military offices, he received a letter to say he could go to the military personnel archives in Schoeman Street, Pretoria where he would be helped.

He set off for Pretoria, wondering what sort of gremlins the file might contain. On arrival, he went up several floors and was shown to a room with a few tables and a photocopier. Two other men were going through files and making photocopies. A civilian woman employee brought a brown folder through and placed it before Clark. His army personnel file, at last. It was the same sort of file he had handled on the border.

Like the documents in Ernie Wentzel's files in the William Cullen Library, the pages in his army file were loose leaves, secured on the sort of split pin he used in legal practice. He lifted the pages off the pin and laid the documents down on the table, then removed the staples and went over to the photocopier to copy and compile his own replica of the file. Once again, he was amused at how easy it would be to contaminate reality by removing old, or inserting new pages into the record of his military service.

As Clark stood at the photocopier, making a copy of his personnel file, he remembered another occasion in which he had photocopied a file - in case of need.

The commandant is away on holiday and the captain is out catching up on his golf, so it's quiet in the office and as long as we get our work done properly, we can give the rest of the day over to reading and watching the French Open on TV.

Leaving a file on the commandant's desk for signature on his return, I see a stapled document lying in the basket. I don't know what makes me reach for it, I should just let things lie. It is too horrible, something you hear about, but never see. Page after page, the product of a grotesque mind: photographs of head shots, full-frontal and side-on; also full body shots, people standing facing to the right of the camera. Angles and dimensions are measured and marked. Next to each photograph is another of an other, also full-frontal, side-on and facing right. The comparisons made are odious, it's impossible to

believe they could be made in print. The document is a photostat of a photostat and is quite faint in places, but the argument is proud and purportedly Christian, though unusually for such, one that argues in favour of evolution.

I'm sickened, but it is consistent with some of the commandant's remarks. I just wish I didn't find myself in these moments, but I it may only have been a matter of time until something like this happened. How many more like incidents are happening all around us? I'm not going to expose the commandant; he'll make some excuse and Power will just sweep it under the carpet, before turning on me with all their venom. Still, I will make a copy when the others are out of the office and the coast is clear. You never know when you might need some leverage.

———

Clark was disappointed. He had not found what he was looking for in his military service file; in fact, it was the opposite of stumbling on a *hrön*. He had nothing to show for a new line of thinking he wanted to go down. He was also worried someone might come across the commandant's materials in his desk and think the worst of him. He needed to put some distance between himself and the documents, so put them in a large envelope and market it with the commandant's name. People might not believe he had made a copy as collateral.

A chink in his armour, you could say he could feel some shame, he was vain to that extent.

Was it possible that the commandant had confiscated the papers from a racist third party and would use them as evidence in a court martial? Exhibit A again.

Always question.

54 You and I (15) – Underworld

- I see Clark got his BARK bunch off the hook in court this week. No doubt you had a hand in it. Well done. How did you do it?
- It was a bit of luck, really. Either that or the magistrate had a sense of humour. The charges were malicious injury to property for vandalising the wall sign outside the Government Garage. They scored through the "u" in "Fourty Two Dolly Rathebe Street" with orange spray paint.
- A fairly innocent prank, wouldn't you say?
- Yes. Clark loved representing the BARK gang, but he has lost a few clients as a result. The state led evidence of how they apprehended the trio in Dolly Rathebe Street at about 1.00 a.m. They caught them red-handed, spray cans in hand. That crazy Rhoda was one of them, larking about with the young crowd. Of course the police took cell phone snaps of them next to their wet graffiti and then took them down to the Central Police Station,[205] so they couldn't say they weren't there, or it wasn't them. The Government Garage was the complainant and their witness told the court how they had to spray solvents and scrub the paint off, to get the sign back to its former state. Clark didn't cross-examine the state witnesses much, aside from probing the issues of spelling and intention, and waited for the state to close its case. Then he took a bit of a chance and asked the court to discharge his clients. The prosecutor looked very surprised, but the magistrate agreed with Clark that the state had not proved beyond a reasonable doubt that the accused had injured, rather than corrected and improved the property in question. They also reasonably possibly had a beneficial intention instead of a malicious one. They were discharged without having to open their case.
- Fantastic. Now, I want to show you this. I've talked about the hold that the past has on us in the present and I came across this review[206] of a new book.[207] It's about the rivalry between King Edward VIII, later the Duke of Windsor, and his younger brother George, who still later became King George VI. Let me read the last passage to you:

[205] Formerly John Vorster Square.
[206] Rosemary Hill. "Petulance is not a tragic flaw" in *London Review of Books*. London. 30th July 2015. (Hill, 2015)
[207] Deborah Cadbury. (2015) *Princes at War: The British Royal Family's Private Battle in the Second World War.* London. Bloomsbury. (Cadbury, 2015)

> *Eventually the brothers came to a cool accommodation, but the women never gave an inch and public opinion in Britain was overwhelmingly hostile to the duke (of Windsor, previously Edward VIII) and, especially, the duchess (Wallis Simpson).*
>
> *If the story fell short of tragedy, the abdication and its aftermath acquired the symmetry of parable. The dogged, decent tortoise of York (who succeeded his brother Edward VIII as George VI) in the end outstripped the vain hare of Windsor. With a sense of narrative more instinctive than considered, the king set out the logic that had brought them all to this point as he explained yet again why Wallis could not have the title 'Her Royal Highness.' If she were a princess now, she could have been a queen in 1936. The moral of the fable would have been lost, or as he put it, it 'would not have made sense of the past.'* [208]

- All right, I see how it ties up with …, well, how we have to live up to the past. We're seldom free of it.
- Damn. I should have made the connection earlier; Barnes has sketched a similar *hrön* scene in his new book.
- Who?
- You know, you really should read more. Julian Barnes.[209] So, the composer Shostakovich isn't a very good communist. In fact he's been branded an enemy of the people. Stalin has banned his works; they can't be played. The Union of Composers appoints Comrade Troshin to enlighten him on the principles of Marxism-Leninism, to make a model man of him, a good citizen. They send him Stalin's works to read. Troshin comes to visit Shostakovich in his apartment, to check up on him and to explain why he needs Troshin's help. (And naturally, if Troshin offers protection to his pupil, the pupil has a responsibility to his protector.) One day, Troshin asks if it is true that, a few years before, Stalin himself had telephoned Shosty at this very apartment. Yes, it was true and Shosty points to the telephone on the wall of his study,

[208] It was strange that George VI clung to his idea of what the past should continue to be, yet his daughter, Elizabeth II eventually overturned his position and decreed that her son Charles could marry a divorcee and still succeed to the throne. Of what version of the past was she custodian? How did Charles' marriage to Camilla Parker-Bowles make sense of Edward VIII's and Wallis Simpson's past? It didn't; it modified their past. The moral of the fable sometimes has to be bent into a new shape, so that a new future can take shape and that people living in that new future can make a new sense of a then-modified past.

[209] Julian Barnes. (2016). *The Noise of Time*. London. Jonathan Cape. pp122 & 126. (Barnes, 2016)

even though he spoke to Stalin on the phone in the next room. Troshin looks at the instrument as if it should already be in a museum.

- Aha, a new *hrön!* I get it now.
- Let's leave aside the files and what not. You'll work on the answering affidavit. It's important we stick to our understanding: a good legal answer to the Bikos, but lots of material on the people involved.

55 Wartenweiler Library - Descent

Although Clark was very busy finalising the Niemands' case, the preparations for the performance evening and fending off Harrison, it was still important to him to track down *Zambezia*, which had been found and then sent over to the Wartenweiler Library. He wasn't simply going to take Harrison's word about its worth. Unfortunately, he was spending more and more time on the university campus and his practice was starting to suffer.

Making his way across the Library Lawns to the Wartenweiler, it struck Clark – and by now you will have thought so yourself – that the whole BARK thing might just be an elaborate cover for smuggling rare books out of the library and selling them on the black market. It would not be the first time this happened at Wits, but what did a bunch of bookworms know about the market for stolen fossils? It could only be a very small and clandestine market, especially where the object was so famous.

Come to that, the BARK people had sought him out, he hadn't gone in search of them. At the outset, Rhoda had eavesdropped on him talking to Conrad Walther at Collectors Treasury and again in the Cullen library. Changa-Changa had also been watching him in the Cullen – spying, almost – and listening in at closed doors.

Clark made his way through pockets of angry students holding placards – decrying the library's policies, as far as he could make out - to the doors of the Wartenweiler. He was tempted to swear at the young fools, even to tear up a placard or two, but he thought better of drawing attention to himself like that in broad daylight. The Wartenweiler was the administrative centre of the university's library system, a 1970's, five storey monolith built beside the central north-south axis of the east campus, grey with metred recesses on its upper floors, housing side-on windows that gave direct light only into the adjacent bays where students sat and studied.

As he entered the ground level foyer he glanced at a table to one side holding a pile of pamphlets, typed in an old-fashioned font like Harrison's typewriter. At the foot of the sheet he saw the words, "Issued by BARK." As he was about to pick one up, he heard a voice say, "There's no point coming in here looking for *Zambezia*, Clark." It was Harrison, walking towards him across the lobby. "I have just asked for it in lost property and they don't have it and never did, so they say. It's not in their register of things handed in. Your little Shibu must have got lost on her way over here, such a long and winding path for the little poppet."

Clark felt himself flush. It was outrageous for Harrison to talk like that about Shibu, who had impeccable credentials and was a woman whom for Clark held a special regard. Harrison was needling him and it would be best not to rise to the bait.

"How do you manage to turn up like a bad penny so often, Harrison?"

Harrison ignored him and said, "I need to discuss something with you, but we'd better go into the reading room, there's a quiet alcove we can sit in without being overheard." He led the way and headed for the spot he had in mind.

After seating themselves, Harrison jumped in and took him on: "You know, I wanted to complete my reading of the *Luangwa* manuscript and now I hear that you conveniently say it is lost, yet you were the last person in possession of it. Where is it?"

"I gave it to Mulholland. As far as I know, she put it back in her cabinet. At least, I have no reason to think otherwise. But why are you so interested in it in the first place?"

"Damn it man, I am not to be trifled with. Do you think I believe such poppycock. Mulholland is so confused at this point she disavows all knowledge of it. Besides, I know you would never part with it."

"You miss the larger picture. The students are intent on stripping the whole library, it's a purge, can't you see. Priceless books are being thrown out and replaced with the mediocre writings of today. And if we leave it to the authorities, *Luangwa* and other texts will simply disappear from the record."

"Pah, I have *Zambezia*, which I will keep out of everyone's hands."

"You said it wasn't that important. Have you changed your mind?" Clark glanced at Harrison's satchel, but pressed on, "Isn't it time you came clean – with me at least. You have an uncanny knowledge of events on the Zambezi and Luangwa, something only an eyewitness would know. Why are you here?"

"I …, you know I was very annoyed when your lady dug up that letter to Helen in the archives in Pietermaritzburg, a town I remember without any fondness. It is sometimes necessary to give events a certain shape, sometimes even a nudge, within the limited abilities still afforded to me. It can be disconcerting to confront an artefact of one's past, eyed from the future - you know that by now, do you not? Of course, I hadn't seen the letter for so long and it came as quite a rude shock; there is no denying the handwriting, even as I might want to disown some of my sentiments of that time, a very difficult year in my progress on the Zambezi, but I had amassed a good number of gold concessions and I needed to stay and see what I could make of them. By what misfortune had the

tantalising text of *Luangwa* been placed before my eyes after so long a time – and then summarily removed."[210]

"I …," Clark was nonplussed. What could he mean? Had he seen the letter, what he called an artefact of his past? Clark's mind was scrambling to work it out, but he thought he should dissemble detachment in the meantime. "I read and reread the letter to Helen[211] – well, let's just say the first wife. It took me many hours to decipher the handwriting, but I have it straight now. I was struck by a number of anomalies in it that trouble me. When read together with books about that time on the Luangwa and environs, it's hard to tell what the truth is."

"Hold your horses. As I mentioned to you, you really have to approach rival writings by the likes of Rev. Hamilton with a pinch of salt. Most of the accounts are very biased towards Cecil John Rhodes and his British South Africa Company. They were the victors in that whole theatre and constituted a great colonising wave in the name of our dear Queen – the last one, not this one - but mostly for their own enrichment, from what I could tell. I tried to hold on to my kingdom for as long as I could, but eventually I had to give way. If I had tried to contest Rhodes's claims and prove my own, I would have had to go to court in London and as you of all people should know, the costs would have wiped me out. They knew that. Rhodes was backed by the crown of England, while mine was only the crown of the Luangwa."

The man was still talking as if he had been there. It was preposterous, quite impossible. Nevertheless, he would humour the man. "But you should be ashamed of yourself. You took off on a frolic of your own choosing, deserting Helen and leaving her to look after Budge entirely on her own. You were a complete stranger to him all his life. A boy without a father. In your letter, you professed great love and longing for Helen even though you had long since taken another wife. You weren't frank with her, but blithely led her on. I daresay that is what made her wait six more years before starting the divorce action. On the one hand you waged war against the slavers, releasing slaves, but then, form my reading I see that, in true African fashion, you made free with the women of the region. On the other hand, Brelsford says you imposed hut taxes and had an assortment of wives, yet whenever you fancied a girl you took her as your mistress for a few days

[210] (Macpherson, 1981) p86. Clark had a concession from Chapugira, dated 21st August 1896 and later procured further concessions from "Chetentaunga or Chekokla" dated 25th May 1898, "Luvimbie or Sinkaronar" dated 12th June 1898, "Sinkermaronga or Maundundua" dated 18th May 1898, "Longo or Marlonguarlau" dated 5th June 1898 whereby he claimed mineral rights in "my country Batwa and Mashukulumbwe". See also Brelsford (1954), pp23-30. (Brelsford, 1954)

[211] Born Helen Agnes Cox (1868 - 1944), first child of William Glendinning Cox and Mary Anne Burchmore of Ladysmith.

and when tired of her sent her home."[212] Now you appear from the wilds and obsess about old documents without even going down to Durban to look up your line."[213]

"Yes, I own that I had been gone many a year already, and of course I had taken several more wives by then, as a man must, to stop going mad, so alone and so far from hearth and kin. But can't you see, it's you, my only kin who should be my family when I have none."

"None! You are related to a third of all Zambians!"

"I mean down south here at least. Several times I turned to you for help, washed up on your doorstep from afar, so to speak, yet you spurned me on each occasion."

This cut Clark to the quick – his Achilles heel. His conscience had been niggling him about this.

"And why so many more wives? Had you taken up the customs of the area?"[214]

"Starve a crow, man! You must try to understand. I arrived at Feira, which was no more than a Portuguese ruin and a few huts, in April 1895.[215] What with setting up my trading post, negotiating with the chief, the shenanigans of Brewis and Clark and the loss of the Box brothers in April 1896 – at the Eureka mine it was, such a sadness – in Logomondi's territory,[216] and then that awful business with Juwi south of the river …. I am not ashamed to say that I was missing Helen and Budge more than commonly in my solitude and that may have inclined me to write with a greater degree of sentiment than the succeeding years may have shown me wise."

"Was she not entitled to take you at your word? That you would return to her and young Budge within a year?"

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[212] (Brelsford, Generation of Men: The European Pioneers of Northern Rhodesia, 1965) p22. Statement from Catino Francisco Lubino Chintanda (April 1899).

[213] Clark was said to have "quarrelled with the Zulu people (presumably some Ndebele south of the Zambezi) and fled after they killed his wife, probably during the first Ndebele war". See (Macpherson, 1981) p86.

[214] See (Brelsford, 1954) p16 regarding Clark's marriage to a daughter of Mphuka, chief of the Chikunda; Allan Isaacman, "Chikunda transfrontiersmen and transnational migrations in pre-colonial South Central Africa, *ca. 1850 – 1900*". Dept. of History, University of Minnesota, Minneapolis, Minnesota. *Zambezia*. XXVII (ii) (2000). p109. (Isaacman, 2000)

[215] This would be more accurate than the date of 1896, given in F.V. Bruce Miller "A few historical notes on Feira and Zumbo" in *Journal of the Royal African Society*, London (1910), p422. (Miller, 1910) Clark seems to have spent time before this date in Southern Rhodesia. See: (Macpherson, 1981) p86. Alternatively, reference to *the "Zulu people" could* refer to the Ngoni people in Mozambique, Malawi and Northern Rhodesia (Zambia), whose forebears were Zulus who were displaced in the great Mfecane. The Ngoni had fled King Shaka and crossed the Zambezi River in the 1820's. In 1897, the British defeated the Ngoni uprising, led by Mpeseni, who was based in the Chipata district in eastern Northern Rhodesia.

[216] https://www.thegazette.co.uk/London/issue/26954/page/2205. (The Gazette, 1898) Items 13 and 14. James and Duncan Box are believed to have been murdered at the Eureka Mine, Logomondi District (a.k.a. Lomagunda, Lomagundi etc.) on about 20th June 1896 during the Mashonaland uprising. See: *The London Gazette*, issue 26954, published on 5th April 1898, pp 2203 – 2208.

"Yes, you are right there. I should not like you to think me duplicitous to Helen and the boy, but I was then torn between the prospects that I saw within my reach at last – gold concessions, my ivory trade, admittedly taken with the fear that I may have passed beyond the *ultima thule,* whence I might never return - and my longing for my wife and child. As chance would have it, I … but let us not be diverted by these maudlin thoughts and turn instead to the pursuit of our project."

"Just a minute. On the one hand you called your trading post 'Budgemore'[217] after your son, and you start out by saying how dear he is and how you miss him, but on the other you never troubled to see him. How could you leave the boy without a father, even though he had one?"

"You are a fine one to speak. Can you not see how you yourself have trampled on young Biko's feelings by refusing to give him the report of the post-mortem examination? It's a rare fragment from the past. It means something to him. He lost his father at the tender age of seven and can only have a few memories of him, yet you carry on regardless of his emotions around the issue."

Clark was surprised to see Rosemary Mulholland walking across the reading room in the company of Mr Shabangu and another middle-aged man, who he recognised from library publicity materials as Professor Danziger. What a curious trio. He wanted to take up the continued absence of the typescript with Rosemary, but the group was walking determinedly towards the lift and looked in no mood for trivial enquiries. Something was up.

Turning back to Harrison, Clark blinked a few times. "Yes, but why did you say your gold concessions were subject to government approval and that they were in English territory? Your territory had not fallen under the Company.[218] You seemed to run with the hare and chase with the hounds as and when it suited you."

"Again, I insist not."

"You wrote to Helen that you had conquered your legendary temper? Yet they say you used the *sjambok* a lot."[219]

"I had it well in hand by then. As you can see, I did defer to the chief and I packed Brewis and Clark off down to Tete, which was an act of diplomacy on my part. I was on

[217] The trading store and house, situated at Feira, on the north-western bank of the confluence of the Zambezi and Luangwa Rivers, taken from their nick name for their child, John Harrison Burchmore Clark (born in Ladysmith on 13 July 1890, died in Durban on 29 June 1947).
[218] See (Macpherson, 1981) pp86-87 and (Miller, 1910), p422.
[219] Ibid. P86.

the best of terms with Chief Chapuga, or Mphuka,[220] who allotted me hunters and bearers whenever I asked." But, sir, I am beginning to find this incessant questioning rather personal, almost impolite. I should not have to appeal to you for more respect. All I can add is that, for an ancestor to see one's own story sink out of sight in the muddy Zambezi is a most painful thing to bear. I am looking to you, sir, to help me bring it back up to the surface, as you like to put it. You can be the custodian of my memories, preserving my legacy."

Clark muttered, "Well, I am not sure …"

"I made my way up the river – ahead of any other Englishmen – and coming to Feira, you could say I planted my seed on the bank, I fertilized the garden with my toil and prospered and multiplied. I took root and I became rooted there, the first white man on the scene since Livingstone passed through. Every explorer bar Livingstone left their women behind in civilization while they headed up Africa's rivers. I was more fugitive than conqueror; please do not embarrass my fine Senga by suggesting they were conquered by one man and his rifle. I had nothing with which to conquer anyone, other than my tenacity and goodwill to all men. To be sure, I was at first horrified by the environs and the people of my new settlement, unsure whether to stay or pack up and return, but I lived through the horror and became settled in a state of acceptance. Returned now to the Transvaal for a short time, I am appalled to see your works: the prison mines and satanic mills - yes, I had the benefit of some anthologies to comfort me on the river. All the getting and grabbing, rushing and crushing, a people possessed. I need to go back and I'd like to take Thandi with me. The girl from Chapter 1 Books, remember. I deplore the present state of the Transvaal, all the way from the Limpopo to these goldfields, raped, plundered and pillaged."

"I see why you gave me that chapter from Brelsford and pushed the Northern Rhodesia Journal my way. They paint quite a rosy account of you – very Boys Own Paper with all your adventures. That's your world, isn't it?"

"What kind of researcher can you be if you ignore first-hand accounts of me by my peers?"

"Well, talking of first-hand accounts, you tried to keep me away from Hamilton's *Zambesia*, but Macpherson is much more thorough than Brelsford and even interviewed men in your part of Zambia who remembered you. Didn't you see that as an important text? And I see what you're up to with your little palimpsest. I'd like to read *Luangwa* now to see what was true back then - your past present. As it is, you adulterate the text

[220] Probably Caetano Anselmo Sant Anna Chapugira. See: (Macpherson, 1981) pp 85-86; and (Isaacman, 2000) p85.

now to show what you want it to have meant back then – your present anterior, you could say."

"What ever does that mean?"

"You're reading the typescript to refresh your memory, to spot all the additions and deletions you want to make, then retyping certain pages that no longer fit with your story as you wish it to have been. You've observed our ways these days and you are aghast at what we might think of you, so you're rubbing some of the past out and overlaying it with new material, so you can live on as a hero of old. I'm dealing with this very issue in a case. It's funny how people do this. I see it now, when you've concocted your new story you'll destroy the manuscript, to erase all the inconveniences of the past and certain events you now want to conceal. But I'll still have the manuscript, I won't let you have it. I've already matched your handwriting in it to your letter to Helen, right down to the same spelling mistakes in the two specimens."

"You mistake me, sir, I merely want to check some minor details in the original. I assure you."

"You were careful enough to type the new pages on the same typewriter from Broken Hill, a nice touch, and as for the newer, fresher pages, short of carbon dating the inks and paper – a procedure of our age that you won't yet know about – with a little dust added, the reader would think they were typed up in a span of ten years, not at the book ends of a hundred. So, that's how you were going to tamper with the archive, to mould history to suit you now. Just what is it that you want us to see differently in you now?"

56 You and I (16) – Break point

There is a splinter of ice in the heart of a writer.
I watched and listened.
There was something which one day I might need.

- Graham Greene[221]

- Counsellor, your sycophantism towards the Niemands is nauseating. The Bikos are described in terrible terms and the best is always believed of the Niemands, never of the Bikos. We are dealing here with a metanarrative and you contend the puny story of the Niemand document against the heroic death of Steve Biko.
- You will find that in our accusatorial legal system, affidavits are one-sided. We don't have to hold back.
- In that case, legal writing and literary writing don't intersect. Clark has a battery of blind spots about the Bikos. Can't he see his privilege over Nkosinathi Biko? For one thing he had a father to pore over atlases, retracing his wartime cruises and engagements. Nkosinathi had no experiences like due to his father's death. I like Clark for all his flaws, but regarding his blind spots, does he never consider that the nature of the document is less important than the exchange of it for money?
- But this is a story about the Niemands, who made a simple misstep, a *blaps*. Do they need to be degraded and bullied? Clark can't be expected to make a case for the Bikos. He's a lawyer, not a journalist. The argument of the case is to say, "Look at the picture from a less partisan, subjective angle." You want to make it more subjective.
- But how is it possible to have such bad taste?
- A free society gives you the freedom to have bad taste. Let the documents speak for themselves; they can do the work.
- So I can't paint a realistic picture, in that case?
- Because it *is* a case – there are rules.

[221] Graham Greene. (1999) *A Sort of Life*. London. Vintage (Rand). (Greene, 1999). During his stay in hospital as a boy, he eavesdropped on a mother grieving the loss of a child in his ward.

- It'll feel like a case is being argued, not a novel written. The character is trying to win a case, instead of the narrator trying to win a reader.
- You must do the best you can, but you cannot write the case for me. Respect that and I will not write the novel for you. The story is about a court case, it's bound by that. It's about how Clark goes about doing his work as a professional – lawyer's work. He has to be dispassionate as he gets down to work. Haig said we can't simply apply Anglo-American law here, but develop South African law for South African litigants. In fact, the judges will seize on the case as an opportunity to distinguish South Africa and to make a statement about African dignity.
- I am not waiting for you any longer. It's over, I'm a free agent and I'll write as I please.
- No, you simply can't do that. You are far too cavalier - you'll mess the whole case up for the Niemands.
- Rubbish. We have to reveal all that is the case and if you're not going to come along, then I'll go ahead and do it myself. At this point I'm going to put you down in the footnotes. You can go down there and give things a shove in the right direction, tamper with events. The tables have turned.
- No, don't. I only meant to …[222]
- That man gets a long-winded sometimes and I've got to get this story back on track. The *Zeitgeist* has moved on, the reasonable man on the Clapham omnibus is now the transgender person on the Soweto minibus taxi.

[222]- say that I was …, hey, you did that too. Damn it man, now I've lost my drift. And no one reads the footnotes anyway. Where was I?
- Something about developing the law, but it's no longer germane. Carry on here by all means, but I'm going back up to the main storyline.
- Come back! Don't leave me here. … Hello?

57 The art of restitution

On Sunday morning, settling down in the sun with the newspaper, Clark came to a fascinating article:

> *The freedom to sell restituted art*[223]
>
> *David Baddiel*
> *Openings*
>
> *…*
>
> *On Wednesday, the first painting from the haul of art discovered in 2012 at the Munich flat of Cornelius Gurlitt, son of Nazi art dealer Hildebrand Gurlitt, was sold at Sotheby's, fetching £1.865m, more than three times the presale estimate. … Restitution is a complicated process, both historically and morally. …*
>
> *The most famous example of this quandary, pre-Wednesday's sale, revolved around works by Gustav Klimt, which included his portraits of Adel Bloch-Bauer, wife of Ferdinand Bloch-Bauer, a Jewish manufacturer and art collector in Vienna. The paintings had remained in Austrian state hands following the Anschluss but, in 2006, after a long and costly legal battle fought from the US, were restituted to Ferdinand's niece, Maria Altmann. That in itself was surely just. But when, soon afterwards, Altmann decided to sell the paintings at auction she was criticised.* New York Times *art critic Michael Kimmelman argued that "cashing in" transformed "a story about justice and redemption after the Holocaust" into "yet another tale of the crazy, intoxicating art market".*
>
> *In 2007, I made a BBC documentary,* Baddiel and the Missing Nazi Billions*, on Holocaust restitution, and discovered the sums – encompassing $150bn – are huge, not only in lost art, but also property, business, bank accounts and insurance claims. Insurance was actually what I found most interesting, specifically life insurance. Claims for murdered relatives who*

[223] David Baddiel. "The freedom to sell restituted art" in *Financial Times*. London. 26th June 2015. (Baddiel, The Freedom to Sell Restituted Art, 2015)

> *held policies have been ongoing against the major German insurance companies since the war ended: small amounts have been paid out. But here's the thing. One thinks of life insurance as a comedy subject* – The Two Ronnies *did sketches about life insurance salesmen boring their guests at cocktail parties – and yet, during this film, I began to feel the idea of life insurance was the very hallmark of a civilised society. Because if life is worth something, genocide is impossible.*

And if ephemera and collectibles were worth something? What, by similar extension, was impossible?

> *Which is why I think critics were wrong to criticise Maria Altmann for selling a painting that she rightfully owned. If restitution means anything, it should he about restoring the civilised order; and in the civilised order, anyone who owns something should be allowed to sell it for the highest market price. It would be considerably less "a story about justice and redemption" if the rightful owners of this art were to feel constrained by the high-flown sanctimony of others from doing whatever they want with their property.*
>
> *… that which was stolen should be returned. Period. Because with justice should come something else that was lost: freedom. …*

If the Niemands' document had been stolen at some early point, it should be returned to the rightful owners. I'm sure we are in agreement there. And the rightful owners – be they the Niemands, the Bikos, the Gluckmans or anyone else – should be free to sell it, just as they could have done if they had possessed it all along.

Did you perhaps see *Woman in Gold*,[224] the film of Maria Altmann's quest to recover her family's Gustav Klimt masterpiece? I was struck at the point where Altmann – in battling to recover the Klimt portrait of her aunt that the Nazis had stolen from her forebears – urges her attorney to continue her legal case[225], saying "The past is asking something of the present."

[224] Simon Curtis, director. (2015) *Woman in Gold*. BBC Films & Origin Pictures. (Curtis, 2015)
[225] See: *Republic of Austria v. Altmann* 541 U.S. 677 (2004) United States Supreme Court. (Republic of Austria v. Altmann, 2004)

Altmann was making much the same point as George VI; it "would not have made sense of the past" to allow the stolen art works to remain with the thieves and murderers and their successors.

There was more to it, though. What was that thought Clark had struggled to hold onto? About property and life? If you have a contract with someone, you can only rely on it or enforce it against that one person. If you have real rights in property, whether as owner, possessor, tenant and so on, you can evict trespassers, protect it against attack and assert your rights against anyone in possession of it, against the whole world. And that would include standing up to the Bikos and their successors when they reached down on you, grasping at your property.

Glancing at his phone after finishing the article, Clark saw that the South African Jewish Board of Deputies had issued a press statement:

> *Jewish Board lays criminal charge for Shabangu hate speech*
> *29 June 2015*
>
> *The SA Jewish Board of Deputies (SAJBD) has laid criminal charges against former Wits SRC President Pius Shabangu for racist and defamatory comments made against the South African Jewish community last week. Specifically, Shabangu stated regarding the Jewish community, "They are devils. They are good for nothing. They are hypocritical, just like [Wits University Vice-Chancellor] Adam Habib. They are uncircumcised in heart". The comments were made in the course of a live interview on Power FM on 23 June.*
>
> *Shabangu's comments are the latest in a series of offensive public statements that he made about South African Jews over the past nine months. The SAJBD already has a complaint of hate speech against him pending before the SA Human Rights Commission, and has asked the Commission to add his Power FM remarks to the existing charges.*[226]

[226] SAJBD statement. Johannesburg. 29th June 2015. (South African Jewish Board of Deputies, 2015)

58 You and I (17) – In reply

Applications – rule 6(5)(e) – the applicant may deliver a replying affidavit

Applications – applicant not permitted to supplement his founding affidavit by adducing supporting facts in his replying affidavit

Applications to strike out – rule 23(2) – averments which are scandalous, vexatious, or irrelevant

- Could you come up here, counsellor, I need to ask you about this letter that came in.
- [227]
- This is not a democracy. I'm the writer, you're only the lawyer and the legal phase is almost over. We share a character.
- And a text.
- That too.
- Okay, I've asked you up as I want to understand this replying affidavit they've just served. Once again, it looks like Clark is being told to reduce material – most of what he inserted into the answering affidavits.
- Yes, I was right, they have said they will apply to strike out a good 80% of the Niemands' affidavits. They complain about the "hearsay evidence, gratuitous insults and irrelevant and misleading assertions ... also premised on unfounded assumptions."[228] They also give notice that they will apply to strike out all the offensive material at the hearing of the matter on the grounds that they are irrelevant, hearsay and vexatious allegations.[229]
- You did say a lot of it was irrelevant to the issues in dispute, but we were agreed on him including all that, we made it relevant. What will the implications of the striking out be? I need that text; my story needs it. You were confident that if the full text was included in the answering affidavit and in the court file, it would fall into the public domain; any journalist or member of the public could go to the courthouse, draw the

[227] With pleasure. You know I don't like to spend too long down here, however much I like books.
[228] RA, p986, para 4.
[229] RA, p987, para 9.

file and read the affidavits. You said it was obvious from *Cape Town v. SANRAL*[230] and I could quote the affidavits at will. Suppose the court does order that the material be struck out... what happens to the text? What will the status of the old text be? Can I still quote it?

- Well, that's an interesting question. I haven't had that situation before. All the offending text in the answering affidavit …, hmm. Certainly, the court hearing the case would not read it or take it into account in deciding the case, but that would not alter the historical fact that the material had once been included in the affidavit, or was contained in an earlier one still lying as an artefact in the court file.
- Could it become a *hrön* at a later stage? Or would it be some sort of un-dead, zombie text that could be read, but never quoted? Could the Bikos argue that the deleted text should be treated as if it had never been written – and what would that mean? Can the genie be put back in the bottle?
- It reminds me of another case. The facts were quite different, but it's interesting in this context. It was *The Citizen v. McBride*.[231] Briefly, in 1986 Robert McBride had carried out a bomb attack outside a bar and restaurant, killing three and wounding 69 others. We was found guilty of murder and sentenced to death, but he was granted amnesty in April 2001. The Citizen newspaper later expressed the view that he was a criminal and a murderer. Mr McBride sued the Citizen for defamation. He contended that receiving amnesty meant that the label "murderer" did not apply to him. The trial court found in favour of McBride and awarded him R200 000 in damages. On appeal, the majority of the Supreme Court of Appeal (SCA) upheld the substance of the High Court's findings on defamation. The SCA found that to call Mr McBride a "murderer" was false because he had received amnesty under the Reconciliation Act.[232]
- In a further appeal to the Constitutional Court, the apex court per Justice Cameron found that:

> *… the Reconciliation Act did not make the fact that Mr McBride committed murder untrue. And that Act did not prohibit frank public discussion of his act as "murderer". Nor did it prevent his being described as a "criminal". The Court emphasised that protected comment need not be "fair or just at all", in any sense in which these terms are commonly understood. Criticism is protected even if*

[230] *City of Cape Town v. South African National Roads Authority Limited & others* [2015] ZASCA 58 (Cape Town City v. South African National Roads Agency Ltd. & Others, 2015)
[231] *The Citizen 1978 (Pty) Ltd and Others v. McBride* (CCT 23/10) [2011] ZACC 11; 2011 (4) SA 191 (CC); 2011 (8) BCLR 816 (CC) (The Citizen 1978 (Pty) Ltd and Others v McBride, 2011)
[232] Ibid.

extreme, unjust, unbalanced, exaggerated and prejudiced, so long as it expresses an honestly-held opinion, without malice, on a matter of public interest on facts that are true. [233]

- I do remember that case from the press, but that's insane. What if say *The Citizen* hadn't had enough money to appeal further to the Constitutional Court?
- Then all South African courts would be stuck with the Supreme Court of Appeal's binding precedent that "… to call Mr McBride a 'murderer' was false …." The Supreme Court of Appeal would have fiddled with the past to give us a new version, one better suited to certain people and their truth today.
- That's just crazy.
- And yet, that is exactly what several of the most senior judges in the country went so far as to say, before Justice Cameron scotched that idea in the Constitutional court. Will we always be so lucky? I don't know.
- I say there's a case to be made that our judges should read a lot more literature, starting with Borges.
- And I'm starting to understand what you mean. So in our *Biko v. Niemand*, by including all the material in the text of the Niemands' answering affidavit, the text became part of the public record; as fact it was in the court record and will remain in the public domain, theoretically for all time in the national archives. No court could say it was not text, un-happen it – just as it couldn't say McBride wasn't a murderer - so it can therefore be quoted in the novel and anywhere else.[234]
- Yes. And Biko's innuendo that the Niemands were liars and thieves would not be protected – it was not based on facts that were true. Now, let's look at the Bikos' replying affidavit. First off, they say Dr Gluckman was appointed by the Biko family via their attorney – and we agree with that – and that he acted as the Bikos' "agent" – but not with that. They've never used the word "agent" before. They're trying to close the trap, but Clark didn't fall for it. It explains their harping on about Gluckman having been appointed by the Biko family and therefore when he acquired the Niemand's document, it became theirs.[235] That can happen between principal and agent. I'll have to consider the corollary, whether Dr Gluckman was not by the same logic as much

[233] Ibid.
[234] Section 12(3) of the Copyright Act, 98 of 1978. (Copyright Act, 98 of 1976, 1978) See WA Joubert & PJ Rabie. (1994). *The Law of South Africa.* Butterworths. Durban (Copeling, 1994). S.v. "Copyright", para 35, p34: "The copyright in a literary or musical work which is lawfully available to the public is not infringed by any quotation from it."
[235] FA, p33, para 81.

their agent in dispensing with ownership in it. That by giving it to Mrs Niemand, he was doing it for the Bikos, as a backup plan.

- And wasn't Gluckman as much the Bikos' agent of knowledge when parting with the document as he was earlier when acquiring it? In short, the Bikos thereby knew they had given ownership away.
- Good point, scribe. There's just one serious aspect I'll highlight in the affidavit.

> *[23] … What gives the report its monetary value is the historical significance of the Report. The historical significance is that Dr Gluckman, who was appointed by the Biko family, feared that the Report would be destroyed by the security police and thus gave the Report to Mrs Niemand for safekeeping. Dr Gluckman sought to preserve the contents of the Report so that justice would prevail.*
> *[24] The respondents' version now is that there is no historical significance in the Report. No person would be interested in purchasing a copy of an autopsy report simply because it was owned by Mrs Niemand absent some form of historical significance. This is what renders the respondent's new version even more unbelievable. They are also versions that did not exist at that time when the Lot description was created. Had they existed at that time then the Lot description would have recorded that the "vendor's mother" owned the Report.*[236]

- There's some inferential reasoning for you, but they are trying to decouple Dr Gluckman from Mrs Niemand – to shed "A Woman of No Importance." Let's hope we draw a feisty lady judge to hear this.
- Yes, we have room to embarrass such sexist nonsense. Moving on:

> *[30.1] … The only reason that the Report would be a "collectible document with economic value" would be if the Report was given to Mrs Niemand for safekeeping because it was created by Dr Gluckman in the scope of his mandate and appointment by the Biko family.*[237]

[236] RA, pp992-3.
[237] RA, p995.

- That's rather low of Nkosinathi, or his advisers, isn't it? Didn't Mrs Niemand – being merely a woman and a part-time secretary – exist in their minds? Her 32-year protection is also a contributor to its economic value, yet they attach no historical significance to Mrs Niemand!
- It was ever thus. As I often say, it is not always necessary to judge, it's often sufficient to be judged. See what you get. Let's skim through the rest:

> *[33.6] The Report is a document that should be viewed by people who come to pay homage to the memory of my late father. …*[238]

- I couldn't have put it better myself, could you? That says it all and that is why Nkosinathi thinks his dignity has been impaired. Did a priest draft his affidavit?
- Here's more:

> *People who have an interest in the history of our country and the struggle against oppression. It is hurtful and offensive for me and my family to be confronted with the complete Report, in this manner and in the context of the facts of this case. …*[239]

- A hurt to be endured in the search for truth, the same as it would be for anyone else. We know from *The Citizen v McBride* that in some circumstances you just have to soak up hurtful criticism. Why wouldn't you also if you are confronted with your father's autopsy report? The Niemands weren't even saying anything "extreme, unjust, unbalanced, exaggerated and prejudiced" to the Bikos. There's also the small inconvenience for the applicants in that the document doesn't belong to them.
- I think we can establish that. Moving on:

> *[35.1] … A cursory reading of these paragraphs suggests that there is in fact a "*Gluckman document". *There is in fact no evidence of the existence of such a document.*[240]

[238] Ibid.
[239] RA, pp998-9.
[240] RA, p1 000.

No evidence? He's already said on radio that the original was removed from Dr Gluckman's files at SAMS.

- But then he has denied the content of his own radio interview.
- Bad faith, again. He's seen a transcript of his radio interview, but he denies it. He reveals the fact of the Gluckman document so he can smear the Niemands and having done that damage he now he says there is no Gluckman document.
- Ja, he wants it both ways. See:

> *[60.6] … There is historical significance attached to the Report. This significance is not there for the respondents to exploit. It is the property of my family. The significance only arises by virtue of the appointment of Dr Gluckman by the Biko family and the circumstances of the appointment.*[241]

Here, let me read it again: 'the significance … is the property of my family'. The significance, note.

- There is some appropriation for you.
- The patriarch speaks, through a slip of the tongue – that's his real issue, isn't it? Can't they see the historical significance didn't arise from the Bikos appointment of Gluckman, but from Gluckman's emotions at the time? His emotional reaction was not part of the Bikos' mandate to him, it was entirely his personal response to the situation – and to deal with his fear, Gluckman gave a copy to his secretary in a private arrangement.
- The Bikos had nothing to do with it; they could not have told Gluckman how to deal with his fear any more than they could have told him what findings to reach as the cause of Biko's death. Gluckman was busy about a plan of his own devising.
- I nearly got taken in by their high and mighty tone. You're right, they are muscling in on a private arrangement between Gluckman and Mrs Niemand because they claim ownership of all the historical significance of Steve Biko.
- The Bikos are just trying to wish Mrs Niemand away, even though she contributed at least half of the significance to the document.
- Come to think of it, she contributed much more than half: Dr Gluckman's contribution stretched no further than handing it to Mrs Niemand. After that, he bore no risk in that document and Mrs Niemand bore all the risk. Could one then say either that his

[241] RA, pp1 030-1.

was not the chivalrous conduct of a gentleman, or that he didn't think the risk was real and he was just showing off to his secretary? In most ventures, the party assuming the greater risk is rewarded more than the party assuming less.

- No, the tenor of the man, from his correspondence and so on, was that he would not shift his burden on to Mrs Niemand if it placed her under greater risk. My sense is that he would have born the greater risk.
- But how?
- By keeping his own copy of the autopsy report, i.e. the Gluckman document.

59 The wrong trousers

Hitler's trousers, Goering's cyanide container sold at auction

Trousers with leather pockets worn by Adolf Hitler and a brass container that held the cyanide used by a top deputy to commit suicide were among a trove of Nazi memorabilia sold for hundreds of thousands of euros at an auction in Germany.

The sale of items from a collection of an American medical officer who attended to the needs of defendants at the Nuremberg War Crimes Trials was condemned by Germany's Jewish community as "scandalous" and "disgusting". The auctioneer did not respond to repeated requests for comment. …

The trousers sold for 62,000 euros, the jacket - made from "finely-woven field-grey cloth" - went for 275,000 euros, the watch for 42,000 euros and some silk underwear owned by Goering for 3,000 euros, according to mass-circulation daily Bild. …

The Central Council of Jews denounced the auction in the run-up to the sale and had called on Hermann Historica to cancel the event.[242]

Don't you think Mr Shabangu would look very fetching in the Führer's clothes? And if he left the trouser fly open, everyone could get a glimpse of Goering's silk underpants completing the ensemble, comingling Goering's DNA with Shabangu's.

[242] "Hitler's trousers, Goering's cyanide container sold at auction" at Reuters World | Monday Jun 20, 2016. 11:58am EDT Related: WORLD http://ewn.co.za/2016/06/21/Hitlers-trousers-Goerings-cyanide-container-sold-at-auction (Eyewitness News, 2016)

60 You and I (18) – Exchanging heads

Then we came to a tavern with vine-leaves over the lintel
Six hands at an open door dicing for pieces of silver
And feet kicking the empty wine-skins

TS Eliot[243]

Agency – principal - transacting in the name of

Property – agency - received by agent transacting for his principal belongs to principal

Property – transfer of ownership - delivery to agent constitutes delivery to principal

Agency – mandate – capacity to act on behalf of principal

Witness – expert – duty to court

Property – sale – what money cannot buy

- The Bikos have homed in the question of agency in their heads of argument. They say that the Niemands accept that Dr Gluckman was the Biko family's agent. Agent, note. His mandate and presence at the autopsy was on the instruction of the Biko family.[244] They point to the legal principle that if an agent acts on behalf of a principal or has transacted in the name of a principal, any property received by the agent belongs to the principal. No delivery to the principal is necessary to pass ownership to the principal and it is not even necessary for the principal to know that his agent is in possession of the property.[245]

[243] T.S. Eliot. (1974) "Journey of the Magi" in *Collected Poems 1909 – 1962*. London. Faber. (Eliot, Journey of the Magi, 1974)
[244] Applicants' heads of argument, para 16.
[245] Ibid, pp 8-9, paras 15 – 18 and: Voet 41.2; Van der Keessel TH 478; *Mills & Sons v Trustees of Benjamin Bros* (1876) 6 Buch 115 at 122 (Mills & Sons v Trustees of Benjamin Bros, 1876); *Newmark Ltd v The Cereal Manufacturing Co. Ltd* 1921 CPD 52 at 61 (Newmark Ltd v The Cereal Manufacturing Co. Ltd , 1921); *Strydom En 'n Ander v De Lange en 'n Ander* 1970 (2) 6 (T) at 11G-A (Strydom En 'n Ander v De Lange en 'n Ander , 1970).

- But doesn't that beg the question? It relies on the truth of a premise that has yet to be proved.
- Yes, that Gluckman was their agent in order to prove he was their agent.
- Hmm. But that still sounds problematic for you. Just say he was the Bikos' agent, then the document belongs to the Bikos and Dr Gluckman couldn't transfer ownership to Mrs Niemand because he was not the owner, the Biko heirs were. Sounds good to me. What can you come up with?
- With the simplest point in Haig's heads that disposes of their argument at a stroke, I think. There are many ways of "appointing" a person to do something for you that do not give rise to agency mandates. Think of delegates, representatives, nominees, employees, archive researchers, independent contractors and so on. They appointed him as an independent expert witness to attend the post-mortem, ascertain the true cause of Biko's death, possibly provide them with an independent report and give expert testimony at the inquest. His mandate was to establish the facts not as the Bikos may have wished them to be, but objectively as the consequence of his independent professional findings.[246]
- What if they didn't like what he said?
- Dr Gluckman was not obliged – he wasn't even permitted – to tailor his evidence to suit the Bikos' wishes. His first duty was to the court,[247] not to them. The closest they come to agency is in using the term "mandate", but mandates can be given to various people without them becoming agents. As Haig says: a surgeon's mandate to operate on his patient doesn't make him the patient's agent.[248] He was an independent contractor who received the document as an independent, expert witness and it became his property.
- Now that sounds like a killer point. But what about the alternative claim under the Constitution: the auction infringes on the dignity of Nkosinathi and his mother. Is that a good argument?
- Look, where people get stuck is over the question of money. People are funny about money, however much they may like it. The crux is this: are there some things that money cannot buy? Or that money shouldn't buy? The answer is obviously 'Yes'. As you know, there are many markets that are regulated by governments and official bodies, just as there are goods that cannot be sold. Petroleum fuels, pharmaceuticals, liquor, pornography, electricity, antiquities, body parts of the living and even

[246] Respondents' heads of argument, p4, para 8 and p7, para 15.
[247] Ibid, p7, para 15.
[248] Ibid, p5, para 10.

prostitution in some countries. The list is long. So the question is, should autopsy reports be added to the list of proscribed goods?[249]

- The sale of all those goods are regulated by statutes and regulations.
- Yes. Like Clark, I am more sanguine about the constitutional case than Haig, but the clients have had enough and just want the whole issue to be laid to rest. Clark must respect that and find a way of reaching a settlement of their case. There are risks if we don't settle it and we proceed to court. The *modus operandi* these days is to identify the good guy and then re-engineer a way back to make a finding for him and against the bad guy.
- Then litigation will boil down to little more than singing your own praises and tearing strips off your opponent, shaming them while flicking the shit off your own trousers. So, what happens to precedent, principles, laws and regulations in the face of such a beauty pageant? It will mean we are not a nation under law, but a nation under lawyers!
- What fuzzy drivel. We live in the real, the material world. Lawyers want facts and clear answers. For society to function, the court has to make a determination, but the basis of that determination has to be what is more probable.
- Again, good luck. It only works if all that is the case is known and set out. In any case, the novel is about facts and I've lifted them.
- Just a minute, scribe, you don't mean to say you've borrowed text from the Niemands' affidavits to put into the novel?
- Oh, yes, that's the very idea.
- Isn't that going a bit far? My lowly lawyer's words, instead of your own pearls?
- It's for verisimilitude. And so as not to get sued. You told me that once the affidavits are filed at court with the registrar's purple date-stamp on it, it's a public document and can be quoted. Depose and be damned, I say. Consider this. I take text from the affidavits for the novel, right?
- Well, yes, for the sake of argument.
- But, can you take text from the novel and put it in the affidavits? Or in your argument?
- Now I'm getting vertigo. I can't … If the judge found out, he …, or she would go bananas. It doesn't bear thinking about. A case based on fiction.
- It really wouldn't be the first time. I suppose there's honest fiction and dishonest fiction. Acceptable and unacceptable.
- Fiction – that is false, or untruth – used for a good purpose? Is that it?

[249] See (Sandel, 2013).

- No. A made up world, having no one-on-one relationship to fact, but having its own truth.

61 Burning man

I'm sure you will be interested to see what progress Clark and Joa Schonfeldt had made on their combined project, or at least the prototype stage. Let us take a look.

The concourse of the Student Union Building had been cleared and chairs were arranged in a wide circle around the bier, which was placed on a canteen table. The wax caste lay on top of the bier, mottled off-white and marbled with yellow veins. Its life-size bulk was running to fat and wore no clothes. Threads of wick stuck out of the body in many places: on the crown of the head, two sides of the forehead, the wax eyes – false eyes had proved too expensive for the prototype – nostrils, ears, mouth and chin. Then the protruding Adam's apple, on the round of each shoulder, the two lumps of the clavicle, nipples, navel, hips and mound where the genitals were rounded off. On the limbs, wicks emerged from the elbows and kneecaps, then the upturned wrists and ankles and finally the fingertips and toes.

A crowd began to filter in; student-looking types from the school of fine arts, the political crowd and some drama kids. Clark noticed there were many more black youths than white – predictable, but a pity all the same; the message would miss its mark. Some junior academics were there, but only from the philosophy, art and literature departments. A group of musicians was playing on marimbas, backed by an electric guitar and some drums.

Clark had arranged for Joshua Murhonga, who had done some large braais for him before, to bring an ox through from Hammanskraal. Joshua was a one-stop-shop for this kind of thing, as he got all the necessary permits from Wits and the City of Joburg and squared away any other problems that cropped up. Wits had been under pressure from the animal rights activists and was a lot more resistant to the event than the City, but eventually they had to cave in to pressure in the name of cultural practices, diversity, tolerance and historical rights. Joshua's beast – which turned out not to be an ox, but a fine Nguni cow – stood impassive, tethered to a wild olive tree on the Piazza outside. Someone had tied ropes around each of its fetlocks, but they were lying loose on the brick paving. Rhoda Rosen was fussing and clucking around some attendants over at the bar table, where there was a lot of cheap wine in bottles, standing in lines. They poured the wine into disposable plastic beakers and passed it around on trays. Snacks amounted only to large bowls of fresh popcorn and peanuts mixed with raisins.

It was pleasing to see that Thandi from Chapter 1 Books had decided to attend – and what's more, would participate in the performance – and she was standing hands on hips over at the braai fires, talking to two of Joshua's assistants, who were kitted out in green overalls and white gumboots.

He also noticed Garth and Tessa Niemand standing to one side with Julia Charlton. Garth looked out of place and uneasy in the youthful crowd. Clark hadn't altogether wanted them to attend, but Tessa had provided the apparel for the evening through her costume business and she wanted to see the final effect. Why was Clark uncomfortable? It was hard to say, but he didn't want them making an appearance out of context, outside the four corners of the neat script. Then there was the awkwardness about Tessa putting Harrison up at her home. Garth and Tessa didn't really belong there and it would be awkward, the mixing of his professional clients with the whack jobs he had met in BARK and at Wits, but he nevertheless went over to join them and put them at ease.

"Hello, it's good to see you. The big night is here at last. I hope we pull it off all right, after all our hard work. And thanks again, Tess, for doing the costumes. I know they will steal the show."

"It's only a pleasure and just a small thing, a gesture of appreciation for doing the case for us for free. I just had to come along and see how it all goes."

"Yes, how else can we thank you?" Garth added.

"No further thanks needed, really, I'm very grateful."

Joshua was now greeting Harrison like a long-lost friend in a language Clark couldn't place. It must have been clear to any observer that Clark found the old man odd and unsavoury, but the ever affable Harrison was less obvious in expressing his coldness towards Clark. Clark was pleased he had warned Shibu and Rhoda off getting too friendly with Harrison, who he thought might be some sort of spy for a cause.

Harrison's appearance had certainly improved since their first meeting and his face seemed more ruddy, his hair and facial hair trimmed and his form more erect. At last he had procured a new fez – probably a purchase from the Oriental Plaza - and next he might go so far as to buy a navy blazer with brass buttons. Now that he took the trouble to look at him more carefully, Clark could see that Harrison had plucked the haywire assortment of hairs from his nose and ears and there was a bit of a sparkle in his eye. He looked washed and ironed and the overall effect was now quite natty. But wasn't a leopard cape a mark of royalty in Zambia just as much as it was down south? It was difficult to make out Harrison's ethnic origins, for they seemed to encompass several.

Joshua beamed at Clark and enthused about meeting one of his great countrymen, gesturing to Harrison in the firelight. “Changa Changa, he is a great man – he is from the Zambezi. *Homwe,* my uncle, my chief.”

“It took me no time at all to recognise your accent, Joshua” Harrison said with a chuckle. With that he held out his rickety hand for Clark to shake. “Hello, again, sir, at your service. I saw the leaflets and couldn’t resist accepting your kind invitation.” Harrison had dispensed with his former affable, easy going air with Clark and, perhaps stung by Clark’s second refusal to come to his aid, was now brazen, even taunting.

“Ah, yes. I’m pleased you came,” Clark said, but thought not really. “It’s an open event and we wanted members of the university community to attend.” Clark shook hands with Harrison.

Harrison moved close up to Clark’s ear and murmured, “I still await my manuscript, I know you still have it. Why are you taking so long? I may have to have a word with the library authorities, or the police for that matter. I expect to have it within a day, or things will look dark for you.”

Clark blanched. He was running out of excuses and time. One thing he would not do was give Harrison the manuscript. He would have to steer clear of him.

Turning away, Clark saw Schönfeldt in his usual ensemble of black shorts and jacket with a white shirt, khaki socks and sandals, smacking his lips and crinkling his nose, unhappy with the wine.

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When it looked like everyone had a beaker of wine, Rhoda waved to the musicians to turn down the volume, took up the microphone and called everyone’s attention.

“Listen up, all you peeps, I want to explain the order of proceedings tonight. This is a pilot project, sort of a prototype presentation of a collaborative and multidisciplinary art project in the Wits schools of fine arts and literature, language and media. And we’re also grateful to have the background music courtesy of the undergrad students in the music school, which we’ll hear more of later. Many thanks to Tessa Niemand for the wardrobe this evening, it’s going to amaze you. It’s all going to take a while, so settle in, get comfortable and have some wine. Jeremy Clark will introduce the presentation by reading some extracts outlining the purpose of this scene. We’ll interview any of you who would like to comment on the manifesto, or proclaim your own, backed up by this feast of wine and food. Others will read from redundant library books – culled by the university, but retrieved by us – and some old manuscripts that have come to light

recently. More about that later … for now, please take your places in a circle around the bier and we can begin."

The crowd shuffled into the Student Union Building and arranged themselves into a circle, standing with plastic cups in hand and looking towards the effigy in the centre. It was time for Clark to speak.

"Welcome everybody and thank you for coming. …"

"We're here for the free booze, you poser!" a voice shouted from the back. No doubt a white student.

"Thank you, thank you. Little has changed since 1982 then. The making of this effigy is a component in the collaborative work of Joa Schönfeldt, who is doing an MA in fine art, and my own written thesis, on early settlement on the Zambezi River."

"You're not qualified to speak on this subject!" It came from one of the angry young men at the back, a tall rangy man in a red Adidas track suit – Pius Shabangu himself.

"That's a little premature to say, surely? If you'd please listen … Well, let's just get on with the show."

The house lights dimmed and the lighters entered the building and came forward in single file to arrange themselves around the effigy, holding flaming kitchen candles, wrapped in tin foil at their bases. Some were young women, some men, or more accurately girls and boys, mostly hairless, well-formed and obviously chosen for their physiques and ability in dance. The black lighters wore black tights to just above the waist, trimmed with broad grey velvet bands and were shod with black ballet slippers. Conversely, the whites wore white leggings with the same grey bands and white slippers. The face on each lighter was a blank – the black kids wore white plastic hockey masks, the whites were in those plain black theatre masks of Comedy and Tragedy. Male and female alike wore cod pieces, or cricket boxes tucked into their tights. Aside from the masks, each was naked from the waist up. Some of the young women had smallish breasts, little more than a handful, others were more fully endowed. The black kids had short hairstyles or braids in the fashion of the day protruding from the backs and sides of their masks, while the whites had their hair swept back off the forehead, secured in Alice bands or clasps behind. Each of them stood next to a wick on the waxen cadaver, sheltering their flames with their hands. The hooded flames threw light up onto their masks and faces, casting them in an eerie light.

According to Rhoda, Joachim Schönfeldt pressurised her into letting Thandi join the performance group; she was keen to get a start in drama and art and the young woman had shaped up well in rehearsal and would be participating in the evening's mime. The thought crossed his mind that he should warn Joa off Harrison when his eyes fell on a

woman lighter whose posture and body language told him it was Thandi. He flushed at the incongruity of buying books from a serious and studious woman one day and now watching her cavort topless at his event.

Taking their cue from Shibu, each lighter stepped forward, turned full circle with balletic poise and applied his or her candle to a wick on the effigy, stepping back after ensuring the flame had taken.

When the effigy was alight at every wick, Clark took up the microphone and began:

Who are these coming to the sacrifice?
To what green altar, O mysterious priest,
Lead'st thou that heifer lowing at the skies,
And all her silken flanks with garlands drest?[250]

At this moment, Shabangu, who had come to the front, snatched the mic from him and ushered him aside.

"Hayi man! We are not interested in this stupid show! It is just *kitsch*. We don't want the white man's *kitsch* here any more – it's all the same, all the time. You know nothing of our suffering. You have no right to include our students in this show. And you students," pointing at Thandi, "we will find you, we have seen you. Soon we will decolonise this university." With that he turned and left the hall, taking a few followers with him.

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Rhoda chirped above the buzz of voices that the next move was to go out to slaughter the ox – she hadn't been told it was a cow. The lighters withdrew from the bier in single file and led the crowd out onto the piazza, where Joshua and his two assistants were ready. Once again, the lighters formed a wide circle around the cow, in front of the spectators.

Joshua was enjoying himself in front of the large audience and finished sharpening his heavy, long knife with a flourish and a smile. He inveigled the help of four young lighter boys and gave each of them hold on a rope before untying the cow from the tree. Then Harrison came forward, pushed one boy aside, took his rope and passed it under the cow's belly to the left side, from where he gave an enthusiastic cry and a swift, hard

[250]John Keats. (1819) *Ode on a Grecian Urn*. (Keats, 1819)

pull on the rope. The cow was caught off guard; the hoof of its opposite right hind leg slipped on the paving and its hind quarters twisted and fell to the ground, followed by its right shoulder. Joshua shouted above the animal's bellows, telling the volunteers to pull hard in four directions, keeping it splayed on its back.

Several white female students started to shout and scream in protest against the slaughter, but were shouted down by the rest of the crowd before they stormed off in anger, threatening legal action.

Joshua then moved in on the cow with his knife. In a deft and determined movement, he cut into the side of its throat. Although the knife was sharp, the cow had a thick skin, even at the throat. Joshua sawed away while the animal bellowed to cheers from some quarters. Then it froze in terror, its eyes bulging. The red neck flesh opened out like a butcher's cut before Joshua found the artery. When he cut through it, his first assistant rushed forward and held a large white enamel bowl to the wound. The bowl filled in fits and starts as the heart beat out the blood, barely leaving a splash or a drop on the paving. In its struggle to stay alive, the animal let go of its bowels and bladder, its eyes stared rigid with fear and then its moans started to fade.

The cow gave some last spasmodic kicks with its hind legs and a number of women lighters and students started singing in call and response while dancing around the animal in a circle. A spasm seized one leg of the cow and it lunged at a boy lighter, who tripped and fell into the steaming shit at its tail. A minute or two seemed like an hour, but at last the beast lost consciousness and expired to a cheer from sections of the crowd.[251]

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Joshua's attendants and some enthusiastic students dived into the work of quartering the carcass before Joshua, the experienced man, started cutting off joints, steaks, ribs and so on. The liver and kidneys were placed on a white enamel plate. The rest of the offal

[251] "Cows: the sacred and the profane" in *Mail & Guardian*. 8th April 2016 (Cows: The Sacred and the Profane, 2016) https://mg.co.za/article/2016-04-07-cows-the-sacred-and-the-profane (Mail & Guardian, 2016). Grahamstown, South Africa Xhosa Cow Slaughtering Ritual [Mature Content]: https://www.youtube.com/watch?v=cGlHsrPuw4k. (Cow Slaughtering Ritual, 2017). Cow slaughter: Part 2 https://www.youtube.com/watch?v=HUhgYmZVrc4. (Cow Slaughter: Part 2, 2017). Slaughtering before African wedding (Slaughtering Before an African Wedding, 2017). Bull slaughter – South African funeral ritual (Bull Slaughter, 2017) (All 2nd March 2017).

was placed on another plate, next to the bowl of blood. Finally, Joshua started to place the cuts on the braai grates, where they sizzled over hot coals.

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Rhoda called everyone back inside. "While Joshua's men get the feast ready, we will read and listen to the poems, statements and excerpts of flash fiction that mark this event and are integral to the two theses."

Once again, the crowd started to take their seats in a circle around the bier. By this stage, the effigy's eyes were dimpled and aflame. The nostrils oozed snot that ran down the cheeks and neck before pooling at the base. The lips and chin were also dribbling molten wax down that way. All along the torso, wax ran down the sides of the body and onto the bier, where it cooled and set hard. The figure's fingertips and toes were already gone, leaving short stumps of burning wax.

Shibu Bhengu stood up and began to read from Clark's medical report, starting with the vital statistics of height, weight, build, colour of the eyes and so on. Then the forensic results from his DNA, taken from a mouth swab, and his blood test results. In a rehearsed and co-ordinated manner, a junior member of BARK projected Clark's x-rays, MRI scans and close-up face and body photographs onto the blank wall behind the bier before screening the *pièce de résistance*, internal video footage of every nook and cranny of Clark's digestive system from his recent gastroscopy and colonoscopy. Whenever Shibu came to an internal organ she intoned: "Pre-mortem: further analysis deferred until death."

"As a final point, Jeremy has provided in his will that a full post-mortem examination will be conducted on his cadaver and that the full report will be published on the internet for anyone, anywhere, to read." There was muted applause.

By then the genital mound had almost disappeared, but the flames burned on, working their way into the lower belly and into the upper thighs.

Thandi was next up, reading extracts from Steve Biko's *I Write What I Like*[252] to some pockets of applause, but also hisses from other sections of the gathering, from where mutterings about respect and appropriation were heard. Another reading from Fanon also stirred the assembly to chanting with raised fists.

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[252] Biko, Steve. (2004). *I Write What I Like*. Johannesburg. Picador. (Biko S. , 2004)

It was about an hour after the slaughter that Joshua indicated that the meat was ready to eat and the eager beavers amongst the students surged outside to pick up paper plates and stock up on meat, mealie *pap* and gravy. Some salads had also been set out, but this was more of a meat and *pap* affair and the lettuce and cucumbers were pretty much ignored. Clark came outside and when he saw that just about everyone had been helped to a first serving, he approached the carcass.

"What have you got there for me, Joshua? I think I'll have a bit of that steak."

On closer inspection, he looked peeved about the state of the meat. "Why have you overcooked the meat like this, man? They're just charred lumps." Joshua ignored this criticism while cutting into the side of the beast and placing two thick wedges on Clark's plate. Harrison was now mingling widely, charming the throng and, to Clark's annoyance, flirting with the young women.

The younger members of the crowd had come back for seconds, or even thirds, but there was still a lot of meat left on the carving table. The liquor was having its effect and by and large the mood was congenial and pleasant. Then there was a stir amongst the crowd – Pius Shabangu had returned with more male acolytes and people stood back to let them through to the carcass. Tall and rangy, Shabangu stopped near Joshua and looked around the gathering. When his eyes found Clark, he fixed him with a hard stare while the faintest smile crossed his lips. Clark had not met Shabangu properly and was apprehensive that he and his friends had come to disrupt the evening. On the other hand, Shabangu was within his rights in attending the event and he helped himself to a large portion of *pap en vleis* before complaining loudly about having to drink wine, when beer and spirits would have been better. Clark thought it best not to prod the viper; it would only lead to another outburst from Shabangu.

The pace of eating slowed when everyone could see there was more than enough to eat their fill. Young men picked over the carcass, pulling off titbits, licking their fingers and wiping them on their jeans.

"Did that young man say decolonisation?" Harrison asked. "The impertinence of it, he has simply no idea at all. Let him come up to stay with me on the Luangwa River for only one month. I will show him what erasing the colony entails."

Just then, as a young lighter walked past Harrison in her mask, he teasingly got her by the arm and pulled her across to his side. His next move was provocative and outrageous, you must agree. Harrison cupped her breast in his right hand, at the same time saying some words in her ear in Senga. The young woman laughed and tried to twist and swerve out of his way, but he had her by the waistband with his left hand. Pulling her back by

the band, he reached into her tights and plucked out her cod piece with his right hand and had a good look down inside her tights.

"Aha, I'm reassured, my fine young lady," he cried, tossing the spongy thing over his shoulder with a cavalier air. "I thought it was a mistake, but now I see everything is all right."

At the young woman's protest a commotion of hissing, whistling and shouting broke out from the throng and several male students came forward to pull Harrison off the young woman, whose mask was knocked off in the melee. "My, it's Thandi. How pretty you are," Harrison said. "Could I interest you in …?"

Into the scene of shoving and punching, Shabangu came up behind Harrison with a piece of firewood and struck him a blow to the head. Harrison collapsed, bleeding from the head and out cold, but he came to on the ground, hearing the bitter curses of the young men, some of whom were kicking him in the back and stomach.

"No! No!" shouted Joshua, rushing forward with his knife. At this intervention the assailants stepped back for a moment and Joshua threw himself upon Harrison, only to absorb some kicks himself when the attack resumed. "He is a great man, *Ngozi*, and he has come a long way! We must respect him and hear his message."

Thandi had withdrawn to put on a pair of jeans, t-shirt and a hoodie top.

Four guards from Campus Control soon arrived with two dogs and the group of animal rights activists. "There they are, just as we told you," one woman shouted.

At the sight of the dogs the students cleared a space around Shabangu, Joshua and Harrison, who got up swearing and still bleeding from his head. With raised arms and clenched fists, Shabangu tried to enlist his supporters to close in, but backed off as the dogs snarled at him. Joshua draped Harrison's arm around his neck to support him and took him to a chair, while someone retrieved his fez and leopard pelt.

Clark noticed the animal rights women setting up a picket at the doors to the union building, blocking anyone from returning to the bier. It was clear that there was more trouble ahead, unless Clark called proceedings to an end. He shouted out that they were serving ice cream with chocolate sprinkles, but a trickle of young men started to leave, followed by the odd couple. Some took cuts of beef with them, one a whole haunch.

By that stage the event had fallen apart. After closing the proceedings and seeing to it that some BARK people would take Harrison to the Johannesburg Hospital, Clark joined Joachim, Rhoda, Shibu and their comrades in tidying up. The melting effigy had started to fold in upon itself, hollow to the core.

62 Missing man

Looking down, he saw that he was in his jeans and a casual shirt with moccasins on his feet, but he was sitting in a wheelchair. It was some kind of a dungeon, with a shiny floor and a lot of pipes and cables bracketed off the roof slabs. The passage was lit, but the rooms were dark. Bev was there and his sister Nicky too. They were chatting in low tones.

"Come on now, when is the power coming back on? We've been here hours already." That was Bev. "Hello, Boy, did you nod off? We're still waiting for the power to come back on – they can't run the MRI machine only off the generator."

He wasn't sure what she meant, but he didn't care much. He felt so tired, he just kept dozing off. It looked like a hospital, like the X-ray department. He recognised the great doughnut of the MRI machine in the next room.

"Mr Clark, please go into the change room, take off your clothes and put this tunic on." That from a nurse, or radiographer, he guessed.

He could only move slowly, but managed to get out of the wheel chair and shuffle down the corridor to the change room. He took off his clothes, leaving his underpants and socks on. The tunic tied up, but whether at the back or front he could not tell. He took a guess and put it on so as to tie up at the front. Back at the wheelchair, he took his seat and dozed off again.

It was a hospital all right, and Bev and Nicky were keeping him company, but more than that he did not know. He could ask, but the effort would be enormous. He'd get it from them later, or some other time. For the present, sleep was all he wanted.

The nurse came and wheeled him through to the darkened room and pulled up next to the bed of the MRI.

"Mr Clark, if you'd get up and lie down on this bed here …"

He folded the tunic over his gut, but couldn't fathom how to tie it. It seemed she was the radiographer and she placed a head brace around his head and two more blocks on each side of his neck. He wondered if he had had an accident, a head injury – that's when they did an MRI's. Oddly, he felt fine, but he was so tired he couldn't stay awake.

He woke as the machine whirred and the bed slid backwards, into the doughnut. Stop, start, a centimetre this way, a few millimetres that way.

"Good, stay still … just a second. Okay".

The clicking was the sound of the machine. At least he was lying down and could doze off between shots.

"Can you remember where your kids are, Mr Clark?"

A strange question; she didn't even know him, yet she was talking about his children as if she was family and he was a neglectful parent.

"Do you know what day it is?"

"I'd have to say Saturday. I wasn't wearing those clothes on Friday."

"Yes, Sa-tur-day. And do you know where you are?"

"Hospital, clearly."

"Cor-rect. Rosebank Clinic. Your wife brought you in around lunch time."

Next thing, he woke up on a gurney in the corridor outside the MRI room, covered in a sheet and lying on his side. If he was in an accident, or had had a stroke, there was no changing it. An orderly pushed the gurney down the passage to a lift. He dozed off and woke again. It could have been minutes or hours.

He was waved through into a ward and transferred onto a bed and the curtain was pulled around for privacy. He stripped the tunic off and lay back, enjoying the coolness of the ward. The afternoon light seemed to be fading.

Pulse, temperature, blood pressure. They must also have taken blood; he had a swab of cotton wool taped inside his left elbow. Bev brought his meds and a wash bag. He was dying of thirst. Gulping water, he swallow the meds.

The physician was kind and asked him to recite his name, ID number, home address and place of work. Did he know his children's names and where they were? Yes, he did.

"Very different from this morning, Mr Clark. You'll need to see a neurologist, but I'd say it looks like a TGA – transient global amnesia. They still don't know much about it. It's rare and a second or subsequent attack is even more unusual. You'll have permanent loss of memory of the last 24 to 48 hours or so, and some gaps in your long-term memory. Expect to feel very tired for the next few days, but otherwise you'll be fine. Be sure to see the neurologist."

He would take in snippets of information from his surroundings, put the pieces together slowly, but for now he just wanted to sleep.

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Bev starts to tell me what's been going on. I woke up, showered, dressed and went downstairs for some breakfast. Then I went over to the office for a few hours, until we met back at home.

"Bun, where's that place we go to every day?"

"What place do you mean?"

"That place, I can't remember where it is."

"You mean the office …. Impala Road?"

"Yes. Who works there?"

"Who do you think? You were just there."

"I don't know. That's what I'm trying to remember?"

"Who sits in the office next to yours?"

"I don't know."

"Think now. You're in the corner, so who is next to you?"

"Gina."

"No, man. Gina was in your office, but she left us two years ago."

"Oh. Where's Lexie?"

"Now, where do you think?"

"At UCT. Is she at UCT?"

"Of course not. You know she's in America."

"America? What's she doing there?"

"Come on, stop it now. Would you like some scrambled eggs?"

A few minutes later, "Where's Lexie? Why isn't she here?"

"What do you mean, you just asked me that? You know where she is."

"Is she at UCT?"

"Look here, boy. Look at me. Are you shitting me? What's going on? Hold up your arms …, put them down by your side. Put them up …, drop them down. Turn to the left. Now turn to the right."

"Where's Lexie?"

"You've asked me that a dozen times!"

"No, I don't think so. Why isn't she here?"

"She's in America, as you well know."

"How did she get there?"

"Tell me, do you know Grant and Lee?"

"Yes, yes, I know them well. So do you."

"Where do they live?"

"In Westcliff, of course."

"They've been living in America for the last twelve years! I don't like this one bit. Just sit here, I'm going to call the doctor."

"Where's Lexie?"

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Bev leaves and returns with some bottled water, sucking sweets and such. It's dark outside now.

Me, formally: "I'm so sorry to cause you this bother. I hope I haven't put you out too much." Who do I think I'm talking to? It's Bev.

"I was terrified. I thought you were having a stroke. The doctors' rooms told me not to take you there, but just to bring you straight here to casualty. Can you remember anything today?"

"No. I remember the MRI and lying on a bed in the corridor."

"Do you remember what you did last night?"

"Not really."

"I'd like to know why you came home with shit on your shoes …, flecks on your jeans. All over the carpets you spread it. You were at Wits for that performance art thing. I gather it ended badly. What happened?

"I can't really say, for sure."

"Well that nutty Rhoda called on the land line looking for you and she said security had to intervene to protect some of the students."

"They did? I don't remember that, though that Shabangu man and his friends showed up. It must have upset me very much."

"How's that?"

"Well, just look where I ended up."

Bev is going. She'll call in the morning to find out how I am. If there is no change by the time the physician comes again, I should be discharged.

I wonder how Rhoda and Shibu are doing. They were going to go out after the event last night and make some more corrections. Brave things that they are. Well, I've fallen down another long rabbit hole and I find it pleasant down here.

I'm so tired, I need a long rest. No need to go back up for a while.

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63 Getting a head

Clark was nonplussed. There was no denying it, it was Lydia, the very same he had held in his hands in the Cullen basement. How in the world had the poor child come to be in his office safe? He had come to the strong room to take out the *Luangwa* volume– he had caved in to that damned Harrison and would have to lend it to him for a few days – and finding the skull in the safe was the last thing he expected.

Yet there she was again, in the palm of his right hand, a small hominid head, millions of years old, perfect and priceless. The news media had made an immense splash of the theft of the Taung Child and the foreign press and science commentators were none too pleased with Wits for letting it happen. Everyone was asking who had whisked it away from the Hunterian Museum. How could this have occurred? They should rather have displayed the replica. He had been worried about Shibu and Rhoda's possible role in it. What had Rhoda done with the child after he had turned her request down? Could she have bamboozled someone in his office into placing it in the safe under some false pretext? Come to think of it, Rhoda had recently helped Bev with writing a poem for a friend's birthday, so Bev might have felt somewhat beholden to her. Maybe she didn't mind if Rhoda left a small packet in the safe for a while. A big mistake.

Once again, Clark was moved to look into the young face, to appeal to her for the story of her short life. He could not bear her silence, the suspense of which mounted with each successive exposure. Some concluding lines called down the years to him as he tried to reach in and fathom her:

Thou, silent form, dost tease us out of thought
As doth eternity: Cold Pastoral!
When old age shall this generation waste,
Thou shalt remain, in midst of other woe
Than ours, a friend to man, to whom thou say'st,
"Beauty is truth, truth beauty,—that is all
Ye know on earth, and all ye need to know.[253]

[253] (Keats, 1819)

Someone – most likely he - must have placed Lydia there while he was in hospital, or on Sunday or Monday before he got back to work, but no one had mentioned it since then. Bev would have raised it with him and so would the office staff, so they were all excluded. Or had Shibu and Rhoda given her to him at the art performance and ox-braai? His memory was still a blank from the time of the fracas on Friday night until he woke up in hospital the next afternoon; he couldn't even remember how he had got home that night. Parts of his long-term memory were also still very hazy. It must have been he who had put her in the safe and that could only have happened from late on Friday night until Bev took him to the Rosebank Clinic the next day.

Finding a new hidey hole for the manuscript would be easy enough, but there was no question of keeping the skull – he would have to move it somewhere safer straight away.

Being responsible for her was more than he could bear. What if someone had seen him taking her from a conspirator, or overheard his conversations at the performance and ox-braai? Had that crazy Harrison had a hand in this – and just where did young Thandi fit in? Word might have spread and reached the university authorities, or worse still, the Level Library gang. They might be applying to court *ex parte*[254] right then for a search and seizure order. They could come barging in at any moment with the sheriff, straight from the judge's chambers. And what if they pounced on *Luangwa* while they were about it?

"Oh, no! *Luangwa!"*

Was that the bait that led him into the trap? Had he been taken? It was a terrible possibility, too horrible to think about. He had trusted the BARK people from the outset, which is why he had agreed to help them. What did they stand to gain by having him exposed in possession of the skull … of Lydia? Could it be a ploy to enrage the scientific and academic community, to bring them out with vocal reinforcements from abroad to get Wits to focus back on its true responsibilities to research and academia?

Hell, he hadn't even checked to see if *Luangwa* was still in the safe. Replacing Lydia on the shelf, he rummaged around among the contents, but found no manuscript there. Close to a panic, he closed the safe, activated the lock and locked the strong room door for good measure, making sure to keep the key. He couldn't run the risk that anyone in the office might see Lydia and start asking questions.

Once he got back to his desk, he had to face the bigger question: "What to do now?"

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[254] An application instituted without giving notice to the other party against whom relief is sought. DE van Loggerenberg and PBJ Farlam. (Service 41, 2013.) *Erasmus: Superior Court Practice*. Cape Town. Juta. Main volume, pB1-41: "An *ex parte* application is used: … where the nature of the relief sought is such that the giving of notice may defeat the purpose of the application, e g an Anton Piller-type order." (Farlam, 2013)

Had he agreed to keep Lydia for the others? No, of that he was sure. At least, he remembered telling Rhoda – a fortnight before the performance fiasco – that he drew the line after taking the *Luangwa* volume – purely for protection and to be returned later – and he would not collude in any further smuggling capers. Could they have softened him up and foisted her on him nonetheless? Had they taken *Luangwa*, with or without his consent?

He wondered if he was being paranoid; his amnesia was not helping him work it out. But it must be he who placed her in the safe; the other possibilities were too remote. And that meant he must have removed *Luangwa*, but where was it?

This was unbearable. *Luangwa* defined him, established a storyline for him in Africa, something to follow. Lydia he just loved and he could no more part with her now than he could cut off one of his own children. He could wipe his fingerprints off her head, but what about traces of his DNA? He remembered the clothes he had worn at the performance and the next day in hospital and would dispose of them. Fibres from a jacket pocket or a car seat could have lodged in a crevice in the skull, anything. And there could be DNA traces of the others who had planted the skull on him, possibly people he had no truck with, but who were linked to him via Lydia. An acid bath would do the trick – but that might do serious damage and he couldn't allow any harm to come to the poor child. …..

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64 Faultlines

Let us now go on a short diversion about images of the body of Steve Biko and the Truth and Reconciliation Commission, to which Nkosinathi Biko referred with approval in his affidavit. The Biko family did not support the TRC proceedings, dismissing them as being merely for the expedient and robbing them of their right to justice. Yet here they invoked the TRC. A lawyer might say they were approbating and reprobating.[255]

One of the things Clark did remember about the TRC was an art exhibition at the Castle in Cape Town where artists displayed their works in response to the TRC.[256] The late Professor Colin Richards, a noted artist, critic and art historian at Wits and later at UCT, displayed his "Biko Series" on that exhibition. Those artistic works included two close-up photographs of parts of the corpse of the late Steve Biko – the post-mortem photographs, tendered as Exhibit B at the inquest - printed on cloth that Richards had himself woven. While these close-ups were "not identifiable on their own", they were identifiable as photographs of Biko's corpse by being included in the "Biko Series."[257]

Most of these images were available to view at the Iziko South African National Gallery in Cape Town, or on the internet. Others, eight in number and also accessible on the internet, were in the Adler Museum of Medicine at Wits University. The Biko Series was finally included in the exhibition entitled "A Fine Line", mounted in tribute to Richards at Wits after his death in August 2014.

The Bikos wouldn't let the Niemands' document be sold and distributed to the public, but they had not proscribed the public exhibition of photographs of his corpse. In both cases, white people had assumed the right to deal with remnants of Steve Biko, one might

[255] George Bizos touched on this in *No One to Blame?* pp 83-4.

[256] Exhibition entitled "Faultlines: Inquiries around Truth and Reconciliation" held at the Cape Town Castle. (1996)

[257] http://wiser.wits.ac.za/page/fine-line-curators-notes-penny-siopis-10989. (Siopis, n.d.) 6th February 2018.
"A complex example of this (therapeutic practice of line-making) is his Biko series which was made for the exhibition Inquiries into Truth and Reconciliation (1996), and which references a critical moment for the artist when, as a medical illustrator in 1977, he encountered post-mortem photographs of Steve Biko. Richards was profoundly affected by his realization that the forensic photographs he had been asked to label for a legal inquest were of Biko's body. This shocking realization provoked a deep sense in the artist of his complicity with the apartheid abuses which had martyred Biko. ... In the Biko series, these cut-out and layered lines of text combine with photographs of a prior art work Richards had created: fabric (to signify the shroud as well as the veil) that Richards had made by hand and upon which he had imprinted mediated versions of the Biko photographs that had so disturbed him."

say for their own purposes. What was the ethical difference between exhibiting pictures of Biko's corpse and selling a copy of his autopsy report? It always seemed to come back to the question of auction, or sale for money.

The Adler Museum website said that Richards first saw the photographs many years before when he was working as a medical illustrator at Wits medical school, probably in 1977 or 1978. He was asked to label the photographs for a doctor and discovered they were photographs of the late activist. Richards was troubled by the politics of the job and its ramifications, still bearing memories of his military service in Angola. [258]

Was Richards profiting, or enhancing his career, by making art with photographs of Biko's corpse, as Jenny Hobbs had supposedly done by writing a book sparked by Jackie Quin's mortuary photograph? This was a fertile line of enquiry and an interesting comparison. To illustrate this inconsistency, Clark would attach a copy of a page from the Adler website to the Niemands' court papers. Any member of the public could look on the internet and see – and distribute anywhere in the world – a reproduction of one of Professor Richards' photographs of Steve Biko's corpse.

[258] https://www.wits.ac.za/health/adlermuseum/exhibitions/colin-richards-born-1954/ (12th July 2017.) (University of the Witwatersrand, 2017)

65 William Cullen Library (4) – Losing one's head

Coming from a seminar, Clark made his way through Senate House. The 1970's concrete multi-purpose building was much decried by its users, but Clark thought it was arranged on a good plan. The students on the university's names committee had succeeded in renaming the building Solomon Mahlangu House. The next to fall would be Central Block, to be renamed after the great pan-Africanist, Robert Sobukwe. The university was going in reverse, changing buildings from the secular to the partisan. I would say that Wits, like Johannesburg, had never been a fully colonial city. It was a rude bitch of a town that had chafed under Paul Kruger and paid scant attention to the British Empire under its eight years of rule. The university was founded later and had a scattering of buildings named after past vice-chancellors, academics and donors, but the most heinous names were no worse than Smuts, Hofmeyr and Oppenheimer, not the imperialists of UCT or the apartheid figureheads weighing Stellenbosch University down.

Clark took comfort that for now Lydia should be safe enough where he had left her, in a document box on a shelf opposite Shibu's secret letter box. He had gone to some trouble to scrub her with a tooth brush and Sunlight dishwashing liquid, then put on rubber gloves to rinse her, rub her down and place her in a Jiffy bag. You might protest that this was another grave sin against the archive, but he wasn't going to be linked to the theft if he could help it. He had also wiped down the shelf inside the office safe with Windowlene, just to be sure. The duster he had burned.

He was now sure it was a theft, however good the motive. How could he have thought that the head librarian and museum curator would allow their greatest treasure out of their care, to go along an underground route to persons unknown? What an idiot he had been. "Danziger knows about it, pretty much" and "a need-to-know basis." All rubbish. And as for that old Alfred individual, no doubt a seasoned fence.

Getting Lydia up to Wits and across to the William Cullen Library had been a bit hair-raising, but he would have flashed his student card if anyone had challenged him. Shibu was right; none of the menacing young men had accosted him, dressed as he was in his professional clothes. He was well known to the Cullen staff by then and his presence in the storeroom would not have seemed that unusual. If a librarian stumbled over Lydia in her new home, too bad, he would have to accept it. They would call in the Hunterian or Adler people to take her away and she would be fostered in safe hands.

Mission accomplished, he felt very relieved. Yet, at the same time he felt some anxiety, being the only person in the world who knew where the child was. He no longer knew who he could trust. The BARK crowd were still friendly and serious, but he kept thinking that Rhoda was peering at him more intently than before, her feathers ruffled. Shibu too. Why didn't they say anything, or ask after Lydia's wellbeing?

Had he told them – while he was amnesic – that he had put her in his office safe? No, it would have come up in conversation later. They had not asked after Lydia, which suggested that they did not know he had her and he had tried to act innocent by asking Shibu and Rhoda if they knew of her whereabouts. They were doubtless innocent in all this and it was very low of him to suspect them. Everyone was so tense and paranoid just then.

So, had he made some sort of custody pact with someone else? Sooner or later someone would have to reveal themselves to him, but who could it be? He wasn't sure how long he could continue. He did not want to have to move her again and he could tip off the museum people about her whereabouts, but no - that would entail a fine toothcomb search of the whole storeroom, in fact the whole library and that could expose Shibu, Rhoda and the others to discovery and prosecution. He just didn't know if they were playing him. And should it be Shibu who opened the box and found Lydia there, he would be in quite a fix, signalling to her and the others that he had gone off-piste and was following his own trail. They might denounce him.

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On entering the Historical Papers room, Rosemary Mulholland called out, "Mr Clark, I am so relieved to be able to report that we have found that typescript of *Luangwa*. I was so worried we might never see it again, but we found it back in the glass cabinet this morning. The index card was slipped inside its front cover."

"Well, Rosemary, that certainly is good news, I was also worried it was lost. …" Obviously, the hand of Harrison in there, Clark thought.

Taking the folder from Ms Mulholland, Clark opened the typescript, now secured with a new ribbon, and flicked through the pages. It was odd; some of the pages were whiter and stiffer than others. All the pages ranged from white to cream to dun. How could they have aged at different rates, or could some have been typed at long intervals after the others? Clark didn't remember that feature on his first perusal of the papers. He flicked through, seeking the pages where he knew sensitive issues like Harrison's free and easy

way with young women and his use of the sjambok would appear, but they were gone from those pages, which were newer, whiter sheets.

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Clark stashed some crackers, cheese, mebos and mineral water in a box in the far corner of BARK room, then saw Harrison and Rhoda returning from their lunch in the student canteen. Christ, it was intolerable! The man was getting his oar in everywhere in Clark's life. Come to think of it, Rhoda was a bit of slut for any new person or antic and rather a gossip. This could present a new danger.

Politeness required that Clark ask, "How has your head healed, Harrison? Shabangu gave you quite a bang."

"Well, I'm not sure what happened, it was all such a palaver, but I woke up in hospital with a thick bandage around my head. I needed stitches, which is a first for me, a real novelty after so many years."

"Your behaviour was quite unacceptable, as you should know," Clark said. "When in Rome, do as the Romans do. Times have changed – you can't do that sort of thing down here. Anyway, the evening ended badly for me too, as you may have heard."

"Hmph. Don't we have some outstanding business to discuss? Is there something you want to say to me?"

"Whatever do you mean? I have nothing to say to you," Clark said. "On the contrary, I thought you might want to raise something with me."

"Concerning lost property?"

Clark paused. "I have lost something valuable, yes. But is that all? Is there nothing else?"

Harrison taunted, "I'll tell you a little story, you know. I was on the scene in Broken Hill …, or Kabwe today, when they found the Rhodesian Man.[259] It caused quite a stir, I don't mind telling you and I had the opportunity, well, as a rather prominent man of the town, if you don't mind me saying so myself, but an opportunity of holding the fossil in my hands and taking a good look at it over several days."

Clark was struck dumb. He would never allow the monster to take his child.

[259] See (Tobias, 2005) "One of the most magnificent crania was that from Kabwe or Broken Hill (formerly known as Rhodesian Man) on the Copper Belt of northern Zambia (formerly Northern Rhodesia). This very complete cranium with diseased teeth and gums was the first significant hominid discovery from Africa. It was obtained in 1921, three years before the Taung skull was found in South Africa." (p81. Also at pp125, 242 & 244.)

"It was quite wrong of you to refuse me accommodation," Harrison added. "And where I come from it would be a disgrace. I say you are indebted to me."

"But is that enough to threaten me. All right, I was wrong, a poor African, but take some responsibility for your own part in it."

"Your friends kept your little secret tight, but don't think they are above showing their slips. I think they may have let you down."

Part 4 After the struggle

66 Bedding down

After tucking Clark into bed, Shibu stepped to the wall, brought the dolly closer and put it in place before she withdrew, turning out the light as she left the room. Clark felt tired. The weeks and weeks of conflict on all fronts had worn him down and affected his ability to get a good night's sleep – just what he most needed in this time of crisis. He was grateful for the flask of soup, the duvet and the pillow Rhoda had sent him.

The next day was going to be epic; Level Library would present their ultimatum to the university administration. That crazed Shabangu had declared himself Vice-Chancellor again. It was quite clear for all to see that the man needed to go away for a long rest. And so did Clark, for that matter.

He had done well to make up with Shibu and Rhoda, who had since done no more than speculate in general terms about Lydia's whereabouts and the identity of the thief or thieves. He felt bad about his thoughts on the hapless Alfred too, but fortunately he hadn't expressed them to anyone.

Clark had joined them all in the guessing game about the missing child, dissembling concern and half-hearted shame, careful not to let slip any words that might suggest his complicity. Rhoda had overcome her anger at the theft and stopped laying the blame at his door. Mysteriously, she kept mum about what she had done with the girl after he refused to take her in – and he dared not ask her, which itself might seem a little suspicious to her. It was hard to keep up. The media were still in a fever, chasing false reports all over the place, even overseas. He had still not been contacted and he had no further leads as to who his brief accomplice had been. Perhaps the mists of his memory would still clear to reveal him or her.

The minister of higher education had visited the Cullen and stood on the steps of the library with the minister of police, addressing the media, but refusing to answer students' questions. The newscasts showed clips of Rosemary Mulholland showing the ministers rare manuscripts in the Wits collections. They had appealed to the students, saying there were valuable struggle documents in the Wits archives that should be preserved, to which they replied, "We will take those ones out of the library and then we will burn the rest of them."

Almost forgotten lines from another life came back to him in the dark:

Webster was much possessed by death
And saw the skull beneath the skin;
And breastless creatures under ground
Leaned backward with a lipless grin.[260]

He usually contrived a way to be near Lydia, though not so close as inadvertently to signal her whereabouts. He dared not move her again, so the thought that someone might stumble on her … that was more than he could bear just then, along with all his other concerns. On occasions when he had to accept a more distant post, his nights were pitiful, tossing and fretting away the hours, thinking about her.

Clark also needed to stick close to Harrison – wherever Harrison was, *Luangwa* was sure not to be far away. Clark just knew that Harrison suspected he had more at stake than the typescript of *Luangwa*. He had been everywhere under foot since the performance debacle and it wouldn't be long before he worked it out. Whoever came to have Lydia would also control Clark. For Harrison to foster Lydia was unimaginable – he would never let it come to pass.

Getting the first dolly from the Woolworths shop had been fairly easy, but moving it up to Wits and then into the Cullen less so. Between them, Shibu and Rhoda had contrived a false book delivery from Collectors Treasury to the library basement and there had been no one there to check that the dolly didn't emerge later. When they saw how nicely it worked, smuggling the next three or four into the building went smoothly.

They had piled the dollies high with books from the piles in the discard room and could now pick any aisle in any room and roll the dollies into position, then erect low walls of books on the floor, blocking the aisles and cutting off all approaches. By filling in the gaps all the way to the top and doing the same at the aisle-ends, any given section became a cul-de-sac for a night and a day. The next night they moved the dollies around the room, or to other rooms, to block off other aisles while they got busy.

Clark felt drowsy in his makeshift coffin on the shelf. Despite the hardness of the steel, Shibu had done a good job, feathering a little nest for him with a sleeping bag thrown onto a layer of newspapers taken from the waste area down the corridor.

Harrison had become a problem again. Rhoda said she had come across Harrison's forlorn little camp in the corner of his room and that he had squirreled away oddments purloined from the student canteen, Joachim's studio and who knew where else. He seemed to be avoiding Clark, though Rhoda and Shibu had seen him moving about in the

[260] TS Eliot. (1919) "Whispers of Immortality." (Eliot, Whispers of Immortality, 1919)

basement when they worked after hours. Clark simply could not believe that he had once again failed to make a copy of the *Luangwa* manuscript before it disappeared from his safe.

How much more stupid could he be? Yes, he should also have found time to type up the manuscript, but that would have taken him weeks and he had work to do. At least he had managed to compare the handwriting in John Harrison Clark's letter and the manuscript; though written about twenty to thirty years apart, he was sure they were by the same hand. But the typed document was no longer a complete transcript of the written one. Harrison was trying to cover his tracks, removing certain pages from the typescript and replacing them with new, whiter pages. Old Changa Changa wasn't such a fool – in his visit to Johannesburg he'd quickly grasped what the present demanded of the past and was obliging it by editing his memoirs to suit, revising history. Was he thinking of publishing it at last? So what if it contained a lot of text that wasn't in the manuscript?

Everything had been so hectic the last few weeks and he was feeling the stress and strain of it all. One question nagged at him: was Lydia the real deal or merely the replica? The high-ups in the university had recently tried to pour cold water on the story that the original skull had been stolen, saying it was only the replica, but there were contradictory mutterings from the museum people. How could that happen? Surely, none of them would assist in a public fraud? Clark wondered if they might be buying time while they dealt with kidnappers over the ransom. If they got the original back, they could do a quick switch in the museum and no one would be any wiser. On the other hand, Rhoda had as good as said that Lydia was the actual Taung Child, passed along by Danziger and the Hunterian curators. He might have to rethink his scepticism. If only he could be certain, but he couldn't take Lydia to the Origins Centre or the Hunterian Museum to confirm it – he would be arrested in no time at all.

As the replica was usually on display in the museum, it gained provenance, always being viewed by visiting school groups, university benefactors and journalists and it was the replica that was viewed by the pop stars, the king and queen, the pope and the president, should they come to pay their respects. The original did not acquire, nor did it need, the quality of having-been-seen-by-important-people. There was a two-tier class system at work. It might only be the true scientists, palaeontologists, anthropologists, evolutionists and other select high minds who got to see the original, the very fossil, unsullied by the gaze of the hoi polloi, giving it a pure provenance, an uncontaminated standing, as sacred as the replica's was profane. Yes, there should be a special shrine where special people got to look upon it.

Had he been wasting his time all along and all for the sake of a copy? Never mind, it mattered not: she was precious.

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I remembered it correctly, my letter to Lesley shows. Up on the border, asking "Why me?" the OC was pleased I had a legal training. He wanted to send me on a law course in Windhoek and then make me a law officer for the unit, roving around in Ratels with the battalion, prosecuting those poor young troepies for drinking animals' blood and shooting each other in the foot so as to get sent home. Instead, I told him where I stood and that my sympathies were with the enemy. He was fascinated, but not unduly shocked or horrified. A professional, he was impressed to meet a troop with principles, even if he didn't share them. We reached the understanding that we each had a different approach, neither of which could be absolutely right, that they didn't coincide as far as working together went and that I could serve no function in his unit. With that he undertook to arrange for my return to "the States", forbade me to discuss my views with any of his troops in the interim and dismissed me.

As far as the case goes, I've lost track of it; lost the plot, you could say. Money lies at the heart of the offence. The tawdry thirty pieces of silver. They say I have a blind spot there, but if the Bikos are hurt and feel their dignity has been impugned by the attempted auction, or sale, let us do no harm to them. We can withdraw the lot from the auction permanently and leave it there.

Whatever the result in the case, costs should be awarded *de bonis propriis* against the applicants' attorneys and counsel. Their behaviour was shocking. Garth and Tessa don't want the dispute to go any further and, above all, are terrified at the prospect of being ordered to pay the Bikos' costs, even though there should be no risk of that: they shouldn't have to pay George Bizos for the privilege of running them down in public, especially when he breached the prescripts of the Red Book. Any court should see that.

But what to do? We could assert our ownership of the autopsy report, yet donate it to them to end their pain. That would be subject to normal archival principles, as they want. In other words, it would be displayed in the Steve Biko Centre with an acknowledgment that it was donated to the museum by the Niemands. That way everyone would win something.

Surely, it would be hard for them to refuse such a proposal? If they did, it would show once and for all that their whole case was no more than a vanity project.

67 Morendo

The Johannesburg Star*:*

(1) Wits students burn classic library

The landmark William Cullen Library on the east campus of the University of the Witwatersrand was gutted by fire last night and may need to be demolished.

A group of students, marching to the library in protest under the banner of the Level Library campaign, started throwing bricks and stones at the ground floor windows while chanting, "The doors of learning and culture shall be opened!" They wanted to present a list of their demands to the vice-chancellor, Professor Adam Habib, and the library authorities, who were at a meeting with the rival Open Archive faction and failed to arrive.

Matters took a turn for the worse when the words "Voetsek, you bloody cretins!" were heard from the basement of the building. Accounts differ, but two students said that they were uttered by an elderly man wearing khaki shorts and a red fez. Another bystander said he saw a middle-aged balding man in a blazer scooping up books and documents. The two were then seen fighting over a document box from the shelves. The protestors ramped up their protest by directing their fire at the basement windows, where the historical archives are housed. Some members of the Open Archive group then removed their t-shirts and doused them in liquid before wrapping them around sticks and setting them alight. They then hurled their improvised torches through the basement windows, from where anguished shouts were heard.

A fire quickly developed in the basement stacks. Onlookers thought it could have been contained in that area if the fire department had arrived sooner. The blaze seemed to have passed its peak when there was a loud crash and parts of the ground floor gave way and collapsed into the basement. At that point the fire increased in strength and spread to the ground floor. City fire fighters hosed the ruins through the night and were

unable to get into the basement until this morning. They do not expect to know if there are any bodies under the rubble until later today.

The library housed the collections of Africana, early and fine printed books, government publications and historical and literary papers as well as the important Landau Library of Judaica and Hebraica and the Ernest Oppenheimer Portuguese collection.

A university spokesman said that while the library was equipped with portable fire extinguishers, the sprinkler system had not been maintained and had been decommissioned several years ago due to ongoing budget cuts. "We felt it was more important to maintain our international subscriptions in the face of the declining value of the Rand."

Mr. Shabangu, president of the Wits SRC, denied that the protestors were to blame for the fire. "They did not start by intending to set fire to the library, but they were provoked by that white man's racist insults. He is the one to blame and also the arrogance of the vice-chancellor who did not meet with us to hear our demands. There is no price that is too high for us as students to pay to bring change to this racist university. We will show the administration that they have to recognise our demands for a new curriculum, for new books and an environment that is more sympathetic to our students."

Asked about the loss of many irreplaceable books and documents, Mr Kenny Mahlangu, leader of the Local Library campaign said, "It is not such a calamity for those books to be burned. What we are saying is that we need a new library with new books that reflect the demographics of our country." Last year, university authorities claimed that the Local Library grouping were agent provocateurs inspired by the Boko Haram movement in Nigeria. Mr Mahlangu denied this, saying, "That is an insult to us as South Africans - that we cannot identify our own struggles and organise our own protests."

The Johannesburg fire department reached the scene more than an hour after the fire started. It then took them another thirty minutes to run hoses from the university swimming pool to the scene of the fire. Picking over the debris, Mr Ronnie April, spokesman for the fire department, said that the heat in the basement must have caused the ceilings to buckle and crack, whereupon a large part of the ground floor collapsed into the basement. "All those books and old wooden shelves, the tables and chairs, they all added fuel to the fire and from there it spread to the rest of the building," Mr April

said. "By then there was nothing more that we could do." A few hours later the upper floor and roof caved in, leaving only the exterior walls and the portico with its Ionic columns still standing.

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(2) Attorney, archivist feared dead in blaze

The missing Johannesburg lawyer, Jeremy Clark, is feared dead in the blaze that largely destroyed the William Cullen Library on the east campus of the University of the Witwatersrand last night. (See main story.)

Mr Clark has been missing from his home in Hyde Park for a month. His family put out an alert for him to contact them, but hearing nothing, feared him dead. Students and staff of the university, who declined to be named, said that he had been seen on occasions in the William Cullen Library, where he was researching early Portuguese and British explorers on the Zambezi River. Earlier this year he was involved in a fracas with the head librarian over the whereabouts of a book on early settlement in Zambia.

A protestor who did not wish to be named said that when the fire started she saw a middle-aged white man hurrying about in the basement, collecting books and passing them through the window bars to the protestors. The man appeared to have passed an old ledger and about twenty books on southern African history through the windows before she lost sight of him in the smoke. Some protestors read the titles of the books and threw them back into the burning basement.

Clark has been linked to an underground activist group known as BARK, which has been campaigning for the protection of historical artefacts and the correct use of language and grammar in all texts and on all public signs and buildings. He is thought to have supplied cans of spray paint to dissident academics and students who have been defacing street signs in Johannesburg in recent years. The group targets misspelt street names on kerb stones and signs and scores through the misspellings in orange fluorescent paint. Another university official said that the university has suspected Clark of living in the basement stacks of the library. Ms Mulholland, head archivist, said they had to order pest controllers in when

they found traces of biltong, biscuits and other deposits in certain basement book bins.

Ms Shibu Bhengu, a sympathetic junior archivist, is said to have smuggled food and other supplies to Clark. Ms Bhengu, who helped to organise protests against the prosecution of the BARK activists outside the magistrates court, is also missing and attempts to reach her were unsuccessful.

Mr Clark's wife Beverley, also an attorney, could not be reached as she is visiting the couple's son and daughter in the United States.

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(3) The Strange Library

Strange movements in the William Cullen Library at Wits University recently left the librarians puzzled. Library staff were baffled by strange movements in the book stacks, saying that piles of books were being moved around the basement at night, so that some corridors got blocked by new piles of books and new aisles were opened up where books had stood before. It became very difficult to keep track of the inventory before last night's fire (see main story) and they had feared the situation would deteriorate into chaos.

Researchers have complained for years that the stacks in the William Cullen Library were overflowing and that shelves, books and document boxes were stacked from floor to ceiling in a maze of twisting corridors and dead ends. It had become very difficult to know where to find items for their research.

Another mystery is the disappearance of some titles from the Africana collections and the mysterious reappearance of others that were discarded in recent years to make way for the university's more recent collections of newspapers, pamphlets, posters, banners and other struggle ephemera. Librarians were not able to find any trace of many books listed in the library catalogue, while increasing numbers of books on the library shelves were not in the catalogue at all.

Ms Rosemary Mulholland, principal curator of the archives said, "We won't be solving that mystery after this terrible fire. We'll just have to start over again."

68 Epilogue - A new *hrön*

There was much to be said for silence,
that place were words run out and music begins;
also, where music runs out.

- Julian Barnes[261]

Shabangu sat at a table on the Library Lawns with the charred ruins of the William Cullen Library behind him. He wore a white t-shirt with the legend "I am because we are." Two of his comrades sat either side of him. Facing him were a few hundred students and some academic staff and a dozen members of the news media.

Proceedings were delayed when a woman lieutenant on his left asked Shabangu to consider the configuration of the space. "We are working for the decolonisation of the university space, where relations between the oppressor and the oppressed have not changed. The oppressed need to form a united voice on decolonisation, but we cannot do this in the presence of our oppressors. So, we ask you, Mr Shabangu, to ask all whites in attendance to leave."[262]

Shabangu smiled for a moment, then looked worried. He was reluctant to evict white members of the mass media – it would have left the event barely reported. After a short discussion, it was agreed that white staff and students would be asked to leave, but the white media workers could stay.

Getting down to business at last, Shabangu intoned, "Friends, today is the most significant day in our recent history as well as our most ancient history. I am privileged to announce that our cadres have been inspecting the ashes of last week's fire and they have brought me a discovery of the greatest significance."

There was a cheer from the onlookers and the news people zoomed in on his radiant face.

"Today we can announce that we have discovered the missing fossil head from three million years ago. The mystery is over. It is the so-called Taung Child. The head was discovered in the ruins of the basement, where it should not at all have been. Until now, it was named by white British and Americans, a colonial fossil, even an apartheid fossil,

[261] (Barnes, 2016) p134.
[262] https://blackopinion.co.za/2017/03/06/reflections-lecture-ngugi-wa-thiongo-baxter-theatre/ 5th July 2017. (Black Opinion, 2017)

but we have liberated it from its chains.[263] I would now like to reveal it to you for the world to know."

There was a gasp from the assembled students and the cameramen came forward as Shabangu placed a sports bag on the table and drew out a smoke-blackened skull. Getting to his feet, Shabangu held it up alongside his face to allow the media people to get close-up pictures of him and the skull in a single frame. When the media were near he turned the head and kissed it on its grinning teeth.

"You can see that it was damaged from the fire … there's this crack here across the top and this piece lost, but we are sure it is still the same head", Shabangu said. "Many well-known professors at this university will tell you that humanity evolved from the apes, but it is what we call pseudo-science to say that Africans are descended from baboons." He stooped and bobbed up and down, mimicking an ape to loud laughter and jeers. When the hilarity had subsided, he stopped his simian antics and placed the head in the palm of his left hand to continue his address. "We say it is pseudo-science. It is based on the Western materialist world view, which other professors will tell you is a world that knows no respect for spirits. They say 'The world is all that is'."[264]

This drew further jeers and hoots from the crowd. When the noise had subsided again, Shabangu continued, "But we know that a human being is a spiritual being as well as a material body. A human being pre-exists its material shape. I will admit that much from that old white man, Plato." A sprinkling of laughter crossed the crowd.

"No, Man is not a series of coincidences. We cannot link our human ancestors and the apes – our ancestors will not forgive us for that. That is why there is so much upheaval going on in our country. The ancestors are angry, they are crying. So today we are announcing it …, it is the end of the Western paradigm and the beginning of the African world view, which puts the African black man and his ancestors at the centre of our world."

Enthusiastic cheers erupted from the crowd and Shabangu held the skull up above his head, like the captain of a winning football team, before continuing. "So today we are

[263] (Tobias, 2005) "While this was going on, anti-apartheid groups were mounting a demonstration on the opposite side of the road (i.e. from the American Museum of Natural History in New York – ed.): they were protesting against the inclusion of South African fossils in the exhibit. 'Apartheid fossils not wanted' was the theme of the posters. It was with the most mingled of feelings that I confronted this turn of events. On the one hand, I had every sympathy with the anti-apartheid sentiments of the protestors, and was sorely tempted to cross the road and stand with them – as I had often stood with Wits students and the Black Sash in Johannesburg. On the other hand, the very idea of dubbing the Taung child, who had lived in southern Africa some 2.5 million years before settlers from Europe had even moved in to South Africa, as an 'apartheid fossil', was painful, if not ludicrous. …" (p235.)

[264] (Wittgenstein, 1974) Proposition 1, p5.

saying the white chaps must remain silent. They will understand me because always they say, 'That which we don't understand, we must pass over in silence'."[265]

After further laughter died down, Shabangu closed: "In the name of the ancestors and our future, I thank you."

[265] (Wittgenstein, 1974) Proposition 7, p89.

Glossary, idioms, slang and abbreviations

AA	-	Answering affidavit.
Ad idem	-	(Latin) Of the same mind.
Afrik.	-	Afrikaans.
Audi alteram partem	-	(Latin) To hear the other party's side.
Australopithecus africanus	-	(New Latin) Extinct apelike primate, 3 to 4.5 million years old.
Blaps	-	(Afrik.) Blunder, clanger, gaffe.
Bloekom	-	(Afrik.) Blue gum tree, Australian eucalyptus.
Bonus paterfamilias	-	(Latin) The good father figure, head of the family.
CAT scan	-	An X-ray image made using computerised axial tomography
Chutzpah	-	(Yiddish) Audacity, cheek, impudence.
Contra bonos mores	-	(Latin) Against, contrary to good morals.
De bonis propriis	-	(Latin) Out of one's own pocket - referring to a party's attorney being ordered to pay the costs of litigation.
Déjà vu	-	(French) Feeling of prior sight, knowledge.
DNA	-	Deoxyribonucleic acid, the constituent of chromosomes of all organisms in double helix, responsible for the transmission of hereditary characteristics.
Dof	-	(Afrik.) Dim, slow, detached, stupid.
Dooswyn	-	(Afrik.) Wine packaged in a box, rather than a bottle.
Dropbox	-	Cloud-based file sharing and storage service.
Ex parte	-	(Latin) From one party only in litigation.
En route	-	(French) On the way.
FA	-	Founding affidavit.
Facta probanda	-	(Latin) The minimum facts that have to be proved to sustain a cause of action, litigation.
Facta probantia	-	(Latin) The facts going towards the proof of *facta probanda*.

Fok	-	(Afrik.) Fuck.
Functus officio	-	(Latin) A court whose duty or authority has come to an end, which has discharged its duty.
Gestetner	-	Brand name of a mimeograph or replicating machine.
Hearsay	-	Reported, rather than directly experienced evidence
Hoi polloi	-	The masses, the rabble, the herd.
Homo naledi	-	Extinct species of hominin
Homo sediba	-	A species of Australopithecus
Homwe	-	(Shona) Uncle figure.
Hrön (pl. hrönir)	-	Secondary object standing in for the original, serving a better function than the original.
Ibid.	-	(Latin) Ibidem. The same.
Injuria	-	(Latin) Impairment of a person's dignity.
Kitsch	-	(German) Vulgar, pretentious or idealised art form with popular appeal.
Laatlammetjie	-	(Afrik.) Late child, much younger than its siblings.
Lapa	-	Semi-open gazebo-like entertainment area with a thatch roof supported by poles.
Libri thesaurus animi	-	Books are the treasury of the mind.
Luangwa	-	Tributary of the Zambezi River in south-eastern Zambia and the region which it drains.
Mero motu	-	(Latin) Interference by a court on its own motion to do something the parties are not entitled to, not at the instance of a litigant.
Modus operandi	-	Method of operating
Mountweazel	-	False entry inserted in a work as a safeguard against copyright infringement.
MRI	-	Magnetic resonance imaging – medical.
Ngozi	-	(Shona) spirits of the deceased who were wronged or neglected
Nxaaaa	-	Expression of annoyance.
oom	-	Uncle, respectful term of address to an order man
Pap en vleis	-	Mealie meal and meat dish.

Pièce de résistance	-	(French) The main or greatest item of several.
Poste restante	-	Post or mail sent to a person care of a post office, to be collected there by the addressee.
Prima facie	-	(Latin) At face value, accepted as true until proved otherwise.
Pro amico	-	(Latin) For a friend.
Pro deo	-	(Latin) For God.
RA	-	Replying affidavit.
Ratel	-	(Afrik.) Literally a honey badger, but an armoured car in the military context.
Red Book	-	General Council of the Bar of South Africa. *Uniform Rules of Professional Ethics*.
Rixa	-	(Latin) Provocation.
Roneo	-	Brand name of a mimeograph or replicating machine.
RSM	-	Regimental sergeant-major.
SADF	-	South African Defence Force (apartheid era).
SAIMR	-	South African Institute of Medical Research.
SAMS	-	South African Medical Services, an arm of the SADF.
Shilling	-	Former British coin, about a twentieth of a pound.
Sif	-	(Afrik.) Poor, weak, incompetent.
Sjambok	-	(Afrik.) Heavy hide whip.
SRC	-	Students Representative Council.
Tabula rasa	-	(Latin) A clean slate, a new beginning.
Tackies	-	Sand shoes, trainer shoes.
Tape recorder	-	Audio recording device, storing sounds on magnetic tape
Tickey	-	Former South African coin, 5c in the rand.
Totalitarian kitsch	-	The cultural style of a single political party or power in which all people are dragooned to share the same aesthetic and cultural preferences.
TRC	-	Truth and Reconciliation Commission.
Traditio brevi manu	-	(Latin) Delivery by a short hand: transfer of ownership to a person already in possession, but not as owner.

Traditio longa manu	-	(Latin) Delivery by a long hand: transfer of ownership to a person before they have the object in possession.
Troep, troepie	-	(Afrik.) Troop, trooper.
Typewriter	-	Hand-operated machine for the single impression of text on a sheet of paper with or without carbon copies.
Ubuntu	-	(Nguni) Fellow feeling or sense of humanity.
UCT	-	University of Cape Town.
Uitkakparade	-	(Afrik.) Shitting-out parade - military.
Ultima thule	-	Distant or unknown region, especially in the north.
Voetsk	-	(Afrik.) Clear out, bugger off.
Wits	-	University of the Witwatersrand, Johannesburg.
Yad Vashem	-	Holocaust memorial and museum in Jerusalem.
Zambezi	-	Major river draining much of south-central and south-eastern Africa into the Indian Ocean.
Zeitgeist	-	(German) The spirit of a time and place as reflected in its culture.

Bibliography

(1898). Retrieved from The Gazette: https://www.thegazette.co.uk/London/issue/26954/page/2205

(1969, June 21). *The Star*.

(1969, June 27). *The Star*.

(1969, December 6). *The Star*.

(1971, October 29). *The Star*.

(1972, February 13). *The Sunday Express*.

(1977, November 28). *The Cape Times*.

(1977, October 8). *Rand Daily Mail*.

(1986, April 10). *The Star*.

(1992, December 5). *Saturday Star*.

(1992, December 11). *The Star*.

(1993, January 15). *The Citizen*.

(1993, May 27). *The Citizen*.

(1999, May 26). *The Citizen*.

(2011, July 28). Retrieved from African Byways: http://africanbyways.blogspot.com/2010/02/changa-changa-zambias-john-dunn.html

(2012, April 16). Retrieved from Graffiti South Africa: http://www.graffitisouthafrica.com/news/2012/04/16/above-in-johannesburg/

(2014, December 3). *The Star*.

(2014, December 4). *The Star*.

(2014, December 4). *The Star*.

(2014, December 7). *City Press*.

(2014, December 7). *Sunday Times*.

(2014, December 8). *The Star*.

(2014, December 8). Retrieved from Adams & Adams.

(2014, December 10). *The Times*.

(2015, July 20). Retrieved from The Guardian: https://www.theguardian.com/commentisfree/2013/dec/09/if-nelson-mandela-really-had-won

(2015, February 4). Retrieved from BBC Monitoring.

(2015, February 14). *The Sun*.

(2015, April 27). *Wits Vuvuzela*.

(2015, May 5). Retrieved from Eyewitness News: http://ewn.co.za/2015/05/05/Habib-cant-remove-me-because-hes-not-god

(2015, March 1). *Sunday Times (Johannesburg)*, p. 16.

(2015, September 11). Retrieved from News 24: http://www.news24.com/SouthAfrica/News/Its-pseudo-science-Motshekga-stands-by-his-views-on-Homo-naledi-20150911

(2015, October 23). Retrieved from Scientific American: https://www.scientificamerican.com/article/a-fossil-find-gets-entangled-with-south-africa-s-apartheid-past

(2015, July). *Wits Review*, p. 6. Retrieved from Wits Review.

(2015, May 25). Retrieved from Antiquarian Auctions: https://antiquarianauctions.com/

(2016, June 13). Retrieved from Open Culture: www.openculture.com/2014/10/44

(2016, March 31). Retrieved from Washington Post: https://www.washingtonpost.com/news/worldviews/wp/2016/03/31/imre-

kertesz-nobel-prize-wining-novelist-and-holocaust-survivor-dies-at-86/?utn term+.579e85d579bc

(2016, June 20). Retrieved from Eyewitness News: http://ewn.co.za/2016/06/21/Hitlers-trousers-Goerings-cyanide-container-sold-at-auction

(2016, April 8). Retrieved from Mail & Guardian: https://mg.co.za/article/2016-04-07-cows-the-sacred-and-the-profane

(2017, April 20). Retrieved from The New Yorker: http://www.newyorker.com/culture/culture-desk/lenin-and-the-russian-spark

(2017, July 12). Retrieved from University of the Witwatersrand: https://www.wits.ac.za/health/adlermuseum/exhibitions/colin-richards-born-1954/

(2017, July 5). Retrieved from Black Opinion: https://blackopinion.co.za/2017/03/06/reflections-lecture-ngugi-wa-thiongo-baxter-theatre

Baddiel, D. (2015, March 12). Oskar Schindler's Papers in Legal Battle. *Financial Times*.

Baddiel, D. (2015, June 26). The Freedom to Sell Restituted Art. *Financial Times*.

Barnes, J. (2016). *The Noise of Time.* London: Jonathan Cape.

Berger, J. (1992). *G.: a novel.* Vintage Reprint.

Biko, N. (2014, December 5). (X. Gwala, Interviewer)

Biko, S. (2004). *I Write What I Like.* Johannesburg: Picador.

Bizos, G. (1998). *No One to Blame?* Cape Town: David Philip.

Bizos, G. (2007). *Odyssey to Freedom.* Cape Town: Random House Struik.

Bizos, G. (2014, December 3). Interview. (SABC, Interviewer)

Borges, J. L. (2000). Tlon, Uqbar, Tertius Orbis. In J. L. Borges, *Fictions* (p. 19). London: Penguin.

Bradfield, G. (2016). *Christie's Law of Contract in South Africa.* Durban: Lexis Nexis.

Brelsford, W. (1954). *Northern Rhodesia Journal*, 23-30.

Brelsford, W. (1965). *Generation of Men: The European Pioneers of Northern Rhodesia.* Salisbury (Harare): Stuart Manning.

Brodsky, J. (1984). *A Commencement Address*.

Bull Slaughter. (2017, March 2). Retrieved from Youtube: https://www.youtube.com/watch?v=TaxRE44Erss&oref=https%3A%2F%2Fwww.youtube.com%2Fwatch%3Fv%3DTaxRE44Erss&has_verified=1

Cadbury, D. (2015). *Princes at War: The British Royal Family's Private Battle in the Second World War.* London: Bloomsbury.

Cape Town City v. South African National Roads Agency Ltd. & Others, [2015] ZASCA 58 (Western Cape High Court 2015).

Chipkin, C. M. (1993). *Johannesburg Style.* Cape Town: David Philip.

City of Tshwane Metropolitan Municipality v. Afriforum and Another (Constitutional Court, South Africa 2016).

Clark, J. (1981). (R. D. Mail, Interviewer)

Clark, J. H. (1897). Luangwa, Southern Rhodesia/Zambia.

Coetzee, J. (1992). The Rhetoric of the Passive in English. In D. Attwell, *Doubling the Point: Essays and Interviews* (p. 147). Johannesburg: Jacana.

Constitution of the Republic of South Africa. (1996). South Africa.

Constitutional Court of South Africa. (2011, April 8). Media Summary. South Africa.

Copeling, A. (1994). Copyright. In W. J. Rabie, *The Law of South Africa* (pp. 1-87). Durban: Butterworths.

Copyright Act, 98 of 1976. (1978). *Govenment Gazette*. South Africa: Government Printer.

Council of the University of the Witwatersrand. (2015, July 14). Johannesburg, South Africa: Council of the University of the Witwatersrand, Johannesburg.

Cow Slaughter: Part 2. (2017, March 2). Retrieved from Youtube: https://www.youtube.com/watch?v=HUhgYmZVrc4

Cow Slaughtering Ritual. (2017, March 2). Retrieved from Youtube: https://www.youtube.com/watch?v=cGIHsrPuw4k

Cows: The Sacred and the Profane. (2016, April 8). *Mail & Guardian*.

Curtis, S. (Director). (2015). *Woman in Gold* [Motion Picture].

DG Kleyn, A. B. (1983). *Silberberg and Schoeman's The Law of Property in South Africa.* Durban: Butterworths.

Dlamini, J. (2014). *Askari.* Johannesburg: Jacana.

Duggan, J.-A. (2014, August 7). Retrieved from Archival Platform: http://www.archivalplatform.org/blog/entry/jacqui_quin_and_leon

Eliot, T. (1919). Whispers of Immortality.

Eliot, T. (1974). Journey of the Magi. In T. Eliot, *Collected Poems 1909-1962.* London: Faber.

ENCA. (2014). *ENCA News.* Johannesburg: eTV.

ENCA. (2014). *News.* Johannesburg: ENCA.

ENCA. (2014). *News.* Johannesburg: eTV.

ENCA News. (2014, December 8). Johannesburg, South Africa.

Farlam, D. v. (2013). *Erasmus: Superior Court Practice.* Cape Town: Juta.

General Council of the Bar of South Africa. (n.d.). *Uniform Rules of Professional Ethics.* General Council of the Bar of South Africa.

Gluckman, J. (1972, September 16). Postcard to Mrs Norma Niemand. Rio de Janeiro, Brazil.

Gluckman, J. (1974, February 26). Letter to Mrs Norma Niemand.

Gluckman, J. (1974, March 11). Letter to Mrs Norma Niemand. Stanford, CA, USA.

Gluckman, J. (1974, May 2). Letter to Mrs Norma Niemand. Stanford, CA, USA.

Gluckman, J. (1974, June 4). Letter to Mrs Norma Niemand. Stanford, CA, USA.

Gluckman, J. (1978, February 25). Letter to Mrs Norma Niemand (1). Johannesburg, South Africa.

Gluckman, J. (1978, Februay 25). Letter to Mrs Norma Niemand (1). Johannesburg, South Africa.

Gluckman, J. (1978, February 25). Letter to Mrs Norma Niemand (2). Johannesburg, South Africa.

Gluckman, J. (n.d.). Letter to Mrs Norma Niemand. Hong Kong.

Gluckman, J. (n.d.). Letter to Mrs Norma Niemand. Biarritz, France.

Gluckman, P. (1970, October 17). Letter to Mrs Niemand. Johannesburg, South Africa.

Gluckman, P. (1970, October 17). Letter to Mrs Norma Niemand. Johannesburg, South Africa.

Goodrich, P. (2007). Law in the Courts of Love: Literature and Other Minor Jurisprudences. In M. Sanders, *Ambiguities of Witnessing: Law Literature in the TIme of the Truth Commission* (p. 22). Johannesburg: Wits University Press.

Governing Body Hoerskool Fochville & others v. Centre for Child Law (Gauteng High Court 2014).

Greene, G. (1999). *A Sort of Life.* London: Vintage.

Hill, R. (2015, July 30). Petulance is not a Tragic Flaw. *London Review of Books*.

Hobbs, J. (1989). *Thoughts in a Makeshift Mortuary.* London: Michael Joseph.

Hughes, R. (2002). *A High Wind in Jamaica.* London: Vintage.

Huisman, S. M. (2015, March 29). Student Spring is Long Overdue. *City Press*, p. 9.

Isaacman, A. (2000). Chikunda Transfrontiersmen and Transnational Migrations in Pre-colonial Southern Central Africa, c. 1850 - 1900. *Zambezia*, 109.

Keats, J. (1819). Ode on a Grecian Urn.

Kentridge, S. (2011, September 12). Evil Under the Sun: the Death of Steve Biko. Cape Town, South Africa.

Kertesz, I. (2013, May 2). Imre Kertisz Takls to Himself. *The New Yorker*.

Kundera, M. (1979). *The Book of Laughter and Forgetting.* London: Faber & Faber.

L de V van Winsen, J. E. (1979). *Herbstein and Van Winsen: The Civil Practice of the Superior Courts of South Africa.* Cape Town: Juta.

Macpherson, F. (1981). *Anatomy of a Conquest: The British Occupation of Zambia.* Harlow: Longman.

Miller, F. B. (1910). A Few Historical Notes on Feira and Zumbo. *Journal of the Royal African Society*, 422.

Mills & Sons v Trustees of Benjamin Bros , (1876) 6 Buch 115 at 122 (1876).

Mills & Sons v Trustees of Benjamin Bros, (1876) 6 Buch 115 (1876).

Mills & Sons v Trustees of Benjamin Bros, (1876) 6 Buch 115 (1876).

Mouton, M. (2014, December 8). ENCA News. (J. Maggs, Interviewer)

Newmark Ltd v The Cereal Manufacturing Co. Ltd , 1921 CPD 52 (1921).

Newmark Ltd v The Cereal Manufacturing Co. Ltd, 1921 CPD 52 at 61 (Cape Provincial Division 1921).

Nicholas, B. (1962). *An Introduction to Roman Law.* Oxford: Oxford University Press.

Niemand, N. (1980, January 23). Letter to Dr Jonathan Gluckman. Johannesburg, South Africa.

Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd., Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) (53/84) [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620 (21 May 1984) (Supreme Court of South Africa, Appellate Division May 21, 1984).

President of the Republic of South Africa v. SARFU (Constitutional Court 2000).

Promotion of Administrative Justice Act, 3of 2000. (2000). *Government Gazette*. South Africa: Government Printer.

Promotion of National Unity and Reconciliation Act, 34 of 1995. (1995). *Government Gazette*. South Africa: Government Printer.

Republic of Austria v. Altmann, 541 US 677 (United States Supreme Court 2004).

Sandel, M. J. (2013). *What Money Can't Buy.* London: Penquin.

Sanders, M. (2007). *Ambguities of Witnessing: Law and Literature in the Time of the Truth Commission.* Johannesburg: Wits University Press.

Security Beefed up at Wits Following Discovery of Gas Cylinders. (2016, May 29). Retrieved from Eyewitness News: http://ewn.co.za/2016/05/29/Security-beefed-up-at-Wits-following-discovery-of-gas-cylinders

Siopis, P. (n.d.). Retrieved from Wits Institute for Social and Economic Research: http://wiser.wits.ac.za/page/fine-line-curtors-notes-penny-siopos-10989

Slaughtering Before an African Wedding. (2017, March 2). Retrieved from Youtube: https://www.youtube.com/watch?v=VsyAa10o3Rw

Solzhenitsyn, A. (1974). *The Gulag Arhipelago.* Collins.

South African Broadcasting Corporation (SABC). (2014). *SABC 3 News.* Johannesbug: SABC.

South African Jewish Board of Deputies. (2015, June 29). *Jewish Board Lays Criminal Charge for Shabangu Hate Speech*. South Africa: South African Jewish Board of Deputies.

South African Natonal Roads Agency Limited v. City of Cape Town (Supreme Court of Appeal (South Africa) 2016).

Spurr, N. E. (1954). Letter to the Editor. *The Northern Rhodesia Journal*, 91-3.

Stephenson, J. (1937). *Chirupula's Tale: A Bye-way in African History.* London: Geoffrey Bles.

Strydom En ‘n Ander v De Lange en ‘n Ander , 1970 (2) 6 (T) (Transvaal Provincial Division 1970).

The Citizen 1978 (Pty) Ltd and Others v McBride, (CCT 23/10) [2011] ZACC 11; 2011 (4) SA 191 (CC); 2011 (8) BCLR 816 (CC) (Constitutional Court 2011).

Tobias, P. (2005). *Into the Past.* Johannesburg: Picador.

Van Wyk, C. (n.d.). In Detention.

Weld, K. (2014). *Paper Cadavers: The Archives of Dictatorship in Guatemala.* Durham: Duke University Press.

Wittgenstein, L. (1974). *Tractatus Logico-Philosophicus.* Oxord: Routledge.

Zeffertt, L. H. (1988). *The South African Law of Evidence.* Durban: Butterworths.

Mountweazels

Clark, John Harrison. (ca. 1920) *Luangwa: The Journal of a Pioneer on the Zambezi.*

Hamilton, the Rev. R.S. (ca. 1925) *Zambezia: The Life of an Exile amongst the Luangwa.*

The Johannesburg Star:
(1) Wits students burn classic library
(2) Attorney, archivist feared dead in blaze
(3) The Strange Library