In the matter between case

DAVID ROBERT LEWIS **Complainant**

and

MICHAEL HALTON CHEADLE **Respondent**

ADDENDUM

I, the undersigned

DAVID ROBERT LEWIS

I hereby make oath and state as follows:-

1. I am an adult male residing at 203 Rockeby, 14 Beach Rd, Muizenburg, Cape Town with identity number 6802155194080

2. I make this my 'Addendum Affidavit' to Supplement the evidence given in three separate instances, namely my complaints issued inter alia, to the disciplinary committee of the Cape Law Society ("CLS"), to the National Prosecution Authority ("NPA") and to the

Judicial Services Commission (“JSC”). Thus this document also supplements my Founding Affidavit dated 7 October 2014, a Supplement Affidavit dated 15 April 2015, and a Second Supplement dated 20 April 2015, all conveyed to the NPA. It also supplements an Affidavit drafted in regard to a similar complaint made to the JSC dated 21 September 2015, and which incorporates and consolidates the earlier founding affidavit and its supplements, and thus which notes correspondence from the NPA, and it supplements the complaint already issued to the Cape Law Society on a previous occasion, and now reissued in the form of the NPA consolidation drafted during November 2017.

3. This Affidavit also adds evidence following the Complainant finally gaining access to the official transcripts in a collateral matter heard before the Labour Court of South Africa heard on 4-6 November 2009 & 20–21 January 2010 and also 4 May 2010.

4. The purpose of this Affidavit is to draw attention to the manifest bias and partisanship shown by the Respondent above who was the adjudicating officer (“adjudicator”) in the matter heard at Labour Court (“the matter”). It is does not serve as an appeal on any of the substantive issues raised during the proceeding viz. vi. the other respondent in the Labour matter (“respondent-in-the-matter”), and merely examines procedural and other irregularities and thus also several additional points in brief, but pertinent to the manner in which the case was adjudicated. As an issue of principle, I do not examine the bias apparent to the various questions in regard to several news stories, articles and interviews, examined by the court, since this opens up the entire case, which invariably needs to be reviewed. This document thus scratches the surface of what occurred.

4.1 The following issues are examined:-

Failure to disclose facts pertinent to recusal;

Failure to uphold Complainant's right to due process;

My right to representation and due process;

Treatment of issues related to my secular Jewish identity;

Failure to uphold the TRC and its Report;

Closure of the Demographic Argument crucial to my case;

The Wikipedia Incident & Struggle History;

Court's partisanship with regard to my role in the struggle;

Court's treatment of an objectionable inquiry into my presumed race identity and other racist remarks issued;

Court accepts several inadmissible documents as evidence;

Conclusion

Failure to disclose facts pertinent to recusal

5. At page 7 line 15 of the official transcripts (DRL1) the Respondent places on record his firm's involvement, but fails to disclose his directorship in the Resolve Group, a firm of labour brokers. He also fails to place on record, that respondent-in-the-matter is more than simply a party to some advices, but is also a client and that Media24, Kagiso and Resolve are effectively business partners:-

> COURT: In the mean time I want to just place on record the issue that I raised in chambers. I raised with both the , with the application and the respondent that the law firm with which I'm associated has – was approached by the applicant on one occasion and on a matter distantly related to this application and that other members of my law firm had given advice on one or two occasions to the

respondent. I personally have not been involved in any of these matters. I raised this issue with both the representatives of the respondent and the applicant and they had no objection to me continuing to hear the matter. Just wish to place that on record.

Failure to uphold Complainant's right to due process

6. At page 7 line 1,(DRL1) following objections by the respondent-in-the-matter, the partisan court moves to question the validity of several subpoenas issued by the Complainant, then provides an undertaking 'on behalf of the other party' to call witnesses if needs be, an undertaking which is never kept:-

COURT: Then I think rather than keeping them here for three days, let's determine the validity of the subpoenas.
MR LEWIS: H'm. . .
COURT: And it may be that that, the evidence becomes relevant in which case the other side have given an undertaking to call them at short notice.

7. At page 8 line 8 (DRL2) the adjudicator once again gives an undertaking 'on behalf of the other party' to call witnesses if needs be at a later stage, this undertaking is once again, never honoured, despite the requirements of due process and the laws of evidence. Instead the Complainant is restrained from calling any witnesses, <u>including his own witnesses, and thus an expert witness is similarly ignored</u>, while the court sets a new low in standards so far as the evidence and due process is concerned. (Please see my complaint to Cape Bar Council regarding the case presented by Adv Kahanovitz SC)

"The representative of the – legal representative of the respondent has requested that you be provisionally excused from being in court for these three days. The applicant has agreed. But it's on this basis, that Mr Kahanovitz has undertaken that you will make yourself available at short notice should the Court require it, together with the documents that you've been asked to bring."

At page 223 (DRL3) Kahanovitz claims: "We have reached agreement that what is contained in this document called "Evidence in the tramlines 5 concerning issues pertaining to Judaism" may be placed before Your Lordship as evidence without the need for a witness to be called ..." The result is that he disposes of my expert witness and then proceeds to ignore any agreement to accept the evidence, moving the court into a position consistent with a Pre-Enlightenment version of Religion and the opposite of positivism.

8. Thus at page 24 line 16 (DRL4) the adjudicator asks who my first witness is, then proceeds to deny my right to call any witnesses and instead forces me into the box as the first witness:-

COURT: Who is your first witness?
MR LEWIS: Shelagh Goodwin would . . .I need to speak to a Human Resources person with regards to the contract. There is no bona fide contract before this Court.
COURT: Well, I think you have to demonstrate that .
MR LEWIS : Right so . . .
COURT: I mean, my sense is that you, you know, it's subject to how you want run your case .

MR LEWIS : Ja.

COURT: But you need, I think you need to get into the box

9. At page 26 line 1 (DRL5) I object to not having a representative to assist me with leading the evidence which I am expected to give from the witness box:-

MR LEWIS: Your honour, I'm at a severe disadvantage. Well how is it possible for me to cross-examine my own – my evidence if I'm now expected to give ...

COURT No, no you won't do, no, no you don't cross-examine your evidence.

MR LEWIS: I'm supposed to give evidence...

COURT: You just give evidence. You give evidence and I will assist you as much as I can.

My right to representation and due process

10. At page 26 line 19 (DRL5), after failing to allow me to make any opening remarks from the bar, and demanding that I give evidence from the box, the adjudicator proceeds to request a "conspectus" of my case. After some discussion between the attorneys I am allowed to read from my filing sheet:-

COURT: Mr Lewis, why don't you open your case and make your case? Give me a conspectus of your case.

11. At page 33 line 4 (DRL6) Complainant objects to being asked questions by the respondent-in-the-matter, without the presence of an attorney:-

MR LEWIS: Sorry Your Honour, I object to being put in this position.

COURT: Okay well. . .

MR LEWIS: H'm, I'm prepared to answer questions put to me by your good self. I'm not prepared to answer questions put to me by the respondent without the aid of an attorney.

12. At page 34 line 15 (DRL7) the adjudicator explains an illiberal position on favouring the other party's purported right to ask any question whatsoever, and no matter how offensive, while claiming a special ability and/or power to "resolve" disputes of fact. Notable is the absence at first, of any instruction, to not answer certain categories of questioning.(see: Privileges of Witness[1])

COURT: You have to take questions under cross-examination from the other side. There's no question of attacks. These are simply questions that are asked and you have to answer them honestly and on the basis of your answers I will make assessment on the probabilities, after having heard their witnesses and I'd make an assessment on credibility and that's the way in which I would be able to resolve the clear disputes of fact between yourself and the respondent. Just as you have the right to come to court and give evidence . . .

13. At page 36 line 7 (DRL8) only after considerable objection on my part, does the clearly hostile court relent on its position:-

1 "Generally speaking, a witness cannot be compelled to answer any question the answer to which might expose him to any pains, penalty, punishment, forfeiture, or criminal charge, or which might degrade his character ... Although it is the duty of the Judge or magistrate immediately to tell the witness he need not answer an incriminating or degrading question, the onus lies mainly on the witness to be ready to protest against any such question, and to ask the Court whether he need answer it." Pg 317 **Medical Jurisprudence**, Gordon, Turner & Price, 3rd Edition, Livingstone 1953

That's not how courts work and I'm not going to sit here and give you legal advice. The issue here is you can refuse to answer the questions put to you by the representative of Media24, the respondent. [My Emphasis]

14. In some law reports such as that of Juta's Industrial Law Journal, the November dates of the hearing are omitted entirely in favour of the January and May period and the Complainant avers this is to be the result of a serious procedural irregularity, in which the other party had applied for 'absolution from the instance', but where the Complainant himself was simply requested to proceed with his case. No further instructions or advices on procedure and with regard to Complainant's participation without an attorney are thus provided by the adjudicator in the records. At the end of a second hearing in which there is only one witness, that of the other party, providing evidence, Complainant is given less than 24 hours to arrive at a summation of the proceedings. He asks if it is okay to simply read through some of his notes, and thus what appears to be a hastily typed memo. One should also hasten to add that it was a practical impossibility for the Complainant to take notes of what was said from the witness box, by either of the parties, (himself included) on either of the occasion and whichever the prevailing procedure or norm. This oversight is a serious impairment to Complainant's ability to integrate the evidence given and thus to present a closing argument on the facts. He thus presents his impressions of the previous day, as a concluding statement:-

14.1 Page 449 line 1

COURT RESUMES ON 21 JANUARY 2010 (at 15:11)

COURT: Mr Lewis?

MR LEWIS: I believe I am expected to deliver some kind of final argument based on the evidence.

COURT: Yes.

MR LEWIS: Is that correct?

COURT : That is correct, ja, it is for argument.

MR LEWIS: I have just written up some things so I am just going to read it if that is okay.

COURT: That is fine, of course.

14.2 The Complainant was subsequently not notified of the 4 May 2010 date of the hearing, and the decision was consequently handed down in his absence. I reserve my right to give evidence in regard to the lack of due process in regard to the appeal.

Treatment of issues related to my secular Jewish identity

15. **The court demonstrates an astonishing level of bias and partisanship by its arrival at certain conclusions <u>without any record of deliberation on the issues</u>**, thus it demonstrably pre-empts my pleadings in favour of the respondent-in-the-matter, going so far as to introduce the other parties response as a *fait accompli.* The issue raised below on page 45 and line 11 (DRL9) thus **<u>appears to be resolved before it is even dealt with in court by the respondent-in-the-matter's representative</u>**:-

I just wish to point out that the respondent has actually contested whether or not I am a Jew and it 's . . . (intervention)

My understanding and I might be wrong and Mr Kahanovitz can confirm, is that I understood them to make the concession that you are a Jew. Is that correct, Mr Kahanovitz?

16. Whereupon the respondent-in-the-matter's representative provides his *post hoc* answer. [Please note my submissions to the General Bar Council in this regard.]

17. Then at page 46 line 6 (DRL10) the adjudicator contradicts himself and says: "Ja no but all of these issues, Mr Kahanovitz, as I understood it you did raise it in your application to amend that he wasn't a Jew." To which Kahanovitz responds at line 9 (DRL10): "Yes, yes."

17.1 Court: "But what I understand you now to say is that all of this is no longer an issue."

17.2 Kahanovitz: "Yes. The only thing is in issue now is whether there ever was any discussion where he raised his Judaism and said that in consequence of his Judaism he needs his working hours altered."

17.3 "Secondly, if he is a Jew, is he in fact what is called a practising Jew for whom observance of the Sabbath would be an important issue."

NOTE: I wish to object in the strongest terms possible to the distinction drawn here by Mr Kahanovitz on the supposed basis of Rabbinical Judaism and/or a pre-Enlightenment version of religion, and/or the Conservative Agenda, and hence the archaic 'Cheadle Doctrine'. It is clear that the respondent-in-the-matter sought to unlawfully exclude and excommunicate me from my common law rights as a secularist, and this merely because I am not compliant with a version of religion to which I dissent and have recorded my objections.

18. 'Rabbi Cheadle's' role in this tragic saga appears to have been to grant Mr Kahanovitz free reign in his inquisition of Jewish identity, whilst restricting my own ability to defend

myself and conduct my case. At no stage does the partisan court request that I supply ‘Heads of Argument’ and thus the primary document supplied to the court by the respondent-in-the-matter is never interrogated in writing and there is no due process shown in this regard. After apparently conceding the issue of whether or not I am Jewish, (DRL9) and after attacking me in documents, respondent-in-the-matter fails to withdraw these documents before the court whilst obfuscating the issue. The issue of norms and standards in regard to the broader Jewish community thus resurfaces not only in the respondent-in-the-matter’s amended HOA, but again in court on multiple occasions and also in closing arguments. The partisan Court proceeds to assist the respondent’s case, which is essentially an objection to my Jewishness on the basis of my attendance at a mixed race nightclub, and/or using a company car on the Sabbath, supposedly in contravention of religious law and/or apartheid-era labour laws and/or laws drafted in the aftermath of the apartheid system, granting the employer what can only be termed *droit de seigneur*, in this case, the supposed right to define one’s identity by virtue of seniority.

18.1. At Page 62 line 3 (DRL11) I claim:-

> He insinuated that I was contradicting myself as a Jew; that I had no right to the Jewish Sabbath; that there was no basis for anyone inferring that – that I was Jewish or deserving; that I had no right to – that if I was Jewish, certainly a good Jew wouldn't be seen in a – a nightclub listening to jazz music.

19. At page 482 line 19 (DRL12) my charge is then reiterated in terms which favour the respondent-in-the-matter’s ecclesiastical case against me:-

> Applicant is clearly a hypocrite who, when it suited him, **was content to use staff transport to visit a Jazz club to do work on a Friday nigh**t, when it suits him is

variously, “multifaith”, a philosemite and/or of orthodox background (and much else besides) he self defines how and when he will observe the Sabbath and his claims on this leg are a subsequent fabrication where he has sought to play the “antisemitism card”, an emotive button to push in pursuing his vendetta against his former employer." [My Emphasis] [This statement is repeated on line 38, pages 15 and 16 respondent-in-the-matter's Heads of Argument and below at page 537, the later assertions are not supported by the evidence].

At page 537 line 14 (DRL13) “and thirdly the only contention made in the heads in relation to the car was that he had asked for the car so that he could work (sic) on a Friday night and we were pointing out the inconsistencies there in relationship to his credibility.” (my emphasis, please note the difference in tone)

20. At 525 line 16 (DRL14) appears just one of my responses to their HOA documents:-

I do not see why I have to apologise for being a Jew self-defined by his Jewishness, as a result of my Jewish background.....Mr Kahanovitz would like the Court to believe that I am just one example, one instance, of a dissenting Jewish person in South Africa.

21. Instead of explaining to me that I can amend my documents, and/or serve notice in this regard, in order to incorporate any new evidence in particular the new counter-charges consistent with the ecclesiastical case, the court insists on pursuing a slightly less offensive tack, a simply inquiry into whether or not the respondent-in-the-matter "knew I was Jewish". Yet even the respondent here realises there is a problem with the sui

generis case on the facts being at cross-purposes with the general case to be drawn via inferences made by the attorney who drafted my filing sheet.

21.1 At 465 line 16 (DRL15):-

> MR KAHANOVITZ: Evidence, so when you are dealing with an unrepresented person – firstly one bears in mind though that this pleading was in fact drafted by a lawyer, so it is not a pleading drafted by – but when you are dealing with an unrepresented person I suppose you can say: Look, it may not be explicitly stated in the pleading, but where it is clearly part of his case – which we infer from the evidence which we led – then in effect we will amend his pleadings or help him to amend his pleadings and I am saying there was not evidence about those issues, so we do not need to go there. [My Emphasis]

22. One has merely to ask, how is it possible to have a dispute over whether or not I am a particular type of Jew, and whether or not I am in breach of certain requirements to do with an ultra-Orthodox and/or conservative version of religion on the Sabbath, if my Jewishness, was not already a commonly held fact before the court? Secondly, how is it possible for the other party to object to my using staff transport on a Friday night, for which I had gained permission, without flouting secular norms and standards with regard to my rights?

22.1 At page 47 line 20 (DRL16)

> COURT: Okay let me just ask you. One of the issues raised by Mr Kahanovitz is one that I think you need to address. ---

Right.

Did you ever advise the respondent that you were Jewish? --- Well, this is an interesting point because it's one of the reasons I've called Shelagh Goodwin who – of the Human Resources department. My question is, is it acceptable in today's age to – for this to be an issue? Surely Human Resources being what it is, this is a questionnaire that one fills out. When you enter a company the size of Media24 you can't just . . .

A company that size can't assume that everyone is a member of the same faith and you know, with regard to the issue of disparate treatment and differentiation this – the question is are the tests that are being put, are those , you know, is this reasonable ?

A Christian for instance seeking employment at the company, would the – a Christian – person of Christian faith have undergone the same kind of test? And what is the policy with regard to members of the Christian faith who have different – a different approach to Christianity?

It's not a monolithic tradition and neither is Judaism. Judaism is not monolithic. So I have a – I have an expert here also willing to test in that regard.

23. Having conceded a point in law, (and thus going on to concede further issues), respondent-in-the-matter then appears to formerly withdraw their case in specie that I never complained about my working hours as a Jew. The point however is re-issued on the basis of supposed evidence given by the sole witness for the respondent-in-the-matter, A Dean. Even more revealing is what appears to be a withdrawal and/or

amendment of certain documents and thus what appears to be a retraction of a general objection made before the court on the basis of blood quantum, and/or my supposed *Mamzer* status and/or lineage, i.e that I am not Jewish by birth, (and that if I am, I am what is known as a “bastard” according to archaic ecclesiastical law) and in terms of apartheid law, not human, but rather an absurdity according to the court. Despite the apparent withdrawal of the strange claim that I am not Jewish, the issue of blood and lineage (my supposed invention as a Jew) persists and continues to resurface, again and again, most notably during the racist examination of my purported ‘multicast’ race identity, and this dimension is thus dealt with in a separate application. (See related section at point 42 below).

23.1 At page 48 line 17 (DRL17),

> MR KAHANOVITZ: M'Lord , might I just indicate? Maybe be of some assistance if ... The points we make at page 67 of the pleadings maybe I should just formally. . . The paragraph 41[2] is the one point we make which the witness might want to address, that he never complained that his working hours conflicted with his religious beliefs. 42[3], 42.1[4] we 'd ask that that now be deleted because we're not pursuing that and then the words “also ”, “also unsurprisingly”[5] should come out. **So the contention would be now he is not an observant Jew and does not observe the Jewish Sabbath and keep it holy. [My bold].**

2 Para 41 reads: “The facts are, however, that Applicant never complained to Respondent that his working hours conflicted with his religious beliefs so the question of whether his hours of work were in conflict with his religious beliefs and whether these beliefs may be reasonably accommodated never arose.”

3 Paragraph 42 reads: “Applicant’s claim is spurious. It is an invention. Had he ever asked to alter his working hours on the grounds of his adherence to the Jewish faith, this request would in either event, and insofar as this may be relevant to these proceedings, have elicited the following response:

4 Paragraph 42.1 reads: “Applicant is not Jewish.”

5 Paragraph 42.2 reads: “He also (unsurprisingly) is not an observant Jew, does not observe the Jewish Sabbath and keep it holy. He however cynically abuses the faith of true believers to advance his own agenda. To this end, Applicant has invented his own version of who is Jewish and of how such Jews practice their faith.”

24. And yet the respondent-in-the-matter's case in specie sans Shelagh Goodwin continued on these very points supposedly removed from the pleadings, see HOA[6], in the process doubling my workload. So far as the adjudicator was concerned, it was enough for the respondent-in-the-matter to make a counter-accusation and for one witness to plead to being 'unaware that I was Jewish', to make a solid case against me and/or to absolve the respondent-in-the-matter. For the record, the sole witness for the respondent-in-the-matter was neither a party to the job interview nor had she signed the employment contract, and did not have any competency in the human resources department, (please see separate **perjury case 889/10/2015]**.

24.1 Page 49, line 2 (DRL18)

COURT: So what is being changed from 42. 2? Just the word "unsurprisingly"?

MR KAHANOVITZ: The phrase . . . Yes, yes. Just take out the words "also unsurprisingly". I meant here is obviously some difficulty with pleading this because our case is simply that the issue actually never arose. But insofar as the Court may find that there was indeed a discussion about whether or not the respondent was prepared to accommodate his religious beliefs, I intend to cross-examine him on whether those beliefs actually would have required him to work or not work certain hours.

25. The respondent-in-the-matter's pathetic assertion in their submission at page 11, from para 42.2 (Respondent's Notice of Intention to Amend), that I am 'cynically abusing "the

6 Respondent's HOA page 16 para 38: "Applicant is clearly a hypocrite who, when it suited him, was content to use staff transport to visit a Jazz club to do work on a Friday night. When it suits him he is variously "multi-faith", a "philosemite" and/or of orthodox background (and much else besides). He self-defines how and when he will observe the Sabbath and his claims on this leg are a subsequent fabrication where he has sought to play the antisemitism card, an emotive button to push in pursuing his vendetta against his former employer."

faith of true believers" to advance my own agenda', and thus I have 'invented my own version of 'who is Jewish and of how such Jews practice their faith' remains central to the case against me and the gist is repeated on page 482 line 19 (DRL12), and elsewhere (Respondent's HOA page 15, line 38)

26. At no stage does the court make any inquiries which may have served to ameliorate the resulting difficulties, in having to first prove that I am Jewish,(in the process called to substantiate my existence, along with my beliefs and/or faith) in order to meet the counter-case and respondent-in-the-matter's further allegations and accusations, whilst also pursuing a case of discrimination (for the purposes of this inquiry, anti-Semitism may be defined as hostility towards secular Jewish identity). Thus the racist's case in its entirety, is recorded in the proceedings, resurrecting itself in the decision, and an immoral judgement couched within the theological justifications of the past, and an apartheid-era mindset, one which proceeds to take up a 'moral position' consistent with a Medieval or Pre Enlightenment version of religion. This is a far cry from the positivism of the Constitution.

26.1 (DRL16) Page 47 line 23

> COURT :
>
> Okay let me just ask you. One of the issues raised by Mr Kahanovitz is one that I think you need to address. ---
>
> Right.
>
> Did you ever advise the respondent that you were Jewish?

26.2 (DRL18) Page 49, line 21

COURT: And certainly these are issues that you would cross - examine him on.

MR KAHANOVITZ: Yes M'Lord . --- H'm . . .

COURT: Alright. --- So what is the question then?

The question simply was that did you advise the respondent that you were Jewish and what – and I understood you to say that you didn't and you don't have to

27. Then at page 52 line 21(DRL19)

“Do we really have to go into it, given the fact that they have made the concession that you're Jewish?”

28. Nowhere in the proceedings do the respondents in the matter go so far as actually conceding their initial point made in regard to my Jewishness, instead they belabour this exact same issue, going so far as to create a category of ‘more-deserving Jews’.

28.1 Page 302 line 9 and line 17 (DRL20)

'It's not as, it's not as simple as seems to be suggested that people can self-identity the manner in which they adhere to a particular faith ...

[...]

> There must be some sort of objective measure to see whether that particular person falls into the category of people whose religious beliefs are such that they are a deserving recipient of the obligation to accommodate his religious needs. So it doesn't, well I take it it doesn't merely follow from the fact that you may be technically speaking a member of some or other faith. It actually goes further than that.

And therefore issuing other points with regard to my not being the subject of rights, and thus not the right type of Jew and/or not Jewish, and thus their further claim that I am not entitled to enter any claims of discrimination (I am the one who 'cannot gain amnesty') on the basis of unfair treatment in the aftermath of apartheid, since as they appear to put it, I am merely an 'object of history', not the subject of rights, a mere utility of the corporation.

29. At page 53 line 5 (DRL21) the partisan court reiterates its unwillingness to do anything about the problem supra:-

> "As far as I can see at the present moment, moment they'd made that concession to you the issue falls away".

30. At page 57 from line 25 and over page 58 (DRL22) the partisan court fails in its duty to consider the evidence and to call witnesses if needs be:-

> "There – there are no time sheets. I've requested time sheets from the company. So one of the reasons I called Shelagh Goodwin was to verify the exact working hours."

30.1 At page 69 line 12 (DRL23)

> "I would need to call Shelagh Goodwin with regard to my – my question as to is it a reasonable..., in terms of Human Resources"

Failure to uphold the TRC and its Report

31. At pages 120 -124 begins a series of questions by Kahanovitz impugning the status of the TRC in law, without any objections upheld by the court. Since I am not represented, there is nothing to moderate this line of attack and the court does absolutely nothing to protect either the complainant nor the commission, instead it proceeds to assist the respondent-in-the-matter whilst closing down my objections. (see pages 213, 242, 476, 500 of the transcripts) I do not include these pages for reasons to do with the current application (EC19/2015) at the Equality Court, but merely note that the party's submissions and my own submissions and that the result needs to be attached to this document.

32 At 122 line 3 (DRL24) the partisan Court is so caught up with the attacks against the TRC that it directs me to restrain myself from any objections, and to 'just answer questions.'

> COURT: Yes, can I just...? I'd like you just to answer the question, alright? And you must allow Mr Kahanovitz to finish his question and then to answer it and please just restrain yourself to answer the question. I think that's really important. Thank you.

Closure of the Demographic Argument crucial to my case

33. At page 68 line 10 (DRL25) I make the claim:-

> I – I was party to a – a number of discussions when the issue of the demographic – demographics of the target market arose and that there was a general failure to abide by the terms of the equality clause in the Constitution and various other documents. The target market was consistently referred to in terms of the old apartheid categories. So I actually took – take exception to the manner in which the respondent has – has raised the demographics issue in – also as part of the – their denial that I have a right to – to..., you know my rights as a journalist. They believe that they can dictate to me the – not only the content of – of my writing but who it is that I write about, what their opinions are and so on. It's a systematic abuse.

33.1 At 292 line 18 (DRL26)

> COURT: So just, just please direct yourself to that issue and as I understand your argument, you say that the political history, the brutal(?) context, the profiling, the structuring of the titles, your endeavour to reach out in these articles, that these articles were spiked because of that political history, political context which is manifested in the decisions made by Ms Dean.
> MR LEWIS: Precisely
> COURT: Okay. Now that's your argument?
> MR LEWIS: H'm.
> COURT: Okay and...

MR LEWIS: Do I need to continue?

COURT: No I just, I just want to know if...

MR LEWIS: Right.

COURT: You know, I see all the stuff as utterly extraneous and...

[my emphasis]

34. At page 376 line (DRL27) I ask questions, followed by respondent-in-the-matter's objections without any merit but upheld by the court. The questioning is crucial to the proceeding, and **the resulting objections upheld by the court** and closing down of this line of inquiry seriously compromises my case and ability to lead evidence:-

34.1 MR LEWIS: "Ms Dean you are an adult" – Yes

"You must be aware that there was a tremendous amount of conflict in the country at least a decade ago?" -- Yes

"You are aware that there was a system of racial segregation?" -- Yes

"And that the Group Areas Act for instance, you cannot say that it is coincidental that certain people live in certain areas, can you?" -- "No, it was planned."

"What steps did you take to ameliorate the effects of those racial policies?" --

"Though our publishing model?"

"Right" – "Through the way we do our work?"

COURT: "Let me just ask – are you asking what she personally did or are you asking what the respondent did?"

MR LEWIS: "I am asking what Ms Dean, as the editor of a (intervention)"

COURT: "What the editor did?"

MR LEWIS: "Yes. What did you personally do?"

MR KAHAHNOVITZ: "**M'Lord I do not know if you are going to allow this? Again, I cannot see what it has got to do with his claim. Because now we are asking – I mean – is it being suggested that she was under some obligation arising from the pleadings to do something about this and it bears some relevance to this case?**" **[my bold]**

MR LEWIS: "But, your honour (intervention)"

COURT: "What is the relevance of the question?"

MR LEWIS: "The relevance is, is that the editorial policies – and I have made allegations of policy – did not occur in a vacuum. There were day to day issues confronted on a daily basis and Ms Dean was confronted with various choices and I am just trying to assist people in finding the truth of what those decisions and choices were. **So I am just asking, Ms Dean, what were your decisions?**"

COURT: "**No, Mr Lewis. I am giving your extraordinary leeway here because you are unrepresented. That question would not – most or many of your questions would probably have been disallowed.**" **[My bold]** (Pages 376/377)

The Wikipedia Incident & Struggle History

35. At page 497 line 5 Kahanovitz (DRL28) openly lies and wilfully deceives the court, by claiming:-

35.1 "He made grandiose claims about his role in the liberation struggle. He name-dropped, he alleged links to heroes of the struggle. He alleged substantial influence which had had on ANC policy and went so far as to write up his own biography on Wikipedia in which he purported, depicted himself as a major struggle figure."

35.2 At page 497 line 11 (DRL28) the court is forced to ask Kahanovitz whether or not the above is in fact the evidence:-

35.3 COURT: Was that part of the evidence?

35.4 MR KAHANOVITZ: It was put to him based on the articles that are at the back of the – oh, you are talking about the Wikipedia articles, not the others?

35.5 COURT: Ja, ja. Okay, well just to answer me – the articles at the back. I do remember you referring to blogs and the like.

35.6 MR KAHANOVITZ: It is at page 76 of the respondent's bundle. It is an article – it was taken off by the editors of Wikipedia because they, h'm.

36.7 COURT: Was this document ever – okay, it has been, it is what it purports to be.

35.8 MR KAHANOVITZ: Let me see if I can find – it was put to him, as far as I recall, that it had been deleted by the editors because it did not have verifiable, any verifiable – the claims made had no verifiable sources.

35.9 Kahanovitz later attempts to walk-back his blatant dishonesty, and thus the transcripts bare record to what can only be called the confession of a mistake. The last-minute retraction however, of the reference to the Wikipedia article, (and

the pages introduced, in any event inadmissible as evidence) in his Heads document does absolutely nothing to remove their content and the damage already made, and do not suffice as a retraction. In any event, the document and any questions surrounding it was never put to the complainant by the respondent and their use by the court in the decision, speaks to the manifest bias of the adjudicating officer.

36. The wikipedia incident is nothing less than a despicable introduction of false evidence and invented testimony before the partisan court during a deceitful address based upon knowingly false statements of material fact:-

36.1 At page 498 line 1 (DRL29)

MR LEWIS: And Media 24 delete me and then? It is the only verifiable resource.
COURT: Mr Lewis, are you addressing the Court or are you addressing mister … (intervention)
MR LEWIS: I am objecting, Your Honour.
COURT: Well, first of all if you want to address me you stand up.
MR LEWIS: Right.
COURT: And second …(intervention)
MR LEWIS: M"Lord, I object, I object to the manner in which this charade is occurring. It is an absolute charade.
COURT: Okay, well, will you – I have heard your objection. It is overruled. Please sit down. You will have an opportunity to reply in due course.

37. The opportunity to address the court via the questioning of witnesses, and any debate upon the admissibility of "evidence" is never granted. Instead of instructing the complainant on how to proceed I am ignored, and the damage remains uncorrected. Kahanovitz's mendacious closing arguments and sophistry, have thus already been made at page 497 and are on record with full effect.

37.1 At page 537 line 9 (DRL30) Kahanovitz attempts to withdraw a single reference, without bothering to deal with the result of the fraudulent introduction of content based upon the supposed reference material:-

> MR KAHANOVITZ: I just need to correct. I am not going to deal in any depth. I just want to tell your Lordship the reference to Wikipedia in the heads can be scrapped.

38. For the record, Wikipedia is an online encyclopaedia edited exclusively by its users, who are not paid for their contributions. Unlike the Encyclopaedia Britannica (which is now out of print) articles are not vetted by professionals. Due to the late introduction of the Internet in South Africa, none of the banned publications for which the complainant worked, save for Kagenna Magazine, (which wasn't banned as such), are available online as reference material. The campaign of excisions and deletions, consistent with the second respondent's career as the chief protagonist, propagandist and defender of the apartheid state, needs to be seen within this context.

Court's partisanship with regard to my role in the struggle

39. At page 406 (DRL31) is an example of my cross-examination of the sole witness for the respondent-in-the-matter. The partisan court's intervention is demonstrably argumentative and evidence of manifest bias. To put this in a nutshell, **the perpetrators of apartheid do not have any right to determine what I did during the struggle.** The correct course of action would have been for the adjudicating officer to ask me if I have any evidence or witnesses to testify to my career as a struggle journalist and anti-apartheid activist. Instead the sole witness for the respondent-in-the-matter goes on to become an expert in struggle history, whilst explaining away race profiling and separate development and the result is memorialised in the decision. [Please see my further submissions in the separate Equality Court matter and also the several related cases].

> MR LEWIS: Ms Dean, are these not your words?
>
> > "In either event applicant's claims about his contribution to the anti-Apartheid struggle in the field of journalism are wholly subjective."
>
> --- It is our response to what you submit.
>
> **Do you endorse this position? --- I believe, yes, your contribution is subjective and the difference between subjective and objective would be a verification. [my bold]**
>
> Do you believe that you have some kind of divine right to rule as a white person? --- No.
>
> Do you not perhaps believe that you are morally superior to those readers living in Lansdowne, Grassy Park, Retreat and Athlone? --- No.

Do you not perhaps think that they would perceive the Jansen interview very differently from your views, informed as they are by an education background in Bloemfontein?

They might view it differently as a reader to how I viewed it as an editor. I could back that up. I would look at an article 15 differently and I look at different things in an article than what a reader would do, but whether or not our cultural framework gives us different interpretations of the same piece is something that I would like you to possibly prove through a submission of some study.

Right, well, isn't a fact that the cultural framework in which we are having this discussion is a very different one than the cultural framework that we would be having the same discussion in a newsroom – I have worked in many newsrooms. I have worked in newsrooms where there are no boundaries
separating white from black. Surely those frameworks that have been supplied by your heritage as a white South African and by the company which informed that heritage, surely those are the boundaries and barriers that we need to be breaking down in this day and age?

COURT: I do not know what the question is.

MR LEWIS: **The question that I am asking her with regards to the cultural framework that she is endorsing, she is claiming that she has some kind of unique** …(intervention)

COURT: She has not claimed any of that.

MR LEWIS: Is she not?

[My bold]

40. At page 312 line 9 (DRL32) Kahanovitz asks a similar question and the witness responds with a well-known euphemism used to explain away apartheid separate development and/or engages in apartheid denial:-

> Now because of the – how does the existence of those editions coincide with racial and culture factors? --- They are published into communities geographically defined at their boundaries and **there is a coincidence of homogeneity within certain of the additions due to what can be termed South Africa's past and divisions that stem from the pas**t. [My bold]
>
> However to a large degree the majority of the editions we serve are published into communities that have a mixed profile demographically and culturally and racially and therefore **any coincidence between the community geographically defined and its profile on a racial and a cultural level would be due to how communities were shaped in the past.** [my bold]

41. A fuller exposition of this issue and other attempts to explain away the demographic problem supposedly on the basis of an overlap of content with several titles which did not exist during the period of review is contained in my submission on the perjury case.

Court's treatment of an objectionable inquiry into my presumed race identity and other racist remarks issued.

42. At pages 147-148, 163, 181-183 and 338, the respondent-in-the-matter's representative engages in a pseudo-scientific inquiry into my presumed race identity, and also provides various statements in this regard setting out the party's views on race at

232, 482, and 500 and especially regarding the strange racist dynamic between '**us and them**'. The court does absolutely nothing to protect the complainant from this kind of inquiry. Instead it gives the respondents free reign to engage in apartheid-era calumny. Before going so far as adopting the respondent-in-the-matter's views. Thus it claims variously in its decision, that it is rather the Complainant (not the apartheid legacy of the respondent-in-the-matter) who/which presents an absurdity and/or is making absurd statements in this regard. Here is but a sample[7] of the racist invective directed at my appearance:

> **My hairstyle**
>
> page 204 line 18 (DRL33)
>
> LEWIS: Right I don't wear a kippot.
>
> KAHANOVITZ: And if fact your hairstyle appears to indicate that you have ..., I don't know is it a Buddhist or Hare Krishna or is it a fashion statement? What is it? [My Emphasis]
>
> LEWIS: What would you do if you were a bald – balding 40-year-old? Do you?

Court accepts several inadmissible documents as evidence.

43. At pages 78-79 the partisan court hears about a document marked "without prejudice". The document as such is not admissible as evidence.

> Correct ? Got anything wrong? --- (No audible answer).
>
> Page 41. --- It says there "without prejudice".

7 The evidence referred to above is part of my case before the Equality Court and is thus not included.

Yes, but all letters which constitute an offer to settle or deal with negotiations about settlement a remarked “without prejudice ”. --- My rights, my rights were reserved .

COURT :

Mr Lewis, let Mr Kahanovitz ask the question and then you can respond. --- Sorry.

44. At pages 82 -87 the partisan court hears about a facsimile of a document which no longer exists and which cannot be relied upon.

45. I also allege that my signature has been attached to the document thus “signed” without my consent, and handed up as a contract, the result amounting, not to a bone fide contract, but rather an outright forgery. The respondent recognises the problem but continues to impute the reality. The result is a decision creating a new low in standards of evidence, and law of contract, as the court bends over backwards to accommodate outright fraud in the form of uttering:-

45.1. At page 86 line 10 (DRL34)

But Mr Lewis, the argument you've just put up is self-destructive because what you've now pointed out is that we've put up a fraudulent document which has resulted in ourselves shooting ourselves in the foot.

46. At page 75 line 7, (DRL35) the partisan court hears about a letter sent by a legal advisor. The substance of the brief and wording is subsequently altered without my consent by the respondent-in-the-matter, **who does not possess my power of attorney**, thus constituting yet another act of forging and uttering. The correction should indicate: “It

is a well-known fact that our member is not an Orthodox Jew per se ..." [see also page 241]

But we do know that LegalWise in fact represented you, page 41 of the respondent's bundle. It's a letter sent by LegalWise on your behalf. --- Right.

Addressed to Mr Warren Charles, dated 6 June 2006. --- Right.

Are you there? --- Sorry, what page?

Page 41 of the respondent's bundle. --- 41. Right there were – there were also several other letters.

No but this is a letter which says that money is being demanded on your behalf. --- Right.

Because it is, and I quote:

“It is a well-known fact that our member is not an Orthodox Jew...”

I assume that's a mistake? --- I – I believe it's an error.

Yes and what it should read is:

“It is a well-known fact that our member is an Orthodox Jew...”

--- H'm. [8]

“...hence he observed the Sabbath from Friday evening.

47. The later use of the unauthorised amendment by the partisan court in order to substantiate a racist pet thesis by the respondent-in-the-matter, and with regard to my being nothing more than an Orthodox Jew acting supposedly in contravention of the general precepts of my religion is despicable and amounts to outright criminality, criminal delicts which needs to be dealt with by a criminal court. The result of the above is a forged outcome based upon invented evidence, nothing less than malfeasance in office.

8 I merely acknowledge the question, there is no assent nor agreement. The verbalisaion as such, is not the equivalent of ‘Ewe’ in isiXhosa.

CONCLUSION

48. Complainant was not given a fair hearing, did not possess an attorney, was restrained from calling any witnesses, was required to testify in his defence without the aid of an attorney, was not provided with any protections nor guarantees of civil rights nor due process and especially in respect of the TRC Report, and the proceeding did not meet any standard in law nor evidence for that matter, and did not approach anything resembling the just administrative action guaranteed in terms of the Constitution. The adjudicating officer moved to close down the Complainant's case, pre-empted his findings, ran a lop-sided ship in favour of the other party, and jumped to conclusions whilst doing his level best to assist the other party who was his client who also happened to be a business associate, in its denial of the material conditions affecting South Africans and in the aftermath of the apartheid system. The result is a wild and unenforceable decision based upon blatant falsehood, hearsay, perjury, and also uttering. The findings are without any doubt contrary to the secular norms underpinning our democracy, and go so far as to contradict the historical record as provided by the legacy of the freedom struggle and the history of apartheid. The terms and outcome must be struck down, not simply as a violation of rights, but also an abrogation of the law.

_____

DAVID ROBERT LEWIS

I CERTIFY THAT THE DEPONENT ACKNOWLEDGED TO ME THAT HE KNOWS AND UNDERSTANDS THE CONTENT OF THIS DECLARATION, THAT HE HAS NO OBJECTION TO TAKING THIS PRESCRIBED OATH AND CONSIDERS IT TO BE

BINDING ON HIS CONSCIENCE. THUS SIGNED AND SWORN TO BEFORE ME AT CAPE TOWN ON THIS DAY OF

_____

COMMISSIONER OF OATHS