

**BEFORE THE CAPE BAR COUNCIL, DISCIPLINARY COMMITTEE**

**HELD IN CAPE TOWN**

In the matter between

**DAVID ROBERT LEWIS**

Complainant

and

**ADV C KAHANOVITZ SC**

Respondent

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**SUPPLEMENT AFFIDAVIT**

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I, the undersigned

DAVID ROBERT LEWIS

hereby make oath and state as follows:-

1. I am an adult male residing at 3 Regent Square Rd, Woodstock, Cape Town with identity number 6802155194080

2. The facts contained are, save where otherwise indicated, within my personal knowledge and are to the best of my belief true and correct.

3. I make this my third Affidavit to supplement and amend the evidence given in my foundation Affidavit (the "First Affidavit"), sworn in this matter on 9 July 2015, and the supplement affidavit (the "Second Affidavit"), also sworn in this matter on 30 September 2015, and also the communications in regard to my appeal of the decision, also sworn in the matter. The following resulting from my finally gaining access, after some time, effort and expenditure, to the official transcripts in the matter as conveyed by Digital Audio Recording Transcription, and thus attached. Please note, where the words 'page' and 'line' are used, one may infer I am thus referring to the relevant pages and lines of the official transcripts.

## **Statements made in regard to the Truth Commission**

4. At 13 of my first affidavit and 6.4 of my second affidavit, I discuss various statements made in regard to the Truth & Reconciliation Commission of South Africa (“Commission”) and its Final Report (“Report”). These points should add the following:-

4.1 At page 119 line 14 (DRL) Kahanovitz asks: “Right so what do you want the judge to find at the end of the case? Must he find the whole Media24 Group or must he make a finding about the People’s Post or which other?”

4.2 At page 120 line 7 (DRL) Kahanovitz asks: “What status as a legal entity under the ...?”

4.3 and then at line 8 (DRL) states: “You’re referring to the Truth & Reconciliation Commission legislation? And I respond at line 9 (DRL), “Yes, the – the problem with the mandate, the mandate for the Commission I think extended to individuals. It wasn’t ostensibly a requirement of the Commission to investigate – investigate corporations. However, there was a media commission at which for example the Independent Group made extensive submissions to the commission, as did for instance, Moegsien Williams and on behalf of the Alternative Press.”

4.4 Then at line 18 (DRL), Kahanovitz says: “I get the impression from your evidence that there’s some sort of legal process that you are referring to that

happened at the TRC where if you went along and apologised for what happened in the past in some or other way, you got some sort of piece of paper from the Truth and Reconciliation Commission which now said that you are accept – you are now – you may now publish newspapers or you're an acceptable newspaper group. Because I am not aware of any such process." [My underline]

4.5 Then again at page 121 line 3 (DRL), Kahanovitz says: "Yes but Mr Lewis, there was no legal process at the TRC, besides there was amnesty." [My underline]

4.6 That at page 122 line 8 (DRL) Kahanovitz says: "You seem to suggest that unlike some other media organisations or individuals or companies, I don't know what you're talking about, but that some, that Naspers did not get a 'clean bill of health' from the Truth and Reconciliation Commission and that had you known that you never have applied for the job there. Have I got that right?" To which I respond: "You're 100% correct."

4.7 Then at line 15 (DRL) Kahanovitz proceeds to state: "But you couldn't get a clean bill of health from the Truth & Reconciliation Commission, so what are you talking about?"

4.8 Then at line 25 (DRL) Kahanovitz says: "But Mr Lewis, before you applied for the job at Media24, the TRC process was part of public record. The report which you now annexed to your bundle has been published."

4.9 At page 124 line 5 (DRL) Kahanovitz says : “Mr Lewis, I’m going to argue at the end of the case that this version that you’ve invented about the relationship between what happened or didn’t happen at the TRC and your decision to join Media24, is a concoction. It’s something you’ve invented for purposes of this case. It just makes no sense.”

4.10 At page 213 line 3 (DRL) Kahanovitz says: “I suppose I must put this to you. If one had to follow your logic one would need to draw a line from DF Malan, the Nazis, Hendrik Verwoerd, the Transvaler to for example whoever edits the Sowetan today?” and I respond: “Its a very interesting hypothesis.” Note: The phrase used by Kahanovitz, thus transposes and interpolates that of the complainants, in particular it also omits and avoids the obvious connection to respondent’s director PW Botha<sup>1</sup>.

4.11 At page 242 line 3 (DRL) Kahanovitz states: “... there’s no evidence to show the reason why the employer did not offer to renew it was because of the chain of shame stretching from Adolf Hitler, D F Malan, Hendrik Verwoerd through to Annelien Dean ...” Please note, although there is substantive evidence regarding the connection between the apartheid regime and the regime of Adolf Hitler, and in particular in regard to the methodology used for race classification, no such evidence was actually lead by the complainant. Instead applicant’s response to questions put by Kahanovitz, in particular various cartoons (not the TRC cartoons published by Die Burger and referred to by the complainant in his written

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<sup>1</sup> See page 450 12 “This is the self-same company set up by ...”

pleadings) and also a piece by Brian Bunting, can be found on page 212. The assertions and evidence in regard to the mooted point and thus what was in effect, an unproven hypothesis at the time, are thus introduced by Kahanovitz not the complainant. The matter itself was finally settled upon the discovery during October 2013, of the so-called ‘Fischer tools’ at the University of Stellenbosch used by both Nazis and the National Party to classify human beings into race groups, as well as other documents linking the two regimes. Complainant reserves his right to enter further evidence in this regard.

4.11 On page 476 line 10 (DRL), Kahanovitz states in respect of the People’s Post: “a small community based title, taken over by the Respondent many years after the defeat of apartheid. The only way, so it was argued, that this chain of shame could ever be broken was through the ritual purging of the corporation via the TRC. My submission is the argument only needs to be stated to realise that it is ridiculous, least of all was there proof that racial profiling was implemented as an employment policy or practice at People’s Post<sup>2</sup>. The editors denial that such practices do not exist were not (sic) seriously challenged by the applicant. It is so that he came to believe that his work could only have been rejected for this reason, but that only tells one that the applicant is a person who is persistent and stubborn in his denial of reality.”

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<sup>2</sup> If one follows this absurd argument, an ethnic kurd employed by a factory producing sarin gas used to kill ethnic kurds, would have no basis for claiming discrimination, since the sale of the gas would not constitute an employment policy or practice.

4.12 Then at page 500 line 1 (DRL) Kahanovitz says: “He claim that he would (sic) have applied for a job with the TRC, sorry with the respondent, had he known it had not been exonerated by the TRC is ridiculous. Although the report is a public record, he said he had not read it. Even though it seems to feature significantly in his thought processes.”

4.12.1 Kahanovitz goes on to say: “In either event no journalist would need to read the TRC report to know something about the history of NASPERS and it is obvious that he applied for the job with the full knowledge of the history of the respondent. When these contradictions were pointed out to him he said that he would continue to hold onto the belief that had he known that Naspers had not been given a clean bill of health by the TRC then he would not have applied for the job.”

4.13 It is clear from the pleadings that Kahanovitz overstepped the mark in the rush to limit damage caused by the inclusion of a document from the TRC Unit in Respondents bundle and referred to in pleadings (DRL) (but never examined by the court) and then by impugning the legal status of the Commission and going so far as to claim “there was no legal process at the TRC”, then that the corporation somehow had ‘amnesty’, and that the it was rather the complainant who ‘couldn’t get a clean bill of health’ and/or nobody had a clean bill of health. He further disputes the historical conditions and the legacy of apartheid, by claiming the context of the TRC and thus the egregious legacy of his client and the historical outcome of the inquiry in which the self-same client was found guilty of gross violations under apartheid, and thus the relationship between his client and the applicant, is ‘an invention’ and thus complainant’s submissions are “ridiculous”.

4.14 At 505 line 11 Kahanovitz states, without evidence or fact: Troubled people who imagine that they are constantly the victim of persecution should not treat courts of law as a port of call in which to seek solace.

### **Statements made in regard to my secular Jewish identity**

5. At 15 of the first affidavit and 25 of my second affidavit, I discuss various degrading statements made by Kahanovitz in respect of my secular Jewish identity. The following points need to be added:-

5.1 After attacking me in documents, in particular the application to amend, Kahanovitz proceeds to explain away the racist and Anti-Semitic attacks as the result of ‘mere confusion’, caused as a result of a post hoc letter penned in response to an inquiry by the SAJBD some time after and following the period under review. Then after apparently conceding the issue, Kahanovitz continues to dispute my Jewishness, in particular my secular identity. The resulting probe is not only offensive hate speech, but it demonstrates contempt for our secular Constitution. Please note for the purposes of this Affidavit, anti-Semitism may be defined as hostility towards secular Jewish identity.

5.2 On page 45 line 11 (DRL) I state: “I just wish to point out that the respondent has actually contested whether or not I am a Jew and its (intervention).” At line 14 (DRL) the Court says: “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?”

5.3 At line 17 (DRL) Kahanovitz responds: “Yes M’lord. Might I just explain where some of the confusion came in and it still remains? The applicant says that he is a

philo or philosemite (different pronunciations) and you will see in your bundle there's a letter he wrote to the Jewish Board of Deputies."

5.3.1 "Which we will argue that by definition it postulates that he's not Jewish but that ... In other words there's no point in a Jew being a philo-Semite. Its some, its an attribute that certain Gentiles have where they have a particular attraction to Judaism for reasons best known to them."

5.4 Then at page 46 line 6 (DRL) Court 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 (DRL): "Yes, yes."

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

5.4.2 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."

5.4.3 "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."

5.6 Complainant wishes to add here that whether or not I am a philosemite or Judeophile had absolutely no bearing on the matter. The statements in respect of the "attribute that certain Gentiles have where they have a particular attraction to Judaism for reasons best known to them" is offensive in the extreme and certainly contrary to the principles of Secular Humanistic Judaism which states: "A Jew is a person who identifies with the history, culture, and future of the Jewish people."<sup>3</sup>

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<sup>3</sup> <http://www.shj.org/humanistic-judaism/what-is-humanistic-judaism/>

5.7 Respondent failed to amend or withdraw their offensive and degrading statements, instead Kahanovitz persisted in his probe of my Jewishness, in the process impugning my faith and culture. At page 48 line 25 (DRL) Kahanovitz: "So the contention would be now he is not an observant Jew and does not observe the Jewish Sabbath and keep it holy."

5.8 Page 189 line 3 (DRL) Kahanovitz: "If you come along and say, "I do not observe the Sabbath, but if – you're discriminating against me by not allowing me to observe the Sabbath", all you are is a hypocrite."

5.9 At page 189 line 13 (DRL) Kahanovitz: "And also just as a general proposition, if a non-Observant Jew trades on the genuine beliefs of observant Jews for their own personal gain, then that would be fundamentally immoral."

5.10 At page 190 line 2 (DRL) Kahanovitz: "What I am putting to you is there are Jews who have genuine beliefs about observing the Sabbath in a particular way ... If you are not one of those Jews ... you should not latch onto their beliefs and claim that you are being discriminated against if you are not being given the latitude."

5.11 At page 201 line 17 (DRL), Kahanovitz falsely accuses me of lying under oath, about a letter dated 28 April 2007 introduced as evidence in the respondent's bundle of evidence (RB1 61.62). The letter to a Jewish community organisation, dominated by Orthodox Jews, is merely a response to a previous letter contained in applicant's bundle page 6 (AB2 6) (DRL), and thus my attempts at correcting some confusion introduced by Gwen Robbins on behalf of the organisation, and thus my attempt at setting the matter straight. The case was not about my

Orthodox Jewish identity per se, nor even, overtime in violation of the Sabbath for which a settlement had been extricated, but rather comprised a *sui generis* case involving unfair discrimination, related to the Sabbath and specifically related to my attendance at a mixed race nightclub supposedly in violation of religious laws and the company's own internal policies<sup>4</sup>. Throughout the proceeding, complainant asserted his right to observe the Sabbath, and thus the customs and traditions of secular Judaism, in the manner in which he sees fit, and has implored authorities and officialdom to restrain the respondent from impinging upon the complainant's faith and culture, and/or imposing its own version of religion. Likewise, Kahanovitz and thus the respondent, repeatedly attacked the complainant's position, denying he was Jewish and/or an "observant Jew" at the same time they disclaimed any knowledge of the facts, whilst reserving their apparent right to impose their own religious views.

5.12 Earlier at page 200 line 5, (DRL) Kahanovitz: "Mr Lewis, this is a letter that was in your possession which you did not discover for purpose of these proceedings, correct?" I respond: "Sorry, this letter was ...?"

KAHANOVITZ: You had this letter in your possession and it pertains directly to this case. You did not make it available as one of the documents.

LEWIS: It's confidential. It's a confidential letter.

KAHANOVITZ: Confidential doesn't apply, Mr Lewis. You're supposed to make available all documents that are relevant for the determination of the truth.

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<sup>4</sup> Please see testimony with regard to the use of staff transport and policy in this regard.

LEWIS: I don't see it as any, having any relevance.

KAHANOVITZ: You're still now, you're even prepared to point fingers and say: Well, where is the – where is the letter that I was replying to?

LEWIS: Right.

KAHANOVITZ: You have that letter.

LEWIS: Well its ...

KAHANOVITZ: You want to make it available, make it available ...

LEWIS: Well I think I should, its on page, page 40 of my bundle, letter from the Jewish Board of Deputies.

5.13 Thus at page 201 line 14 (DRL) Kahanovitz, without any evidence, also falsely accuses me of lying under oath and of withholding evidence from the court:-

KAHANOVITZ: Well you are no doubt aware that there's an offence called perjury. You understand what perjury is?

LEWIS: I don't see the relevance.

KAHANOVITZ: Well the relevance is, is if you come to court and tell lies it's a criminal offence.

LEWIS: Are you accusing me of lying?

KAHANOVITZ: Yes

LEWIS: Why?

KAHANOVITZ: Because in the letter which you withhold from the court ...

LEWIS: Excuse me, I didn't withhold any letter. I presented it.

KAHANOVITZ: No, the letter which you withhold is at our bundle page 61.

LEWIS: Yes, you assisted me in providing. I didn't have – it was an email document that you dug up somehow, right? And you're presenting it as evidence. I've presented the, the corresponding letter, the document.

KAHANOVITZ: Now well let's move on then to ...

5.14 At page 203 line 19 (DRL) Kahanovitz again without any evidence falsely claims: "You went to the Jewish Board of Deputies demanding that they take up the cudgels on your behalf." Although I affirm in the records, that I did in fact approach the SAJBD, the statement by Kahanovitz is incorrect, I merely canvassed the SAJBD. Their letter dated 24 April 2007 (DRL) (AB1 40), and also referred to on page 204 line 14 clearly contradicts Kahanovitz's version of the facts, and thus far from being a refutation of my position, merely states:-

Dear David

"We believe that you are fighting a case in the labour court on the grounds of discrimination because you have been forced to work Saturdays."

"Unfortunately the Jewish Board of Deputies, in terms of its mandate, represents affiliated organisations and not individuals and we can not take on cases for individuals, no matter the merit."

5.15 At page 537 line 14 (DRL), Kahanovitz again falsely claims: "Secondly the letter – there is no letter (sic) from the Jewish Board of Deputies. The reference is to the letter sent by the applicant to the Jewish Board of Deputies 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."

5.16 At page 204 line 18 (DRL) Kahanovitz continues his over-zealous religious inquisition going so far as to impugn my standing in the community on the basis of my dress and appearance. The line of questioning is extremely offensive:-

KAHANOVITZ: Well its not strange that they might mention Saturdays because that is in fact the major part of the Jewish Sabbath is Saturday.

LEWIS: Right. In fact its from Friday evening until Saturday, Saturday evening sunset.

KAHANOVITZ: Yes, you're right, but most of the hours of the Sabbath fall on the Saturday.

LEWIS: But it begins on a Friday.

KAHANOVITZ: Yes you are 100% correct. Just to state the obvious. You do not wear a yarmulke.

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 underline]

LEWIS: What would you do if you were a bald – balding 40-year-old? Do you?

KAHANOVITZ:I don't know Mr Lewis. The only reason I ask you is you can say that it has no reference to any religious affiliation and then I will...

LEWIS: My hair, no my hairstyle has no relevance to any religious anything.

5.17 At page 299 line 1 (DRL) Kahanovitz claims the secular court is allowed to test the assertion: “Everyone knows I am a Jew.”<sup>5</sup> Please note, the sole witness was not requested to provide any corroborating documents in regard to similar claims in her own defence, and that the court openly favours the respondent’s position on the inquisition in this regard. Thus at first the court objects, but then appears to be carried away by Kahanovitz’s chicanery:

COURT: No you see, I’m not allowed to test that, am I?

MR KAHNOVITZ: No you are M’lord.

COURT: Am I allowed to test the question, the plausible of ...?

KAHNOVITZ: Yes, Yes.

COURT: I’m not ...

KAHAHNOVITZ: “Inherently implausible” is one ...

COURT: “Inherently implausible?

MR KAHANOVITZ: Yes

COURT: Okay.

5.18 At page 299 line 14 (DRL), Kahanovitz proceeds with his offensive assertions regarding the plausibility and/or implausibility of my Jewishness being common knowledge and thus the apparent duty to inform all and sundry, as well as employers, and without there being an equal requirement affecting all other

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<sup>5</sup> Please see witness own testimony, since she was surprised to find this fact out at the evaluation meeting, and hence should have refrained from making such inquiries, she cannot claim to not be aware of the fact.

co-religionists and other faith groupings, (and thus employers) in law. The inferences, that this fact of my existence, has not been accomplished by amongst other things, a Mikvah, my attendance at a Jewish kindergarten, my graduation from a Hebrew School under the auspice of the Union of Orthodox Synagogues, my Bar Mitzvah, my political journey from the South African Union of Jewish Students (SAUJS) to the armed struggle, and so forth, is outrageous and shameful:-

5.18.1 “So, so it it is inherently implausible that it must follow from the fact that a witness says: “Because everybody knows I’m a Jew, but doesn’t – can’t find a basis to substantiate it, then you must – must you assume that therefore everybody does know he’s a Jew and take it then to the next step and say well, if everyone knows he’s a Jew, do we then jump into the next logical step and say everybody knows he is a Jew, then there’s a *prima facie* case of discrimination which comes to existence in circumstances where he starts working after whatever it is? Half-past five on a Friday?”

5.19 At page 302 line 17 (DRL) Kahanovitz proceeds to create an offensive and degrading category of ‘more-deserving members’ of a religion. He does this at the same time that he appears to acknowledge that getting into such a legal debate about ‘what the central tenets of ones religious faith may or may not be’ is morally wrong. He however is unable to step back from the brink, nor to avoid the consequences of his own actions and thus the objection lodged here, that it is Kahanovitz himself, who is claiming to be some kind of religious or ecclesiastical authority, declaiming upon the matter. The imposition of Kahanovitz’s version of religion and impositions of tests in this regard, is a serious violation of the

complainant's right to freedom of religion (which is also freedom from the religious views of others. Please see my document prepared for the Constitutional Court in this regard):-

5.19.1 KAHANOVITZ: "Yes and that is the stage at which you would get involved in a debate that we stayed away from, which is: What are the central tenets of your religious faith? Because the mere fact that someone is a Christian or a Jew, or something else doesn't ... , or there's a piece of paper that says that they may be, what they do in the cases is when they start ..."

5.19.2 "It's not as, its not as simple as seems to be suggested that people can self-identify the manner in which they adhere to a particular faith. In other words if you go and ask a Rabbi .... A student comes to you and says: "I do not wish to write this exam because it falls on Sukkot. There must be some measure, method ..." And he says to the rabbi: Please write a letter to the University of Cape Town, telling them I'm excused from writing this exam."

5.19.3 "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 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." [My underline].

5.20 Again at page 303 line 17 (DRL) Kahanovitz repeats his offensive assertions regarding the need for tests over and above what would be considered the norm in a secular society:-

5.20.1 "Well, what I'm also saying is that there might in those situations then be a discussion wherein if Mr Lewis says: "Because I'm Jewish I don't do this," one might need to go and ask a Rabbi. Excuse me, can you just confirm that what he is saying actually ...""

5.21 This theme contradicting secular and common law guarantees of human agency independent of religious structures and thus rights accorded adulthood, and whilst reserving special privileges for his client, is repeated in the closing statements, in particular Kahanovitz proceeds to state at page 481 line 14 (DRL) that his client was simply unaware complainant was Jewish: "They were not aware that he was Jewish ...." and this despite them having had an opportunity to interview me and examine my CV.

5.22 Kahanovitz then continues to falsely assert at line 19: "this case is a construction that has been invented to in order to push certain emotive buttons" and then: "The applicant's working hours would not actually have affected his ability to attend synagogue on a Friday evening because his ordinary hours, it is only, it was only unusual overtime that had no impact whatsoever." Please note the submissions made to the court in this regard, and in respect of Friday night observances or Synagogue attendance not being an "all or nothing affair" and "if all that one does is light candles, that it is enough".

5.23 Then at page 482 line 19 (DRL) Kahanovitz proceeds to read from his pleadings:

5.23.1 “I pointed out in paragraph 38”

5.23.2 “The 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 multicast<sup>6</sup>, a Philosemitic and/or of Orthodox background and much else besides. He is self-defines how and when he will observe the Sabbath and his claims on this leg are a subsequent fabrication where he sought to play the Anti-semitism card, an emotive button to push in pursuing his vendetta against his former employer.”

### **Statements made with regard to my opposition to apartheid**

6. At point 19 of my first Affidavit and points 14 -18 of my second Affidavit I discuss degrading statements and submissions made by Kahanovitz in regard to my opposition to apartheid and heroic role during the struggle for freedom. The following points need to be added:-

6.1 At page 216 line 1 (DRL) Kahanovitz states: “Moving on to deal with your claim that you were a struggle journalist and the claims that you make about your roll (sic) in the liberation struggle, because one of the initial claims that you brought was that because of the roll (sic) that you played in the liberation struggle your salary was discriminatory ...”

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<sup>6</sup> I note here the use of the term multicast in the same vein of similar racist accusations made by Kahanovitz in respect of my being a ‘Mamzer’, a ‘Mischlinge’ or simply half-cast.

6.2 Then at page 216 line 21 (DRL) Kahanovitz: "So because you are, I don't know if you cast yourself as a hero of the liberation struggle or someone who played a major role in liberating South Africa from oppression, but your salary should have been higher in consequence."

6.3 Then at page 217 line 11, appears further offensive and degrading examination by Kahanovitz relating to the struggle for freedom, and complainant's role, (and without the complainant having benefit of an attorney). Thus Kahanovitz restricts his questioning to marginal issues related to an organisation known as the United Democratic Front, and not the broader Mass Democratic Movement, nor its emanations in the struggle press, while complainant is forced to reduce himself in stature to fit the questions regarding a single UDF affiliate. Please note the affiliate was banned while the complainant was a paid-up member. The banning followed the banning of the SWAPO solidarity committee (unaffiliated) and also COSAW. No questions are asked in regard to COSAW, and one can only presume that unlike COSAW which was remarkable for the period, this is because the ECC was an organisation representing 'white male conscripts'.

The text follows the transcripts order, and thus my answers are preceded by (---) :-

6.3.1 You say you were a member of the United Democratic Front. --- right.

6.3.2 How did you become a member of the United Democratic Front?" ---  
by joining anyone of the sister organisations or affiliates.

6.3.3 Yes and which affiliates were you involved in? --- Oh gosh, End  
Conscription Campaign, Congress of South African Writers, h'm that's about it.

6.3.4 How were you involved in the End Conscription Campaign? --- H'm

6.3.5 Were you on an organising committee? --- I wasn't on a committee. I was a close associate of Jonathan Handler, one of the COs<sup>7</sup>

6.3.6 Were you actually involved in the End Conscription Campaign? --- I personally knew Cameron Dugmore and Cameron (invention)

6.3.7 You personally knew Cameron Dugmore? --- Cameron is actually a personal friend of mine.

6.3.8 Does that make you involved in the End Conscription Campaign? --- Yes, it was also, I actually paid my dues and I also, was a member of the South African Union of Jewish Students."

6.3.9 Because I must put it to you that the people in the End Conscription Campaign don't seem to have heard of you. --- Gosh, well you talking rubbish.

6.3.10 COURT: Are you going to lead evidence on that, Mr ...?

6.3.11 MR KAHANOVITZ: H'm?

6.3.12 COURT: You're not going to lead evidence of ....?

6.3.13 MR KAHANOVITZ: I'm not going to lead evidence on that. We know his comment.

6.3.14 COURT: Oh well let's --- you're talking rubbish.

6.4 After failing to take the opportunity to lead any evidence in respect of the vicious and degrading assertions above (6.3.9) and the questions put to the

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<sup>7</sup> According to the transcripts the acronym for Conscientious Objector is CEO, I correct the error here since it serves no purpose

complaint and made on page 212, Kahanovitz proceeds to place his false utterances, and racist inquisition, using his ‘rubbish’ statements and dishonest averments on record, claiming there is now ample evidence before the court, and this during his closing address and remarks. At page 497 line 5 Kahanovitz openly lies and wilfully deceives the court, by claiming:-

6.4.1 “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.”

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

6.5.1 COURT: Was that part of the evidence?

6.5.1 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?

6.5.1COURT: Ja, ja. Okay, well just to answer me – the articles at the back. I do remember you referring to blogs and the like.

6.5.1 MR KAHANVOTZ: It is at page 76 (DRL) of the respondent’s bundle. It is an article – it was taken off by the editors of Wikipedia because they, h’m.

6.5.1COURT: Was this document ever – okay, it has been, it is what it purports to be.

6.5.1 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.

6.6 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 held up, 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 speaks to the manifest bias which is now part of the case against the adjudicating officer.

6.7 The wikipedia incident is nothing less than a despicable introduction of false evidence and invented testimony before the court during a deceitful address based upon knowingly false statements of material fact. Kahanovitz's mendacious closing arguments and sophistry, are thus already been made at page 497 and on record.

6.7.1 Thus at page 537 line 9 (DRL) Kahanovitz withdraws a single reference:-

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.

6.8 The damaging statements informed the final decision, even though the basis for making them, what one may refer to as evidence introduced as discovery, was

partly retracted at the end of the proceeding. 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 deletions, consistent with the respondent's career as the chief protagonist, propagandist and defender of the apartheid state, needs to be seen within this context.

7. At 19.2 of my first Affidavit I discuss statements made by Kahanovitz with regard to my verified membership of MKVA. The reference to "foreign intelligence service" may be removed and/or exchanged with the phrase: "Underground operative". The following point may be added:-

7.1 At pages 175-177 (DRL) Kahanovitz cross-examines me on an incident related to the evaluation meeting. He makes various claims and statements in regard to an organisation known as Qiblah, my relationship to MK itself, the armed press, and my relationship to Muslims and Jews. He then proceeds to ask: "Oh, were you an underground operative." I respond: "I am not at liberty to tell you."

7.2 'Why would you not be at liberty to tell us? --- How would I know?

### **Statements made in regard to my presumed race identity**

8. At point 15.2 and 18 of my first Affidavit and 21.3 of my second Affidavit I discuss various utterances and degrading statements made by Kahanovitz in writing in regard to

my presumed race identity and in respect of the issue of race. The following points need to be added:-

8.1 At page 163 line 7 (DRL) Kahanovitz states: "And if I understand your views about your credibility in the black community, in one of your videos you explain that you'd crossed this racial divide because of your role in the liberation struggle and you used the phrase "I don't consider myself white". Correct? " and I respond: "Right. H'm right."

8.2 Kahanovitz: "Can you explain briefly to us how you transformed yourself?" and I respond: "Oh H'm well firstly I don't consider myself beholden to the categorical imperative of racism. Secondly during 1986/87 I was a member of the End Conscription Campaign and the alternative – we had an alternative education programme." [Please note the question here is based upon an assumption that I was not disenrolled from the 'white race', nor sectioned under apartheid laws, because of my activism, but rather focuses on how I accomplished the transformation on my own, as if I am the one responsible for the racist dispensation].

8.3 Kahanovitz: "No I don't want to know about .... I'll get your history in the liberation struggle later. What I'm trying to understand is how you ceased to be a white person; if you can just explain that." and I respond: "H'm Dr Neville Alexander actually explained this to me in Political Studies 101. It's the concept of non-racialism as opposed to multiracialism."

8.4 At page 163 line 25 (DRL) Kahanovitz then proceeds to falsely accuse me of being a ‘white person, of hypocritically fighting for my rights as a white person’:

8.4.1 Kahanovitz: “If you don’t consider yourself white, why are you bringing a claim in which you say that you have been discriminated against as a white person?” and I respond: “I’ve been discriminated because of the – the – I’ve been forced into a racial category. I’ve been discriminated as a result of the material conditions that that have informed the new South Africa and which continue to prevail in this country.”

8.4.2 Kahanovitz: “Well, aren’t you embarrassed to come to court to assert your right as a white person?” and I respond: “H’m, I don’t believe that that is what I was asserting. H’m its a misreading of ... perhaps I wasn’t clear enough.”

8.5 At page 181 line 5 (DRL), one can only assume Kahanovitz is now referring to a document prepared for Dale Stevens (AB1) namely ‘My experience of discrimination at Media24’. Both the questioning and the reference contradict Kahanovitz’s earlier line of attack at 8.4.

8.5.1 Kahanovitz says: “Now another very strange feature of your case is that you explain your selection as a reporter, sorry sub editor and staff member on the basis that Media24 were prepared to presume you to be coloured because you were writing for coloureds.”

8.5.2 I respond: “Its bizarre.”

8.5.3 Kahanovitz says: “Because another possible explanation, besides being bizarre, is that what you have to say is utter nonsense.”

8.6 It is clear that Kahanovitz is not interested at all in the facts of the complainant's history, but rather in scoring points based upon his own false assumptions and prejudice. The questioning by Kahanovitz under the assumption that the Population Registration Act repealed by the apartheid government in 1991, is still in force, is extremely offensive. Nowhere in any of my pleadings do I make the claim as suggested by Kahanovitz, that 'I am white', or that "I am a race", or that my compulsory and/or former de jure membership of this race league by virtue of the previous moribund Population Registration Act is in any way current, and/or not already the subject of litigation stemming from an outrageous denial of human agency during the past regime. I have never uttered any words to lead anyone to believe any race presumption to be valid, nor was it ever the basis for my case nor any of my pleadings. Rather it is the respondent's imposition of race categories and defence of apartheid that is at issue here. Kahanovitz goes so far as to question the sole witness as to her views on which race group I supposedly occupy in terms of the "old classifications".

8.6.1 At page 338 line 4, (DRL)Kahanovitz asks: " We know also from the – from time to time the applicant alleges that he is not actually white, but that he is actually Coloured. Just for the purposes of the record, according to the old classifications, what category would applicant fall into?" And Dean's answer: "White".

8.7 At page 183 line 19 (DRL) after questioning me about the report submitted to Dale Stevens, Kahanovitz makes perverse and pathetic comments regarding an obsession which deserve to be sanctioned by the Bar, and instead of objecting,

the court proceeds to grant Kahanovitz free reign, it is Kahanovitz who is obsessed with the distinction between us and them (see 8.8):

MR KAHANOVITZ: Sorry is that? --- Sorry can I just perhaps remind you?  
“Other Coloured”.

Excuse me? --- Sorry, there was a category called “Other Coloured”.

Yes --- You could, if you were white, classified as white you could be reclassified coloured, as in Other Coloured.

H'm? --- The – the result of racial .... If you cross that – that line. I suffered because of the system of apartheid in this country articulated by Naspers.

I just want to put it to you that you are obsessed with racial, cultural and religious stereotypes. You are the person who is obsessed with identity.

c At page 232 line (DRL) Kahanovitz makes what could be only be termed the eponymous speech of a dyed in the wool racist, please note the offensive and racist distinction between us and them:-

8.8.1 “Now M'Lord, we submit that the answer to a lot of what we have heard in this court is not going to be found in law textbooks.

8.8.2 The problems which the applicant experienced, although they find some echo in the real world , are largely figments of his own imagination. In his mind the things that happened to him at work can only be experienced by himself through a paradigm in which he is the victim of persecution.

8.8.3 “He identifies strongly with persecuted people to the extent that he has become one of them. So when he works long hours on a Friday or he's asked to volunteer to handout pamphlets before dawn or when his stories are not published, then he is not capable of understanding that it doesn't automatically follow that these experiences must inexorably result from a motive to get David Lewis because David Lewis was part of the struggle or because he is Jewish or because he is not in the NGK or because he is not a Boer.” [My underline]

8.8.4 “With respect to him, he was a tiny or insignificant cog in a very large machine. I have no doubt that his feelings were hurt. It may even be that he briefly worked excessive hours, but he has not come close to providing any concrete proof of discrimination and by that I mean facts which go to substantiate the claim.”

8.9 At Page 147 line 9 (DRL) Kahanovitz states: “You said Annelien Dean had no experience of publishing in the former Coloured areas” and I respond: “Right”

8.9.1 Kahanovitz asks: “Why did you tell us that? And I respond: H'm, just because I – I believe there was a – a lot of misunderstanding with regards to the requirements of the -- the issues in the communication and the obstacles that are faced with publishing in such communities.”

8.9.2 Kahanovitz states: “And luckily enough you offered yourself as the link you tell us to the Coloured community.” And I respond: ”I was trying to assist her.”

8.9.3 Kahanovitz states: “Yes, because you understand how coloured people think?” And I respond: “H’m that’s probably because I am a coloured.”

8.10. At page 148 line 19 (DRL) Kakanovitz asks questions framed apparently in terms of a concession by the company that several publications referred to are directed at a “coloured target market”:

8.10.1 “Do you know whether she worked on what you would call “Black” or “White” newspapers in the past?” --- “no idea”

8.10.2 “And in terms of your racial profiling thesis ...” “h’m”

8.10.3 “And the fact that this was now going to be a newspaper targeted at coloured people, why would Media24 in terms of your thesis go and appoint a white woman to edit the newspaper?”

(witness chuckles)

8.10.4 “Then, why would they appoint a white woman to edit a coloured title?”<sup>8</sup>

9. At page 500 line 22 in his closing address, Kahanovitz states, without any evidence nor any basis in scientific reasoning: His claim that 'I am a Coloured' is ridiculous.

### **Statements made with regard to the profession of journalism**

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<sup>8</sup> I do not believe the appointment of a ‘white woman’, as editor of several titles geared towards previously disadvantaged group areas in any way conforms to the principle of employment equity.

10. At point 20, in particular 20.2, of my first affidavit I discuss Kahanovitz's attacks against the privileges generally accorded the profession of journalism and in respect of my own career as a journalist. The following points need to be added:-

10.1 At page 112 line 25 (DRL) Kahanovitz begins a series of questions, and continuing over the course of three pages until page 115, the gist of which is that I had no right to make any line decisions nor submit input in regard to the tone of content at the People's Post and that my submissions in this regard are 'ridiculous'.

10.2 To provide some context to my profession, according to 'Prospects', an online website specialising in graduate careers, "press sub-editors, or subs, check the written text of newspapers, magazines or websites before it is published. They are responsible for ensuring the correct grammar, spelling, house style and tone of the published work." [My underline] "Subs make sure that the copy is factually correct and that it suits the target market. They also lay out the story on the page, write headings and may be involved with overall page design." [My underline]. Please note, nowhere is it suggested here or in the points below that the routine generation of copy and/or generic content, also involves submitting written work or photographic material under ones own byline.

10.2.1 "To be a good sub, you must be an all-rounder: you need to know media law, have a keen eye for detail and be able to put a story together with speed and style." [My underline]

10.2.2 "Depending on the nature of employment and the extent to which production and layout work falls within the sub-editor's remit, tasks typically involve the following:-

- editing copy, written by reporters or features writers, to remove spelling mistakes and grammatical errors;
- rewriting material so that it flows or reads better and adheres to the house style of a particular publication;
- ensuring that a story fits a particular word count by cutting or expanding material as necessary;
- writing headlines that capture the essence of the story or are clever or amusing;
- writing standfirlsts or 'sells' (brief introductions, which sum up the story underneath the headline);
- liaising with reporters, journalists and editors;
- cropping photos and deciding where to use them for best effect and writing picture captions;
- proofreading complete pages produced by other sub-editors using the main basic proofing symbols;
- working to a page plan to ensure that the right stories appear in the correct place on each page;
- laying out pages and, depending on the nature of the role, playing a part in page design;

- manipulating on-screen copy using appropriate desktop publishing software, such as Quark Express, InDesign and Photoshop;<sup>9</sup>
- keeping up to date with sector issues, e.g. by reading related publications;
- adapting all these skills for a publication's website.

10.3 For the record, the grading given me by the Independent Group is for Paterson C5 “interpretative function, middle management.” In the UK an experienced or senior press sub editor generally speaking earns between £25,000 to £40,000+. A production editor or chief sub-editor for a national newspaper could earn £60,000.

10.4 Thus at page 112 line 25 (DRL) Kahanovitz states: “I also want to put it you something quite obvious. You weren’t hired to decide how the People’s Post should run. Do you agree with that?” To which I respond: “I wasn’t hired as an editor but I was given some kind of position as an Arts & Entertainment sub at some point. I would presume that if, if Arts and Entertainment was under my purview, I would have some kind of responsibility for the content or at least to engage the editor in such discussions.”

10.5 Kahanovitz: “But Mr Lewis, whatever you may think, you weren’t hired to decide on what editorial policy would be. It appears to me that you seem to believe

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<sup>9</sup> The Eidos workflow publishing system used by Media24, is a linear editing suite lacking many of the advanced tools of the industry standards in publishing.

that you most certainly had an important role to play in this regard, but you weren't hired to do that." To which I respond: "if, if your question is, is it the editor's prerogative or the prerogative of the sub editor to decide what the content of the newspaper is, the – it is the editor's role essentially, the final – the buck stops at the editor. However I do have a right as a citizen of this country to object to discrimination or prejudice anywhere."

10.6 I wish to emphasize here that my right to object to discrimination and prejudice is not simply a common right accorded all citizens, but an inherent requirement of any job affecting the profession of journalism. I thus continue at page 114 line 3 (DRL): "There's no inherent requirement for me to abide by an unethical practice or you know, to discriminate against a particular group of people. I don't have to comply with, with that decision." To which Kahanovitz proceeds to vex me with questions related to his client's supposed exclusive money-making venture<sup>10</sup>, going so far as to falsely assert variously that the community paper was simply in the business for the purposes of advertising and thus any concerns that a journalist might have in regard to the profession of journalism and mutatis mutandis the profession and its relationship to the company, should fall away on the basis of this strategy:-

10.6.1 Now do you accept this was a money-making venture. The aim of the exercise is to make money. That's what Media24 does --- Right, but money is not my god.

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<sup>10</sup> If one takes this circular argument to its logical conclusion, the profession of law, for the most part, is also a business venture, making money, and is thus, according to Kahanovitz, exempt from any rules or regulations governing the profession.

10.6.2 It may not be your god, but that's how they stay in business. They make money --- right.

10.6.3 And they make money by developing titles that people want to buy. Do you agree with me? --- No, this was a free, a freebie. It was a knock and drop, and no-one actually bought the People's Post.

10.6.4 Yes, but that's ... Alright very good point. How do they make money from the People's Post? --- You tell me.

10.6.5 From advertising, do you agree? --- I believe that the – it is a vehicle for advertising. However, the People's Post actually has an editorial. There's an editorial page. There's also op-ed material. There are news, newsworthy stories, community news in, in the paper. So its not essentially an advertiser.

10.6.6 Yes but what are advertising, what is (intervention)

10.6.7 And the Cape Times was also, is also an advertiser. If you want to look at the history of newspapers in South Africa the Argus was also an, you know, the ... What is journalism essentially? I think that would be a better question.

10.6.8 I just have a simple point to make. To sell advertising you need readers? --- H'm sorry, if you've asked me a question on what is journalism I believe I could answer the question.

10.6.9 I'm not asking you what is journalism. I'm asking you how to run a newspaper that makes a profit. --- right I'm, I didn't – oh right. I didn't apply – I didn't apply for a job at an advertising agency. I'm not an advertiser.

10.6.10 So why would you take a job with this profit driven enterprise if you are so at odds with their fundamental philosophy?

10.7 At 297 line 24 (DRL) Kahanovitz attempts to claim special privileges for his client: "In other words, if you have ..., if you are a right-wing newspaper and I join a right-wing newspaper, why must it be discrimination when you tell me that you will not publish my article because the employees of that newspaper are not being treated differently." At page 477 line 3 (DRL) of Kahanovitz's closing address, a similar vein appears, repeated the gist of what has already been said, that a man may murder, or even physically attack an employee but if he appears before the Labour Court, there is nothing that can be done about it: -

10.7.1 "In what way does it affect you as an employee? This company, whatever, sells arms to, into civil wars. Okay, that you say is a noxious policy or practice and they you will say: Well, I am a pacifist. I work for this company. They force me to – but first you would need to show the existence of some sort of employment-related policy or practice that is discriminatory and then move onto how it actually impacts on you as a worker."

10.7.2 "The Act cannot be that this Court is going to be police the commercial morality of all corporations unless and until somebody can

come along and actually show that this is an employment policy and practice, not that the company does horrible things or not merely.”

10.8 At page 117 line 19 (DRL) Kahanovitz in response to submission on the political climate at Media24, falsely states: “But the only component/part of Media24 that you have any direct knowledge of is the People’s Post?” To which I respond: “That wouldn’t be correct.”

“It wouldn’t be correct? --- No

Well, what other parts of Media24 have you worked in?

--- I’ve worked for Metroburger. I’ve subbed copy for City Vision.

Sorry, was this before you came?

--- Yes before the move to the, Tokai.

Sorry, is this during your training period that you did this subbing, or was this a different job that you (intervention) ...

--- No, there was no training. I didn’t need to train. I, I’m already, have ample experience. I don’t need to be retrained to sub. The only retraining that occurred was with regard to retraining my skills for the, the layout system.

10.9 The same attempt by Kahanovitz and hence his client, the company to cast aspersions by limiting evidence of my work experience and/or expanding upon false evidence can be seen at page 344 line 11, where I discuss the pleadings signed by

Kahanovitz, who does absolutely nothing to correct the falsehood that he has brought before the court:-

MR LEWIS: There is a quote there:

"This was the applicant's first exposure to actual production of a newspaper.

I then ask:

MR LEWIS: Ms Dean, is this an accurate statement? and she responds:

The reference should be "the newspaper" as your CV made clear that you had had production experience.

10.9 In Kahanovitz' warped mind, any version of events which veered from his client's own technical model, i.e. the actual publishing model, not the model on paper, was an 'exaggeration' on my part. At page 140 line 13 (DRL): "I can put it to you that Mr Taljaard or Annelien Dean or anyone else for that matter who – if they need to come and testify in this case they will point out that the distribution of newspapers is not an editorial or journalistic function. They have people who are, I don't know the English word is but in Afrikaans they call them "roete opsieners". To which I respond: "Yes. But at the same time you, you seem or appear to argue that an inherent, there was an inherent requirement for the job to do all manner of things. So I don't believe its an exaggeration." [Please note, Mr Taljaard was not called by the court to give his version of events, despite such undertakings. His name appears no less than 21 times in the decision]

10.10 For the record, although the duties of a sub-editor do not extend to the physical distribution of newspapers, a sub-editor who is head of production, or part of the production team, would certainly be responsible for the dispatch of newspapers per se insomuch as the finished product would need to be put to bed at the printers, and the printers would need to liaise with production in order to make good on the order to and from dispatch. Hence the problematic late shift and early morning appointments. Kahanovitz' various assertions in this regard are pathetic, irresponsible and beneath contempt.

### **The use of quotations and figures of speech**

10.11 At 386 line 25 (DRL) Kahanovitz proceeds to claim in regard to my use of a quotation from material supplied by the music industry: "there is no evidence that has been placed before the court which says that what appears at page 24 of the bundle is a press release or anything akin to a press release which would entitle anybody to go and cut and paste from it without in any way impacting on the intellectual property of the authors of that website." Yet at page 156 from line 22 (DRL), I have already stated my 'fair use' defence in response to such vituperation.

10.11.1 And if you look --- its an extract. Its in quotation marks.

10.11.2 That, that is cut and paste from the Internet site music.org ... --- Its called ... Yes it's called 'fair use'. I, I'm quite entitled to make use of that paragraph. In fact, I was given permission by the author of the biography to use it."

10.11.3 For the record I have email correspondence from the publisher, granting permission to use the biography in question. The assertions by Kahanovitz are therefore wrong, and the premise for his argument, fraudulent.

11. At pages 170 -171 (DRL) Kahanovitz attacks the privileges accorded the profession in regard to confidentiality of ones sources, going so far as to insinuate that I have defrauded and mislead the public by writing the words, 'speaking from his home Robbie Jansen said' since I was not at Mr Jansen's home at the time. The decision goes so far as to repeat this bizarre assertion, and is evidence of demonstrable bias against my rights as a journalist by the court, and/or lack of competence.

Line 16 You see, would you blame me if I had to read this to imagine a situation of here's David Roberts (sic) sitting, here's Robbie Jansen sitting, here's Robbie Jansen's producer. David Roberts is attempting to interview Robbie Jansen and the producer.

11.1 At page 443 (DRL), Dean has already confirmed these are merely figurative terms, i.e a 'figure of speech':-

MR LEWIS: Right. Ms Dean, is it not true that it is just a figure of speech to say, speaking through one's record producer? That is just a figurative term that would be used in a newsroom. -- Yes.

## **Introduction of evidence which does not exist.**

12. During the proceedings, Kahanovitz submitted false pleadings constituting statutory perjury on behalf of his client which were contradicted by the sole witness. He also suborned false statements from the witness constituting statutory perjury. It turns out the witness is a serial liar and blatantly dishonest under oath. Please see my submissions in regard to the Perjury Case: 889/10/2015

12.1 At page 146, line 4 (DRL12) he claims that Dean does not speak Afrikaans: “Well you’re wrong, you know, she’s not Afrikaans speaking. It’s not her home language.” This is contradicted at page 308 line 14 (DRL8), Dean confirms she is “bilingual” and that her parents are also “bilingual”. Dean says: “Both are bilingual and were raised as such and so we’re we Afrikaans and English.”

12.2 At page 207, line 1 a submission on her behalf his client, by claiming that: “And the one thing I need to put to you is that Annelien Dean doesn’t come from Bloemfontein.” is contradicted by testimony on page 308, line 21 of the transcripts (DRL) by stating: “I completed my High School education in Bloemfontein”, and by also confirming this fact at page 340 (DRL9) and 341

12.3 At page 214 (DRL) Kahanovitz attempts to attribute an item on Page 32 Respondent’s Evidence Bundle, Page Author A Dean, item without any strapline to my own pen. The piece originates from the music.org.sa website and is also listed as item 33 respondent’s bundle, Hotep Idris Galeta Biography.

12.4 At page 215 (DRL23) Kahanovitz falsely asserts: “You were the author of this article.” My answer: “I’m not the author of the article. It – it clearly states there:

"Author: A Dean, Date: 5/27/2006" The data-line of the data file, merely has my initials attached to the data entry." Kahanovitz again falsely asserts: "Oh so you deny that you wrote this article? My answer: "I'm I'm denying. I did no, not in a million years."

12.5 At page 324 line 16 (DRL) Kahanovitz continues his campaign of misquotations and half-truths, and thus the quotation he purports to refer to, is not only taken out of context but are not my own words:

12.5.1 "He also says that, somewhat disparagingly (indistinct), that you had no experience before being appointed the editor and his words were: She was ostensibly the editor. She had no experience. Just comment briefly on that."

12.5.2 The submission by Kahanovitz is directly contradicted by my testimony at page 148 line 6, (please see points 8.9 and 9 above with regard to the context): Kahanovitz asks: So the person that you were reporting to whose instructions you were supposed to adhere to, you regarded her as actually not having the competence or the capacity to be the editor of this newspaper?" And I respond: "Not. She was ... , I don't believe that she - she's very competent in terms of editorial. I think she has an ability to - to manage a newspaper."

**Statements in regard to my attendance at a 'mixed race' nightclub, the West End.**

13 At no stage has the complainant ever maintained that he interviewed Mr Jansen at the West End on a Friday night. Nowhere in the article in question do any words

appear attributing the interview to the West End. There is no evidence in support of any of the claims to the contrary under oath, made by Ms Dean and thus the perjury suborned by Kahanovitz.

13.1 At Page 430 line two (DRL) Kahanovitz invents evidence which does not exist and proceeds to suborn same from his witness (please see perjury case):

13.1.1 "Just on this question of how the issue of the West End came up, you will recall that when I cross-examined the applicant I asked him where he interviewed Mr Robbie Jansen because the article (sic) says he interviewed him at West End. I am just trying to – speaking from his Cape Town home via telephone. There was some debate between you and Mr Lewis now about whether he had or had not interviewed him at the West End. In what context did that arise?"

13.2 At Page 431, line 2 (DRL) Kahanovitz proceeds to falsely claim there is a document which corroborates the witness testimony:

13.2.1 MR KAHANOVITZ: But there was a document in which, where the issue had arisen that – which he claimed that he had interviewed at West End which is where this whole issue of whether he was at West End on Friday night had arisen in the first place.

13.3 The document referred to only came to be in the respondent's possession because it was included in my bundle, page 27AB of my bundle not their bundle. It is a report written for an evaluation meeting on problems encountered in the production cycle in terms of a contract position for a layout sub. It was never submitted as a report as such. It would have been submitted to the respondent at

the time, had they dealt with the editorial issues to do with the rejection of the several pieces, and other related issues to do with racism. It is inadmissible as evidence and is nothing more than an "aide memoir" as the respondent variously puts it. The document merely corroborates that I met with Mr Jansen. No date is thus given for the interview, which in any event was conducted over the phone on a Thursday. It is certainly not a personal 'vision for change' in the company as maintained by Mr Kahanovitz on page 337 line 9.

13.3.1 We know from the applicant's version that he prepared a document.

He seemed to be under the impression that he was coming to present his vision of how the newspaper should be run. Do you know where he got, do you have any idea where he got that idea from that this was the purpose of the meeting?

#### **Statements in regard to Messrs Jimmy Dludlu and Chris Syren**

At page 435 begins what can only be called a ruse purporting to uncover a deception. It is nothing less than a blatant attack against the privileges granted the profession of journalism. Thus on page 436 line 8 Kahanovitz suborns false testimony by stating:

"You will recall that I asked the applicant whether he in fact had interviewed Mr Dludlu before he had put that into the article and he said no, he had not, but that the author of the statement was a Mr Chris Siren who was his manager and he said that doing that, putting those words into Mr Dludlu's mouth, was an acceptable journalistic practice . He called it a journalistic conceit. I just want to find out from you, is that an acceptable journalistic practice?" and the witness gives her opinion.

Kahanovitz then asks at page 436 line 23, without any evidence and with absolutely no basis for making such averments, a question purporting to gain corroboration of his pet

thesis that I have somehow purloined Mr Dludlu's speech, and/or plagiarised and/or passed similar words off as an 'interview' by extracting text from a press release and/or statement issued by Mr Syren on behalf of the company Making Music and thus acting for Mr Dludlu, in which Mr Dludlu's own words were in quotation marks:

"Were you told at the time that this article was presented to you that what appear to me, at least as a lay person, as being the words of Mr Dludlu, were in fact not his words? To which the witness responds: "No, that was not pointed out to me."

Then At page 437 line 2 Kahanovitz asks a seemingly relevant question but with absolutely no bearing on the matter: Is via his record label some sort of code for, journalistic code for telling an editor that that is not the words of the person? To which the witness answers: No it is not.

The intention is clearly to paint the complainant as somebody acting outside of accepted discourse in regard to the profession. It is beneath contempt to have this kind of economy with the truth admitted as evidence in a court of law, and without the person who is being quoted being given an opportunity to come to court to set the matter straight. The entire line of questioning is hearsay. Furthemore Mr Kahanovitz did not have any authority to act on behalf of either Mr Dludlu nor Mr Syren, and his presentation of this so-called evidence is clearly a denial of their personhood, rights and legal capacity. The correct course of action would have been for the court to call the witnesses referred to by Mr Kahanovitz, to verify if what was said was true or not. That this is typical of what occurred during the proceeding merely speaks to its invalidity and unlawfulness. Mr Kahanovitz should know better than to cast aspersions against persons in the industry and the profession without giving them an opportunity to appear in court.

## **Sexual innuendo**

13. At page 70 line 23 (DRL) a series of questions and answers are given in regard to the promise of a better contract, in which the word cherry is used: "There were various reassurances that were given to me. In fact those reassurances were also given to me by Dean. It was the sort of cherry that was held out." [My underline]

KAHANOVITZ: So and the promises made by Annelien Dean, can you be more specific? And can we --- It was one of the reasons why I agreed to provide the People's Post with the articles in the first place, I, I was told that I would get a better contract.

14. Then at page 115 line 22 (DRL):

KAHANOVITZ: Now you said that you weren't aware that you would have to submit copy and you – the end result you said that although duress had been placed on you to write copy, your words were, "It wasn't a problem for me." --- right Because eventually you kindly agreed --- Yes, I – I was assured there was a press code – there was actually a code of conduct governing journalists at the People's Post. Its actually part of my documents, item 4 indexed to applicant's bundle of documents: "Ethical code for reporters, photographers and graphic artists of Die Burger."

15 Then at page 116 line 8 (DRL), the word 'cherry' is given an entirely new meaning by Kakanovitz, who proceeds to misquote me, I play along with him:-

And one of the factors that you said that induced you to be so kind as to agree to write articles was the attractiveness of Annelien Dean --- Under the overtures, ja. She, she made quite, quite a number of promises.

What exactly are you suggesting? H'm"

Are you suggesting that she was offering you some sort of romantic or sexual enticement to ...? --- (Witness laughs)

--- Gosh.

What are you suggesting? --- No, I, I just accepted it as God's will, that this is what God intended, that – this would, this was an, -- these obstacles that were in my mind were, were actually ... You know, it was an opportunity to, for growth in a, in a global company where there were – that I was assured that – that we were tackling transformation in the workplace.

Sorry, you've gone off the point entirely. I was asking you ...

--- H'm, Annelien Deans attractiveness or not should actually have, is of no relevance.

16. Again at page 117 line 1 (DRL) Kakanovitz appears to claim that the word 'cherry' has a different meaning, I thus infer that Kahanovitz finds Ms Dean attractive at line 4:

Well, you're the one that mentioned it, which is why I raised it. --- Right, h'm.

I didn't raise it. You raised it yesterday in your evidence. --- Ja, but you've got to admit that she is attractive.

17. At page 324 line 5 (DRL) Kakanovitz obviously thinking with his gonads, attempts to suborn further perjury from the sole witness.

KAHANOVITZ: "He said:

"I became aware because of the attractiveness of Annelien Dean and the promises of further contracts that I should write articles. It was not a problem for me."<sup>11</sup>

Just on the attractiveness issue, did you ever lure him into writing through making romantic overtures towards him? --- No

Did you ever lure him into writing by making a promise to him of a future contract?  
--- No.

18. At page 496 line 6 (DRL) Kahanovitz uses his own redactions, misquotations and purloined 'testimony from the bar', and obviously thinking with his balls, proceeds to import evidence which does not exist:

KAHANOVITZ: Well, again, there are two versions there. There is the "I was forced" and then there is 'due to the attractiveness of Annelien Dean I agreed to do it' and what Dean said yesterday was that she never forced him to do it. In fact if anything he was terrifically keen to the extent that he kept on bothering her to the point of distraction from her work about this issue."

19. At no point have I ever used any of the phrases introduced by Kahanovitz, nor affirmed anything more than the validity of such propositions which may be true or false. The word cherry is figurative and has absolutely no relevance here as I stated at page 116 line 24:

"H'm, Annelien Deans attractiveness or not should actually have, is of no relevance."

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<sup>11</sup> The correspondence between complainant and the company contradicts this assertion. It was definitely a problem to supply byline and written work under copyright without a contract.

**Subornation of Perjury with regard to the "coincidence of homogeneity", separate development and the tragic legacy of apartheid.**

20 At page 309 Kahanovitz begins a series of questions with the express aim of admitting testimony on the respondent's 'community newspaper model' and the purported 'mandate to publish community newspapers into specifically defined communities on the Cape Peninsula'. Instead of examining the witness on the events related during the period under review in 2006, he picks up the status quo almost four years after the facts, thus questioning the witness on the then current publication profile in 2010.

20.1 At page 311 line 20 he states: "So in line with that, it has already been said the People's Post has ten separate editions for ten communities in the Cape Peninsula. I just want to confirm, those communities are editions. There is a Michell's Plain edition, correct,

A Retreat edition --- yes

A Grassy Park edition --- yes

A Lansdowne edition --- yes

A Athlone edition --- yes

Constantia/Wynberg edition --- yes

A Claremont/Rondebosch edition --- Ja .

A Woodstock/Maitland edition --- Yes .

And an Atlantic Seaboard/City edition --- That is correct .

20.2 At Page 312 Line 9: "Now because of the – how does the existence of those editions coincide with racial and culture factors? And the witness answers: "They are

published into communities geographically defined at their boundaries and there is a coincidence of homogeneity within certain additions (sic) due to what can be termed South Africa's past and divisions that stem from the past. 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.

20.3 At page 312 line 21: "Now the applicant has put up a version which, as I understand it, essentially says that the Peoples Post has a demographic profile of coloured people. Is that correct? In other words that is the sole demographic profile and he goes on to then build an argument which says the content of the newspaper, the only content which may be published, is content which fits that racial demographic profile, is that thesis correct? And the witness falsely answers under oath: It is incorrect.

20.4 There is no need to repeat the contents of my Affidavits supplied with regard to the perjury case, suffice to add here that Mr Kahanovitz knew that he was asking questions related to several editions of the community newspaper which did not exist at the time at which the complaint was issued and the case lodged at the CCMA and Labour Court. Furthermore he appears to have coached his witness to provide false information under the rubric "All races served."

20.5 The record reflects that the witness was unable to maintain this ruse, and accepted the implications of the characterisation of the four editions germane to the case, but aided and abetted by Mr Kananovitz, explained the problem away, as the witness put it, all a

result of a "coincidence of homogeneity" and/or an accident of sameness. I wish to state for the record here that this is exactly the same illogical justifications and bizarre euphemisms used to justify apartheid, without doubt, carrying the taint of apartheid theology issued by various officials and clerics during that tragic period. There is no possibility of there ever having been a 'coincidence of homogeneity' at the editions under review and related to the People's Post. What was observed and reported by the complainant to the court, which proceeded to do nothing about the problem, under the advice of Kahanovitz, is nothing less than the aftermath of the self-same policies adopted and punted by the company responsible for the apartheid regime. As late as 2006, portraits of the late D F Malan, an apartheid leader and also former editor of 'Die Burger' were seen outside the editor's office. Complainant reserves his right to enter further evidence in this regard.

## **CONCLUSION**

20. Mr Kahanovitz is a thoroughly dishonest interloper, a rogue and a racist to boot, who has gone further than what can be considered professional, by overstepping the mark of what could be considered reasonable in defending racism, newsroom segregation and race profiling. He has espoused both the anti-secularist views and apartheid denial of his client. He has made racist, degrading and blatantly false and fraudulent statements in what appears to be nothing less than a successful campaign to deceive both the court and the people of South Africa. He has callously and without any thought to the consequences suborned perjury and/or engaged in statutory perjury via his authorship of false statements via oath and affidavit, and is a party to the manifest perjury of his witness and client. He is unfit to be considered a legal professional, and should not be allowed to

practice law. His continued presence as a member of the bar, reflects badly on all other members of the profession. He must be disenrolled and/or suffer sanctions accordingly.

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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

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