

ADELAIDE INSTITUTE

PO Box 3300

Adelaide 5067

Australia

Tel: 61+88331 0808

Mob: 61+4170 88217

Email: toben@adelaideinstitute.org

Web: <http://www.adelaideinstitute.org>

Online

ISSN 1440-9828

June 2009 No 448

Points of Law

Dr Töben's endeavour of telling the truth about the so-called 'Holocaust', among other things, and the consequences he took into account for insisting that it is his moral duty to tell the truth, have been variously interpreted – often revealing more about the writers' state of mind than about what Töben's world view is all about.

One such article appeared in Adelaide's *The Advertiser* on 26 May 2009. Written by a John Goldberg, president of the Law Society of South Australia, it clearly illustrates a mind that finds itself in a conceptual prison, and is not comfortable with itself. It is the soul destroying Talmudic-Marxist mindset that cannot imagine anything outside of its own dialectic process, and hence any kind of idealism is interpreted through the infantile eyes of Freudian psychology. In Töben's case, so Goldberg contends, the matter is simple – he wants to be a martyr. But this is an easy way out of a huge moral dilemma, which the following fact: the truth concept is the foundation on which civilisations rest because without it we have no trust, and without trust relationships break down, and a one-dimensional world appears in the form of the legal conceptual prison.

For example – and more below from one of his actual court documents – if a dialectic is set that states the following moral dilemma: 'Do I tell the truth or do I obey the law', the Talmudist would fall into a frenzy and ramble on: "...obey the law, obey the law, obey the law...".

The life-giving dialectic process of German philosopher Hegel would state the following: "I tell the truth AND obey the law".

All this is nothing new for civilized individuals. Was it not Christ who rebelled against the Talmudic mindset by bringing in the truth-telling moral dimension, thereby eliminating an absolutist/unbalanced and materialistic-only world view?

Here is John Goldberg's article:

Going to jail the hard way

By Guest Columnist John Goldberg, May 24, 2009 11:30pm

ONE of the great privileges we enjoy in Australia is freedom of speech. We are able to speak and write publicly and freely on almost any topic. No rights, however, come without restriction, and freedom of speech is no exception.

Apart from defamation laws that protect damage to reputation, there are other things that you cannot do in the name of free speech. An often-quoted example is falsely calling out "fire" in a crowded cinema or nightclub. Australia, in common with many countries, has an additional restraint on free speech.

Under the Racial Discrimination Act, it is unlawful to communicate words, sounds, images or writing to the public if they are reasonably likely to offend, insult, humiliate or intimidate another person or group and it is done because of the race, colour or national or ethnic origin of the other person or people.

This is described as racial vilification. Although racial vilification is unlawful, it is not a criminal offence. I now turn to the curious case of Dr Fredrick Töben. He is, or was, a director of the so-called Adelaide Institute and is a German-born Australian and a serial Holocaust denier. He has just been sentenced to three months' imprisonment by the Australian Federal Court in circumstances which he describes as being for the sake of his right of free expression.

In Germany, unlike in Australia, Holocaust denial is a crime. Töben knows that only too well. The challenge for Töben was to achieve martyrdom in Australia on the altar of freedom of speech by being imprisoned for Holocaust denial. As it is not a crime in Australia, how could he get himself locked up? The answer is: With great difficulty, unless you are as persistent and resourceful as Töben. To start with, you have to engage in racial vilification and have a determination made against you under the Racial Discrimination Act. Töben managed to achieve that in October, 2000.

You then have to refuse to comply with that determination until the Federal Court orders you to comply.

That happened in 2002 when he was ordered to remove material from his Adelaide Institute website where he denied the Holocaust and suggested, among other things, that Jewish people who were offended were of limited intelligence and that Jews exaggerated the number of people slaughtered for ulterior purposes.

The next step is to ignore the Federal Court orders but when you are finally charged with contempt of court, unreservedly apologise and undertake to comply with the orders. That happened in November, 2007.

You then have to immediately change your mind and continue to maintain the offending material on your website for a further 18 months until you are again charged and ultimately found guilty of 24 counts of contempt of court. That happened in April this year.

Then when it comes to sentencing submissions, you suggest to the court that in the Australian justice system, Jewish people get preferred treatment. That was in May this year.

Well, it was a long and difficult path but Frederick Töben finally got there; three months' jail for contempt of court.

Not quite as easy as going to jail for Holocaust denial in Germany, but undoubtedly well worth the effort if martyrdom is your objective.

John Goldberg is president of the Law Society of SA.

<http://www.news.com.au/adalaidenow/story/0,,25531484-5013696,00.html>

**IN THE FEDERAL COURT OF AUSTRALIA
SOUTH AUSTRALIA REGISTRY
NSD 327 of 2001
On appeal from The Honourable Justice Lander**

BETWEEN
GERALD FREDRICK TÖBEN
Appellant
JEREMY JONES
Respondent

AFFIDAVIT OF APPELLANT

On 25 May 2008 I, Gerald Fredrick Töben, retired teacher and pensioner, of 23 Caloroga Street, Wattle Park, in the State of South Australia, MAKE OATH AND SAY -

1. I am the Appellant in these proceedings. I desire to refer to my previous Affidavits sworn 27 and 28 April 2009.
2. Since I and a group of individuals in 1994 began this non-profitable enterprise, Adelaide Institute, I have always been ready to augment, correct and delete material and offer an apology, especially if any of it in tone is jarring, rude and crude. But if material is factually correct, then there is no reason for being apologetic because this would compromise my moral and intellectual integrity.
3. I believe that it is my God-given right and duty to pursue the truth of a matter and to think about contentious versions of history.
4. When on 26 November 2007 at around 7 pm I received per email the draft of the Consent Orders, my focus on the actual Apology - as discussed with my then court-appointed barrister - rested on **C** of the Branson J Orders of 27 September 2002. I agreed that an article, under **Order C**, requested to be removed was indeed somewhat rude and crude, but I had prepared myself to defend the Allegation that I was in breach of **Order A, B and D**, which the barrister had accepted. The next morning at the FCA Adelaide, before signing the Consent Orders, my barrister and I again canvassed the matter and I understood that a blanket general apology would settle the matter, and at a later stage in future proceedings the specific orders could be challenged and varied. Hence my initial hesitation, as indicated at Line 30 of the Transcript of Proceedings of 27 November 2007, when offering the Apology to His Honour, Justice Michael Moore, who then demanded I give an unqualified apology to the court.
5. On 21 December 2007 I completed the deletion of all the material complained of, except for that mentioned in **1.** of the Consent Orders of 27 November 2007 because I realized that under **1.** of the Consent Orders the Applicant was granted leave to rely on the Second Further Amendment Statement of Charge filed on 3 November 2007. Therein the material listed for deletion is a **LINK on our Internet website**. I considered the removal of links from Adelaide Institute's website not part of the Consent Order, and hence did not delete the link - all material on Adelaide Institute's website was removed by me at midnight on 16 April 2009, the day on which Lander J handed down his judgment.
6. At the 19 December 2007 hearing His Honour, Michael Moore, stated that my belief/world view was not in question, but that the apology focused on specific material deemed to be offensive and published on Adelaide Institute's. At his hearings, Justice Lander insisted that 'whether the Holocaust happened or not' was not for him to find out.
7. I am aware that the views which I hold are contrary to those held by the majority of people in Australia, and by those who adhere to mainstream views in Australia. Further, I am aware that my views are those of a heretic and a dissident: for some time the website included in its home page -
"This is a REVISIONIST - DISSIDENT - HERETIC -WEBSITE"
I believe that it was appropriate so to describe my views. There is no reason to suppose that my views are based, in any way, on hate: they are not. The notion that my views are based on hate, or that I hate the applicant or those he represents, is false: it appears that that notion is based on stereotyping.
I maintain that a democratic society necessarily involves the right to express views which are unpopular, and that it should not follow that because I may have views considered heretical to existing authority, that I should be placed, effectively, outside the polity.

Filed by Dr G F Töben
23 Caloroga Street
Wattle Park 5066

fredricktoben@y7mail.com

8. Throughout my life I have maintained diaries, and on historical matters relating to the Holocaust, I have always attempted to present a rational and open argument as would suit a global civilized debate. I have always attempted to express and present my views in a manner which is consistent with my life as a teacher, and with my own philosophical and academic background. On some occasions I have employed the language of persuasion [rhetoric] those occasions have been entirely within an academic/didactic context.

9. Bearing in mind the comments made by His Honour, Justice Moore, at the 19 December 2007 hearing as regards my beliefs/world view not being subject of the Consent Orders, I am still having considerable difficulties deciding what is permitted and what is not permitted to be published on Adelaide Institute's Internet website. If my belief, which His Honour labelled 'Holocaust denial', is not in contention then surely I am able to state: "I would rather be a Holocaust denier than a Holocaust liar!" My whole belief system is inadequately attended to and inadequately defined in the Orders of the Honourable Justice Branson of 17 September 2002.

10. The Respondent, Mr. Jones, from the outset of these proceedings - first before HREOC in 1996 and subsequently in the FCA, until to date - has never shown any preparedness to conciliate.

11. The conceptual confusion flowing from Branson J's Orders and from the Consent Orders is designed to neutralize my mind and "to stop it from functioning". I do not wish to be in breach of any Court Orders but I resist such an act of mental rape, and submitted for His Honour's consideration, as an example of my attempt to escape this act of mental rape, the following newsletters wherein the essence of my belief system/world view is clearly articulated and vigorously canvassed by experts in the field of historical research: No 368, 369, 370, 371.

12. The matter before the Federal Court involves creating a legal orthodoxy out of holocaust history. The created orthodoxy is that against which I am a heretic. I maintain that the creation of such orthodoxy is contrary to my right to hold opinions and express them, and is contrary to the right to communicate concerning political matters. The relevant political matters include matters of external affairs and foreign affairs [international politics in which Australia is involved]. I do not now approve of, espouse, or incite, nor have I ever approved of, espoused, or incited, violence or hatred.

13. The following is a list of organisations with which I have had dealings:

13.1 Adam Internet – Adelaide-based Internet service provider, has since 1 May 1996 hosted Adelaide Institute's website – without complaint. The provider has received death threats for refusing to disconnect Adelaide Institute's website, and management continues to host the website because it considers the material on Adelaide Institute's website to be covered by the democratic principles of free expression. Were Adelaide Institute to dabble in pornography, the site would have been pulled a long time ago.

13.2 South Australia Police – has not complained and does not regard Adelaide Institute's activities as being detrimental to the community.

13.3 Australian Federal Police – has not complained and does not regard Adelaide Institute's activities to be a national community threat – had there been weapons and drug involvement, then criminal proceedings would have been initiated a long time ago.

13.4 Australian Security Intelligence Organisation - ASIO – has not complained and does not regard Adelaide Institute's activities to be an Australian national security threat.

13.5 Australia's education institutions – I opposed the introduction of ideological concepts such as 'value-free' and 'non-judgmental' because they signified intellectual fraud: I believe it is impossible for education and society generally to function in the absence of value judgments. These concepts, among others, were then coupled to the anti-discrimination industry's attempt to neutralise thinking processes, thereby suppressing within individuals a healthy development of a normative value system. Truth, honour, justice – are concepts that have no home within the discrimination industry's value system.

13.6 The Australian Print Media – initially the local, state and national print media outlets supported Töben's educational endeavours, but not the substantive issue surrounding the Jewish Holocaust-Shoah. In fact, the media hate incitement against Fredrick Töben and Adelaide Institute was not absolute and there were instances of fair reporting. The Murdoch press unashamedly used one or more of the following concepts to whip up hatred against Adelaide Institute or Fredrick Töben: hater, Holocaust denier, antisemite, racist, neo-Nazi, etc. A ban imposed on Töben to a right-of-reply exists to this day at The Australian and The Advertiser newspapers. The Internet, however, offers Töben Natural Justice by enabling him to respond to any such attacks by placing material on Adelaide Institute's website. It would be an injustice were this avenue of a right-of-reply taken from Töben.

14. The legal system - The initiating complaint came from Simon Wiesenthal Centre, in Los Angeles, USA. The respondent, Jeremy Jones, informed the HREOC and the Federal Court that the material "hurt" his feelings.

14.1 The Honourable Justice Lander at 24 of his **13 May 2009 Reasons for Judgment** designates Jews as a

race. This characterisation aligns with that of German National Socialist thinking, which determined that being Jewish was a matter of race. I contend that in fact being Jewish is a matter of religion.

14.2 The Honourable Justice Lander, at 28, 53 and 54 of his **13 May 2009 Reasons for Judgment** takes issue with my statement "Do I Tell the Truth or Do I Obey the Law" as elicited under cross examination. I did try to explain to the court that my position is [both] to tell the truth and to obey the law because this is based on the life-giving Hegelian dialectic process, while the 'only Obey the law' process is based on the death-bringing/killing of the soul Talmudic/Marxist dialectic process. The analysis of these dialectics and my views about them are part of my strongly held personal philosophy.

14.3 The Honourable Justice Lander, at 64. ff of his **13 May 2009 Reasons for Judgment** states that for him an important consideration was "whether the contemnor has purged his contempt and is truly contrite." He does not acknowledge the fact that I deleted more material than I had to – wiping the whole content of the website – in 2000 after the HREOC decision and in 2002 after the FCA judgment, and that I deleted all material agreed upon in November 2007 – but not the link because this was not part of the agreement made before Justice Moore.

I respectfully say that I believe that it was unreasonable that the Honourable Justice Lander characterised my actions as having been done **only under legal advice** when I went to some length to explain to His Honour that I do not operate under such a dialectic process.

14.4 At p23 of the **Transcript of Proceedings, 28 April 2009**, the matter of truth-telling continues where His Honour attempts to re-question Töben on matters canvassed earlier by Margo:

HIS HONOUR: Well, I'll put the - I think I can remember the question.

Is it not the case, Dr Töben, that if you are obliged to comply with the order of Branson J and honour the undertaking you gave to Moore J, you would not be able to tell the truth, as you understand the truth?

Töben: I have problems understanding what that question actually implies or even if it states that if I follow the orders

His Honour: Are you saying you can't understand the question?

Töben: I'm having problems

His Honour: Are you saying you can't understand the question?

Töben: Because what I

His Honour: No, is that what you're saying? You can't understand it?

Töben: I'm trying to follow what you're saying.

His Honour: No, no, I'm just asking you. Can you not understand the question? You can say yes or no to that?

Töben: I would like to hear it again. I can't

His Honour: Well, I'll ask the question again, but if you can't understand, say so. The question that Mr Margo asked, and I'm paraphrasing, is that if you complied with the order that Branson J made on 22 September 2007, and honour the undertaking you gave to Moore J on 27 November 2007, you would thereby be debarred from telling the truth, as you understand it. Do you accept that proposition? Now, if you don't understand the question, say so?

Töben: It's raising so many issues. I'm just thinking that to obey – I've tried to. For example, I'm locked in to tell the truth and obey the law and therefore I'm trying to.

His Honour: It's not – the question – the question is not about whether you are complying with the orders. The question is if you do comply with the orders you are not able to tell the truth as you understand it. Do you accept the proposition?

Töben: Are you saying – using the quotation marks Holocaust, I would be in the situation where I would be in Germany. Are you saying that? Where the legal system prevents me from doubting, from expressing public doubt, from asking questions? Are you – in what you've just said, are you implying that this is the effect of Branson J's order?

His Honour: No. I think that implicit in Mr Margo's question is this, that if you have to comply with her Honour's orders, and the undertaking you gave to Moore J, you are thereby prevented from telling the truth about the Holocaust. That is your position, is it not?

Töben: This – I can't see that it's an either/or case.

His Honour: Very well?

Töben: I follow the orders and I must not tell the truth. I see that our justice system – we have moral, legal and social duties, your Honour, and I am

His Honour: I'm just doing my best to put Mr Margo's question, but I'm not doing it so well, apparently, but I'll try it once more. Mr Margo's question is, if you are obliged to comply with Branson Js orders and honour the undertaking given to Moore J, you are thereby prevented from telling the truth about the Holocaust, as you understand the truth. Isn't that your position?

Töben: I don't think it is

His Honour: Okay. That's fine, thank you?

Töben: because, if I may add?

His Honour: Yes?

Töben: Because the way I understand the law. As I said, we have moral, legal and social duties, basic citizen rights and so on, and therefore it is my duty to tell the truth as it is, within the law, within legal constraints, and I've tried that for these last seven years or whatever. I've tried that to the best of my ability.

His Honour: Yes. Yes, I'm sorry, Mr Margo.

Margo: Thank you for that, sir.

Dr Töben, you say you've been trying for the last seven years, but the court has found that you've failed. And you said in your most recent affidavit that you accepted that you had brought the administration of justice into disrepute, or words to that effect, or undermined its standing. How do you reconcile the findings of ?

Töben: Mr Margo, I will

Margo: How do you reconcile those findings with your intention, as I understand it, to continue telling the truth, despite the orders?

Töben: Very easy, Mr Margo. I have not had any legal counsel, as you know, throughout these years, and I've now had Mr Perkins' legal advice and I'm being guided by Mr Perkins. I - as you know, I enrolled in the University of Adelaide law course and I failed Commissioner McEvoy's subject and all that. Law is not easy for me. My discipline is philosophy, asking questions, difficult questions, and therefore, I have now, without hesitation, signed this affidavit, which Mr Perkins and I formulated which, on his advice, I've accepted.

Margo: Well, do you accept now that if you obey the orders of Branson J and honour your undertakings to Moore J, you may not publish on your web site what you regard as the truth about the Holocaust, namely that it didn't happen?

Töben: Mr Margo, in the affidavit I ask that I be supervised by the court or by you or the executive of Australian Jewry

15. The above matter indicates there is something fundamentally wrong with the whole legal proceedings against me. It cannot be in any way the intention of the court to deny an Australian citizen to right to free expression, to have and express an opinion about any matter.

Sworn by Deponent

at Adelaide

on the 25th day of May 2009

.....
Deponent's Signature

Before me:.....

Talk Back With Attitude
Community Radio 3CR Melbourne Australia
21 May 2009

Presenters: Joe and Pat

Talk-back: Michael Mazur – mazur@iinet.net.au

Pat: Who have we got now ? Good morning Michael.

Michael: Good morning Pat, Good morning Joe.

Joe: Good morning Michael.

M: I am very concerned that we are moving towards a nuclear assault on Iran. And i'd like to explain. Of course, that would be a precursor to something much wider and . .

P: Before we even move into Pakistan? We are just looking for a excuse there?

M: We are, the thing with Pakistan is that it needs to be destabilised for the purpose of getting nukes out of Pakistan and into Iran without the Iranians knowing, and then the American satellites pick this up and its all beamed all across America and across the world. And this will look like the thing that the . .

J: Excuse me, excuse me, just go back one step. Your saying, the Americans will steal the nukes from Pakistan, secretly put them in Iran? Are you?

M: Yes, I am.

J: That's crazy talk.

M: You may say that.

J: But, I'm happy to listen to it.

M: Yeah, alright, now with the Iraq build-up, and they were telling us about weapons of mass destruction, just the WMD thing. When Iraq was destroyed, and they all went in and had a look for these WMDs, there wasn't anything like that all. The whole thing, the campaign against Iraq was just based on a pack of lies.

Now, this sort of approach isn't going to sell with a war against Iran. They are going to have to do something much better, and it will be a bigger lie but it will be a substantive in that they will find weapons of mass destruction there - meaning nukes, which they will have got from Pakistan.

Now, how to get them out of there?

The process started, i would say, if you had to put a date on it, it was December 2007 when they murdered Benazhir Bhutto, and that put terrific instability into Pakistan; and the next thing that happened by way of instability was the blowing up of the Islamabad Marriott Hotel in Sept 08, left a huge hole in the ground, could not have been done by a truck bomb, that's a complete nonsense, it was a micro nuke put in there by the United States of Israel.

And, now, the third thing that's destabilising the country is the mass murder of just hundreds of innocents in the North West of Pakistan, a lot of this is being done by American drones which is pilotless aircraft dropping ordnance on these people. Of course the Pakistani Army is doing the same thing, knocking people off just in the same way.

Now, and in the political build up to this, about a month ago, Shimon Peres, the President of Israel, he went to Washington, had private meetings with Barack Obama, the President over there, and i think he would have told him what is really expected of him, and never mind what they said on television for the evening news here, what really was going on was making sure that Barack Obama would not wimp out on doing as he was instructed, whereas George Bush did . . .

J: Excuse me, excuse me. Do you honestly believe, that it's the Israeli Prime Minister who sets the agenda and not the United States Prime Minister?

M: Exactly.

J: Amazing . .

M: Well, OK, . .

J: Amazing, I continue to be amazed by you Michael, but keep amazing me . .

P: I think Michael maybe is onto something here that perhaps nobody else is .

M: Alright, OK, now, so we had Shimon Peres, President of Israel going over there. Now the next thing that happened after that was that brace of Presidents from Pakistan and Afghanistan, they went there to meet with President Obama at the same time, which means that these lesser people were summonsed - as it were, and they would have been given their instructions.

P: They'd be told.

M: They were told certain things were gonna happen, and they will comply. Now, of President Zadari, who is, of course, the President of Pakistan, he would have been informed that what we need to do is get hold of those nukes, and we don't want the security detail to be strong on that, we want that to be a lot less so that we can get hold of these without actually too much trouble . .

J: What's the point of all this . .

M: What's the point of this? The point of this is to get nukes into Iran and make the Iranians look as if they are about to launch a nuclear assault on Israel.

P: Wouldn't this just destabilise another country in the Middle East?

M: The Israeli intent using the United States as a proxy is to destabilise the whole planet, have wars going on everywhere . . .

J: Argamedon? What is it?

M: Armageddon, I'm not a reader of the Bible, and end times stuff. But the Israelis actually believe this stuff and the Old Testament stuff, and they are really pursuing it.

J: Alright, well thank you Mike, you give people thought, irrespective of what i think, you get people thinking . .

M: Joe, Joe, could I just say, there are groups of Americans, commandos and such in Pakistan now, there may well be Israelis as well amongst them, because these things are done on the basis of United States of Israel forces, and i think the purpose of this destabilisation is to make it look as if the taking of the these nuclear weapons will be done by Islamists who are really mad at the Pakistan government and so they'll be taken . .

P: Who's going to believe that, because the American spy satellites are out everywhere, and they are not going to believe the Americans were removing them . .

J: Look, look, Michael, thank you very much, and we'll continue this another day. Thank you very much, bye bye.

P: Thankyou Michael.



**3CR 855 AM www.3cr.org.au
21 Smith Street Fitzroy Melbourne VICTORIA AUSTRALIA 3065
PO Box 1277 Collingwood Melbourne VIC AUSTRALIA 3065**



Walking out of the Federal Court of Australia, Adelaide, Fredrick Töben with new Director of Adelaide Institute, Adelaide born and bred, Peter Hartung.



Adelaide Institute

**PO Box 3300
Norwood SA 5067
Australia**

Media Release: 26 May 2009

Adelaide Institute welcomes the imprisonment of Dr Töben as a great victory for free expression.

In expressing his beliefs, Dr. Töben was exercising his civic responsibility as a thinking individual as well as his right to free expression.

Over-sensitive individuals or agitators, claiming to be offended by the utterance of an unwelcomed opinion, cannot be protected by law as we understand it; only by bias-law, a recent, nebulous concept, based on the interpretation of another recent concept: politically incorrect opinion.

In the case of freedom of expression, one of the basic rights of Democracy, there are no half-measures. A mature society does not need the law to protect it against unpleasant or awkward statements. An immature society allows its civic liberties to be curtailed without resistance. Then, oppression rules by suppression.

The enemies of TRUTH and FREEDOM have lost the argument!

Adelaide Institute is under new management and will continue Dr Töben's struggle for FREEDOM and TRUTH.

Peter Hartung

Director

info@adelaideinstitute.org

www.adelaideinstitute.org

Mobile 0401 692 057